PHILIPPINE REPORTS

VOL. 608

JUNE 22, 2009 TO JUNE 29, 2009

VOLUME 608

REPORTS OF CASES

DETERMINED IN THE

SUPREME COURT

OF THE

PHILIPPINES

FROM

JUNE 22, 2009 TO JUNE 29, 2009

SUPREME COURT
MANILA
2013

Prepared
by

The Office of the Reporter
Supreme Court
Manila
2013

EDNA BILOG-CAMBA
DEPUTY CLERK OF COURT & REPORTER

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

FE CRESCENCIA QUIMSON-BABOR
COURT ATTORNEY VI

MA. VICTORIA JAVIER-IGNACIO
COURT ATTORNEY V

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

JOSE ANTONIO CANCINO BELLO
COURT ATTORNEY IV

LEUWELYN TECSON-LAT
COURT ATTORNEY IV

DIANA DIAZ-GARRA
COURT ATTORNEY IV

FLORDELIZA DELA CRUZ-EVANGELISTA
COURT ATTORNEY IV

ROSALYN ORDINARIO GUMANGAN
COURT ATTORNEY IV

FREDERICK INTE ANCIANO
COURT ATTORNEY III

SUPREME COURT OF THE PHILIPPINES

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

FIRST DIVISION

Chairman

Hon. Reynato S. Puno

Members

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

Division Clerk of Court

Atty. Enriqueta E. Vidal

SECOND DIVISION

Chairman

Hon. Leonardo A. Quisumbing

Members

Hon. Conchita Carpio Morales
Hon. Arturo D. Brion

Division Clerk of Court

Atty. Ludichi Y. Nunag

THIRD DIVISION

Chairperson

Hon. Consuelo Ynares-Santiago

Members

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

Division Clerk of Court

Atty. Lucita A. Soriano

PHILIPPINE REPORTS
CONTENTS

PHILIPPINE REPORTS

Page

Page

Page

Page

REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

FIRST DIVISION

[A.M. No. P-08-2579. June 22, 2009]

ODALINE B. NARAG, *complainant, vs.* **MARITESS R. MANIO, Court Interpreter III, Regional Trial Court of Tuguegarao City, Branch 4,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; REVISED UNIFORM RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE (CIVIL SERVICE RULES); CLASSIFICATION OF OFFENSES; GRAVE OFFENSES; DISHONESTY AND GRAVE MISCONDUCT; PUNISHABLE BY DISMISSAL FOR THE FIRST OFFENSE. — Dishonesty and grave misconduct, respectively, are classified as grave offenses punishable by dismissal for the first offense under Section 52 (A)(1) and (3) of the Revised Uniform Rules on Administrative Cases in the Civil Service (Civil Service Rules).

2. ID.; ID.; ID.; ID.; IMPOSABLE PENALTY; MITIGATING CIRCUMSTANCES ATTENDANT TO THE COMMISSION OF THE OFFENSE SHOULD BE CONSIDERED IN THE DETERMINATION OF THE PENALTY TO BE IMPOSED ON THE ERRING GOVERNMENT EMPLOYEE; INAPPLICABLE IN CASE AT BAR. — Section 53 of the Civil Service Rules, however, provides that mitigating circumstances attendant to the commission of the offense should be considered in the determination of the penalty to be imposed on the erring government employee. But respondent never filed her comment

on the complaint and consequently never invoked, nor did the OCA find, any mitigating circumstances which could have favored her. On the contrary, she was shown to be a repeated violator of the rules she had sworn to uphold as a court employee, judging from the number of administrative cases filed, and ultimately decided, against her.

3. ID.; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; POWER OF JUDICIAL REVIEW; MOOTNESS; PREVIOUS DISMISSAL FROM THE SERVICE DOES NOT RENDER MOOT THE PRESENT CASE INVOLVING ADDITIONAL SERIOUS OFFENSES; RATIONALE. — x x x [T]he Court has already dismissed respondent from the service, also for dishonesty and grave misconduct, with forfeiture of all benefits, except accrued leave credits, and with prejudice to re-employment in the government service. Unfortunately for respondent, this did not render her case moot. She must not be allowed to evade administrative liability by her previous dismissal from the service. Thus, for this case involving additional serious offenses, the Court finds it proper to impose upon her a fine of ₱20,000 to be deducted from her accrued leave credits in lieu of dismissal from the service.

R E S O L U T I O N

CORONA, *J.*:

This is an administrative complaint for grave misconduct, dishonesty and conduct unbecoming of a court employee against respondent Maritess R. Manio,[1] court interpreter III, Branch 4 of the Regional Trial Court (RTC) of Tuguegarao City.

In a complaint-affidavit,[2] complainant Odaline B. Narag narrated that her sister, Veneranda Obdulia B. Baquiran (Baquiran), was planning to adopt her two stepchildren. Baquiran asked for complainant's help in looking for a good lawyer to handle the case. Complainant's officemate, Susana Wandag (Wandag), mentioned that her friend, herein respondent, might be able to help.

[1] Also referred to as Marites R. Manio in the records.

[2] Dated May 20, 2004. *Rollo*, pp. 4-5.

On April 2, 2004, respondent personally went to complainant's office and told her that a certain Atty. Mac Paul Soriano (Atty. Soriano) had agreed to handle the adoption case.

According to respondent, Atty. Soriano was going to take his Holy Week vacation in Manila and was allegedly asking for money so that he could prepare the necessary pleadings during his vacation for filing after the Holy Week. Respondent's representations, however, turned out to be totally unknown to and unauthorized by Atty. Soriano.[3]

Respondent then informed complainant that Atty. Soriano's professional fee for the adoption case was ₱40,000 for two children and accordingly asked for a 50% down payment thereof. Complainant readily gave ₱20,000 as partial payment and made respondent sign an acknowledgment receipt[4] for the said amount.

After the Holy Week, complainant kept calling respondent at the RTC Branch 4 to follow up the status of her sister's petition but the latter was always absent. On April 30, 2004, an employee of the RTC informed complainant by phone that respondent was no longer reporting for work.

Complainant then tried to see respondent at her residence but she was nowhere to be found.

---

[3] This was established in the 1st Indorsement (dated May 25, 2004) forwarded by Judge Lyliha L. Abella-Aquino, the presiding judge of the RTC branch where respondent was assigned, to the OCA. *Id.,* p. 2.

[4] *Id.,* p. 6. The acknowledgment receipt read:

ACKNOWLEDGEMENT RECEIPT

Received the amount of TWENTY THOUSAND PESOS ONLY (P20,000.00) representing Attorney's Fee[s] on Adoption Case to be filed in favor of SPS. RAY and OBDULLA BAQUIRAN. ONE THOUSAND PESOS (₱1,000.00) from Ms. Ma. Lourdes H. Golino for issuance of ODC of Jacinto Golino.

April 2, 2004 — Date

(Sgd.) MARITES R. MANIO
Interpreter – Branch IV
Regional Trial Court
Tuguegarao City

Complainant's complaint-affidavit was corroborated by her officemates, Wandag and Ma. Lourdes H. Golino[5], who executed their own separate sworn statements.

Respondent, on the other hand, failed to file her comment despite personal receipt of the 1st Tracer of the Office of the Court Administrator (OCA)[6] on February 22, 2005.[7]

During the pendency of this case, respondent was found (in another case) guilty of conduct unbecoming a court employee for which she was reprimanded with a warning that the commission of the same or similar offense in the future would be dealt with more severely.[8] And in yet another administrative complaint,[9] she was again found liable for dishonesty and grave misconduct for which she was dismissed from the service.

---

[5] Also a witness to the transaction.

[6] Dated January 28, 2005. *Rollo*, p. 15.

[7] The 1st Tracer reiterated the OCA's directive in its 1st Indorsement of August 25, 2004 for respondent to comment on the complaint. *Id.*, p. 15.

Records would show that the other directives were not validly served on respondent as there was a seeming intent on her part to elude service thereof. In a telephone conversation with Judge Abella-Aquino, she informed the OCA that although respondent was allegedly always out of town whenever personal service of the Indorsement of August 25, 2004 was to be effected, respondent was regularly spotted in public places within the same locality. Respondent's propensity to ignore directives from the Court was strengthened by the fact that she also ignored several Court directives in another administrative case involving her entitled *Adtani v. Manio*, A.M No. P-04-1893, 27 July 2007, 528 SCRA 232.

[8] *Adtani v. Manio*, *supra*. In this case, respondent was held administratively liable for conduct unbecoming a court employee for her willful failure to pay a just debt.

[9] *Canlas-Bartolome v. Manio*, A.M. No. P-07-2397, 4 December 2007, 539 SCRA 333. In this case, respondent also solicited money from therein complainant who wanted to follow up the status of her sister's petition which she mistakenly thought to have been filed in the RTC branch where respondent used to be assigned (Branch 4). Although the petition (which was filed in, and decided by, RTC Branch 1) had already been dismissed, respondent made it appear that she could still do something about it and all that was needed was money for filing fee, publication, attorney's fees and bribe for the judge. After receipt of the money, respondent handed a

Furthermore, in a resolution dated November 17, 2004, this Court dropped respondent from the rolls for absence without official leave (AWOL) since March 1, 2004.

On the basis of the pleadings and documents presented by complainant, the OCA submitted its memorandum finding respondent administratively liable for dishonesty and conduct unbecoming a court employee. It recommended respondent's dismissal from the service effective November 17, 2004 with forfeiture of retirement benefits, except accrued leave credits, and with prejudice to re-employment in the government service.

We agree with the OCA that respondent's acts constituted dishonesty and conduct unbecoming a court employee. They also fell within the purview of grave misconduct.

Dishonesty[10] and grave misconduct, respectively, are classified as grave offenses punishable by dismissal for the first offense under Section 52 (A)(1) and (3)[11] of the Revised

---

resolution to complainant showing that the petition was granted. However, she told complainant that she should give additional money to expedite the release of the certificate of finality of judgment. Complainant readily obliged to respondent's urging.

After complainant followed up the certificate of finality of judgment a number of times to no avail, she subsequently found out that no petition in the name of her sister was filed in Branch 4 and that it was, instead, raffled to Branch 1 and had been dismissed. When complainant went to Branch 4 and showed the resolution respondent gave her, it was discovered that the docket number contained therein referred to an entirely different case which was resolved in yet another branch of the RTC (Branch 5). It was also found that respondent forged her presiding judge's signature to make the resolution appear legitimate.

[10] Dishonesty is "a disposition to lie, cheat, deceive, or defraud; untrustworthiness, lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray" (*CSC v. Dasco*, A.M. No. P-07-2335, 22 September 2008).

[11] Section 52 of the Revised Uniform Rules on Administrative Cases in the Civil Service provides:

Section 52. *Classification of Offenses*. – Administrative offenses with corresponding penalties are classified into grave, less grave or light, depending on their gravity or depravity and effects on the government service.

Uniform Rules on Administrative Cases in the Civil Service (Civil Service Rules).[12]

Respondent's guilt is unmistakable. As a public servant, nothing less than the highest sense of honesty and integrity is expected of her at all times.[13] She should be the personification of the principle that public office is a public trust. Regrettably, she fell extremely short of the standards which should have governed her life as a public servant.

By soliciting money from complainant, she committed an act of serious impropriety which tarnished the honor and dignity of the judiciary and deeply affected the people's confidence in it. She committed the ultimate betrayal of the duty to uphold the dignity and authority of the judiciary by peddling influence to litigants, creating the impression that decisions can be bought and sold.[14]

Section 53 of the Civil Service Rules, however, provides that mitigating circumstances attendant to the commission of the offense should be considered in the determination of the penalty to be imposed on the erring government employee. But respondent never filed her comment on the complaint and consequently never invoked, nor did the OCA find, any mitigating circumstances which could have favored her. On the contrary, she was shown to be a repeated violator of the rules she had

---

A. The following are *grave offenses* with their corresponding penalties:

1. Dishonesty

1st offense – Dismissal

x x x

3. Grave Misconduct

1st Offense -Dismissal

[12] Promulgated by the Civil Service Commission through Resolution No. 99-1936 dated 31 August 1999 and implemented by CSC Memorandum Circular No. 19, Series of 1999.

[13] *Canlas-Bartolome v. Manio, supra* note 9 at 339.

[14] *Id.*, pp. 339-340.

sworn to uphold as a court employee, judging from the number of administrative cases filed, and ultimately decided, against her.

Respondent's acts of recommending a private attorney to a prospective litigant[15] and her disappearance after receipt of the money (without fulfilling her promise to cause the preparation of the petition) also constituted conduct unbecoming a court employee.[16]

With three cases (including this case) decided against her and her being dropped from the rolls for having gone on AWOL, respondent has clearly demonstrated her unfitness to be in the government service, thus warranting her dismissal therefrom.

As already mentioned, however, the Court has already dismissed respondent from the service, also for dishonesty and grave misconduct, with forfeiture of all benefits, except accrued leave credits, and with prejudice to re-employment in the government service.[17] Unfortunately for respondent, this did

---

[15] We agree with the OCA when it stated that while the New Code of Judicial Conduct for the Philippine Judiciary, expressly prohibiting the above act, took effect only on June 1, 2004 or after the commission of the complained act, the Court has always emphasized that court personnel are involved in the dispensation of justice, and parties seeking redress from the courts for grievances look upon them as part of the Judiciary. In view of this pronouncement, there was an appearance of impropriety when respondent referred a lawyer to complainant. She created an impression upon complainant that the adoption case would somehow receive some kind of special treatment, especially since the lawyer concerned usually handles cases in the family court where respondent was assigned.

[16] In *Joson v. Macapagal*, 432 Phil. 980 (2002), two court employees were likewise found guilty of committing acts constituting conduct unbecoming a government employee when they reneged on their promise to have pertinent documents notarized and submitted to the Government Service Insurance System (GSIS) after the complainant's rights over the subject property were transferred to the sister of one of the respondents. Complainant then received a letter from the GSIS reminding her of her accountabilities and informing her that, in case of her failure to pay the monthly amortization, the same would be deducted from her retirement benefits.

[17] *Canlas-Bartolome v. Manio*, *supra* note 9.

not render her case moot.[18] She must not be allowed to evade administrative liability by her previous dismissal from the service. Thus, for this case involving additional serious offenses, the Court finds it proper to impose upon her a fine of ₱20,000 to be deducted from her accrued leave credits in lieu of dismissal from the service.[19]

WHEREFORE, we find respondent Maritess R. Manio, Court Interpreter III of the Regional Trial Court, Branch 4, Tuguegarao City, *GUILTY* of grave misconduct, dishonesty, and conduct unbecoming a court employee. In view of her previous dismissal from the service, a *FINE* of ₱20,000 is instead imposed on her, to be deducted from her accrued leave credits.

Respondent is further ordered to *RESTITUTE* the amount of ₱20,000 she received from complainant within 10 days from her receipt of this resolution. Failure to do so will subject her to criminal prosecution.

The Employees' Leave Division, Office of Administrative Services-OCA, is likewise *DIRECTED* to compute respondent's earned leave credits and deduct therefrom the amount representing the payment of the fine.

SO ORDERED.

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

---

[18] *OCA v. Cunting*, A.M. No. P-04-1917, 10 December 2007, 539 SCRA 494, 512, citing *Sibulo v. San Jose*, A.M. No. P-05-2088, 11 November 2005, 474 SCRA 464, 471.

[19] *Id.*

EN BANC

[G.R. Nos. 154211-12. June 22, 2009]

SPOUSES ERNESTO F. CURATA and LOURDES M. CURATA, EDUARDO M. MONTALBO, SPOUSES MARCELINO DALANGIN and VITALIANA DALANGIN, PABLO SUMANGA, HEIRS OF MATEO MACARAIG, HEIRS OF PAULINA ACOSTA, HEIRS OF NICOLAS ALDOVER, SPOUSES MARCIANO MANALO and LUCIA GABIA, GREGORIO FALTADO, SILVERIO ROSALES, and CESARIO ILAO, HEIRS OF ALDOVER, CATALINA PEREZ, LORNA PANTANGCO, SONIA PANTANGCO, BELEN PANTANGCO, IRENEO PANTANGCO, JR., PEDRO CHAVEZ, SATURNINA PEREZ, ESTELITA C. PEREZ, ESTELITA M. PEREZ, ROMEO PEREZ, RUBEN PEREZ, MARIO PEREZ, NABOCHO DONAZA PEREZ, MANUEL PEREZ, HERMINIGILDO PEREZ, MAYHAYDA PEREZ, ALFREDO PEREZ, ERNESTO PEREZ and ARACELI PEREZ (represented by ROSARIO PEREZ ROSEL), ROSALINDA BUENAFE, FRED M. HERNANDEZ married to SUSANA ILAO, VICENTE GUTIERREZ, MARIA LACSAMANA, HEIRS OF JUANA MACALADLAD, FELISA HERNANDEZ, FELINO HERNANDEZ and FLORENTINO MACATANGAY, HEIRS OF BASILIO MACARAIG and PACIENCIA DEL MUNDO, and ROSALINDA BUENAFE, *petitioners, vs.* **PHILIPPINE PORTS AUTHORITY,** *respondent.*

[G.R. No. 158252. June 22, 2009]

PHILIPPINE PORTS AUTHORITY, *petitioner, vs.* **REMEDIOS ROSALES-BONDOC, JOSE ROSALES, JR., ANTONIO ANTOLIN, MARIA THERESA ANTOLIN-YUPANGCO, ADORACION CABRAL, AGRIFINA GARCIA, ALFREDO BAUTISTA, EMELIA M. BERBA, ANDREA BALINA, ARSENIO**

ABACAN, AUGUSTO CLAVERIA, AUREA and CONSOLACION ACOSTA, AZUCENA and ARNEL PEREZ, BENJAMIN CASTILLO, BIENVENIDO MARALIT, BRIGIDO LONTOC, CONSTANCIA VILLAMOR BARCELO, CONSUELO ALCANTARA, CORAZON and ISABEL ILAO, DANIEL MAGADIA, DR. EFREN ESPINO, DELIA ESPINO VELASCO and ALFREDO P. ESPINO, ESPERANZA DIMAANDAL, ESTEBAN ESPINO, EVARISTO BAUAN, FELINO and FELISA HERNANDEZ, FLORENTINO MACATANGAY, GENEROSA BUENAFE, GERARDO ABACAN, ERLINDA ABACAN, LILIANA ABACAN, GODOFREDO ROSALES, GREGORIA DAPAT, GUADALUPE DAYANGHIRANG, HEIRS OF LUCILA ALDOVER, HEIRS OF POPULA LLANA, JOSE MARANAN, JOSE NOEL AGBING, *ET AL.*, LAURO ABRAHAN, LIBRADA MACATANGAY *vda. DE* ABAS, LILIA SINGUIMOTO, LUIS and ZENAIDA LIRA, LUISA *vda. DE* MONTALBO, LUISA VILLANUEVA, MA. CONSOLACION SARMIENTO, MARCIANA BUENAFE, MARIA CAEDO, MARIA ESPAÑOL, MARIA LACSAMANA, MARIA M. MONTALBO, MILAGROS MACATANGAY, PABLO MENDOZA, PEDRO ALCANTARA and DOROTEA MACATANGAY, PEDRO MARASIGAN, PRISCILLA BUENAFE, RAFAEL S. BERBA, RUFINO GERON, SEGUNDINA GUALBERTO, SIMEON BALITA, SIXTO GUALBERTO, SPS. CARLITO and ENRIQUETA CASAS, and SPS. JAIME and REYNADA TAURO, *respondents.*

[G.R. No. 166200. June 22, 2009]

PHILIPPINE PORTS AUTHORITY, *petitioner, vs.* **HONORABLE COURT OF APPEALS (SPECIAL SIXTEENTH DIVISION), HON. PATERNO TAC-AN, in his capacity as Presiding Judge of the Regional Trial Court, Batangas City, Branch 84, FELIPA ACOSTA, SPS. EMILIO BERBERABE, HEIRS OF SPS. ATANACIA ALDOVER and CESARIO RIVERA,**

ROMULO S. BALINA, ADORACION MAGTIBAY, SOLE HEIR OF SPS. PEDRO MONTALBO and MAURICIA BALINA-CATALINA, MONTALBO ALDOVER, HEIRS OF LEOCADIO and LEONILA ALANO, HEIRS OF SPS. LEOCADIO ALANO and FELIPA MACATANGAY, LEANDRO R. GALVEZ, HEIRS OF SIMEON MAGTIBAY, GABRIELA ACOSTA for herself and as SOLE HEIR OF ESTANESLAWA ACOSTA, HEIRS OF NESTORA ALCANTARA and BROTHERS, SPS. ZOLIO ALDOVER and CATALINA MONTALBO ALDOVER, CATALINA D. BALINA, SIMEON D. BALINA, ERLINDA D. BALINA married to ALBERTO REYES, SOLE HEIR OF FORTUNATO D. BALINA married to FAUSTINA BURAL, JOSEFA GRACE BRUAL, NEMESIO D. BALINA married to CONCHITA MORALES, HEIRS OF TOMASA BALINA, FRANCISCO A. BERBERABE, EMELIO FRANCISCO BERBERABE JR., THOMAS A. BERBERABE married to NYMPHA ATIENZA, JOEL A. BERBERABE married to MURITA REYES, HEIRS OF CECILIA DIMAANDAL, SPS. EDILBERTO DIMAANDAL, LILIA GARCIA, JUANA DIMAANDAL, HEIRS OF VICENTA GUTIERREZ, HEIRS OF EVARISTO MONTALBO and FELISA MONTALBO, HEIRS OF FRANCISCO SUMANGA, NEMESIO D. BALINA and ERLINDA D. BALINA, and CAROLINA B. ACOSTA and ABIGAIL B. ACOSTA, *respondents.*

[G.R. No. 168272. June 22, 2009]

ROSALINDA BUENAFE and MELENCIO CASTILLO, *petitioners, vs.* **PHILIPPINE PORTS AUTHORITY,** *respondent.*

[G.R. No. 170683. June 22, 2009]

PHILIPPINE PORTS AUTHORITY, *petitioner, vs.* **CAROLINE B. ACOSTA, ABIGAIL B. ACOSTA, NEMESIO D. BALINA, and ERLINDA D. BALINA,** *respondents.*

[G.R. No. 173392. June 22, 2009]

PHILIPPINE PORTS AUTHORITY, *petitioner, vs.* **REMEDIOS ROSALES-BONDOC, JOSE K. ROSALES, JR., MARIA TERESA ANTOLIN-YUPANGCO, MARIA LOURDES ANTOLIN, ARSENIO ABACAN, PEDRO ALCANTARA, HEIRS OF POPULA LLANA, GODOFREDO ROSALES, LUIS LIRA, ZENAIDA LIRA, CORAZON ILAO, MILAGROS MACATANGAY, LILIA SINGUIMOTO, GERARDO ABACAN, JOSE NOEL AGBING, *ET AL.*, MARCIANA BUENAFE, ESTEBAN ESPINO, BRIGIDO LONTOK, BIENVENIDO MARALIT, AUREA ACOSTA, CONSUELO ALCANTARA, BENJAMIN CASTILLO, AUGUSTO CLAVERIA, RUFINO GERON, SEGUNDINA GUALBERTO, SIXTO GUALBERTO, ADORACION CABRAL, HEIRS OF LUCILA ALDOVER, JAIME TAURO, SIMEON MAGTIBAY, CONSTANCIA VILLAMOR BARCELO, MA. CONSOLACION SARMIENTO, PRISCILLA BUENAFE, MA. CLARA BERBA, PACITA BERBA, AMELIA BERBA, RAFAEL BERBA, MARIANO DIOKNO, HEIRS OF BASILIO MACARAIG, FELINO HERNANDEZ, JOSE MARANAN, GREGORIO DAPAT, MANUEL AMUL, DANIEL MAGADIA, LUISA MONTALBO, SIMEON BALITA, MARIA LACSAMANA, MARIA CAEDO, MARIA ESPAÑOL, PEDRO MARASIGAN, ANDREA BALINA, EULALIO BUENAFE, GENEROSA BUENAFE, LILIANA ABACAN (co-owner of GERARDO ABACAN), ERLINDA ABACAN (co-owner of GERARDO ABACAN), CONSOLACION ACOSTA, CECILLE OLIVIA CUISIA, DELIA E. VELASCO, ALFREDO P. ESPINO, EFREN ESPINO, ALFREDO BAUTISTA,**

RAFAEL LLANA, RUSTICA LLANA, PEDRO MAGADIA, ROSE MAGADIA, ARNEL PEREZ, EVARISTA BAUAN, CARLITO CASAS, AZUCENA PEREZ, ESPERANZA DIMAANDAL, JUANA MACALALAD, PABLO MENDOZA, DOROTEO MACATANGAY, FRANCISCO SUMANGA, LIBRADA MACATANGAY *VDA. DE* ABAS, MARIA MONTALBO, WILSON ONG, AGRIFINA GARCIA, ISABEL ILAO, HEIRS OF MELANIO ACOSTA and PELAGIA ACOSTA, ROSA D. MAGADIA, GUADALUPE DAYANGHIRANG, LAURO ABRAHAM, FELISA MACATANGAY, FRANCISCO ABALOS, PETRA ALANO, HEIRS OF SEVERO ALANO, HEIRS OF SOLEDAD ALANO, HEIRS OF INOCENCIO ALANO, HEIRS OF REMEDIOS ALANO, HEIRS OF ANTONIO ALANO, HEIRS OF FELIPE ALANO, ERLINDA D. BALINA, NEMESIO BALINA, FELIPA ACOSTA, LAMBERTO ACOSTA, EMILIO BERBERABE, SOLE HEIR OF GABRIELA ACOSTA, ESTANISLAW ACOSTA, HEIRS OF CECILIA DIMAANDAL, HEIRS OF FRANCISCO SUMANGA, HEIRS OF SIMEON MAGTIBAY, HEIRS OF CESARIO RIVERA and ANATACIA ALDOVER, FRANCISCO A. BERBERABE, EMILIO F. BERBERABE, JR., ANITA G. ESCANO, LYDIA G. CAPULONG, ERLINDA BERMER (GERMER), ERLINDA G. GONZALES, ROMULO G. GONZALES, ANUNCIACION GUTIERREZ, SILVERIO ATIENZA, FELIPE SERRANO AND SPOUSE, J.L. GANDIONCO REALTY, GREGORIO BALIWAG, LOURDES MERCADO, AUGUSTO MERCADO, HEIRS OF FIDENCIO MERCADO, HEIRS OF CONCEPCION MERCADO, SATURNINO PEREZ, *ET AL.*, DOMINGO L. TAN, DANIEL MAGADIA, CELIA PASION DIMAANDAL, *ET AL.*, LUISA VILLANUEVA, SIMEON BALINA, JOEL BERBERABE, THOMAS BERBERABE, HEIRS OF NESTOR ALCANTARA, ENRICO ALCANTARA, LEONARDO ALCANTARA, ROMULO BALINA, JUANA DIMAANDAL,

CATALINA D. BALINA, HEIRS OF FORTUNATA BALINA, SPS. ZOILO ALDOVER and CATALINA MONTALBO, HEIRS OF PEDRO MONTALBO and MAURICIA BALINA, ADORACION MAGTIBAY, HEIRS OF VICENTE GUTIERREZ, EDILBERTO DIMAANDAL and LILIA GABIA, HEIRS OF EVARISTO MONTALBO and FELISA MONTALBO, HEIRS OF LEOCADIO ALANO and LEONILA ALANO, TOMASA BALINA, LUMIN ANTOLIN (rep. by LEANDRO GALVEZ), VICENTE DE RIVERA, RENE DE RIVERA, FRANCISCO MERCADO, SERAFIN MONTALBO, FORTUNATA BAUNA, SALUD MACARAIG, FLORENDO MACATANGAY, PASTOR REALTY CORP., LUZ BALMES, PERPETUA ATIENZA, FORTUNATA ATIENZA, ISABELO ATIENZA, BROTHERS OF FORTUNATA BALINA, ROSALINDA C. ROSALES, and PATRICIO SUMANGA, *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PERFECTION OF APPEALS; AS A RULE, PAYMENT OF DOCKET FEES WITHIN THE PRESCRIBED PERIOD IS MANDATORY THEREFOR; EFFECT OF NON-PAYMENT OF APPELLATE COURT DOCKET FEES. — The payment of docket fees within the prescribed period is, as a rule, mandatory for the perfection of an appeal. Secs. 4 and 9 of Rule 41 of the Rules of Court provide, thus: SEC. 4. *Appellate court docket and other lawful fees*.—Within the period for taking an appeal, the appellant shall pay to the clerk of court which rendered the judgment or final order appealed from, the **full amount of the appellate court docket and other lawful fees.** x x x SEC. 9. *Perfection of appeal; effect thereof*.—x x x **A party's appeal by record on appeal is deemed perfected as to him with respect to the subject matter thereof upon the approval of the record on appeal filed in due time.** In appeals by notice of appeal, the court loses jurisdiction over the case upon the perfection of the appeals filed in due time and the expiration of the time to appeal of the other parties. x x x The appellant's

failure to pay the appellate docket fees is a ground for the dismissal of the appeal by the trial court under the succeeding Sec. 13: SEC. 13. *Dismissal of appeal*.—Prior to the transmittal of the original record or the record on appeal to the appellate court, the trial court *may*, *motu proprio* or on motion, dismiss the appeal for having been taken out of time or for **non-payment of the docket and other lawful fees within the reglementary period.** (*As amended, A.M. No. 00-2-10-SC, May 1, 2000*.) Complementing the above provisions is Sec. 1(c), Rule 50, providing in effect that the appellate court may refuse to entertain a suit for nonpayment of the appellate docket fees.

2. ID.; ID.; ID.; ID.; EXCEPTIONS. — As with most rules of procedure, however, exceptions are invariably recognized and the relaxation of procedural rules on appeals has been effected to obviate jeopardizing substantial justice. This liberality stresses the importance of an appeal in our judicial grievance structure to accord every party litigant the amplest opportunity for the proper and just disposition of his cause, freed from the constraints of technicalities. *La Salette College v. Pilotin* teaches that the otherwise mandatory nature of the requirement on payment of appellate docket fees is to be viewed as qualified, as follows: "*first*, failure to pay those fees within the reglementary period allows only discretionary, not automatic, dismissal; *second*, such power should be used by the court in conjunction with its exercise of sound discretion in accordance with the tenets of justice and fair play, as well as with a great deal of circumspection in consideration of all attendant circumstances." Among the grounds that pertinent jurisprudence has recognized as justifying the loosening up of the stringent requirement on payment of docket fees are: (1) to relieve a litigant from an injustice not commensurate with his failure to comply with the prescribed procedure; (2) good faith of the defaulting party by paying within a reasonable time from the time of the default; (3) the merits of the case; (4) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (5) a lack of any showing that the review sought is frivolous and dilatory; (6) no unjust prejudice to the other party; and (7) importance of the issues involved. Concomitant to a liberal interpretation of the rules of procedure should be an effort on the part of the party invoking liberality to adequately explain his failure to abide by the rules.

3. ID.; ID.; ID.; ID.; ID.; APPLICABLE TO CASE AT BAR. — In the case at bar, the Court rules that the public interest and the higher interests of justice and fair play dictate that PPA's appeal should be allowed. The trial judge should have permitted the appeal to prosper in view of the billions of pesos of taxpayers' money, subject matter of the appeal. Fully aware of the wide disparity between the fair market values of the lots ranging from PhP 2.10 to 3.50 per square meter based on the tax declarations and the amount of PhP 5,500 per square meter pegged as just compensation, the judge cannot be said to have wielded his power to reject PPA's appeal with the highest degree of circumspection. Moreover, a sharp increase in the total amount of compensation from PPA's offered price of PhP 500 per square meter to PhP 5,500 per square meter or an increase of 1,000% may make PPA rethink if the project is still viable in view of huge financial requirements. Lastly, the fact that the judge even increased the amount of PhP 4,800 per square meter recommended by the commissioners to PhP 5,500 per square meter can be a compelling reason why a review by a higher court should be allowed, given the increase of hundreds of millions granted by him over the amount proposed by the commissioners. Given these circumstances, he should have liberally applied the procedural rules to the end that the losing party, and a government agency at that—the PPA—be given the fullest opportunity to air and exhaustively discuss countervailing arguments against the order fixing the just compensation. PPA must be given a sporting chance to convince the higher court of the merits of its position. Indeed that would be in keeping with the axiom that the case be decided on the merits rather than on technicality. x x x In the same vein, PPA filed a motion to file the record on appeal and pay the appellate docket fee, indicating its readiness to pay within the extension prayed for. In view of the importance of Phase II of the BPZ Project, the huge financial implications of the prescribed compensation and the considerable interests of the government in enhancing our port facilities, the trial court should have allowed the record on appeal and the payment of the appeal fees to afford the higher court a second look at the merits of the case. In the light of the foregoing, the CA did not err in allowing PPA's appeal.

4. ID.; ID.; ID.; APPELLATE COURT'S ACTION OF REFERRING THE MOTION FOR WRIT OF POSSESSION TO THE

TRIAL COURT FOR IMMEDIATE RESOLUTION IS PROPER. — Anent the second issue, petitioners Curata, *et al*. claim that the CA erred in taking cognizance of the motion for a writ of possession and declaring PPA's entitlement to the possession of the subject lots. The position is clearly misplaced. The CA, in its November 28, 2000 Resolution, simply referred the motion for a writ of possession to the Batangas RTC for immediate resolution. This was the proper action to take, since the matter was not within the ambit of CA-G.R. SP No. 60314.

5. ID.; ID.; EXECUTION OF JUDGMENTS; EXECUTION OF JUDGMENTS PENDING APPEAL DOES NOT APPLY TO EMINENT DOMAIN PROCEEDINGS; ELUCIDATED. — The Court rules that discretionary execution of judgments pending appeal under Sec. 2(a) of Rule 39 does not apply to eminent domain proceedings. x x x PPA's monies, facilities and assets are government properties. Ergo, they are exempt from execution whether by virtue of a final judgment or pending appeal. PPA is a government instrumentality charged with carrying out governmental functions through the management, supervision, control and regulation of major ports of the country. It is an attached agency of the Department of Transportation and Communication pursuant to PD 505. x x x Therefore, an undeniable conclusion is that the funds of PPA partake of government funds, and such may not be garnished absent an allocation by its Board or by statutory grant. If the PPA funds cannot be garnished and its properties, being government properties, cannot be levied via a writ of execution pursuant to a final judgment, then the trial court likewise cannot grant discretionary execution pending appeal, as it would run afoul of the established jurisprudence that government properties are exempt from execution. What cannot be done directly cannot be done indirectly. From the above discussion, we find that the RTC committed grave abuse of discretion in its July 24, 2000 Order directing the execution of the First Compensation Order (July 10, 2000 Order) pending appeal. Nevertheless, this issue of discretionary execution has been rendered moot by our dispositions in this judgment, more particularly on just compensation.

6. STATUTORY CONSTRUCTION; RULE ON PROSPECTIVITY OF LAWS; RATIONALE; EXCEPTION.— Statutes are

prospective and not retroactive in their operation, laws being the formulation of rules for the future, not the past. Hence, the legal maxim *lex de futuro, judex de praeterito*—the law provides for the future, the judge for the past—which is articulated in Art. 4 of the Civil Code thusly: "Laws shall have no retroactive effect, unless the contrary is provided." The legislative intent as to the retroactive application of a law is made manifest either by the express terms of the statute or by necessary implication. The reason for the rule is the tendency of retroactive legislation to be unjust and oppressive on account of its liability to unsettle vested rights or disturb the legal effect of prior transactions. A well-settled exception to the rule on prospectivity is when the law in question is remedial in nature. The rationale underpinning the exception is that no person can claim any vested right in any particular remedy or mode of procedure for the enforcement of a right.

7. POLITICAL LAW; STATUTES; REPUBLIC ACT NO. 8974; A SUBSTANTIVE LAW THAT CANNOT BE GIVEN RETROACTIVE EFFECT; ELUCIDATED. — A perusal of RA 8974, AO 50 and Rule 67 would readily show that they all deal with the subject of expropriation. Save for the matter of the amount to be deposited, RA 8974 is almost identical with the earlier issued AO 50. Accordingly, RA 8974, owing to its repealing clause, would have superseded AO 50 *vis-à-vis* Civil Case No. 5447, were the former given retroactive operation. So would the prescription on deposit set forth under Sec. 2 of Rule 67, which merely requires the expropriating agency, upon property taking, to deposit an amount equivalent to the assessed value of the lot to be expropriated. The question to be resolved then is whether or not RA 8974 is a remedial statute and, hence, can be accorded retroactive effect to apply to the expropriation of lands for the development of Phase II of the BPZ. We answer the poser in the negative. In *Republic v. Gingoyon*, on the issue of how much must the government pay by way of initial deposit, the Court, after positing the applicability of RA 8974 to the expropriation of NAIA Passenger Terminal III (NAIA III), stated the observation that the appropriate standard of just compensation—inclusive of the manner of payment thereof and the initial compensation to the lot owners—is a substantive, not merely a procedural, matter. The Court explained: **It likewise bears noting that the appropriate standard of just compensation is a substantive matter.** It is well within the

province of the legislature to fix the standard, which it did through the enactment of Rep. Act. No. 8974. Specifically, this prescribes the new standards in determining the amount of just compensation in expropriation cases relating to national government infrastructure projects, as well as the payment of the provisional value as a prerequisite to the issuance of a writ of possession. x x x In *Lintag v. National Power Corporation*, we reiterated that RA 8974 is a substantive law that cannot be applied retroactively: It is well-entrenched principle that statutes, including administrative rules and regulations, operate prospectively unless the legislative intent to the contrary is manifest by express terms or by necessary implication because the retroactive application of a law usually divests rights that have already become vested. This is based on the Latin maxim: *Lex prospicit non respicit* (the law looks forward, not backward). In the application of RA No. 8974, the Court finds no justification to depart from this rule. *First*, RA No. 8974 is a substantive law. *Second*, there is nothing in RA No. 8974 which expressly provides that it should have retroactive effect. *Third*, neither is retroactivity necessarily implied from RA No. 8974 or in any of its provisions. Unfortunately for the petitioners, the silence of RA No. 8974 and its Implementing Rules on the matter cannot give rise to the inference that it can be applied retroactively. Applying the lessons of *Gingoyon*, in relation to *Lintag* in the light of the aforementioned doctrinal pronouncements, RA 8974, to the extent that it imposes a certain requirement that is substantive in nature or disturbs substantive rights, cannot be made to apply to Civil Case 5447.

8. ID.; ADMINISTRATIVE LAW; ADMINISTRATIVE ORDERS; NATURE; CASE AT BAR. — Under the Administrative Code of 1987, "[A]cts of the President which relate to particular aspects of government operations in pursuance of his [or her] duties as administrative head shall be promulgated in administrative orders." A perusal of AO 50 would readily disclose that it partakes the nature of instructions or guide to "all government agencies and instrumentalities x x x engaged in public infrastructure projects." And the standards enumerated therein for the assessment of the value of the land subject to expropriation are addressed to the expropriating agency or its duly authorized assessor, only "in order to facilitate the immediate judicial determination of just compensation during the expropriation proceedings." The provisions of AO 50, as

couched, and the nature of administrative orders bind the officials and agencies in the executive branch that exercise the power of eminent domain. But not the RTC which, needless to stress, does not look up to the President as administrative head in the first place. Any valuation or standard that may be set forth in AO 50 for just compensation may serve only as guiding norm or one of the factors in arriving at an ideal amount. But it may not take the place of the court's own disposition as to what amount should be paid and how to arrive at such amount. After all, the determination of just compensation in expropriation cases is a judicial function. AO 50, or any executive issuance for that matter, cannot decree that the executive, or the department's own determination, shall have primacy over the court's findings. These pronouncements can, however, be applied only to pending condemnation proceedings prior to November 26, 2000 when RA 8974 took effect. As of that date, RA 8974 had repealed AO 50 for being inconsistent with the said law.

9.REMEDIAL LAW; SPECIAL CIVIL ACTIONS; EXPROPRIATION; RULE 67 OF THE RULES OF COURT APPLICABLE. — x x x Rule 67 should be viewed in Civil Case No. 5447 as governing the instant expropriation of private respondents' lots. Since the negotiation by PPA with the lot owners for the just compensation bogged down, Rule 67 should have been applied independently of AO 50 to Civil Case No. 5447. Thus, the correct amount of deposit for the appropriated lots should have been the assessed value of the subject lots per tax declarations pursuant to Rule 67, given the fact that courts are not bound by AO 50 or by RA 8974 which cannot be applied retroactively in the first place. In the factual setting at bar, the RTC can either order a deposit equal to the total assessed value of the lots in question, as reflected in the tax declarations of the subject lots; or, in the alternative, order the level of deposit as proposed by PPA, as it correctly did through the May 15, 2002 Order pegging the deposit equivalent to 10% of the offered amount for the expropriated lots pursuant to Sec. 2 of AO 50. Thus, the May 15, 2002 RTC Order should be affirmed. But the RTC later committed a miscue and gravely abused its discretion by issuing the July 12, 2002 and July 29, 2002 Orders applying RA 8974, which cannot be applied retroactively. The recall of the July 12 and 29, 2002 Orders is in order.

10. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; POWER OF JUDICIAL REVIEW; ISSUE OF PAYMENT OF CORRECT DEPOSIT OR INITIAL PAYMENT HAS BEEN RENDERED MOOT BY THE COURT'S DETERMINATION OF JUST COMPENSATION. — The issue of the payment of correct deposit or initial payment, however, has been rendered moot by our determination of just compensation for the expropriated lots in these consolidated petitions, considering that the lot owners can already be paid the just compensation upon the finality of this decision.

11. ID.; STATUTES; REPUBLIC ACT NO. 8974; AMENDMENTS THEREOF TO RULE 67 OF THE RULES OF COURT. — One last point on the application of RA 8974 and Rule 67. RA 8974 amended Rule 67 effective November 26, 2000, but only with regard to the expropriation of right-of-way sites and locations for national government infrastructure projects. On the other hand, in all other expropriation cases outside of right-of-way sites or locations for national government infrastructure projects, the provisions of Rule 67 of the Rules of Court shall still govern.

12.REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; NULLIFICATION OF THE ORDERS OF THE TRIAL COURT IS PROPER FOR BEING ISSUED WITHOUT BASIS, WHICH IS A CASE OF GROSS ABUSE OF DISCRETION ON THE PART OF THE TRIAL COURT JUDGE; CASE AT BAR. — Much reliance was made by the trial judge on the July 9, 2002 Certification issued by Asst. RDO Torres of the Batangas City BIR office that the expropriated lots had a zonal value of PhP 4,250 per square meter, and that the lots were industrial in nature. This was a gross abuse of discretion on the part of Judge Tac-an. For one, the BIR official who certified the zonal value was not even the head of the BIR revenue district office, but an assistant. It had not been demonstrated that he had the power or authority to issue such certification as to the value of the lots in question. The certification was not under oath. Torres was not called to testify on the contents of his certification. The contents, therefore, are self-serving and hearsay. Torres likewise did not cite the basis for his certification, nor did he explain the process used to reach the conclusions contained therein. As

such, the Torres certification is totally bereft of weight and credit. What was patently erroneous on the part of Judge Tac-an was his failure to apply Department Order No. (DO) 31-97 issued by the Department of Finance (DOF) on February 11, 1997, when said order was the official issuance of the DOF on the current zonal valuation of lots in the province of Batangas. The Secretary of Finance first approves the zonal valuation before it is given legal effect. Said DO became effective on July 14, 1997. DO 31-97 is the official government repository of the zonal valuations of lots in the province of Batangas, which is used by the BIR and other government agencies—especially the Registrar of Deeds—with regard to the transfers of titled lots. The zonal valuations contained in DO 31-97 are the results of a rigorous process and cannot be the sole handiwork of a mere Assistant Revenue District Officer like Torres. x x x Judge Tac-an, as a veteran trial judge, should have known of the existence of DO 31-97 and taken judicial notice thereof. Judge Tac-an's stance of using the Torres certification instead of DO 31-97 only reveals his failure to keep abreast with the recent developments in law and jurisprudence as required of all magistrates under the Code of Judicial Conduct. Had Judge Tac-an repaired to the zonal values contained in DO 31-97, he would have readily known that the zonal value of the lots in Brgy. Calicanto, Batangas City, is PhP 400 per square meter and PhP 290 per square meter for lots in Brgy. Bolbok. In both *barangay*s, the classification of all the lots were agricultural and not industrial as declared in the assailed December 2, 2003 Order. The zonal values of PhP 400 per square meter for Calicanto lots and PhP 290 per square meter for Bolbok lots were a far cry from the amount of PhP 4,250 per square meter fixed by Torres, which was undeniably unconscionable and unjust. Thus, the December 2, 2003 Order has to be nullified; and—together with the December 18, 2003, February 13, 2004, March 24, 2004, April 12, 2004, and April 15, 2004 Orders—must, like a stack of cards, fall to the ground for total absence of support and basis.

13. ID.; CIVIL PROCEDURE; FINAL ORDERS; EXECUTION OF FINAL ORDERS; WHERE THE ORDER OF EXECUTION IS NOT IN HARMONY WITH AND EXCEEDS THE FINAL ORDER THAT GIVES IT LIFE, THE ORDER HAS *PRO TANTO* NO VALIDITY; CASE AT BAR. — It is

simple logic that said petitioners were not included in the PPA's appeal, since they were not covered by the July 10, 2000 Order. Hence, they cannot claim that because they were not included in the appeal, then they can demand execution of an order that does not apply to them in the first place. More importantly, since they are not included in the First Compensation Order, then such order cannot be considered as an adjudication in their favor. Consequently, the nullification of the November 6, 2003 Order utilizing the July 10, 2000 Order is proper. Where the Order of execution is not in harmony with and exceeds the final order that gives it life, the order has *pro tanto* no validity.

14.ID.; ID.; ID.; NATURE; DISTINGUISHED FROM INTERLOCUTORY ORDER. — In *Investments, Inc. v. Court of Appeals*, this Court explained the nature of a final order and how it differs from one that is interlocutory, in the following wise: The concept of "*final judgment,*" as distinguished from one which has "become final" … is definite and settled. A "final" judgment or order is one that finally disposes of a case, leaving nothing more to be done by the Court in respect thereto, *e.g.*, an adjudication on the merits which, on the basis of the evidence presented at the trial, declares categorically what the rights and obligations of the parties are and which party is in the right; x x x. Once rendered, the task of the Court is ended, as far as deciding the controversy or determining the rights and liabilities of the litigants is concerned. **Nothing more remains to be done by the Court except to await the parties' next move** (which, among others, may consist of the filing of a motion for new trial or reconsideration, or the taking of an appeal) **and ultimately, of course, to cause the execution of the judgment once it becomes "final"** or, to use the established and more distinctive term, "*final and executory*." x x x x Conversely, an order that does not finally dispose of the case, and does not end the court's task of adjudicating the parties' contentions and determining their rights and liabilities as regards each other, but obviously indicates that other things remain to be done by the Court, is "interlocutory," *e.g.*, x x x. Unlike a "final" judgment or order, which is appealable, as above pointed out, an interlocutory order may not be questioned on appeal except only as part of an appeal that may be eventually taken from the final judgment rendered in this case.

15. ID.; ID.; APPEALS; APPEAL FROM THE REGIONAL TRIAL COURTS; NO APPEAL MAY BE TAKEN FROM AN INTERLOCUTORY ORDER; EXCEPTIONS. — According to Sec. 1, Rule 41 of the Rules of Court, governing appeals from the regional trial courts to the CA, an appeal may be taken only from a judgment or final order that completely disposes of the case or of a matter therein when declared by the Rules to be appealable. Said provision, thus, explicitly states that no appeal may be taken from an interlocutory order. While the general rule proscribes the appeal of an interlocutory order, there are also recognized exceptions to that rule. Where special circumstances clearly demonstrate the inadequacy of an appeal, then the special civil action of *certiorari* or prohibition may exceptionally be allowed. This Court recognizes that, under certain situations, recourse to extraordinary legal remedies, such as a petition for *certiorari*, is considered proper to question the denial of a motion to quash (or any other interlocutory order) in the interest of a "more enlightened and substantial justice;" or to promote public welfare and public policy; or when the cases "have attracted nationwide attention, making it essential to proceed with dispatch in the consideration thereof;" or when the order was rendered with grave abuse of discretion. *Certiorari* is an appropriate remedy to assail an interlocutory order: (1) when the tribunal issued such order without or in excess of jurisdiction or with grave abuse of discretion; and (2) when the assailed interlocutory order is patently erroneous, and the remedy of appeal would not afford adequate and expeditious relief.

16. ID.; ID.; JUDGMENTS; FINAL ORDERS; THE AUGUST 15, 2000 ORDER IS A FINAL ORDER; ELUCIDATED. — x x x As this Court stressed in *Municipality of Biñan v. Garcia*: "The order fixing the just compensation on the basis of the evidence before [the court], and findings of, the commissioners would be **final**, too[, as it] would x x x leave nothing more to be done by the [c]ourt regarding [this] issue." x x x [I]t is beyond any equivocation that the assailed Order definitely settles the issue of what is the just compensation for the defendants outside of the Dimayacyac Group who were covered by the July 10, 2000 Order which is by the way also a final order. The August 15, 2000 Order finally disposes of the issue of valuation for the lots of said defendants, leaving nothing more for future

determination. It, thus, fixed the just compensation at PhP 5,500 per square meter and nothing remains except the execution of the Order. The trial court was actually about to execute the final August 15, 2000 Order and other implementing orders were it not for the restraining order and writ of injunction issued by the Court. Furthermore, even a simple perusal of the Second Compensation Order easily reveals the justification and arguments in support of the trial court's finding that the just compensation is at PhP 5,500 per square meter (2nd paragraph of August 15, 2000 Order). It cited the July 10, 2000 Order fixing the just compensation for the lots of Dimayacyac Group at PhP 5,500 per square meter. It cited the findings and recommendations of Cuervo Appraisers, Inc. that the fair market value ranges from PhP 5,500 to a maximum of PhP 6,000. It mentioned the sales in favor of Demetrio Marasigan, Andrea Palacios and First Gas where the prices ranged from PhP 5,000 per square meter to PhP 10,000 per square meter. It likewise considered *Dimaano v. PPA*, which pegged the price at PhP 10,000 per square meter. Lastly, it cited *Toledo City v. Fernandes* where it was ruled that the fair market valuation is greatly guided by prior sales near the date of expropriation. The text of the assailed order and the concluding paragraph pegging the just compensation at PhP 5,500 per square meter fully complies with Sec. 1 of Rule 36 which reads: *Rendition of judgments and final orders*.—A judgment or final order determining the merits of the case shall be in writing personally and directly prepared by the judge, stating clearly and distinctly the facts and the law on which it is based, signed by him, and filed with the clerk of the court. The August 15, 2000 Order was signed by the issuing judge who stated therein the facts and the law on which it was based. The same order declared the rights of the lot owners to just compensation and the obligation of PPA to pay the private respondents just compensation for their lots taken to be well-nigh defined or at least ascertainable. The Order is, therefore, an adjudication on the merits of the issue of just compensation, as it declares the just compensation at PhP 5,500 per square meter. Such finding is in favor of the above-named defendants and those similarly situated including those who did not file an answer. Perforce, we vacate our holding in the assailed August 24, 2007 Decision in **G.R. No. 173392** that the August 15, 2000 RTC Order is an interlocutory order. Indeed said

order was a final order that could be the subject of appeal, which was timely interposed by PPA. **While it is true that the concluding paragraph is not the typical dispositive portion that starts with the word "WHEREFORE" or the phrase "IN VIEW OF THE FOREGOING," the flaw, if it can be considered as such, relates only to form and is unimportant. What is clear to the Court is that the concluding paragraph contains the disposition of the trial court, which finally resolves the issue of just compensation**.

17. ID.; ID.; ID.; SUBSEQUENT ORDERS IMPLEMENTING THE AUGUST 15, 2000 ORDER ARE MERE INTERLOCUTORY ORDERS; EXPLAINED. — The orders issued to enforce the Second Compensation Order are the RTC Orders dated August 17, 18, and 23, 2000, which named and specified the lot owners indicated in the August 15, 2000 Order as "above-named defendants and those similarly situated including those who did not file answer." All these orders are anchored or based on the August 15, 2000 Order as they are all uniformly prefaced as having been issued "**Pursuant to the Order of 15 August 2000**." Clearly the mother order was the August 15, 2000 Order which ruled on the just compensation for the expropriated lots. The subsequent orders principally served merely to implement the August 15, 2000 Order and were mere interlocutory, as the issue of just compensation had already been resolved in the August 15, 2000 Order, a final order. The subsequent orders (August 17, 18, and 23, 2000 Orders) did not dispose of the issue of just compensation or declare the rights and obligations of the parties, as these matters were already decided in the August 15, 2000 Order. Said orders were issued simply to clarify the August 15, 2000 Order, for the question of who were "the above-named defendants and those similarly situated including those who did not file answer" had to be straightened out. These were simply clarificatory and implementing orders of the August 15, 2000 Order, but nevertheless of interlocutory nature and did not need to be appealed, as the August 15, 2000 Order had already been subject of an appeal to the CA (CA-G.R. CV No. 77668). Hence, the August 17, 18, and 23, 2000 Orders, specifically mentioning the lot owners, cannot be executed on the sole ground that the same have became final. These orders will rise or fall depending on the outcome of the appeal from the August 15, 2000 Order

in CA-G.R. CV No. 77668. Even if it is conceded that the August 17, 18, and 23, 2000 Orders are final orders, PPA need not interpose an appeal from each one, since it has already appealed the principal order—the August 15, 2000 Order-–and the decision in said appeal will be binding and conclusive on the said implementing orders.

18.ID.; SPECIAL CIVIL ACTIONS; EXPROPRIATION; DETERMINATION OF JUST COMPENSATION; PRINCIPAL CRITERION. — Fair market value, as an eminent domain concept, is determined by, among other factors, the **character of the property at the time of the taking of the property.** It is basic that the nature and character of the land at the time of the taking is the principal criterion for determining how much just compensation is to be given to the lot owner, not the potential of the expropriated area. With these principles in mind, it is clear that the fact that the subject lots would eventually be developed as an integral part of the BPZ and consequently devoted to industrial use is of little moment for purposes of determining just compensation. And the adaptability for conversion in the future of the lots found within the BPZ is a factor, but not the ultimate in determining just compensation.

19.ID.; ID.; CONTEMPT; OBJECTIVE; COVERAGE; PETITION FOR CONTEMPT MUST PROCEED TO ITS FINAL CONCLUSION DESPITE RETIREMENT. — The objective of criminal contempt is to vindicate public authority. It is an effective instrument of preserving and protecting the dignity and authority of courts of law. Any act or omission that degrades or demeans the integrity of the court must be sanctioned, lest it prejudice the efficient administration of justice if left unpunished. Contempt of court applies to all persons, whether in or out of government. Thus, it covers government officials or employees who retired during the pendency of the petition for contempt. Otherwise, a civil servant may strategize to avail himself of an early retirement to escape the sanctions from a contempt citation, if he perceives that he would be made responsible for a contumacious act. The higher interest of effective and efficient administration of justice dictates that a petition for contempt must proceed to its final conclusion despite the retirement of the government official or employee, more so if it involves a former member of the bench. While there is still no definitive ruling on this issue

when the respondent charged with contempt has retired, we apply by analogy the settled principle in administrative disciplinary cases that separation from service does not render the case moot and academic.

20. ID.; ID.; ID.; INDIRECT CONTEMPT; A CASE OF; PENALTY. — x x x [T]he Court finds Judge Paterno Tac-an guilty of indirect contempt of court. His acts—issuing the February 1 and 2, 2005 Orders implementing the May 29, 2001 and November 18, 2004 Orders and the related February 2, 2005 Notice of Garnishment in defiance of the January 10, 2005 TRO; setting the Bureau of Treasury's Manifestation and Motion for hearing on April 25, 2005 in disregard of the March 15, 2005 injunctive writ of the CA; issuing the April 26, 2005 Order disobeying the April 19, 2005 TRO and the March 15, 2005 writ of preliminary injunction; and lastly, conducting a hearing on June 21, 2005 for Civil Case No. 5447, thus violating the June 3, 2005 CA Order—are contumacious, continuing acts in clear disobedience and disrespect of the resolutions of the CA. A person guilty of indirect contempt may be punished by a fine not exceeding PhP 30,000 or imprisonment not exceeding six (6) months or both. Judge Tac-an violated four (4) resolutions/processes of the CA, namely: the January 10, 2000 TRO, the March 15, 2005 Writ of Preliminary Injunction, the April 19, 2005 TRO and the June 3, 2005 Resolution, for which he is hereby fined PhP 30,000 for each violation. Let this serve as a warning to all trial courts to strictly comply with the resolutions and orders of the appellate courts and this Court.

APPEARANCES OF COUNSEL

De Jesus Linatoc Mendoza and Associates for J.L. Gandionco Realty and Development Corporation.

Cesar C. Cruz & Partners for Remedios Rosales-Bondoc, *et al.*

Agustin Chiong Agustin Law Offices for Evaristo and Felisa Montalbo, *et al.*.

Ortega Del Castillo Bacorro Odulio Calma & Carbonell for Felipe Acosta, *et al.*

Agbing & Agbing Law Office for Guadalupe Dayanghirang, *et al.*

Fiel & Associates Law Office for Intervenor VACC.
Eugenio E. Mendoza for Felipe Serrano, *et al.*
Dimayacyac & Dimayacyac Law Firm for Sps. Ernesto and Lourdes Curata, *et al*.
Singson Valdez & Associates for intervenor Manuel R. Singson.
Delia C. Vivar-Dimaandal for private respondents.

D E C I S I O N

VELASCO, JR., *J.*:

The Cases

Before the Court are six petitions and a motion for reconsideration of our Decision dated August 24, 2007,[1] all offshoots of various orders, writs, and processes issued by the Regional Trial Court (RTC), Branch 84 in Batangas City in **Civil Case No. 5447**, a suit for expropriation initiated on October 14, 1999 by the Philippine Ports Authority (PPA), entitled *Philippine Ports Authority v. Felipa Acosta, et al.*

While procedural and collateral issues abound, central to these petitions, however, is the matter of just compensation for the lots sought to be expropriated by PPA for the Batangas Port Zone (BPZ) project (Phase II) subject of the July 10, 2000 and August 15, 2000 RTC Orders and various orders implementing the August 15, 2000 Order.

In the two (2) petitions under Rule 45 (**G.R. Nos. 154211-12**), petitioners Ernesto F. Curata, *et al.*, seek a review of the July 30, 2001 Decision[2] and the July 11, 2002 Resolution[3] of the Court of Appeals (CA) in the consolidated cases entitled *PPA v. Hon. Paterno V. Tac-an, Rolando Quino, Ernesto Curata, et al*., docketed as CA-G.R. SP No. 60314 and *PPA v. Hon.*

---

[1] G.R. No. 173392, 531 SCRA 198.

[2] *Rollo* (G.R. Nos. 154211-12), pp. 88-108. Penned by Associate Justice Romeo A. Brawner (deceased) and concurred in by Associate Justices Remedios Salazar-Fernando and Rebecca De Guia-Salvador.

[3] *Id.* at 115-120.

Paterno V. Tac-an, Arsenio Abacan, et al., docketed as CA-G.R. SP No. 63576 which granted PPA's petitions and accordingly annulled various RTC orders. In CA-G.R. SP No. 60314, PPA, as petitioner therein, questioned the actions taken by the trial court in connection with its **First Compensation Order**[4] dated **July 10, 2000**, fixing the just compensation at PhP 5,500 per square meter, more specifically (1) the July 24, 2000 order granting the motion to execute pending appeal the said July 10, 2000 order and (2) the July 31, 2000 order issuing the writ and various notices of garnishment. PPA likewise sought to annul the Orders that emanated from the Notice of Appeal filed by PPA from the First Compensation Order. These orders are the August 25, 2000 Order denying PPA's Notice of Appeal with Motion for Extension to pay appellate docket fees and file a record on appeal, the August 28, 2000 Order denying PPA's record on appeal, and the September 18, 2000 Order denying PPA's Motion for Reconsideration.

In the *certiorari* and *mandamus* proceedings in CA-G.R. SP No. 63576, PPA sought to annul the RTC's August 18, 2000 Order, which implemented the **Second Compensation Order**[5] dated **August 15, 2000** also pegging the just compensation at PhP 5,500 per square meter, and several related issuances that followed including an Order of December 13, 2000 denying PPA's record on appeal.

In the third petition **(G.R. No. 158252),** PPA assails the May 16, 2003 Decision[6] of the CA in CA-G.R. SP No. 73848 entitled *PPA v. Hon. Paterno Tac-an, Remedios Rosales-Bondoc, et al*. which dismissed PPA's petition for *certiorari* to annul these RTC orders, to wit: the July 12, 2002 RTC Order for the release to lot owners Remedios Rosales-Bondoc, *et al*. of the deposit equivalent to 100% of the zonal valuation of the expropriated lots based on Republic Act No. (RA) 8974, the

[4] *Id.* at 215-217. Penned by Presiding Judge Paterno V. Tac-an (retired).

[5] *Rollo* (G.R. No. 168272), pp. 103-106.

[6] *Rollo* (G.R. No. 158252), pp. 30-37. Penned by Associate Justice Eliezer R. de Los Santos and concurred in by Associate Justices Romeo A. Brawner (now deceased) and Regalado E. Maambong.

July 29, 2000 Order denying PPA's Omnibus Motion to Withdraw the June 27, 2002 Manifestation, and the September 5, 2002 Order denying PPA's Motion for Reconsideration.

In the fourth petition **(G.R. No. 166200),** PPA likewise impugns, as having been issued in grave abuse of discretion, the November 22, 2004 CA Decision[7] in CA-G.R. SP No. 83570 entitled *PPA v. Hon. Paterno Tac-an, Felipa Acosta, et al*. The CA affirmed the RTC orders dated December 2, 2003, December 18, 2003, February 13, 2004, March 24, 2004, and April 12, 2004 and the Supplemental Order dated April 15, 2004 relating to the initial payment of the zonal value of the lots pursuant to RA 8974 at PhP 4,250 per square meter to lot owners Felipa Acosta, *et al.*

In the fifth petition **(G.R. No. 168272),** petitioners Rosalinda Buenafe and Melencio Castillo seek a review of the March 31, 2005 Decision[8] and May 26, 2005 Resolution[9] of the CA in CA-G.R. SP No. 82917 entitled *PPA v. Hon. Paterno V. Tac-an, Rosalinda Buenafe, et al*. which nullified the November 6, 2003 RTC Order[10] granting the writ of execution in favor of landowners Rosalinda Buenafe and Melencio on the basis of the September 29, 2000 writ of execution earlier issued by the trial court.

In the sixth petition **(G.R. No. 170683),** PPA assails the July 28, 2005 Decision[11] and the November 24, 2005 Resolution of the CA in CA-G.R. CV No. 70023 entitled *PPA v. Felipa*

---

[7] *Rollo* (G.R. No. 166200), pp. 57-70. Penned by Associate Justice Monina Arevalo-Zenarosa and concurred in by Associate Justices Remedios A. Salazar-Fernando and Danilo B. Pine (retired).

[8] *Rollo* (G.R. No. 168272), pp. 34-41. Penned by Associate Justice Mariano C. del Castillo and concurred in by Associate Justices Romeo A. Brawner and Magdangal M. de Leon.

[9] *Id.* at 43.

[10] *Id.* at 186.

[11] *Rollo* (G.R. No. 170683), pp. 47-66. Penned by Associate Justice Vicente S.E. Veloso and concurred in by Associate Justices Roberto A. Barrios and Amelita G. Tolentino.

Acosta, et al., which affirmed the September 7, 2000 RTC Order,[12] setting the just compensation at PhP 5,500 per square meter pursuant to the August 15, 2000 Order (Second Compensation Order), for intervenors Caroline B. Acosta, *et al*.

Finally, in the seventh and last petition **(G.R. No. 173392),** pending resolution is the motion for reconsideration[13] interposed by PPA of the Court's Decision[14] dated August 24, 2007 which affirmed the July 3, 2006 CA Resolution[15] in consolidated cases CA-G.R. CV No. 77668 (*PPA v. Remedios Rosales-Bondoc, et al.*), SP No. 87844 (*PPA v. Hon. Paterno V. Tac-an, Remedios Rosales-Bondoc, et al.*), and SP No. 90796 (*PPA v. Hon. Paterno V. Tac-an*), and dismissed PPA's appeal from the August 15, 2000 RTC Order (Second Compensation Order). The CA Resolution affirmed the May 29, 2001[16] and November 18, 2004[17] RTC Orders granting the November 22, 2004 Writ of Execution[18] and the November 23, 2004 Notices of Garnishment.[19] Lastly, it denied PPA's petition to cite RTC Judge Paterno V. Tac-an for contempt for lack of merit.

On January 29, 2008, the Court consolidated **G.R. Nos. 158252, 166200,** and **173392.** On March 25, 2008, an oral argument was held on the consolidated petitions. On June 10, 2008, the Court ordered the consolidation of the three consolidated petitions with the related petitions in **G.R. Nos. 154211-12, 168272,** and **170683,** all of which pertain to Civil Case No. 5447.

---

[12] *Rollo* (G.R. No. 173392), pp. 805-73.

[13] *Id.* at 1300-1344, dated September 6, 2007.

[14] *Id.* at 1173-1196; *supra* note 1.

[15] *Id.* at 65-103. Penned by Associate Justice Andres B. Reyes, Jr. and concurred in by Associate Justices Kahim S. Abdulwahid and Estela M. Perlas-Bernabe.

[16] *Rollo* (G.R. No. 173392), p. 349.

[17] *Id.* at 391-395.

[18] *Id.* at 397-399.

[19] *Id.* at 400-403.

The Facts

Executive Order No. (EO) 385,[20] Series of 1989, and EO 431,[21] Series of 1990, delineated the BPZ and placed it under

[20] *Rollo* (G.R. No. 158252), pp. 493-494. EO 385 pertinently reads:

EXECUTIVE ORDER No. 385

EXPANDING AND DELINEATING THE BATANGAS PORT ZONE AND PLACING THE SAME UNDER THE ADMINISTRATIVE JURISDICTION OF THE PHILIPPINE PORTS AUTHORITY

I, CORAZON C. AQUINO, President of the Philippines, by virtue of the powers vested in me by the law, do hereby order:

Sec. 1. The territorial jurisdiction of the Port of Batangas is hereby expanded and delineated as follows:

Beginning at a point marked 1 on the plan located at the northeast corner of Sta. Clara Elementary School, Batangas City; x x x comprising a total area of 3,488,420.4 square meters or 348.84 hectares, more or less.

Sec. 2. The Batangas Port Zone as expanded and delineated is hereby placed under the administrative jurisdiction of the Philippine Ports Authority which shall, consistent with law and the regional industrial plans of the Government, implement a program for the proper zoning, planning, development and utilization of the port areas in the said Port Zone.

Sec. 3. All orders and issuances, rules and regulations or parts thereof which are inconsistent with this Executive Order are hereby revoked or modified accordingly.

Sec. 4. This Executive Order shall take effect immediately.

DONE in the City of Manila, this 19th day of December, in the year of Our Lord, nineteen hundred and eighty-nine.

[21] *Id.* at 490-491. EO 431 pertinently reads:

FURTHER EXPANDING THE DELINEATED BATANGAS PORT ZONE AS PROVIDED FOR UNDER EXECUTIVE ORDER NO. 385, DATED DECEMBER 19, 1989

I, CORAZON C. AQUINO, President of the Philippines, by virtue of the power vested in me by law, do hereby order:

Sec. 1. The territorial jurisdiction of the Port of Batangas is hereby further expanded and delineated as follows:

Beginning at a point marked 1 on the plan located at the northeast corner of Sta. Clara Elementary x x x comprising a total area of 5,380.893.7 square meters or 538.09 hectares, more or less.

Sec. 2. The Batangas Port Zone, as expanded and delineated, is hereby placed under the administrative jurisdiction of the Philippine Ports Authority

the PPA for administrative jurisdiction of its proper zoning, planning, development, and utilization. Pursuant thereto, the PPA instituted on October 14, 1999 a Complaint[22] for expropriation of 185 lots before the RTC of Batangas City. Owned by some 231 individuals or entities, the 185 lots, with a total area of about 1,298,340 square meters, were intended for the development of Phase II of the BPZ.

In its Complaint, docketed as Civil Case No. 5447 (*PPA v. Felipa Acosta, et al.*), and eventually raffled to Branch 84 of the RTC of Batangas City, the PPA alleged that, per evaluation of the Land Acquisition Committee for Phase II of the BPZ project, subject lots had a fair market value of **PhP 336.83** per square meter. Prior to the filing of the complaint, PPA offered PhP 336.40 per square meter as just compensation, but defendants rejected the offer. PPA prayed to be placed in possession upon its deposit of the amount equivalent to the assessed value for real estate taxation of the lots in question.

For convenience, the RTC divided the defendant-lot owners into three groups, represented as indicated: the first group represented by Atty. Reynaldo Dimayacyac (Dimayacyac Group);[23] the second group by Attys. Gregorio F. Ortega (Ortega

---

which shall, consistent with law and regional industrial plans of the Government, implement a program for the proper zoning, titling, planning, development, and utilization of the port areas in the said Port Zone.

Sec. 3. Executive Order No. 385, dated December 19, 1989, and all orders and issuances, rules and regulations or parts thereof which are inconsistent with this Executive Order are hereby revoked or modified accordingly.

Sec. 4. This Executive Order shall take effect immediately.

[22] *Rollo* (G.R. No. 173392), pp. 104-141.

[23] The following defendants in Civil Case No. 5447 are represented by Atty. Reynaldo Dimayacyac: 1) Spouses Ernesto Curata & Lourdes F. Curata; 2) Eduardo M. Montalbo; 3) Spouses Marcelino Dalangin & Vitaliana Dalangin; 4) Pablo Sumanga; 5) Heirs of Mateo Macaraig; 6) Heirs of Paulina Acosta; 7) Heirs of Nicolas Aldover; 8) Spouses Marciano Manalo & Lucila Gabia, Gregorio Faltado, Silverio Rosales, and Cesaro Ilao; 9) Heirs of Aldover; 10) Catalina Perez, Lorna Pantangco, Sonia Pantangco, Belen Pantangco, Ireneo Pantangco, Jr., Pedro Chavez, Saturnina Perez, Estelita C. Perez, Estelita M. Perez, Romeo Perez, Ruben Perez, Mario Perez, Nabocho Donaza Perez,

Group)[24] and Cesar C. Cruz (Cruz Group);[25] and the third group by Atty. Emmanuel Agustin (Agustin Group).[26] There were other

---

Manuel Perez, Herminigildo Perez, Mayhayda Perez, Alfredo Perez, Ernesto Perez and Araceli Perez (Represented by Rosario Perez Rosel); 11) Fred M. Hernandez, married to Susana Ilao, Vicente Gutierrez; 12) Maria Lacsamana; 13) Juana Macalalad; 14) Felisa Hernandez, Felino Hernandez and Florention Macatangay; 15) Heirs of Basilio Macaraig and Paciencia del Mundo.

[24] The following defendants in Civil Case No. 5447 are represented by Atty. Gregorio F. Ortega: 1) Pedro Alcantara married to Dorotea Macatangay; 2) Corazon Ilao married to Ceferino Perez; 3) Luis Lira & Zenaida Lira; 4) Milagros Macatangay; 5) Lilia Singuimoto; 6) Gerardo Abacan married to Alicia Fabul; 7) Gerardo Abacan, Erlinda Abacan, Liliana Abacan, Cristeta Abacan, Analiza Abacan; 8) Librada Macatangay *vda. de* Abas; 9) Jose Noel M. Agbing, Jose Nereus M. Agbing, Ma. Bernadette M. Agbing, Marie Frances Th. M. Agbing; 10) Cecile Olivia F. Cuisia; 11) Efren P. Espino married to Erlinda Espino, Delia Espino married to Joseph Velasco, Alfredo P. Espino married to Eloisa S. Espino; 12) Esteban Espino; 13) Felisa Hernandez; 14) Alfredo Bautista married to Maria Rita Bautista; 15) Rafael Llana & Rustica Llana; 16) Juana L. Carnero, Adelaida Belegal; 17) Bienvenido Maralit; 18) Luisa B. *Vda de* Montalbo; 19) Azucena Perez & Arnel Perez; 20) Constancia Villamor Barcelo married to Alfonso Barcelo; 21) Cesar Perez, Romeo Perez, Ruben Perez, Mario Perez, Narocho Donaza Perez, Herminigildo Perez, Saturnina Perez; 22) Pricilla Buenafe; 23) Aurea Acosta married to Roman Acosta, Consolacion Acosta married to Severo Malimban, Betty Acosta married to Carlos Caabay, Constancio Acosta married to Araceli Reraida, Araceli Acosta; 24) Consuelo Alcantara; 25) Simeon Balita married to Elena M. Balita; 26) Maria Clara T. Berba, Felimon T. Berba, Azucena T. Berba, Eduardo T. Berba, Ma. Lourdes T. Berba, Edgardo T. Berba, Edmundo T. Berba; 27) Pacita M. Berba, Alejandro M. Berba, Clara M. Berba, Martina M. Berba, Gremauldo M. Berba, Evelina M. Berba; 28) Amelia M. Berba, Pablo M. Berba, Ricardo M. Berba, Francisco M. Berba; 29) Rafael S. Berba; 30) Adoracion Acosta Cabral; 31) Carlito Casas married to Enriqueta Casas; 32) Benjamin Castillo married to Erlinda Laredo; 33) Augusto Claveria; 34) Esperanza Dimaandal married to Josue Bagsit; 35) Mariano Diokno, Ernesto B. Diokno, Mariano B. Diokno, Jr., Maria Clara B. Diokno, Angelita B. Diokno; 36) Maria Español; 37) Rufino Geron married to Matilde Geron; 38) Segundina Gualberto; 39) Sixto Gualberto married to Maria Gualberto; 40) Corazon Ilao, Isabelle M. Ilao, Concepcion M. Ilao, Michelle I. Ilao, Blanca I. Susi, Enrico Antonio M. Ilao; 41) Maria Lacsamana; 42) Dorotea Macatangay married to Teodorico Alcantara; 43) Pedro Marasigan; 44) Pablo Mendoza married to Maria Lourdes Mendoza; 45) Jaime Tauro married to Reynada Tauro; 46) heirs of Lucila Aldover;

47) Andrea Balina & Moises Macatangay (heirs); 48) Heirs of Gregorio Dapat; 49) Popula Llana (heirs); 50) Arsenio Abacan (heirs); 51) Lauro Abraham

(heirs); 52) Manuel Amul, Sr. & Marcosa Marasigan (heirs); 53) Eulalio Buenafe (heirs); 54) Generosa Buenafe (heirs); 55) Marciana Buenafe (heirs); 56) Heirs of Guadalupe Dayanghirang; 57) Heirs of Felino Hernandez; 58) Heirs of Florentino Macatangay; 59) Brigido Lontoc (heirs); 60) Heirs of Pedro Magadia; 61) Rosa P. Magdala (heirs); 62) Heirs of Daniel Magadia; 63) Jose Maranan & Concha Magadia (heirs); 64) Heirs of Maria Montalbo; 65) Heirs of Godofredo Rosales; 66) Heirs of Maria Consolacion; 67) Heirs of Luisa Villanueva; 68) Evarista Bauan (heirs); 69) Heirs of Maria Caedo; 70) Heirs of Agripina Garcia; 71) Feliza Macatangay (heirs); 72) Heirs of Basilio Macaraeg & Pacencia del Mundo.

[25] The following defendants in Civil Case No. 5447 are represented by Atty. Cesar C. Cruz: 1) Remedios Rosales Bondoc and Jose K. Rosales; 2) Heirs of Lumin Antolin. The following defendants have been lumped together under the Cruz group but have their own various counsels in brackets: 1) Anita G. Escaño, Lydia G. Capulong, Erlinda Germer Gonzales and Romulo F. Gonzales [Atty. Felipe G. Capulong]; 2) Francisco Abalos and Remedios Alano [Atty. Cipriano U. Asilo]; 3) Severo Alano, Soledad Alano, Inocencia Alano, Petra Alano, Remedios Alano, Antonino Alano, Felipe Alano [Atty. Cipriano U. Asilo]; 4) Anunciacion Gutierrez [Atty. Ramon Gutierrez]; 5) Felipe Serrano and Spouse [Atty. Eugenio Mendoza]; 6) Silverio Atienza & Jocelyn Felio [Atty. Yolando Atienza]; 7) Silverio Atienza [Atty. Yolando Atienza]; 8) J.L. Gandionco Realty [Atty. Glenn Mendoza]; 9) Lourdes Mercado, Augusto Mercado, Heirs of Fidencio Mercado and Heirs of Concepcion Mercado [Atty. Norberto L. Cajucom]; 10) Cecilia Pasion Dimaandal, Arnel Joseph Dimaandal, Roxanne Socorro Dimaandal, Teresita Dimaandal, Aaron Martin Dimaandal, Rachel Victoria Dimaandal, Aris Anthony Dimaandal [Atty. Delia C. Vivar]; 11) Gregorio Baliwag, Eliseo Baliwag, Crisanta Baliwag [No Counsel].

[26] The following defendants in Civil Case No. 5447 are represented by Atty. Emmanuel Agustin: 1) Felipa D. Acosta married to Honesto Hernella, Heirs of Eleuterio D. Acosta married to Martha Galang, Pacita D. Acosta married to Emilio Berberabe, Lamberto D. Acosta married to Angelina Ituralde; 2) Sps. Emilio Berberabe and Pacita D. Acosta; 3) Heirs of Sps. Anastacia Aldover and Cesario Rivera; 4) Romulo S. Balina; 5) Adoracion Magtibay; 6) Sole Heir of Sps. Pedro Montalbo and Mauricia Balina, Catalina Montalbo Aldover; 7) Heirs of Leocadio and Leonila Alano, Heirs of Sps. Leodacio Alano & Felipa Macatangay; 8) Heirs of Simeon Magtibay; 9) Gabriela Acosta for herself and as Sole Heir of Estanislawa Acosta; 10) Heirs of Nestora Alcantara & brothers; 11) Sps. Zoilo Aldover & Catalina Montalbo Aldover; 12) Catalina D. Balina married to Juan Ramirez; 13) Simeon D. Balina (as defendant-in-intervenor); 14) Erlinda D. Balina married to Alberto Reyes; 15) Sole Heir of Fortunata D. Balina married to Faustino Brual, Josefa Grace Brual; 16) Nemesio D. Balina married to Conchita Morales; 17) Heirs of Tomasa Balina; 18) Francisco A. Berberabe, Emilio Francisco A. Berberabe, Jr.,

defendant-lot owners who did not belong to any of said groups. They will be mentioned individually.

On March 31, 2000, the RTC issued an order declaring that "the objective of [the complaint] is for public use" and appointed three (3) Commissioners to determine just compensation, to wit: (1) Provincial Engineer Arturo V. Magtibay, Chairman; (2) Provincial Assessor Lauro C. Andaya, member, and; (3) Provincial Treasurer Jaime E. Cantos, member. No appeal was interposed to assail said RTC Order, hence putting to final rest the issue of the legality of the expropriation of the subject lots.

Forthwith, the court-appointed commissioners submitted a Partial Report[27] dated May 29, 2000 recommending the amount

---

Thomas A. Berberabe married to Nympha Atienza, and Joel A. Berberabe married to Murita Reyes; 19) Heirs of Cecilia Dimaandal; 20) Sps. Edilberto Dimaandal & Lilia Garcia; 21) Juana Dimaandal; 22) Heirs of Vicenta Gutierrez; 23) Heirs of Evaristo Montalbo & Felisa Montalbo; and, 24) Heirs of Francisco Sumanga.

[27] *Rollo* (G.R. Nos. 154211-12), pp. 168-170. The [First] Partial Report in its entirety reads:

COMMISSIONERS PARTIAL REPORT

WHEREAS, upon Order of this Honorable Court dated 4th April 2000, that herein appointed Commissioners in relation to CIVIL CASE NO. 5447 for expropriation of Real Property are mandated to ascertain just compensation of the lots of the following defendants who filed answer, thru Counsels, to wit:

1. SPOUSES ERNESTO CURATA & LOURDES F. CURATA;
2. EDUARDO M. MONTALBO;
3. SPOUSES MARCELINO DALANGIN & VITALIANA DALANGIN;
4. PABLO SUMANGA;
5. HEIRS OF MATEO MACARAIG;
6. HEIRS OF PAULINA ACOSTA;
7. HEIRS OF NICOLAS ALDOVER;
8. SPOUSES MARCIANO MANALO & LUCILA GABIA, GREGORIO FALTADO, SILVERIO ROSALES, and CESARO ILAO;
9. HEIRS OF ALDOVER;

of PhP 4,800 per square meter as just compensation for the lots of 15 lot owners listed therein (the First Partial Report

---

10. CATALINA PEREZ, LORNA PANTANGCO, SONIA PANTANGCO, BELEN PANTANGCO, IRENEO PANTANGCO, JR., PEDRO CHAVEZ, SATURNINA PEREZ, ESTELITA C. PEREZ, ESTELITA M. PEREZ, ROMEO PEREZ, RUBEN PEREZ, MARIO PEREZ, NABOCHO DONAZA PEREZ, MANUEL PEREZ, HERMINIGILDO PEREZ, MAYHAYDA PEREZ, ALFREDO PEREZ, ERNESTO PEREZ and ARACELI PEREZ (Represented by ROSARIO PEREZ ROSEL)
11. FRED M. HERNANDEZ, married to SUSANA ILAO, VICENTE GUTIERREZ;
12. MARIA LACSAMANA;
13. JUANA MACALALAD;
14. FELISA HERNANDEZ, FELINO HERNANDEZ and FLORENTINO MACATANGAY;
15. HEIRS OF BASILIO MACARAIG and PACIENCIA DEL MUNDO,

WHEREAS, the Commissioners have carefully studied, examined and analyzed the manifestation and its annexes of the AFORENAMED DEFENDANTS, thru Counsels, attached hereto and made integral parts of this Report, together with all the records of the proceedings and other documents;

WHEREAS, the Commissioners are guided with the three (3) basic concepts underlying the appraisal of real estate, such as:

(a) An appraisal is an opinion of an appraiser which is based upon interpretation of facts and belief as of given date;

(b) "Real Estate" is a term used to designate the rights of real estate ownership, rather than the land, building and other improvement. It is actually the rights of ownership that are appraised. Different owners may own one or more of the rights.

(c) The value appraised is the value to the typical user or investor, and not necessarily to the owner or any specific person or organization.

WHEREAS, current market value of real property is the market value which is acceptable to a willing buyer and a willing seller who are not obliged to buy and to sell, and market value of real property is never determined but merely estimated for it is only the Court that can fix value of real property;

WHEREAS, the commissioners noted paragraph 1 of defendants' answer which states:

"x x x that if ever, it is vested with any power and authority to condemn or expropriate private properties surrounding any port or harbor, for

hereinafter). In its Comment on the Commissioners' Partial Report,[28] PPA, through the Office of the Solicitor General (OSG), protested the recommendation, claiming that the just compensation level should be lower than PhP 4,800, the subject lands being agricultural in nature and used for purposes other than commercial or industrial.

---

the development of any port District, for public use and purpose, as in the instant case, the same must be within the constitutional limitations, and as provided under "1997 Rules of Civil Procedure," to the effect that "NO PRIVATE PROPERTY SHALL BE TAKEN FOR PUBLIC USE, WITHOUT JUST COMPENSATION" and must be determined as of the date of the taking of the property, OR THE FILING OF THE COMPLAINT, whichever comes first;"

WHEREAS, aforementioned DEFENDANTS vehemently refused PLAINTIFF'S offered price of ₱336.82 per square meter for being too little and does not constitute just compensation;

WHEREAS, DEFENDANTS herein are willing and ready to accept ₱8,000.00 per square meter considering the attached "Judgment by Compromise Agreement" and "Deed of Absolute Sale" costing real property within the vicinity of the Port Site of ₱5,211.00 per square meter in 1997 and ₱5,000.00 per square meter in 1996 by reason of acceleration of prices at the time of the filing of the complaint in June 11, 1997;

WHEREAS, the Commissioners cannot ignore the Findings of the City Appraisal Committee of Batangas City of fixing the cost of real properties affected by the Southern Tagalog Arterial Road Extension Package III, Balagtas-Port Area Section particularly in Barangay Balagtas, Alangilan, Banaba South and Bolbok area at ₱4,000.00 per square meter in 1999, copy of the Minutes of Committee Hearing is attached and made integral part hereof for being connected to the Port Zone.

NOW THEREFORE, BE IT RESOLVED AS IT IS HEREBY RESOLVED, that in view of all the foregoing, it is the most considered view of the herein Commissioners to submit the cost of FOUR THOUSAND EIGHT HUNDRED PESOS (₱4,800.00) per square meter, for payment of just compensation, subject to further review, evaluation, discretion and sound judgment of this Honorable Court.

Batangas City, May 29, 2000.

[28] *Id.* at 212-214.

The First Compensation Order (July 10, 2000 Order Involving Dimayacyac Group)

Based on the May 29, 2000 Commissioners' Partial Report, the RTC issued the Order dated **July 10, 2000**[29] (First Compensation Order), and directed PPA to pay the Dimayacyac Group the amount of Ph₱ 5,500 per square meter as just compensation, amending the suggested compensation of Ph₱ 4,800 per square meter recommended by the Commissioners. Said order fully reads:

> This refers to the report on appraisal rendered by commissioners Arturo V. Magtibay, Provincial Engineer (Chairman), Lauro C. Andaya, Provincial Assessor (member) and Jessie Cantos, Provincial Treasurer (member), dated May 29, 2000 for which the hearing was conducted on June 13, 2000, covering the properties of the following defendants:
>
> 1. SPOUSES ERNESTO CURATA & LOURDES F. CURATA;
> 2. EDUARDO M. MONTALBO;
> 3. SPOUSES MARCELINO DALANGIN & VITALIANA DALANGIN;
> 4. PABLO SUMANGA;
> 5. HEIRS OF MATEO MACARAIG;
> 6. HEIRS OF PAULINA ACOSTA;
> 7. HEIRS OF NICOLAS ALDOVER;
> 8. SPOUSES MARCIANO MANALO & LUCILA GABIA, GREGORIO FALTADO, SILVERIO ROSALES, and CESARO ILAO;
> 9. HEIRS OF ALDOVER;
> 10. CATALINA PEREZ, LORNA PANTANGCO, SONIA PANTANGCO, BELEN PANTANGCO, IRENEO PANTANGCO, JR., PEDRO CHAVEZ, SATURNINA PEREZ, ESTELITA C. PEREZ, ESTELITA M. PEREZ, ROMEO PEREZ, RUBEN PEREZ, MARIO PEREZ, NABOCHO DONAZA PEREZ, MANUEL PEREZ, HERMINIGILDO PEREZ, MAYHAYDA PEREZ, ALFREDO PEREZ, ERNESTO PEREZ and ARACELI PEREZ (Represented by ROSARIO PEREZ ROSEL);
> 11. FRED M. HERNANDEZ, married to SUSANA ILAO,

[29] *Supra* note 4.

VICENTE GUTIERREZ;
12. MARIA LACSAMANA;
13. JUANA MACALALAD;
14. FELISA HERNANDEZ, FELINO HERNANDEZ and FLORENTINO MACATANGAY;
15. HEIRS OF BASILIO MACARAIG and PACIENCIA DEL MUNDO

The said report *inter alia* states:

"WHEREAS, the Commissioners cannot ignore the Findings of the City Appraisal Committee of Batangas City of fixing the cost of real properties affected by the Southern Tagalog Arterial Road Extension Package III, Balagtas-Port Area Section particularly in Barangay Balagtas, Alangilan, Banaba South and Bolbok area at ₱4,000.00 per square meter in 1999, copy of the Minutes of Committee Hearing is attached and made integral part hereof for being connected to the Port Zone.

NOW THEREFORE, BE IT RESOLVED AS IT IS HEREBY RESOLVED, that in view of all the foregoing, it is the most considered view of the herein Commissioners to submit the cost of **FOUR THOUSAND EIGHT HUNDRED PESOS (₱4,800.00)** per square meter, for payment of just compensation, subject to further review, evaluation, discretion and sound judgment of this Honorable Court."

Commissioner Lauro C. Andaya appeared in Court in behalf of other Commissioners to identify the said report and to answer to the clarificatory question propounded by the court and the parties. He stated that the basis of the ₱4,800.00 compensation per square meter was the Deed of Absolute Sale executed by Demetrio E. Marasigan in favor of the [PPA], executed on December 11, 1996 (Exhibit "3"). He admitted that he is aware of the compromise agreement between Andrea Palacios and the City Government of Batangas which was the basis of the judgment by compromise on September 22, 1997 on Civil Case No. 4641, presided by [RTC], Branch 84. The price per square meter was agreed upon to be ₱5,211.00. The land area involved is about 7 kilometers upon the properties in question. This instant complaint for expropriation was filed on October 14, 1999. There is no record of sale on 1998, 1999 and to date. He stated that for purposes of taxation once in every 5 years, assessment is revised every five years. Said witness stated further that it depends upon the growth of valuation, because that is governed by market forces. He admitted that the amount of

₱6,000.00 per square meter considering the appreciative value of ₱789.00 from ₱5,211.00 from 1997 to the present, is possible. He also admitted that it is a common practise [sic] to lower the stated selling price in the Deed of Sale to mitigate the capital gains tax.

Prescinding from all of the foregoing, the Court is of the opinion that the fair market value of the foregoing properties of the above-named defendants is ₱5,500.00 per square meter.

WHEREFORE, plaintiff is hereby ordered to pay the above-named defendants the price of ₱5,500.00 per square meter of their lands subject of expropriation as a condition precedent for transferring ownership, pursuant to Sec. 4, Rule 67 of the Revised Rules of Court.

SO ORDERED.[30] (Emphasis ours.)

After the RTC issued the First Compensation Order (July 10, 2000 Order), the Dimayacyac Group filed a motion[31] for issuance of a writ of execution under Sec. 4, Rule 67 in relation to Sec. 2, Rule 39 of the Rules of Court. The RTC, over PPA's opposition, issued on July 24, 2000 an Order[32] granting the motion, followed by another Order[33] of July 31, 2000 issuing a writ of execution. Subsequently, a notice of garnishment[34] was issued to LBP Batangas City Branch. PPA lost no time in assailing the aforesaid orders and the notices of garnishment before the CA thru a special civil action for *certiorari* and prohibition,[35] the recourse docketed as **CA-G.R. SP No. 60314** entitled *PPA v. Hon. Paterno V. Tac-an, Rolando Quino, Ernesto Curata, et al.*

---

[30] *Id.* at 217.

[31] *Rollo* (G.R. Nos. 154211-12), pp. 218-225.

[32] *Rollo* (G.R. Nos. 154211-12), pp. 226-231.

[33] *Id.* at 232-235.

[34] *Id.* at 238-239, addressed to the LBP Batangas City.

[35] *Rollo* (G.R. Nos. 154211-12), pp. 243-264, Petition for *Certiorari* and Prohibition (With Urgent Prayer for Immediate Issuance of Temporary Restraining Order and Writ of Preliminary Injunction) dated August 18, 2000.

Supplemental Petition in CA-G.R. SP No. 60314

On August 10, 2000, PPA filed a *Notice of Appeal with Motion for Extension of Time to File Record on Appeal and Pay Appeal Fee*[36] from the July 10, 2000 Order (First Compensation Order). Within the extended period sought or on August 25, 2000, PPA filed its *Record on Appeal*. Acting on the PPA pleadings, the RTC issued the following orders, *viz*.:

1. August 25, 2000 Order[37] — dismissing PPA's notice of appeal on the ground of non-payment of the appeal fee;

2. August 28, 2000 Order[38] — denying PPA's Record on Appeal; and,

3. September 18, 2000 RTC Order[39] — denying PPA's motion for reconsideration of the above August 25, 2000 order.

This prompted PPA to register with the CA in CA-G.R. SP No. 60314 a Supplemental Petition[40] on October 25, 2000 to annul the aforestated RTC issuances.

PPA's petition in **CA-G.R. SP No. 60314** against the Dimayacyac Group was eventually consolidated with **CA-G.R. SP No. 63576** (*PPA v. Hon. Paterno V. Tac-an, Arsenio Abacan, et al.*) — a petition filed by PPA against the Ortega Group assailing the August 18, 2000 RTC Order implementing the August 15, 2000 RTC Order which likewise pegged the compensation at PhP 5,500 per square meter.

In its July 30, 2001 Decision in the consolidated CA-G.R. SP Nos. 60314 and 63576, the CA gave due course to PPA's appeal and annulled the challenged RTC Orders, the decretal portion of which reads:

---

[36] *Id.* at 331-332, dated August 9, 2000.

[37] *Id.* at 346-347.

[38] *Id.* at 368.

[39] *Id.* at 369-371.

[40] *Id.* at 372-390, Supplemental Petition (With Urgent Prayer for Immediate Issuance of Temporary Restraining Order and Writ of Preliminary Injunction) dated September 1, 2000.

WHEREFORE, We vote to GRANT the twin petitions. A writ of *certiorari* is hereby ISSUED ANNULLING AND AVOIDING the impugned Orders, and the appeals of the Petitioner are hereby ALLOWED.

SO ORDERED.[41]

To clarify, aside from entertaining PPA's appeal, the adverted August 25, 2000, August 28, 2000 and September 18, 2000 RTC Orders in favor of the Dimayacyac Group and the August 18, 2000 Order beneficial to the Ortega Group were nullified.

The July 30, 2001 CA Decision was later challenged in **G.R. Nos. 154211-12** by the Dimayacyac and Ortega Groups.

The Second Compensation Order (August 15, 2000 Order involving the Agustin, Ortega and Cruz Groups and Pastor Realty Corp., *et al*.)

In their Second Partial Report[42] dated August 2, 2000, the court-appointed commissioners recommended the same price of PhP 4,800 per square meter as just compensation for the

---

[41] *Id.* at 108.

[42] *Rollo* (G.R. No. 170683), pp. 302-305. The [Second] Partial Report in its entirety reads:

COMMISSIONERS PARTIAL REPORT

WHEREAS, upon Order of this Honorable Court dated July 18, 2000, the herein appointed Commissioners in relation to CIVIL CASE NO. 5447 for expropriation of Real Property are likewise mandated to ascertain the just compensation of lots of the following defendants, to wit:

1. ERLINDA D. BALINA;
2. NEMESIO BALINA;
3. FELIPA ACOSTA;
4. HEIRS OF ELEUTERIO ACOSTA;
5. PACITA ACOSTA;
6. LAMBERTO ACOSTA;
7. EMILIO BERBERABE;
8. SOLE HEIR OF GABRIELA ACOSTA;
9. ESTANISLAW ACOSTA;
10. HEIRS OF CECILIA DIMAANDAL;

11. HEIRS OF FRANCISCO SUMANGA;
12. HEIRS OF SIMEON MAGTIBAY;
13. HEIRS OF CESARIO RIVERA AND ANASTACIA ALDOVER;
14. FRANCISCO A. BERBERABE;
15. EMILIO F. BERBERABE, JR.;
16. JOEL BERBERABE;
17. TOMAS BERBERABE;
18. HEIRS OF NESTOR ALCANTARA;
19. ENRICO ALCANTARA;
20. LEONARDO ALCANTARA;
21. ROMULO BALINA;
22. HEIRS OF PEDRO MONTALBO;
23. JUANA DIMAANDAL;
24. CATALINA D. BALINA;
25. HEIRS OF FORTUNATA BALINA;
26. SPS. ZOILO ALDOVER AND CATALINA MONTALBO;
27. HEIRS OF PEDRO MONTALBO;
28. MAURICIA BALINA;
29. ADORACION MAGTIBAY;
30. HEIRS OF VICENTA GUTIERREZ;
31. EDILBERTO DIMAANDAL;
32. LILIA GARCIA;
33. HEIRS OF EVARISTO MONTALBO;
34. FELISA MONTALBO;
35. HEIRS OF LEOCADIO ALANO;
36. FELIPA MACATANGAY;
37. LEOCADIO ALANO;
38. LEOVILA ALANO;
39. TOMASA BALINA;
40. LEANDRO R. GALVEZ;
41. FRANCISCO ABALOS;
42. PETRA ALANO;
43. HEIRS OF SEVERO ALANO;
44. HEIRS OF SOLEDAD ALANO;
45. HEIRS OF INOCENCIA ALANO;
46. HEIRS OF REMEDIOS ALANO;
47. HEIRS OF ANTONIO ALANO;
48. AND HEIRS OF FELIPE ALANO;

lots listed therein (Second Partial Report[43] hereinafter). But just like the First Compensation Order of July 10, 2000, the **August 15, 2000** Order (Second Compensation Order) likewise fixed the just compensation at PhP 5,500 per square meter not only for the expropriated lots of defendant-owners, **but also for the lots of those similarly situated and of those who did not file their answers**. Said order reads:

For Resolution is the Second Report on Appraisal of the Fair Market Valuation dated August 2, 2000 submitted by Commissioners Arturo V. Magtibay, (Chairman), Jessie E. Cantos and Lauro C. Andaya. Said report reiterated its recommendation in that Partial Report dated May 30, 2000, that the appropriation price shall be ₱4,800.00 per square meter.

The Court, acting on said Partial Report, issued an Order dated

---

1. Report of Cuervo Appraisers, Inc.
2. Transcript of Records
3. Copy of Executive Order 385
4. Copy of Executive Order 431 further expanding EO 385

WHEREAS, after evaluation, it was established that the evidences submitted are just the same evidences being considered in this Case;

WHEREAS, the Commissioners noted that the properties of the DEFENDANTS are adjacent to the other properties being expropriated since they are all within the port zone as described and mandated in [EO] 385 which was later amended by [EO] 431 on October 19, 1990 x x x;

WHEREAS, it is the belief and view of the undersigned Commissioners that since 1990 the effectivity of [EO] 431, the port zone is already converted to industrial zone;

WHEREAS, being considered prime lands, the presence of utilities such as electricity, water and communication services are available on the area nearby the properties of the AFORENAMED DEFENDANTS;

NOW THEREFORE, BE IT RESOLVED AS IT IS HEREBY RESOLVED, on the basis of the above premise, it is the consistent stand of the undersigned Commissioners that we adhere to the previous recommendations and findings of just compensation in the amount of FOUR THOUSAND EIGHT HUNDRED PESOS (₱4,800.00) per square meter, as there appears to have no cogent reason that would justify the changes of previous recommendation.

Batangas City, August 2, 2000.

[43] Note from the Publisher: Footnote text not found in the official copy.

July 10, 2000, modifying said recommendation and pegged the price at ₱5,500.00 per square meter, as to the properties of the defendants named therein.

Mentioned in the second report is the findings and recommendation of Amicus Curiae, Cuervo Appraisers Inc., thru Manager/Appraiser Salvador D. Oscianas. He rendered an opinion that the fair market value per square meter ranges from ₱5,500.00 to a maximum of ₱6,000.00 (Report as Exhibit "97", supplemented by his testimony in Court on July 18, 2000). He mentioned three (3) prior landsales/ transactions within the zone, to wit:

1. Deed of Absolute Sale between Demetrio Marasigan in favor of Phil. Port Authority (PPA for brevity) dated December 11, 1996, price per square meter P5,000.00;

2. Judgment by compromise agreement dated September 23, 1997 (Exhibit "100-2") between Andrea Palacios and the City Government of Batangas, wherein the expropriation price per square meter for the road right of way (by-pass road) was agreed upon at ₱5,200.00;

3. Purchase by First Gas at Sta. Rita (fronting Batangas Bay) for ₱10,000.00 per square meter (industrial zone) a little further than Sta. Clara into the seashore in 1997.

Mr. Oscianas stated that the lands in the area in question are for commercial/light industrial purposes. These are developed areas as per ocular inspection. It is accessible by National highways (Calicanto from Batangas City Hall and the Bauan/Diversion Road) as well as Municipal Road (the bypass road), and by the sea (Port of Batangas). It is near the City Hall of Batangas City. It has water, lighting, communication and garbage facilities. Batangas City and province enjoys continuous boom of industrial and commercial developments. It has not experienced recession, unlike other regions, although it has experienced also the depreciation of the peso and the rise of the prices of prime commodities and real properties. The asking price of some pieces of real properties are much higher of ₱15,000.00 per square meter than the recorded past sales prices. He recommended for a maximum price of ₱6,000.00 per square meter as fair market value of the properties in question.

Atty. Emmanuel Agustin in behalf of his clients submitted a Decision by compromise agreement dated January 20, 1999 in the Court of

Appeals in that case of Dimaano vs. PPA pegging the price per square meter at ₱10,000.00 involving a similarly situated lot (Exh. "47").

Jurisprudence on expropriation pricing has shown that the fair market valuation is greatly guided by prior sales near the date of expropriation (*Toledo City vs. Fenandes, et al.*; G.R. L-45144, April 15, 1998 and prior Supreme Court decisions).

Based on the foregoing considerations, the Court hereby sets the fair market value at ₱5,500.00 per square meter of the lots of the above-named defendants and those similarly situated, including those who did not file answer.

SO ORDERED.[44] (Emphasis supplied.)

PPA received a copy of the afore-quoted August 15, 2000 Order on August 22, 2000, and seasonably filed its appeal therefrom docketed as **CA-G.R. CV No. 77668,** entitled *PPA v. Remedios Rosales-Bondoc, et al.* Of the respondents[45] named in CA-G.R. CV No. 77668, only the Cruz Group moved for the dismissal of PPA's appeal, while the rest filed their respective appellees' briefs.

CA-G.R. CV No. 77668 (PPA's appeal) was later consolidated with CA-G.R. SP No. 87844 (*PPA v. Hon. Paterno V. Tac-an, Remedios Rosales-Bondoc, et al.*) and CA-G.R. SP No. 90796[46] (*PPA v. Hon. Paterno V. Tac-an*). In the July 3, 2006 CA Resolution, PPA's appeal was dismissed in CA-G.R. CV No. 77668, while PPA's petitions in CA-G.R. SP Nos. 87844 and 90796 were likewise rejected, thus:

WHEREFORE, premises considered, the instant Motion to Dismiss Appeal is GRANTED. The Petition and Supplemental

---

[44] *Supra* note 5, at 103-106.

[45] The Agustin, Ortega and Cruz Groups, and Pastor Realty Corp., *et al.*

[46] In CA-G.R. SP No. 87844, PPA assailed the May 29, 2001 and November 18, 2004 RTC Orders, the November 22, 2004 Writ of Execution and November 23, 2004 Notices of Garnishment issued in favor of the Agustin Group. In CA-G.R. SP No. 90796, PPA filed a petition to cite Judge Paterno Tac-an for contempt for continuing to hear the expropriation case despite the CA cease and desist Order.

Petitions are DISMISSED and the writs of preliminary injunction are hereby LIFTED. The "Petition to Cite Respondent Paterno V. Tac-an In Contempt" is DENIED for lack of merit.

SO ORDERED.[47]

Hence, the instant petition in **G.R. No. 173392** filed by PPA.

RTC Orders implementing the Second Compensation Order

Anchored to the August 15, 2000 Order (Second Compensation Order) were various orders subsequently issued by the RTC directing payment at PhP 5,500 per square meter by PPA to the lot owners specified therein, to wit:

1. August 17, 2000 Order[48] for lot owners in the Agustin Group for an aggregate amount of PhP854,293,000.00;

2. August 18, 2000 Order[49] for lot owners in the Ortega Group for an aggregate amount of PhP3,384,212,425.00;

3. August 23, 2000 Order[50] for lot owners in the Cruz Group for an aggregate amount of PhP1,526,109,750.00;

4. August 23, 2000 Order[51] for lot owners Pastor Realty Corporation, *et al*., amounting to PhP566,879,500.00.

For clarity, we quote the aforestated orders verbatim.

I. THE AGUSTIN GROUP [CA-G.R. CV No. 77668 and CA-G.R. SP No. 83570]

The August 17, 2000 Order for the Agustin Group

The August 17, 2000 Order reads:

---

[47] *Rollo* (G.R. No. 173392), p. 103.

[48] *Id.* at 805-56 to 805-59.

[49] *Id.* at 805-60 to 805-67.

[50] *Id.* at 805-70 to 805-72, also at 339-341.

[51] *Id.* at 805-68 to 805-69.

Pursuant to the Order dated August 15, 2000, plaintiff is required to pay by way of just compensation to the following defendants represented by Atty. Emmanuel Agustin, to wit:

NAMES OF DEFENDANTS	T C T / T A X DEC. NO.	AREA OF PROPERTY OWNED BY THEM, LIKEWISE, AS MENTIONED IN THE COMPLAINT AND IN THE ANSWER	**AMOUNT OF JUST COMPENSATION DUE THEM BASED ON ₱5,500.00/SQ. M. PER AUGUST 15, 2000 PARTIAL JUDGMENT ORDER**
1. FELIPA D. ACOSTA married to Honesto Hernella; Heirs of ELEUTERIO D. ACOSTA married to Martha Galang; PACITA D. ACOSTA married to Emilio Berberabe; LAMBERTO D. ACOSTA married to Angelina Ituralde	TD No. 90-00010	13,131 SQ. M.	₱ 72,220,500.00
2. SPS. EMILIO BERBERABE and PACITA D. ACOSTA	TD No. 033-02492	5,033 SQ. M.	27,681,500.00
3. HEIRS OF SPS. ANASTACIA ALDOVER and CESARIO RIVERA	TD No. 090-00006	2,690 SQ. M.	14,795,000.00
	TD No. 090-00005	1,251 SQ. M.	6,880,500.00
	TD No. 033-02428	2,585 SQ. M.	14,217,500.00
4. ROMULO S. BALINA	TD No. 090-00008	4,052 SQ. M.	22,286,000.00
5. ADORACION MAGTIBAY	OCT No. P-633 and TD No. 090-00012	3,130 SQ. M.	17,215,000.00
6. SOLE HEIR OF SPS. PEDRO MONTALBO and MAURICIA BALINA-CATALINA MONTALBO ALDOVER	TD No. 090-00015	7,858 SQ. M.	43,219,000.00
	TD No. 033-02535	6,330 SQ. M.	34,815,000.00
	TD No. 033-02531	1,133 SQ. M.	6,231,500.00

	TD No. 033-02500	729 SQ. M.	4,009,500.00
	TD No. 033-02503	756 SQ. M.	4,158,000.00
	TD No. 033-02529	7,503 SQ. M.	41,266,500.00
7. HEIRS OF LEOCADIO AND LEONILA ALANO; HEIRS OF SPS. LEOCADIO ALANO & FELIPA MACATANGAY	TD No. 035-01115	11,066 SQ. M.	60,863,000.00
	TD No. 035-0113	7,056 SQ. M.	38,808,000.00
8. HEIRS OF SIMEON MAGTIBAY	TD No. 035-01098 (TD No. 035-01150) (TD No. 035-01148) (TD No. 035-01149)	5,581 SQ. M.	30,695,500.00
9. GABRIELA ACOSTA for herself and as SOLE HEIR OF ESTANISLAW ACOSTA	TD No. 033-02524	9,139 SQ. M.	50,264,500.00
10. HEIRS OF NESTOR ALCANTARA & BROTHERS	TD No. 033-04280 (TD No. 033-02523)	625 SQ. M.	3,437,500.00
11. SPS. ZOILO ALDOVER & CATALINA MONTALBO ALDOVER	TD No. 033-02489	1,315 SQ. M.	7,232,500.00
	TD No. 033-02506	2,390 SQ. M.	13,145,000.00
12. CATALINA D. BALINA married to Juan Ramirez	TCT # T-30369	3,253.50 SQ.M.	17,894,250.00
	TD No. 033-02559	3,851 SQ. M.	21,180,500.00
	TCT # T-30364 TD No. 033-03177		
13. SIMEON D. BALINA (as defendant-in-intervenor)	TCT # T-30363 TD No. 033-03178	3,851 SQ. M.	21,180,500.00

14. ERLINDA D. BALINA married to Alberto Reyes	TCT # T-30366	331.50 SQ. M.	1,823,250.00
	TCT # T-30368	1,806 SQ. M.	9,933,000.00
15. SOLE HEIR OF FORTUNATA D. BALINA married to Faustino Brual – JOSEFA GRACE BRUAL	TCT # T-30370 TD No. 033-02558	3,253.5 SQ. M.	17,894,250.00
16. NEMESIO D. BALINA married to Conchita Morales	TCT # T-30366	331.50 SQ. M.	1,823,250.00
		1,806 SQ. M.	
	TCT # T-30367 TD No. 033-02561		9,933,000.00
17. HEIRS OF TOMASA BALINA	TD No. 033-02502	1,723 SQ. M.	9,476,500.00
18. FRANCISCO A. BERBERABE; EMILIO FRANCISCO A. BERBERABE, JR.; THOMAS A. BERBERABE married to Nympha Atienza; and JOEL A. BERBERABE married to Murita Reyes	TCT # T-22967	4,559 SQ. M.	25,074,500.00
	TCT # T-22968	967 SQ. M.	5,318,500.00
19. HEIRS OF CECILIA DIMAANDAL	TD No. 033-02473	1,075 SQ. M.	5,912,500.00
20. SPS. EDILBERTO DIMAANDAL & LILIA GARCIA	TD No. 033-02493	6,507 SQ. M.	35,788,500.00
21. JUANA DIMAANDAL	TD No. 033-03274	10,939 SQ. M.	60,164,500.00
22. HEIRS OF VICENTA GUTIERREZ	TD No. 033-02538	12,593 SQ. M.	69,261,500.00
23. HEIRS OF EVARISTO MONTALBO & FELISA MONTALBO	TD No. 033-02537	2,965 SQ. M.	16,307,500.00
24. HEIRS OF FRANCISCO SUMANGA	TD No. 033-02504	856 SQ. M.	4,708,000.00
	TD No. 033-02475	1,305 SQ. M.	7,177,500.00
		GRAND TOTAL - - - - - - -	₱ 854,293,000.00

SO ORDERED.[52] (Emphasis supplied.)

PPA did not interpose an appeal from the aforequoted August 17, 2000 Order. PPA, however, postulated that the Agustin Group was included in its appeal of the August 15, 2000 Order (Second Compensation Order) before the CA in **CA-G.R. CV No. 77668** (consolidated with CA-G.R. SP Nos. 87844 and 90796). Said appeal was, however, dismissed by the CA in favor of the lot owners. The CA decision was later elevated by PPA before the Court in **G.R. No. 173392.**

II. ORTEGA and CRUZ GROUPS [CA-G.R. SP No. 63576, CA-G.R. SP No. 73848 and CA-G.R. No. SP No. 87844]

As a result of the August 15, 2000 RTC Order, twin orders were issued by the RTC, namely: the August 18, 2000 Order for the Ortega Group and the August 23, 2000 Order for the Cruz Group.

A. The **August 18, 2000 RTC Order** implementing the Second Compensation Order for the Ortega Group of lot owners reads:

Pursuant to the Order dated August 15, 2000, plaintiff is required to pay by way of just compensation to the following defendants represented by Atty. Gregorio Ortega and Atty. Simon T. Agbing, to wit:

Name of Defendants	TCT/TAX Dec. No.	Area of Property Owned by them, Likewise as Mentioned in the Complaint & Answer	**Amount of Just Compensation due them based on ₱5,500.00/sq/m. per August 15, 2000 partial Judgment/Order**
1. Pedro Alcantara md. to Dorotea Macatangay	TD 090-00003	1,581	₱ 8,695,500.00

[52] *Supra* note 48.

2. Corazon Ilao md. to Ceferino Perez	TD 090-01099	9,351	51,430,500.00
3. Luis Lira & Zenaida Lira	TD 090-00330	19,630	107,965,000.00
4. Milagros Macatangay	TD 090-01075 TD 090-00027	54,620 29,819	300,410,000.00 164,004,500.00
5. Lilia Singuimoto	TD 090-00028	12,349	67,919,500.00
6. Gerardo Abacan md. to Alicia Fabul	TD 035- ?	10,011	55,060,500.00
7. GerardoAbacan, Erlinda Abacan, Liliana Abacan, Cristeta Abacan, Analiza Abacan;	TD 035-1110 TD 035- 01075	3,983 3,128	21,906,500.00 17,204,000.00
8. Librada Macatangay *vda. de* Abas	TD 035-01130 TD 035-01120	1,694 463	9,317,000.00 2,546,500.00
9. Jose Noel M. Agbing, Jose Nereus M. Agbing, Ma. Bernadette M. Agbing, Marie Frances Th. M. Agbing;	TCT-21511 TCT-21512	750 3,000	4,125,000.00 16,500,000.00
10. Cecile Olivia F. Cuisia	TD 035-1892	6,700	36,850,000.00
11. Efren P. Espino md. to Erlinda Espino, Delia Espino md. to Joseph Velasco, Alfredo P. Espino md. to Eloisa S. Espino	TCT 22520	14,590	80,245,000.00

12. Esteban Espino	TD 035-01134	2,804	15,422,000.00
13. Felisa Hernandez	TD 035-01101 corrected under TD 01952 Area=11,365	1/3 of 11,365= 3,788	20,834,000.00
14. Alfredo Bautista md. to Maria Rita Bautista	TD 035-01433	643	3,536,500.00
15. Rafael Llana & Rustica Llana	TD 035-01539	13,395	73,672,500.00
16. Juana L. Carnero, Adelaida Belegal	TD 035-01129	2/3 of 1,115= 744	4,092,000.00
17. Bienvenido Maralit	TD 035-01081 & TD 035-01082	1,337 2,413	7,353,500.00 13,271,500.00
18. Luisa B. *Vda. de* Montalbo	TD 035-01096 TD 035-01355 TD 033-02710	11,788 5,486 2,691	64,834,000.00 30,173,000.00 14,800,500.00
19. Azucena Perez & Arnel Perez	TD 035-01119	2,158	11,869,000.00
20. Constancia Villamor Barcelo md. to Alfonso Barcelo	TD 035-01220	8,371	46,040,500.00
21. Cesar Perez, Romeo Perez, Ruben Perez, Mario Perez, Narocho Donaza Perez, Herminigildo Perez, Saturnina Perez	TD 090-00013 (17,777) TD 035-01125 (5,097)	1/6 of 17,777= 2,962.8 1/6 of 5,097= 849.50	16,295,400.00 4,672,250.00

22. Pricilla Buenafe	TD 035-01108	2,222	12,221,000.00
23. Aurea Acosta md. to Roman Acosta, Consolacion Acosta md. to Severo Malimban, Betty Acosta md. to Carlos Caabay, Constancio Acosta md. to Araceli Reraida, Araceli Acosta	TD 033-02420 TD 033-02467	12,241 8,301	67,325,500.00 45,655,500.00
24. Consuelo Alcantara	TD 033-02511	3,003	16,516,500.00
25. Simeon Balita md. to Elena M. Balita	TCTC-35523	157	863,500.00
26. Maria Clara T.Berba, Felimon T. Berba, Azucena T. Berba, EduardoT. Berba, Ma. Lourdes T. Berba, Edgardo T. Berba, Edmundo T. Berba	TD033-02707	2,690	14,795,000.00
27. Pacita M.Berba, Alejandro M. Berba, Clara M. Berba, Martina M. Berba, Gremauldo M. Berba, Evelina M. Berba	TD 033-02713 TD 033-02711	2,691 2,793	14,800,500.00 15,361,500.00
28. Amelia M.Berba, Pablo M. Berba, Ricardo M. Berba, Francisco M. Berba	TD033-02714	2,691	14,800,500.00
29. Rafael S. Berba	TD 033-02715	2,691	14,800,500.00
30. Adoracion Acosta Cabral	TD 033-02474	2,530	13,915,000.00

31. Carlito Casas md. to Enriqueta Casas	TD 033-02492	5,033	27,681,500.00
32. Benjamin Castillo md. to Erlinda Laredo	TCT-20929	4,823	26,526,500.00
33. Augusto Claveria	TD 033-02454	2,653	14,591,500.00
34. Esperanza Dimaandal md. to Josue Bagsit	TD 033-02707	4,000	22,000,000.00
35. Mariano Diokno, Ernesto B. Diokno, Mariano B. Diokno, Jr., Maria Clara B. Diokno, Angelita B. Diokno	TD 033- 02708	2,690	14,795,000.00
36.Maria Español	TD 033-02497	1,493	8,211,500.00
37.Rufino Geron md. to Matilde Geron	TD 033- 02477	1,364	7,502,000.00
38. Segundina Gualberto	TD 033- 02927 TD 033- 02928 TD 033- 02929	1,153 1,429 257	6,341,500.00 7,859,500.00 1,413,500.00
39. Sixto Gualberto md. to Maria Gualberto	TD 033- 02694 TD 033- 0278	374 5,457	2,057,000.00 30,013,500.00
40. Corazon Ilao, Isabelle M. Ilao, Concepcion M. Ilao, Michelle I. Ilao, Blanca I. Susi, Enrico Antonio M. Ilao	TD 033- 03145 TD 033-03146 TD 033-03147	4,243 6,175 1,058	23,336,500.00 33,962,500.00 5,819,000.00
41. Maria Lacsamana	TD 033-02479 TD 033-02491	1,157 1,414	6,363,500.00 7,777,000.00
42. Dorotea Macatangay md. to Teodorico Alcantara	TD 033-02512	3,003	16,516,500.00

43. Pedro Marasigan	TD 033-02518	1,705	9,377,500.00
44. Pablo Mendoza md. to Maria Lourdes Mendoza	TD 033-03342	3,447	16,516,500.00
45. Jaime Tauro md to Reynada Tauro.	TD 033- 02505 TD 033- 02507	809 1,584	4,449,500.00 8,712,000.00
46. Heirs of Lucila Aldover	TD 090- 00004 TD 033- 02526	1,251 618	6,880,500.00 3,399,000.00
47. Andrea Balina & Moises Macatangay(heirs)	TD 090-00009 TD 033- 02462	4,051 2,287	22,280,500.00 12,578,500.00
48. Heirs of Gregorio Dapat	TD 090- 027	11,938	65,659,000.00
49. Popula Llana (heirs)	TD 090-00023	187,583- 45,667= 142,186	782,023,000.00
50. Arsenio Abacan (heirs)	TD 035- 01112 TD 035- 01074	12,384 1,454	68,112,000.00 7,997,000.00
51. Lauro Abraham (heirs)	TD 035-01132	5,441	29,925,500.00
52. Manuel Amul, Sr. & Marcosa Marasigan (heirs)	TD 035- 01077	5,360	29,480,000.00
53. Eulalio Buenafe (heirs)	TD 035- 01121	3,053	16,791,500.00
54. Generosa Buenafe (heirs)	TD 035-01117	2,120	11,660,000.00
55. Marciana Buenafe (heirs)	TD 035-01102 TD 035- 01107 TD 035- 01109	2,106 3,796 1,090	11,583,000.00 20,878,000.00 5,995,000.00
56. Heirs of Guadalupe Dayanghirang	TD 035- 01131	6,642	36,531,000.00

57. Heirs of Felino Hernandez	TD 035-01101	1/3 of 11,365= 3,788	20,834,000.00
58. Heirs of Florentino Macatangay	TD 035-01101	1/3 of 11,365= 3,789	20,839,500.00
59. Brigido Lontoc (heirs)	TD 035-01129	1,115	6,132,500.00
60. Heirs of Pedro Magadia	TD 035-01104	1,084	5,962,000.00
61. Rosa P. Magadia (heirs)	TD 035-01103	1,085	5,967,500.00
62. Heirs of Daniel Magadia	TD 035-01105	2,140	11,770,000.00
63. Jose Maranan & Concha Magadia (heirs)	TD 035-01106	2,292	12,606,000.00
64. Heirs of Maria Montalbo	TD 035-01133	5,044	27,742,000.00
65. Heirs of Godofredo Rosales	TD 035-01128	13,000	71,500,000.00
66. Heirs of Maria Consolacion Sarmiento	TD 035-01111	13,583	74,706,500.00
67. Heirs of Luisa Villanueva	TD 035-01083 TD 035-01085	945 18,209	5,197,500.00 100,149,500.00
68. Evarista Bauan (heirs)	TD 033-02534	1,220.5	6,712,750.00
69. Heirs of Maria Caedo	TD 033-2712 TD 033-02716	2,795 2,691	15,372,500.00 14,800,500.00
70. Heirs of Agripina Garcia	TD 033-024	1,671	9,190,500.00
71. Feliza Macatangay (heirs)	TD 033-03261	1,733	9,531,500.00

72. Heirs of Basilio Macaraeg & Pacencia del Mundo	TD 033-02525 TD-033-02528	1/7 of 5,088=726.85 1/7 of 4,926=703.7	3,997,675.00 3,870,350.00
	T O T A L		3,384,212,425.00

SO ORDERED.[53] (Emphasis ours.)

On August 22, 2000, PPA received a copy of the aforequoted August 18, 2000 Order. The last day to file the record on appeal fell on September 21, 2000.

On September 20, 2000, PPA filed its *Notice of Appeal with Motion for Extension of Time to File a Record on Appeal* of the above August 18, 2000 Order asking for a 30-day extension, which the RTC granted with a caveat against any further extension.

On October 20, 2000, a Friday, the last extended day of filing its record on appeal, full power outage hit the whole island of Luzon — including Metro Manila — and all government workers were dismissed at noon time. On Monday, October 23, 2000, PPA filed a *Motion for Reconsideration and Extension* of the September 19, 2000 RTC Order therein praying for a final extension of 30 days.

On November 20, 2000 or within the 30-day final extension sought, the PPA filed its *Record on Appeal* of the August 18, 2000 Order[54] implementing the August 15, 2000 Order for the Ortega Group. On December 13, 2000, the RTC dismissed PPA's record on appeal on the ground that the said August 18, 2000 Order had become final and executory, as the PPA's *Motion for Reconsideration and Extension* with respect to such record of appeal had been filed out of time. This development prompted PPA to file a petition for *certiorari* before the CA, assailing the RTC Orders dated August 18, 2000 and December 13, 2000, docketed as **CA-G.R. SP No. 63576** (*PPA v. Hon. Paterno V.*

[53] *Supra* note 49.

[54] *Supra* note 49.

Tac-an, Arsenio Abacar, et al.). The CA, in its July 30, 2001 Decision, nullified the December 13, 2000 RTC Order and allowed PPA's appeal.

CA-G.R. SP No. 63576 was consolidated with the earlier CA-G.R. SP No. 60314 (*PPA v. Hon. Paterno V. Tac-an, Rolando Quino, Ernesto Curata, et al.*) [against the Dimayacyac Group]. The July 30, 2001 CA Decision[55] later became the subject matter of two (2) petitions (**G.R. Nos. 154211-12**) filed by the Dimayacyac and Ortega Groups.

B. The August 23, 2000 RTC Order implementing the August 15, 2000 Order for the Cruz Group of lot owners reads:

Pursuant to the Order of the Court dated August 15, 2000, plaintiff is hereby required to pay by way of just compensation to the defendants represented by the following counsels, to wit:

NAME OF DEFENDANTS	T C T / T A X DEC. NO.	AREA OF PROPERTY OWNED BY THEM, LIKEWISE, AS MENTIONED IN THE COMPLAINT AND IN THE ANSWER	**AMOUNT OF JUST COMPENSATION DUE THEM BASED ON ₱5,500.00/sq. m. PER AUGUST 15, 2000 PARTIAL JUDGMENT ORDER**
COUNSEL: ATTY. CESAR C. CRUZ			
1. Remedios Rosales Bondoc and Jose K. Rosales	TCT No. T-43534	106,720	₱586,960,000.00
2. Heirs of Lumin Antolin	TD 035-01704	54,681	300,745,500.00
			₱ 887,705,500.00

[55] *Supra* note 2.

COUNSEL: ATTY. FELIP G.CAPULONG

1. Anita G. Escano, Lydia G. Capulong, Erlinda Germer Gonzales and Romulo F. Gonzales	TD 033-02510 TD 035-01125	6,116 29,170	₱ 33,638,000.00 160,435,000.00
2. Anita G. Escano, Lydia G. Capulong, Erlinda Germer Gonzales and Romulo F. Gonzales	TD 035-01126 TD 035-01127	2,261 88	₱ 12,435,500.00 484,000.00
			₱206,992,500.00

COUNSEL: ATTY. CIPRIANO U. ASILO

1. Francisco Abalos and Remedioa Alano	TD 035-01114	2,500	₱ 13,750,000.00
2. Severo Alano, Soledad Alano, Inocencia Alano, Petra Alano, Remedios Alano Antonio Alano, Felipe Alano	TD 035-01116	7,141	39,275,500.00
			₱ 53,025,500.00

COUNSEL: ATTY. RAMON GUTIERREZ

1. Anunciacion Gutierrez	TD 035- 01114	2,691	₱ 14,800,500.00

COUNSEL: ATTY. EUGENIO MENDOZA

1. Felipe Serrano and Spouse	TD 090-01112	225	₱ 1,237,500.00

COUNSEL: ATTY. YOLANDO ATIENZA

1. Silverio Atienza & Jocelyn Felio	TCT No. T-30107	1.119	6,154,500.00

2. Silverio Atienza	TD 035- 02767	167	918,500.00
			₱ 7,073,000.00

COUNSEL: ATTY. GLENN MENDOZA

1. J. L. Gandionco Realty	TD 035- 02592	8,836	₱48,598,000.00

COUNSEL: ATTY. NORBERTO L. CAJUCOM

1. Lourdes Mercado,	TD 035-01140	13,350	₱73,425,000.00
Augusto Mercado,	TD 035-01138	35,528	195,404,000.00
Heirs of Fidencio Mercado and heirs of Concepcion Mercado			₱268,829,000.00

COUNSEL: ATTY. DELIA C. VIVIAR

1. Celia Pasion Dimaandal, Arnel Joseph Dimaandal, Roxanne Socorro Dimaandal, Teresita Dimaandal, Aaron Martin Dimaandal, Rachel Victoria Dimaandal, Aris Anthony Dimaandal	D 035- 02487	4,432	₱24,376,000.00

DEFENDANTS BALIWAG (no counsel)

1. Gregorio Baliwag,	TD 035-02510	740	₱ 4,103,000.00
EliseoBaliwag,	TD 033-02691	483	2,626,500.00
Crisanta Baliwag	TD 033-02533	1,220.5	6,712,750.00
			₱13,472,250.00

OVER ALL TOTAL : 1,526,109,750.00

SO ORDERED.[56]

PPA did not file a notice of appeal from the above August 23, 2000 Order.

Thereafter, the Cruz Group moved for the execution of the above August 23, 2000 RTC Order, maintaining that it had become final and executory for PPA's failure to appeal therefrom. The RTC, agreeing with the Cruz Group's assertion of finality, granted the motion for execution in an Order dated May 29, 2001.[57]

Over three (3) years from the issuance of the May 29, 2001 Order granting the writ of execution, the Cruz Group filed a motion dated November 4, 2004 for issuance of a Writ of Execution. PPA's opposition thereto was disregarded by the RTC which ruled in favor of the movants via a November 18, 2004 Order. Subsequently, the trial court likewise issued a writ of execution dated November 22, 2004 and Notices of Garnishment dated November 23, 2004 addressed to the National Treasury, Development Bank of the Philippines (DBP), Philippine National Bank (PNB), and the Philippine Veterans Bank (PVB).

PPA moved for a reconsideration which it later withdrew, opting to file a petition for *certiorari* under CA-G.R. SP No. 87844 which was later consolidated with the PPA's appeal in CA-G.R. CV No. 77668. The CA rendered a Decision on July 3, 2006 in the consolidated cases dismissing CA-G.R. SP No. 87844, CA-G.R. CV No. 77668, and CA-G.R. SP No. 90796.

In the meantime, on **September 11, 2001**, the RTC issued a *Writ of Possession*[58] to PPA effective upon a deposit of PhP 400 per square meter for the lots in question. PPA, responding to the RTC's Order[59] dated September 20, 2001 to submit a certificate of deposit in connection with the writ of possession

---

[56] *Supra* note 50.

[57] *Rollo* (G.R. Nos. 154211-12) pp. 226-231.

[58] *Rollo* (G.R. No. 158252), pp. 136-143.

[59] *Id.* at 144.

thus issued, filed a *Manifestation/Submission*, attaching thereto the following:

(1) Certification of Deposit and Availability of Funds dated December 14, 2000 in the amount of PhP 422,640,960;[60]

(2) Certification dated December 14, 2000 by the Bureau of Treasury showing PPA's investment in treasury bills amounting to PhP 473,500,000 with maturity on January 24, 2001;[61]

(3) Certification dated October 25, 2000 by the LBP (Lipa City Branch) with respect to PPA's account in the amount of ₱2,104,484.28;[62] and,

(4) Lists for Deposit based on the 1998 Zonal Valuation indicating the amounts to be paid to all the respondents totaling PhP 422,640,960 corresponding to the aggregate full zonal valuation of all the subject expropriated properties.[63]

Subsequently, PPA took possession of the subject lots.

RTC Orders for release of deposit to landowners

While PPA's appeal of the August 15, 2000 Order (Second Compensation Order) was pending before the CA in CA-G.R. CV No. 77668, the RTC, on May 15, 2002, in accordance with Sec. 2 of Administrative Order No. (AO) 50,[64] directed PPA to release 10% of the deposit relative to the zonal valuation of the expropriated properties pursuant to the List for Deposit based on the 1998 Zonal Valuation submitted by PPA. The Ortega[65] and Cruz[66] Groups filed their respective motions for partial

[60] *Id.* at 145.

[61] *Id.* at 256.

[62] *Id.* at 257.

[63] *Id.* at 146-151.

[64] Issued on February 17, 1999 by then President Estrada.

[65] *Rollo* (G.R. No. 158252), pp. 152-154, dated June 18, 2002.

[66] *Rollo* (G.R. No. 173392), pp. 361-377, dated June 19, 2002.

reconsideration of the said May 15, 2002 Order, contending that the amount should be 100% of the zonal valuation pursuant to Republic Act No. (RA) 8974,[67] and not the 10% of the offered amount under Sec. 2 of AO 50.

By a June 27, 2002 *Manifestation*,[68] Atty. Arturo S. Bernardino, then PPA's Director for Legal Services, interposed "no objection" to the motions for partial reconsideration (of both the Ortega and the Cruz Groups) and the reasons behind them, as evidenced by his attached letter[69] dated June 25, 2002

---

[67] On November 7, 2000 and during the pendency of Civil Case No. 5447, Republic Act No. (RA) 8974 was signed into law, pertinently providing as follows:

Section 4. *Guidelines for Expropriation Proceedings.*—Whenever it is necessary to acquire real property for the x x x location for any national government infrastructure project through expropriation, the appropriate implementing agency shall initiate the expropriation proceedings x x x under the following guidelines:

(a) Upon the filing of the complaint, and after due notice x x x, the implementing **agency shall** immediately **pay the owner** of the property the amount equivalent to the sum of (**1**) **one hundred percent** (**100%**) **of the value** of the property **based on the current relevant zonal valuation of the Bureau of Internal Revenue** (**BIR**); x x x

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

x x x x x x x x x

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

x x x x x x x x x

In the event that the owner of the property contests the implementing agency's proferred value, the court shall determine the just compensation to be paid x x x. When the decision of the court becomes final and executory, the implementing agency shall pay the owner the difference between the amount already paid and the just compensation as determined by the court. (Emphasis supplied.)

[68] *Rollo* (G.R. No. 158252), pp. 268-269.

[69] *Id.* at 155.

stating that said motions appeared to be consistent with RA 8974. Accordingly, by Order[70] of July 12, 2002, the RTC directed PPA to immediately release to respondent-land owners the deposit equivalent to 100% of the zonal valuation.

PPA later disowned the Bernardino letter and asked the withdrawal of Atty. Bernardino's manifestation.[71] On July 29, 2002,[72] however, the RTC denied the motion to withdraw, a denial which would be reiterated in an Order of September 5, 2002. This prompted PPA to interpose a petition for *certiorari* before the CA (**CA-G.R. SP No. 73848**) assailing the July 12, 2002 and July 29, 2002 Orders on these grounds: *first*, according retroactive application to RA 8974; and *second*, compelling PPA to immediately pay the percentage rate provided under RA 8974 instead of the lower rate required under AO 50.

CA-G.R. SP No. 73848 was decided by the CA on May 16, 2003 against PPA, holding that RA 8974 requiring the initial payment of 100% of the zonal valuation of the expropriated lots was applicable, thus:

> WHEREFORE, premises considered, the instant petition is hereby DENIED for lack of merit. The prayer for the issuance of a temporary restraining order and a writ of preliminary injunction is likewise denied.
>
> SO ORDERED.[73]

Via its petition in **G.R. No. 158252**, PPA challenges the CA Decision.

While the August 15, 2000 Order (Second Compensation Order) involving the Agustin Group, among others, was pending appeal in CA-G.R. CV No. 77668, said group, in a Motion for

---

[70] *Id.* at 39-40.

[71] *Id.* at 156-161. According to the PPA, Atty. Bernardo's conformity letter was without PPA's management clearance.

[72] *Id.* at 41-47.

[73] *Id.* at 37.

Immediate Payment dated September 25, 2003, prayed for the release of one hundred percent (100%) of the zonal value of their lots at the rate of **four thousand two hundred and fifty pesos per square meter** (PhP 4,250/sq.m.). It anchored its plea for immediate payment on Sec. 4 (a) of RA 8974 in relation to Sec. 13 of its Implementing Rules and Regulations, claiming that:

> x x x And since the zonal value prescribed for industrial lots in Bgy. Sta. Clara is in the amount of between ₱1,740.00 to ₱9,500.00 **which *barangay* is adjacent to the industrial lots being expropriated in barangays Calicanto and Bolbok; and since the zonal value prescribed for industrial lots located in Bgy. Sta. Clara of similar condition as that found in barangays Calicanto and Bolbok is ₱4,250.00, it is thus most respectfully move (sic) that said 100% zonal value of ₱4,250.00 be immediately paid and be released to the defendants.** Their properties being classified as Industrial/Port Zone under E.O. No. 431 dated October 19, 1990 and as that adopted and approved by the Sangguniang Panglunsod of Batangas in its Resolution No. 53-893 dated February 4, 1994 adopting and approving the comprehensive or predominant use of said properties as industrial. x x x

In the Order dated October 13, 2003, the trial court ordered the Agustin Group to make a "summary" of the details and to indicate the "specific location" of the properties under expropriation.

In their October 20, 2003 Compliance, the members of the Agustin Group submitted the summary of the area, classification and location of their properties and a Certification dated July 9, 2002 issued by Abencio T. Torres, Assistant Revenue District Officer (RDO) of the Bureau of Internal Revenue (BIR), Batangas City.

PPA opposed the motion for payment alleging that the relevant zonal valuation of private respondents' properties was only PhP 290 per square meter and not PhP 4,250, as the subject lots were agricultural in nature.

By Order dated December 2, 2003, the trial court directed PPA to pay the Agustin Group 100% of the zonal value at the rate of PhP 4,250 per square meter.

Subsequently, in the Order dated December 18, 2003, the trial court modified its December 2, 2003 Order and instead directed PPA to release in favor of the Agustin Group 10% of the zonal valuation computed at PhP 4,250 per square meter. PPA received on January 8, 2004 the December 18, 2003 Order.

Incidentally in connection with the Ortega Group, the trial court issued an Order dated December 8, 2003 directing PPA to release to the Ortega Group 10% of the zonal value pursuant to an Order dated August 30, 2002 which pegged the zonal valuation at the rate of PhP 290 per square meter and not PhP 4,250 per square meter. The lots of the Ortega and Agustin Groups are all located at Barangays Bolbok, Calicanto and Santa Clara.

Claiming that the Orders dated December 2 and 18, 2003 had attained finality, the Agustin Group filed a Motion for the Issuance of Writ of Execution dated January 15, 2004 and prayed for the release of one hundred percent (100%) of the zonal valuation computed at PhP 4,250 per square meter.

On January 23, 2004, PPA filed a Motion for Reconsideration of the Orders dated December 8 and 18, 2003, which the Agustin Group opposed.

PPA's motion for reconsideration was denied in an Order dated February 13, 2004 which reads:

> As suggested by the Court to achieve justice and humanitarian consideration inasmuch as their properties have long been converted to the use of the plaintiff, subject to the final approval by the Supreme Court of the fair market valuation considering the ₱500.00 per square meter offer of the plaintiff, it may pay the sum of ₱425.00 per square meter by way of equity or on humanitarian basis. The cap of payment shall be Five hundred pesos (₱500.00) in the meantime.
>
> The movant is given a period of three (3) days from today to submit the Special Power of Attorney, furnishing copy to the plaintiff.

The Motion for Reconsideration filed by the plaintiff is DENIED.

WHEREFORE, let a Writ of Execution be issued.

Subsequently, a Writ of Execution dated February 20, 2004 was issued to implement the December 2, 2003 Order. PPA, via a Manifestation and Motion dated March 8, 2004, sought the stay of the December 2, 2003 Order.

On March 17, 2004, the trial court issued another Order directing the parties to file their respective memoranda "on or before March 23, 2004." PPA allegedly received the March 17, 2004 Order only on March 23, 2004 (the last day for filing the Memorandum); hence, its inability to comply therewith.

The next day, March 24, 2004, the RTC issued an Order denying PPA's Manifestation and Motion of March 8, 2004 and directing the Land Bank of the Philippines (LBP) to release the amount stated in its December 2, 2003 Order under pain of contempt.

The Agustin Group was able to execute on March 25, 2004 the Order dated December 2, 2003 and obtained the release of PhP 81,741,250 from the LBP. However, what was withdrawn was still insufficient to cover the entire amount sought to be executed.

While the trial court gave PPA a period of five (5) days within which to file its motion for reconsideration of the March 24, 2004 Order, PPA filed instead a Manifestation dated April 5, 2004 therein expressing its intention to resort to other appropriate remedies.

To ensure execution of the "deficiency" amount to satisfy the December 2, 2003 Order, the trial court issued the April 12, 2004 Order which reads:

Defendants represented by Atty. Emmanuel Agustin filed the Motion for Issuance of Writ of Execution of the 100% zonal valuation as contained in the order dated December 2, 2003. This is opposed on the ground that the zonal valuation of the said defendants is on appeal, thus, this Court has no jurisdiction.

This Court is inclined to rule in favor of the defendants on the following grounds.

1. The Order dated December 2, 2003 has long become final and executory because no appeal or petition for *certiorari* has been filed assailing the said Order.

2. [RA] 8974 is clear that a payment of zonal valuation is not appealable as it is intended to tide-over the needs of the landowners of the lands under litigation. The defendants have manifested that some of [them] have died and some are sick and about to die, that their properties have been expropriated for almost three years without payment, to take care of their needs x x x;

3. Granting that there was an appeal filed and considering that the records of this case are still with this court, the Motion for payment may be considered as a Motion for Execution Pending Appeal based on compelling grounds as cited above and on grounds of equity. Even if there was a petition for certiorari filed in the higher court, the proceedings in this Court below and the orders will take their due course (SC case of Atty. Aparicio vs. Judge Andal) in the absence of a restraining order. The rule on execution pending appeal will be applied in a suppletory manner.

WHEREFORE, the Court hereby orders the partial execution of the Order dated December 2, 2003 in an amount of 50% of the valuation thereof. Let a Writ of Execution be issued accordingly.

The trial court also issued the Supplemental Order dated April 15, 2004, which partly reads:

Upon motion of the counsel for defendants Atty. Emmanuel Agustin, and pursuant to the Order dated April 12, 2004 and in reference to the Order dated December 2, 2003 the plaintiff Philippine Ports Authority is hereby ordered to pay the 50% of the zonal valuation of the properties of the following defendants x x x.

On April 19, 2004, PPA filed an Omnibus Motion for Reconsideration of the Order dated April 12, 2004 and the Supplemental Order dated April 15, 2004 and to Stay the Enforcement of the Writ of Execution dated April 16, 2004. PPA, however, later filed a Manifestation withdrawing the said omnibus motion.

In lieu of the withdrawn omnibus motion, PPA interposed a petition for *certiorari* before the CA to nullify the following RTC orders earlier adverted to: the December 2, and 18, 2003 Orders; and the February 13, 2004, March 24, 2004, April 12, and 15, 2004 Orders. The petition was docketed as **CA-G.R. SP No. 83570**. This petition was resolved through the assailed Decision dated November 22, 2004, with the CA denying PPA's petition in CA-G.R. SP No. 83570. The writ of preliminary injunction earlier issued was lifted.[74]

The CA held that, *first*, the finality of the main assailed RTC order of December 2, 2003 directing PPA to pay the concerned lot owners the BIR zonal valuation of PhP 4,250 per square meter had set in, and thus the issuance of the writ of execution therefor was warranted; and *second*, the provision of RA 8974 on the amount of the provisional payment applied.

The CA Decision in question was later challenged by PPA in **G.R. No. 166200**.

The August 23, 2000 Order for Pastor Realty Corporation, *et al.*

The August 23, 2000 Order implementing the Second Compensation Order for lot owners Pastor Realty Corporation, *et al.*, reads:

Pursuant to the Order of the Court dated August 15, 2000, plaintiff is hereby required to pay by way of just compensation to the following defendants, to wit:

NAMES OF DEFENDANTS	TCT/TAX DEC. NO.	AREA OF PROPERTY OWNED BY THEM, LIKEWISE, AS MENTIONED IN THE COMPLAINT	**AMOUNT OF JUST COMPENSATION DUE THEM BASED ON ₱5,500.00/SQ.M. PER AUGUST 15, 2000 PARTIAL JUDGMENT ORDER**

[74] Issued on February 17, 1999 by then President Estrada.

1. Pastor Realty Corporation	TCT RT-627 (37429)	41,389	₱227,639,500.00
	TCT RT-626 (37428)	398	2,189,000.00
2. Luz Balmes md.to Ernesto Balmes	TD 035- 01084	1,780	9,790,000.00
3. Perpetua Atienza,	TD 033- 02769	863	4,746,500.00
Fortunata Atienza,	TD 033-02764	14,731	81,020,500.00
Isabelo Atienza	TD 033-02766	14,564	80,102,000.00
4. Brothers of Fortunata Balina	No Tax Dec. or Title (per complaint)	7,702	42,361,000.00
5. Rosalinda C. Rosales	TD033- 03000	164	902,000.00
6. Patricio	TD-033- 02530	1,057	5,813,500.00
Sumanga	TD-033- 02517	510	2,805,000.00
7. Vicente G. de Rivera	TD 033-02513	1,908	10,494,000.00
8. Rene de Rivera	TD033- 02453	1.944	10,692,000.00
9. Francisco Mercado	TD 033-02496	1,050	5,775,000.00
10. Serafin Montalbo	NO TAX DEC or Title (per complaint)	5,240	28,820,000.00
11. Fortunata Bauna	NO TITLE OR TAXS (sic) DEC. (per complaint)	7,071	38,890,500.00
12. Salud Macaraig	TD 033- 02520	1,448	7,964,000.00

13. Florendo Macatangay	TD033- 02476	1,250	6,875,000.00
	TOTAL		₱556,879,500.00

SO ORDERED.[75] (Emphasis supplied.)

PPA claims that the August 23, 2000 Order in favor of Pastor Realty Corp., *et al.*, was included in its appeal from the August 15, 2000 Order (Second Compensation Order) in **CA-G.R. CV No. 77668** which was consolidated with its petition in **CA-G.R. SP Nos. 87844** (involving the Cruz Group) and **90796** (petition to cite Judge Tac-an for contempt of court). The CA resolved the consolidated petitions in favor of the lot owners, which decision PPA elevated to the Court in **G.R. No. 173392**.

III. INTERVENORS CAROLINE B. ACOSTA, *ET AL.* [CA-G.R. CV No. 70023]

Compensation of PhP 5,500 applied to defendant-intervenors Acosta, *et al.*

Meanwhile, Caroline B. Acosta, Abigail B. Acosta, Nemesio D. Balina and Erlinda D. Balina, also represented by Atty. Agustin, moved to intervene, claiming in their *Answer-in-Intervention*[76] that, while they were owners of the properties located within the expropriated area, they were inadvertently omitted from PPA's complaint. They thus prayed for the same PhP 5,500 per square meter rate for their lots. By Order[77] dated September 7, 2000, the RTC granted the plea of Acosta, *et al.*, thus:

There being no opposition, the Motion for Intervention is granted with respect to lot owners Nemesio D. Balina and Erlinda D. Balina whose property is Lot No. 1178 covered by Tax Dec. No. 033-02871 containing an area of 2,301 sq. meters which is surrounded already by lots subject of this expropriation and also to Caroline B. Acosta

---

[75] *Supra* note 50.

[76] *Rollo* (G.R. No. 170683), pp. 282-284.

[77] *Id.* at 67.

and Abigail B. Acosta with respect to Lot Nos. 1146 and 1152 covered by Tax Dec. No. 033-04285 with an area of 2,961.5 sq. meters which are similarly situated and which have been inadvertently omitted in the complaint as per letter from the Manager of Legal Services Department, Arturo S. Bernardino, dated August 28, 2000.

The movants have marked Exhibit "1" – the letter dated August 28, 2000; Exhibit "1-A" – Tax Dec. No. 033-02871; and Exhibit "1-B" – Tax Dec. No. 033-04285.

The motion further prays for (sic) that they be allowed to adopt the Order of the Court dated July 10, 2000 and August 15, 2000 setting the fair market value at ₱5,500.00 per square meter. There being no opposition, the same is GRANTED.

SO ORDERED. (Emphasis supplied.)

This compelled the disgruntled PPA to again appeal[78] to the CA, the recourse (*PPA v. Felipa Acosta, et al.*) docketed as **CA-G.R. CV No. 70023**. The CA rendered the herein assailed Decision[79] affirming the September 7, 2000 Order[80] of the RTC on the fair market value, *i.e.*, PhP 5,500 per square meter, of the expropriated property, using as bases sales transactions involving neighboring lots and the findings of the court-appointed commissioners.[81]

Thus, the instant petition of PPA in **G.R. No. 170683**.

IV. ROSALINDA BUENAFE AND MELENCIO CASTILLO [CA-G.R. SP No. 82917]

RTC grant of execution to Buenafe and Castillo

Meanwhile, pending review by this Court of the July 30, 2001 consolidated CA Decision in CA-G.R. SP Nos. 60314 and 63576 [involving the Dimayacyac and Ortega Groups,

[78] *Rollo* (G.R. No. 173392), pp. 300-338, Brief for the Plaintiff-Appellant dated July 19, 2002.

[79] *Supra* note 11.

[80] *Supra* note 12.

[81] *Rollo* (G.R. No. 170683), p. 66.

respectively — which, for reference, effectively gave due course to the appeal of PPA from the July 10, 2000 Order — Rosalinda Buenafe and Melencio Castillo filed a *Manifestation and Motion to Order the Sheriff to Implement Writ of Execution (Based on Finality of Judgment)*.[82] They alleged they were covered by PPA's basic complaint; that they filed their answer; that their property sought to be expropriated had an area of 2,092 square meters; and that they were included in the RTC September 29, 2000 writ-order[83] directing execution of the July 10, 2000 Order fixing just compensation, but were not impleaded in PPA petitions in CA-G.R. SP Nos. 60314 and 63576. They, however, added that the July 10, 2000 Order did not include either of their names.

By Order[84] dated November 6, 2003, the RTC granted Buenafe and Castillo's aforementioned motion to implement the writ of execution, on the rationale that the amounts indicated in the July 10, 2000 Order and upon which the September 29, 2000 writ of execution was based, were final and executory as to them (Buenafe and Castillo).

On November 20, 2003, the RTC issued in favor of Buenafe and Castillo the corresponding writ of execution,[85] followed later by the issuance of several *Notices of Garnishment*.[86]

PPA's motion for reconsideration of the RTC's basic and ancillary orders was rejected, sending PPA anew to the CA, thru a petition for *certiorari*[87] to nullify the aforesaid RTC Order of November 6, 2003, as effectively reiterated later. PPA's recourse was docketed as **CA-G.R. SP No. 82917**.

---

[82] *Rollo* (G.R. No. 168272), pp. 180-185.

[83] *Rollo* (G.R. Nos. 154211-12), pp. 431-434.

[84] *Rollo* (G.R. No. 168272), p. 186.

[85] *Id.* at 198.

[86] *Id.* at 199-201.

[87] *Id.* at 204-218.

Eventually, on March 31, 2005, the CA rendered a Decision[88] in CA-G.R. SP No. 82917 granting PPA's petition and annulling the RTC Orders of November 6, 2003 and January 9, 2004 and all other orders, writs and processes issued relative thereto. The *fallo* of the CA's decision reads:

> WHEREFORE, the petition is GRANTED. The Order dated November 6, 2003 issued by the respondent judged in Civil Case No. 5447 and all other orders or writs issued in the enforcement of the said order is ANNULLED and SET ASIDE. The Writ of Preliminary Injunction issued on November 23, 2004 is hereby made permanent.
>
> SO ORDERED.[89]

Hence, the instant petition in **G.R. No. 168272** filed by Rosalinda Buenafe and Melencio Castillo.

Petition to cite Judge Tac-an for contempt of court

On August 5, 2005, PPA filed a petition to cite Paterno V. Tac-an for contempt[90] when said judge issued the April 20, 2005 and July 21, 2005 Orders in defiance of the CA-issued temporary restraining orders (TROs) and writs of preliminary injunction. This petition, docketed as **CA-G.R. SP No. 90796**, was eventually consolidated with **CA-G.R. CV No. 77668** and **CA-G.R. SP No. 87844**.[91]

These consolidated petitions were resolved on July 3, 2006, by the issuance of the CA's assailed Resolution of same date which denied, among other things, PPA's petition to cite the RTC judge for contempt for lack of merit. The July 3, 2006

---

[88] *Supra* note 8.

[89] *Rollo* (G.R. No. 168272), pp. 40-41.

[90] *Rollo* (G.R. No. 173392), pp. 543-569, dated July 28, 2005.

[91] As aforementioned, **CA-G.R. SP No. 90796** was consolidated with **CA-G.R. CV No. 77668** (appeal from the August 15, 2000 Order [Second Compensation Order] and **CA-G.R. SP No. 87844** (assailing the May 29, 2001 and November 18, 2004 RTC Orders, the November 22, 2004 Writ of Execution and November 23, 2004 Notices of Garnishment) before the CA's Tenth Division.

Resolution in the consolidated cases CA-G.R. CV No. 77668, CA-G.R. SP Nos. 87844 and 90796 were elevated to this Court in **G.R. No. 173392**.

V. HEIRS OF POPULA LLANA [CA-G.R. SP No. 81091]: Decision became final and executory

Albeit not part of these consolidated proceedings, we take judicial notice of a CA Decision dated February 15, 2006, as effectively reiterated in a Resolution of October 12, 2006, in a related case (*PPA v. Tac-an*) docketed as **CA-G.R. SP No. 81091**, involving the heirs of Popula Llana who belong to the Ortega Group. PPA's petition in CA-G.R. SP No. 81091 sought to nullify the October 29, 2003 RTC Order— and several subsequent implementing orders and processes to enforce the assailed October 29, 2003 Order— directing PPA to pay the heirs of Llana PhP 743,897,880 on top of the provisional amount of PhP 54,477,370, which PPA was forced to pay pursuant to the August 30, 2002 RTC Order that pegged the zonal valuation at PhP 4,250 per square meter.

On February 15, 2006, the CA nullified the October 29, 2003 RTC Order for grave abuse of discretion of Judge Tac-an and on October 12, 2006 rejected the heirs of Llana's motion for reconsideration. Both the decision and resolution of the CA eventually lapsed into finality when the heirs did not question said issuances before this Court. On November 3, 2006, an Entry of Judgment[92] was issued by the CA in CA-G.R. SP No. 81091.

From the foregoing petitions for review, it can be noted that PPA prevailed in four of its petitions before the appellate court, to wit: (1) CA-G.R. SP No. 60314; (2) CA-G.R. SP No. 63576; (3) CA-G.R. SP No. 81091; and (4) CA-G.R. SP No. 82917. On the other hand, it lost in the following six cases: (1) CA-G.R. SP No. 73848; (2) CA-G.R. SP No. 83570; (3) CA-G.R. CV No. 70023; (4) CA-G.R. CV No. 77668; (5) CA-G.R. SP

[92] *Rollo* (G.R. No. 168272), p. 521.

No. 87844; and (6) CA-G.R. SP No. 90796. Only nine of these cases, however, are before us on petitions for review, the CA Decision and Resolution in CA-G.R. SP No. 81091 (Heirs of Popula Llana) having already become final and executory.

We will now proceed to tackle *seriatim* the various petitions, but will resolve last the fundamental issue of the proper determination of just compensation in **G.R. No. 173392**.

G.R. Nos. 154211-12

The Issues

Petitioners Ernesto Curata, *et al.*, submit that the CA erred in:

I

ALLOWING [PPA'S] APPEAL WITH RESPECT TO CA-G.R. NO. 60314 DESPITE THE FACT THAT THE RTC ORDER/PARTIAL JUDGMENT DATED JULY 10, 2000 IS ALREADY FINAL AND EXECUTORY.

II

x x x TAKING COGNIZANCE OF THE MOTION FOR ISSUANCE OF WRIT OF POSSESSION FILED FOR THE FIRST TIME BY RESPONDENT PPA IN A SPECIAL CIVIL ACTION FOR *CERTIORARI*, AND DECLARING THAT RESPONDENT PPA IS ENTITLED TO THE ISSUANCE OF A WRIT OF POSSESSION AS A MATTER OF RIGHT.

III

x x x RULING THAT AN EXECUTION PENDING APPEAL WOULD RENDER MOOT THE VERY ISSUE RAISED BY [PPA] IN ITS APPEAL — THAT OF JUST COMPENSATION.

IV

x x x TAKING COGNIZANCE OF THE SUPPLEMENTAL PETITION FILED BY x x x PPA IN CA-G.R. NO. 60314.[93]

To recall, consolidated **G.R. Nos. 154211-12** stemmed from CA-G.R. SP No. 60314 (concerning the Dimayacyac Group) and SP No. 63576 (involving the Ortega Group).

[93] *Rollo* (G.R. Nos. 154211-12), pp. 30-31.

Briefly, the events that brought about CA-G.R. SP No. 60314 are as follows:

On July 10, 2000, the RTC issued the first compensation order, which pegged the just compensation at PhP 5,500 per square meter in favor of the Dimayacyac Group. Alleging that almost all of the group members were of advanced age, the trial court, upon motion, issued the July 24, 2000 Order that granted the execution pending appeal. On July 31, 2000, another order ensued, directing the issuance of the writ of execution. On August 2 and 3, 2000, respondent Sheriff Rolando D. Quino served Notices of Garnishment on LBP.

On August 10, 2000, PPA filed a "Notice of Appeal with Motion for Extension of Time to File Record on Appeal and Pay Appeal Fee." Within the period of extension requested, PPA filed its Record on Appeal on August 25, 2000. On the same day, August 25, the RTC issued an Order denying PPA's Notice of Appeal from the July 10, 2000 Order (First Compensation Order) on the ground of non-payment of appeal fee. In its August 28, 2000 Order, the RTC denied PPA's Record on Appeal. On September 18, 2000, the RTC denied PPA's Motion for Reconsideration of the August 25, 2000 RTC order.

Thus, in CA-G.R. SP No. 60314, PPA challenged the execution pending appeal of the July 24, 2000 Order, the July 31, 2000 Order which issued the writ of execution and the August 2 and 3, 2000 Notices of Garnishment. In its supplemental petition in CA-G.R. SP No. 60314, PPA assailed the August 25, 2000 Order which denied PPA's motion for extension of time to file Record on Appeal and pay the appeal fee, the August 28, 2000 Order which denied the PPA's record on appeal and the September 18, 2000 Order which denied PPA's motion for reconsideration.

The pith issues, as the CA saw it, were whether or not the RTC committed grave abuse of discretion when it (a) denied PPA's motion for extension of time to pay the appeal fee, (b) disapproved PPA's record on appeal and (c) did not give due course to PPA's appeal.

The CA ruled that public interest and public policy dictated that the RTC merely order PPA to pay the docket fees during the extension prayed for instead of dismissing the appeal. Thus, the RTC erred in denying the motion for time to file the record on appeal and pay the appellate docket fees. On other collateral issues, the appellate court ruled that the orders subject of the original petition in CA-G.R. SP No. 60314 had been suppressed by the events that occurred after the filing thereof, while the execution pending appeal would render moot the heart of PPA's appeal — the issue of just compensation.

The CA allowed the appeal of PPA and nullified the questioned RTC orders in CA-G.R. SP No. 60314.

In the instant petition, petitioners Curata, *et al*. (Dimayacyac Group) assail, among others, the ruling of the CA allowing PPA's appeal despite the alleged finality of the July 10, 2000 Order (First Compensation Order).

The contention of the Dimayacyac Group is bereft of merit.

The payment of docket fees within the prescribed period is, as a rule, mandatory for the perfection of an appeal.[94] Secs. 4 and 9 of Rule 41 of the Rules of Court provide, thus:

SEC. 4. *Appellate court docket and other lawful fees.*—Within the period for taking an appeal, the appellant shall pay to the clerk of court which rendered the judgment or final order appealed from, the **full amount of the appellate court docket and other lawful fees**. x x x

x x x x x x x x x

SEC. 9. *Perfection of appeal; effect thereof.* — x x x

A party's appeal by record on appeal is deemed perfected as to him with respect to the subject matter thereof upon the approval of the record on appeal filed in due time.

---

[94] *Camposagrado v. Camposagrado*, G.R. No. 143195, Sept. 13, 2005, 469 SCRA 602, 607; *St. Louis University v. Cordero*, G.R. No. 144118, July 21, 2004, 434 SCRA 575; *Yambao v. CA*, G.R. No. 140894, Nov. 27, 2000, 346 SCRA 141, 146.

In appeals by notice of appeal, the court loses jurisdiction over the case upon the perfection of the appeals filed in due time and the expiration of the time to appeal of the other parties.

x x x (Emphasis ours.)

The appellant's failure to pay the appellate docket fees is a ground for the dismissal of the appeal by the trial court under the succeeding Sec. 13:

SEC. 13. *Dismissal of appeal*. — Prior to the transmittal of the original record or the record on appeal to the appellate court, the trial court **may**, *motu proprio* or on motion, dismiss the appeal for having been taken out of time or **for non-payment of the docket and other lawful fees within the reglementary period**. (*As amended, A.M. No. 00-2-10-SC, May 1, 2000*.) (Emphasis supplied.)

Complementing the above provisions is Sec. 1(c), Rule 50, providing in effect that the appellate court may refuse to entertain a suit for nonpayment of the appellate docket fees.

In the recent case *Fil-Estate Properties, Inc. v. Homena-Valencia*,[95] we reiterated our consistent ruling that the payment of the appellate docket fees is mandatory for the perfection of an appeal and held that the above-quoted Sec. 13 of Rule 41, as amended in 2000, gives the additional ground for the dismissal of an appeal on the nonpayment of the required appellate docket fees, which gave force to the ground provided under the above-quoted Secs. 4 and 9 of Rule 41.

As with most rules of procedure, however, exceptions are invariably recognized and the relaxation of procedural rules on appeals has been effected to obviate jeopardizing substantial justice.[96] This liberality stresses the importance of an appeal in

---

[95] G.R. No. 173942, October 15, 2007, 495 SCRA 252.

[96] See *Ginete v. Court of Appeals*, G.R. No. 127596, Sept. 24, 1998, 296 SCRA 38; *Fajardo v. Cas*, G.R. No. 140356, March 20, 2001, 354 SCRA 736; *Go v. Tong*, G.R. No. 151942, Nov. 27 2003, 416 SCRA 557, 567; *Heirs of Bertuldo Hinog v. Melicor*, G.R. No. 140954, 12 April 2005, 455 SCRA 460, 475; *Far Corporation v. Magdaluyo*, G.R. No. 148739, Nov. 19, 2004, 443 SCRA 218.

our judicial grievance structure to accord every party litigant the amplest opportunity for the proper and just disposition of his cause, freed from the constraints of technicalities.[97]

La Salette College v. Pilotin teaches that the otherwise mandatory nature of the requirement on payment of appellate docket fees is to be viewed as qualified, as follows: "*first*, failure to pay those fees within the reglementary period allows only discretionary, not automatic, dismissal; *second*, such power should be used by the court in conjunction with its exercise of sound discretion in accordance with the tenets of justice and fair play, as well as with a great deal of circumspection in consideration of all attendant circumstances."[98]

Among the grounds that pertinent jurisprudence has recognized as justifying the loosening up of the stringent requirement on payment of docket fees are: (1) to relieve a litigant from an injustice not commensurate with his failure to comply with the prescribed procedure; (2) good faith of the defaulting party by paying within a reasonable time from the time of the default; (3) the merits of the case; (4) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (5) a lack of any showing that the review sought is frivolous and dilatory; (6) no unjust prejudice to the other party; and (7) importance of the issues involved. Concomitant to a liberal interpretation of the rules of procedure should be an effort on the part of the party invoking liberality to adequately explain his failure to abide by the rules.[99]

Exceptions applicable to case at bar

In the case at bar, the Court rules that the public interest and the higher interests of justice and fair play dictate that PPA's appeal should be allowed.

---

[97] See *Yambao v. Court of Appeals*, *supra* note 94, at 146.

[98] G.R. No. 149227, December 11, 2003, 418 SCRA 380, 387; citing *Buenaflor v. Court of Appeals*, G.R. No. 142021, November 29, 2000, 346 SCRA 563, 567.

[99] *Enriquez v. Enriquez,* G.R. No. 139303, 25 August 2005, 468 SCRA 77, 86.

The trial judge should have permitted the appeal to prosper in view of the billions of pesos of taxpayers' money, subject matter of the appeal. Fully aware of the wide disparity between the fair market values of the lots ranging from PhP 2.10 to 3.50 per square meter based on the tax declarations and the amount of PhP 5,500 per square meter pegged as just compensation, the judge cannot be said to have wielded his power to reject PPA's appeal with the highest degree of circumspection.

Moreover, a sharp increase in the total amount of compensation from PPA's offered price of PhP 500 per square meter to PhP 5,500 per square meter or an increase of 1,000% may make PPA rethink if the project is still viable in view of huge financial requirements. Lastly, the fact that the judge even increased the amount of PhP 4,800 per square meter recommended by the commissioners to PhP 5,500 per square meter can be a compelling reason why a review by a higher court should be allowed, given the increase of hundreds of millions granted by him over the amount proposed by the commissioners. Given these circumstances, he should have liberally applied the procedural rules to the end that the losing party, and a government agency at that — the PPA — be given the fullest opportunity to air and exhaustively discuss countervailing arguments against the order fixing the just compensation. PPA must be given a sporting chance to convince the higher court of the merits of its position. Indeed that would be in keeping with the axiom that the case be decided on the merits rather than on technicality.

In *Mactan Cebu International Airport v. Mangubat*, the technical rules of procedure were relaxed in view of the attending policy considerations in the interest of justice and equity. While the appellant in *Mactan* was not able to pay the appeal fees on time, the Court considered the late payment as excusable in view of the importance of the issues raised therein, *i.e.*, who had valid title over the land occupied by the Mactan Cebu International Airport, and the substantial governmental interest involved, to merit a review of the case on appeal.

In the same vein, PPA filed a motion to file the record on appeal and pay the appellate docket fee, indicating its readiness to pay within the extension prayed for. In view of the importance of Phase II of the BPZ Project, the huge financial implications of the prescribed compensation and the considerable interests of the government in enhancing our port facilities, the trial court should have allowed the record on appeal and the payment of the appeal fees to afford the higher court a second look at the merits of the case.

In the light of the foregoing, the CA did not err in allowing PPA's appeal.

Anent the second issue, petitioners Curata, *et al*. claim that the CA erred in taking cognizance of the motion for a writ of possession and declaring PPA's entitlement to the possession of the subject lots.

The position is clearly misplaced.

The CA, in its November 28, 2000 Resolution, simply referred the motion for a writ of possession to the Batangas RTC for immediate resolution. This was the proper action to take, since the matter was not within the ambit of CA-G.R. SP No. 60314.

Regarding the third issue, petitioners question the ruling of the CA that an execution pending appeal would render moot the issue of just compensation.

Actually the CA did not categorically rule on the other issues raised by PPA in CA-G.R. SP No. 60314, relating to discretionary execution, namely: (1) that public funds could not be garnished; (2) that respondent Sheriff disregarded Sec. 9, Rule 39 on execution of judgments; (3) that execution pending appeal was not applicable to expropriation proceedings; and (4) that no good reasons existed for execution pending appeal. After ruling that the appeal from the July 10, 2000 Order (First Compensation Order) shall be entertained, it declared that there was no need to rule on said issues as an execution pending appeal would render academic the issue of just compensation.

The genuine issue to be resolved is whether or not execution pending appeal is applicable to expropriation proceedings.

The Court rules that discretionary execution of judgments pending appeal under Sec. 2(a) of Rule 39 does not apply to eminent domain proceedings.

As early as 1919 in *Visayan Refining Co. v. Camus and Paredes*,[100] the Court held:

> When the Government is plaintiff the judgment will naturally take the form of an order merely requiring the payment of the award as a condition precedent to the transfer of the title, as a personal judgment against the Government could not be realized upon execution.

In *Commissioner of Public Highways v. San Diego*,[101] no less than the eminent Chief Justice Claudio Teehankee explained the rationale behind the doctrine that government funds and properties cannot be seized under a writ of execution, thus:

> The universal rule that where the State gives its consent to be sued by private parties either by general or special law, it may limit claimant's action "only up to the completion of proceedings anterior to the stage of execution" and that the power of the Courts ends when the judgment is rendered, since government funds and properties may not be seized under writs of execution or garnishment to satisfy such judgments, is based on obvious considerations of public policy. Disbursements of public funds must be covered by the corresponding appropriation as required by law. The functions and public services rendered by the State cannot be allowed to be paralyzed or disrupted by the diversion of public funds from their legitimate and specific objects, as appropriated by law.

PPA's monies, facilities and assets are government properties. Ergo, they are exempt from execution whether by virtue of a final judgment or pending appeal.

PPA is a government instrumentality charged with carrying out governmental functions through the management, supervision,

---

[100] 40 Phil. 550, 562 (1919).

[101] No. L-30098, February 18, 1970, 313 SCRA 616, 625.

control and regulation of major ports of the country. It is an attached agency of the Department of Transportation and Communication pursuant to PD 505.

This Court's disquisition in *Manila International Airport Authority v. Court of Appeals*[102]— ruling that MIAA is not a government-owned and/or controlled corporation (GOCC), but an instrumentality of the National Government and thus exempt from local taxation, and that its real properties are owned by the Republic of the Philippines — is instructive. Therein we found that MIAA is neither a stock or a non-stock corporation, for its capital is not divided into shares nor does it have members. Moreover, the airport lands and buildings it administers are owned by the Republic, which certainly takes them outside the commerce of man and makes MIAA a mere trustee thereof. These findings are squarely applicable to PPA, as it is similarly situated as MIAA. *First*, PPA is likewise not a GOCC for not having shares of stocks or members. *Second*, the docks, piers and buildings it administers are likewise owned by the Republic and, thus, outside the commerce of man. *Third*, PPA is a mere trustee of these properties. Hence, like MIAA, PPA is clearly a government instrumentality, an agency of the government vested with corporate powers to perform efficiently its governmental functions.[103]

Therefore, an undeniable conclusion is that the funds of PPA partake of government funds, and such may not be garnished absent an allocation by its Board or by statutory grant. If the PPA funds cannot be garnished and its properties, being government properties, cannot be levied via a writ of execution pursuant to a final judgment, then the trial court likewise cannot grant discretionary execution pending appeal, as it would run afoul of the established jurisprudence that government properties are exempt from execution. What cannot be done directly cannot be done indirectly.

From the above discussion, we find that the RTC committed

---

[102] G.R. No. 155650, July 20, 2006, 495 SCRA 591.

[103] *Id.* at 642.

grave abuse of discretion in its July 24, 2000 Order directing the execution of the First Compensation Order (July 10, 2000 Order) pending appeal.

Nevertheless, this issue of discretionary execution has been rendered moot by our dispositions in this judgment, more particularly on just compensation.

Anent the last issue, that the CA erred in taking cognizance of PPA's Supplemental petition, the Court treats the Supplemental petition as an amendment to the original petition in CA - G.R. SP No. 60314, since the issues raised therein are inextricably intertwined with those in the original petition.

G.R. No. 158252

The Issue

Petitioner PPA comes to us on the sole issue of whether or not RA 8974 retroactively applies to Civil Case No. 5447, which was filed before the law took effect on November 26, 2000.[104]

The Court's Ruling

The Court recollects the antecedents that caused the filing of the instant petition:

On August 15, 2000, an RTC Order was issued fixing the just compensation at PhP 5,500 per square meter. On August 23, 2000, the RTC issued an Order specifically naming Remedios Rosales-Bondoc, *et al*. (Cruz Group) as the lot owners covered by the August 15, 2000 Order. On May 15, 2002, the trial court directed PPA to release 10% of the zonal value deposited to the lot owners, including the Cruz Group. On June 19, 2002, the Cruz Group filed a motion for partial reconsideration claiming payment of 100% of the zonal value under RA 8974 and claiming further that AO 50 did not apply. On July 12, 2002, the trial court granted the motion and ordered PPA to immediately release 100% of the zonal valuation of the properties.

---

[104] *Rollo* (G.R. No. 158252), p. 393.

PPA challenged the July 12, 2002 Order and other related orders in CA-G.R. SP No. 73848. The CA dismissed PPA's petition, ruling that AO 50, which prescribed guidelines for the acquisition of land for public use and required only a deposit of 10% of the amount offered to initiate the expropriation proceedings, was repealed by RA 8974. RA 8974 prescribed the immediate payment of 100% of the BIR zonal valuation. The CA ratiocinated that RA 8974, a procedural law, was applicable retrospectively to Civil Case No. 5447. Lastly, it relied on the statement of PPA's Atty. Arturo Bernardino that PPA had no objection to the application of RA 8974, and that such manifestation was an admission against PPA's interests.

In the instant petition, PPA asserts that RA 8974 is actually a substantive law that cannot be given retroactive effect.

The Court agrees with PPA.

To resolve the issue of what rule or law on the deposit or provisional payment should apply, we need to determine which among Rule 67, AO 50 or RA 8974 should be of governing application to the expropriation of the lands for the BPZ project.

Sec. 2 of Rule 67 provides for the deposit or initial payment of the total assessed value of the expropriated property:

> SEC. 2. *Entry of plaintiff upon depositing value with authorized government depositary.*— Upon the filing of the complaint or at any time thereafter and after due notice to the defendant, the plaintiff shall have the right to take or enter upon the possession of the real property involved if he deposits with the authorized government depositary **an amount equivalent to the assessed value of the property for purposes of taxation** to be held by such bank subject to the orders of the court. Such deposit shall be in money, unless in lieu thereof the court authorizes the deposit of a certificate of deposit of a government bank x x x. (Emphasis supplied.)

Under Sec. 2 of AO 50, the deposit or provisional payment required of the government agency is 10% of the offered amount (the amount offered in writing by the government agency equivalent to 10% higher than the zonal value of the subject property), thus:

SEC. 2. *Expropriation Proceedings*.—After the abovementioned period and no acceptance is made by the landowner, the concerned agency, in coordination with the Solicitor General, shall initiate expropriation proceedings in the proper court, **depositing ten per cent (10%) of the offered amount**. (Emphasis supplied.)

On the other hand, Sec. 4 of RA 8974 mandates a provisional payment of 100% of the BIR zonal value of the subject land upon filing of the expropriation case as well as the value of the improvements thereon, if any:

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

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

For perspective, AO 50 was issued on February 17, 1999 or before the complaint in Civil Case No. 5447 was filed on October 14, 1999. On November 7, 2000, RA 8974 was signed into law and became effective on November 26, 2000 after its publication. The provisions of Rule 67 have remained unchanged since the 1997 revision of the Rules of Civil Procedure, which took effect on July 1, 1997.

It is PPA's posture that Rule 67, as supplemented by AO 50, applies; that RA 8974 cannot be applied retroactively for being a substantive law. The Cruz and Ortega Groups maintain otherwise. The RTC and the CA upheld the latter's position and applied RA 8974.

PPA's contention is basically correct.

Statutes are prospective and not retroactive in their operation, laws being the formulation of rules for the future, not the past. Hence, the legal maxim *lex de futuro, judex de praeterito* — the law provides for the future, the judge for the past — which is articulated in Art. 4 of the Civil Code thusly: "Laws shall have no retroactive effect, unless the contrary is provided." The legislative intent as to the retroactive application of a law is made manifest either by the express terms of the statute or by necessary implication.[105] The reason for the rule is the tendency of retroactive legislation to be unjust and oppressive on account of its liability to unsettle vested rights or disturb the legal effect of prior transactions.[106]

A well-settled exception to the rule on prospectivity is when the law in question is remedial in nature. The rationale underpinning the exception is that no person can claim any vested right in any particular remedy or mode of procedure for the enforcement of a right.[107]

A perusal of RA 8974, AO 50 and Rule 67 would readily show that they all deal with the subject of expropriation. Save for the matter of the amount to be deposited, RA 8974 is almost identical with the earlier issued AO 50. Accordingly, RA 8974, owing to its repealing clause,[108] would have superseded AO 50 *vis-à-vis* Civil Case No. 5447, were the former given retroactive operation. So would the prescription on deposit set forth under Sec. 2 of Rule 67, which merely requires the expropriating agency, upon property taking, to deposit an amount equivalent to the assessed value of the lot to be expropriated.

The question to be resolved then is whether or not RA 8974 is a remedial statute and, hence, can be accorded retroactive

---

[105] *Tolentino v. Alzate*, 98 Phil. 781, 783-784 (1956).

[106] L.J. Gonzaga, *STATUTES AND THEIR CONSTRUCTION* 47 (1st ed., 1958); citing Black, *Interpretation of Laws* 380-381.

[107] *Zulueta v. Asia Brewery, Inc.*, G.R. No. 138137, March 8, 2001, 354 SCRA 100.

[108] Section 14. *Repealing Clause.*—All laws, decrees, orders, rules and regulations or parts thereof inconsistent with this Act are hereby repealed or amended accordingly.

effect to apply to the expropriation of lands for the development of Phase II of the BPZ.

We answer the poser in the negative.

In *Republic v. Gingoyon*,[109] on the issue of how much must the government pay by way of initial deposit, the Court, after positing the applicability of RA 8974 to the expropriation of NAIA Passenger Terminal III (NAIA III), stated the observation that the appropriate standard of just compensation – inclusive of the manner of payment thereof and the initial compensation to the lot owners – is a substantive, not merely a procedural, matter.

The Court explained:

It likewise bears noting that the appropriate standard of just compensation is a substantive matter. It is well within the province of the legislature to fix the standard, which it did through the enactment of Rep. Act. No. 8974. Specifically, this prescribes the new standards in determining the amount of just compensation in expropriation cases relating to national government infrastructure projects, as well as the payment of the provisional value as a prerequisite to the issuance of a writ of possession.

This ruling was reiterated in this Court's Resolution of February 1, 2006 which further states that:

"[I]f the rule takes away a vested right, it is not procedural, and so the converse certainly holds that if the rule or provision creates a right, it should be properly appreciated as substantive in nature. Indubitably, a matter is substantive when it involves the creation of rights to be enjoyed by the owner of property to be expropriated. The right of the owner to receive just compensation prior to acquisition of possession by the State of the property is a proprietary right, appropriately classified as a substantive matter and, thus, within the sole province of the legislature to legislate on."

In *Lintag v. National Power Corporation*,[110] we reiterated that RA 8974 is a substantive law that cannot be applied retroactively:

---

[109] G.R. No. 166429, December 19, 2005, 478 SCRA 474.

[110] G.R. No. 158609, July 27, 2007, 528 SCRA 287.

It is well-entrenched principle that statutes, including administrative rules and regulations, operate prospectively unless the legislative intent to the contrary is manifest by express terms or by necessary implication because the retroactive application of a law usually divests rights that have already become vested. This is based on the Latin maxim: *Lex prospicit non respicit* (the law looks forward, not backward).

In the application of RA No. 8974, the Court finds no justification to depart from this rule. *First*, RA No. 8974 is a substantive law. *Second*, there is nothing in RA No. 8974 which expressly provides that it should have retroactive effect. *Third*, neither is retroactivity necessarily implied from RA No. 8974 or in any of its provisions. Unfortunately for the petitioners, the silence of RA No. 8974 and its Implementing Rules on the matter cannot give rise to the inference that it can be applied retroactively.

Applying the lessons of *Gingoyon*, in relation to *Lintag* in the light of the aforementioned doctrinal pronouncements, RA 8974, to the extent that it imposes a certain requirement that is substantive in nature or disturbs substantive rights, cannot be made to apply to Civil Case 5447.

Rule 67 on expropriation applies

Given the foregoing consideration, the next question that comes to mind is which between AO 50 and Rule 67 applies to the instant expropriation case. The poser should not be difficult to resolve. While it tasks the appropriating agency to offer, during the negotiation, a certain amount to the lot owner and/or deposit with the court a pre-determined amount or fixed percentage of the value of the lot to be expropriated, AO 50 is no more than an internal issuance promulgated by the President as administrative head.

Under the Administrative Code of 1987, "[A]cts of the President which relate to particular aspects of government operations in pursuance of his [or her] duties as administrative head shall be promulgated in administrative orders."[111] A perusal of AO 50 would readily disclose that it partakes the nature of instructions

[111] Sec. 3, Chap. 2, Title I, Book III.

or guide to "all government agencies and instrumentalities x x x engaged in public infrastructure projects."[112] And the standards enumerated therein for the assessment of the value of the land subject to expropriation are addressed to the expropriating agency or its duly authorized assessor, only "in order to facilitate the immediate judicial determination of just compensation during the expropriation proceedings."[113] The provisions of AO 50, as couched, and the nature of administrative orders bind the officials and agencies in the executive branch that exercise the power of eminent domain.

But not the RTC which, needless to stress, does not look up to the President as administrative head in the first place. Any valuation or standard that may be set forth in AO 50 for just compensation may serve only as guiding norm or one of the factors in arriving at an ideal amount. But it may not take the place of the court's own disposition as to what amount should be paid and how to arrive at such amount.[114] After all, the determination of just compensation in expropriation cases is a judicial function.[115] AO 50, or any executive issuance for that matter, cannot decree that the executive, or the department's own determination, shall have primacy over the court's findings.[116] These pronouncements can, however, be applied only to pending condemnation proceedings prior to November 26, 2000 when RA 8974 took effect. As of that date, RA 8974 had repealed AO 50 for being inconsistent with the said law.

Upon the foregoing holdings, Rule 67 should be viewed in Civil Case No. 5447 as governing the instant expropriation of private respondents' lots. Since the negotiation by PPA with

---

[112] AO 50, Sec. 1.

[113] *Id.*, Sec. 3.

[114] *National Power Corporation v. Purefoods Corporation*, G.R. No. 160725, September 12, 2008; citing *EPZA v. Dulay*, No. 59603, April 29, 1987, 149 SCRA 305.

[115] *Land Bank of the Philippines v. Celada*, G.R. No. 164876, January 23, 2006, 479 SCRA 495.

[116] *EPZA v. Dulay*, *supra* note 114, at 316.

the lot owners for the just compensation bogged down, Rule 67 should have been applied independently of AO 50 to Civil Case No. 5447. Thus, the correct amount of deposit for the appropriated lots should have been the assessed value of the subject lots per tax declarations pursuant to Rule 67, given the fact that courts are not bound by AO 50 or by RA 8974 which cannot be applied retroactively in the first place.

In the factual setting at bar, the RTC can either order a deposit equal to the total assessed value of the lots in question, as reflected in the tax declarations of the subject lots; or, in the alternative, order the level of deposit as proposed by PPA, as it correctly did through the May 15, 2002 Order pegging the deposit equivalent to 10% of the offered amount for the expropriated lots pursuant to Sec. 2 of AO 50. Thus, the May 15, 2002 RTC Order should be affirmed. But the RTC later committed a miscue and gravely abused its discretion by issuing the July 12, 2002 and July 29, 2002 Orders applying RA 8974, which cannot be applied retroactively. The recall of the July 12 and 29, 2002 Orders is in order.

The issue of the payment of correct deposit or initial payment, however, has been rendered moot by our determination of just compensation for the expropriated lots in these consolidated petitions, considering that the lot owners can already be paid the just compensation upon the finality of this decision.

One last point on the application of RA 8974 and Rule 67. RA 8974 amended Rule 67 effective November 26, 2000, but only with regard to the expropriation of right-of-way sites and locations for national government infrastructure projects. On the other hand, in all other expropriation cases outside of right-of-way sites or locations for national government infrastructure projects, the provisions of Rule 67 of the Rules of Court shall still govern.

G.R. No. 166200

The Issues

Petitioner PPA urges the allowance of its petition for *certiorari* on the ground that the CA committed grave abuse of discretion:

I.

x x x IN DENYING THE PETITION FOR *CERTIORARI* AND CONCLUDING THAT THE DECEMBER 2, 2003 ORDER OF RESPONDENT JUDGE PATERNO TAC-AN HAD ALREADY ATTAINED FINALITY.

II.

x x x IN DECLINING TO ANNUL AND SET ASIDE THE FOLLOWING ORDERS OF RESPONDENT JUDGE PATERNO TAC-AN xxx TO WIT: (I) ORDER DATED DECEMBER 2, 2003; (II) ORDER DATED DECEMBER 18, 2003; (III) ORDER DATED FEBRUARY 13, 2004; (IV) ORDER DATED MARCH 24, 2004; (V) ORDER DATED APRIL 12, 2004; AND (VI) SUPPLEMENTAL ORDER DATED APRIL 15, 2004.

III.

IN RULING THAT THE PRIVATE RESPONDENTS' MOTION FOR ISSUANCE OF WRIT OF EXECUTION MAY BE TREATED AS A MOTION FOR EXECUTION PENDING APPEAL.[117]

To recall, this petition turns on the CA's ruling in CA-G.R. SP No. 83570, a *certiorari* proceeding in which PPA assailed:

a) the December 2, 2003 RTC order declaring the lots of affected landowners [Agustin Group] to be industrial with an applicable zonal valuation of PhP 4,250 per square meter and directing the release, as initial payment, of the amount equivalent to 100% of the zonal valuation;

b) the December 18, 2003 order directing the PPA to release 10% of the zonal value of PhP 4,250 per square meter;

c) the February 13, 2004 order granting the writ of execution of the December 2, 2003 order;

d) the March 24, 2004 order denying PPA's motion to stay execution;

e) the April 12, 2004 order and April 15, 2004 supplemental order directing the further release of 50% of the zonal valuation at PhP 4,250; and

f) the April 16, 2004 writ of execution.

---

[117] *Rollo* (G.R. No. 166200), pp. 394-395.

The CA affirmed the legality of the aforelisted RTC Orders.

The Court's Ruling

Anent the first issue of the finality of the December 2, 2003 Order and the third issue that the execution of said Order is considered by the trial court as execution pending appeal, the Court rules that said issues have been resolved, albeit indirectly, by our ruling in **G.R. No. 158252** where we held that RA 8974, being a substantive law, could not be applied retroactively to Civil Case No. 5447.

It should be borne in mind that the Motion for Immediate Payment dated September 25, 2003 filed by the Agustin Group was based on Sec. 4(a) of RA 8974 in relation to Sec. 13 of its Implementing Rules and Regulations. Sec. 4(a) provides:

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

Due to the inapplicability of RA 8974 to the instant expropriation proceedings before the Batangas RTC, the December 2, 2003 Order must be revoked and set aside for want of basis.

In view of our disposition in **G.R. Nos. 170683** and **173392,** which shall be touched upon shortly, substantially pruning the compensation fixed by the trial court, then the execution of the Court's judgment on the just compensation will veritably supersede the enforcement of the assailed orders seeking to implement the trial court's orders on the compensation in question. Thus, the issue of the legality and propriety of said RTC orders has become moot.

With regard to the second issue as to whether or not the CA gravely abused its discretion in affirming the aforesaid December 2, 2003 RTC Order, applying the valuation certified to by BIR Asst. RDO Abencio Torres of Batangas City for the expropriated lots at PhP 4,250 per square meter as initial payment under

RA 8974, the Court likewise finds that this issue has also been mooted by our ruling that RA 8974 has no prospective application.

Even if we resolve the issue on the merits, the December 2, 2003 Order has to be nullified.

Much reliance was made by the trial judge on the July 9, 2002 Certification issued by Asst. RDO Torres of the Batangas City BIR office that the expropriated lots had a zonal value of PhP 4,250 per square meter, and that the lots were industrial in nature. This was a gross abuse of discretion on the part of Judge Tac-an. For one, the BIR official who certified the zonal value was not even the head of the BIR revenue district office, but an assistant. It had not been demonstrated that he had the power or authority to issue such certification as to the value of the lots in question. The certification was not under oath. Torres was not called to testify on the contents of his certification. The contents, therefore, are self-serving and hearsay. Torres likewise did not cite the basis for his certification, nor did he explain the process used to reach the conclusions contained therein. As such, the Torres certification is totally bereft of weight and credit.

What was patently erroneous on the part of Judge Tac-an was his failure to apply Department Order No. (DO) 31-97 issued by the Department of Finance (DOF) on February 11, 1997, when said order was the official issuance of the DOF on the current zonal valuation of lots in the province of Batangas. The Secretary of Finance first approves the zonal valuation before it is given legal effect. Said DO became effective on July 14, 1997. DO 31-97 is the official government repository of the zonal valuations of lots in the province of Batangas, which is used by the BIR and other government agencies — especially the Registrar of Deeds—with regard to the transfers of titled lots. The zonal valuations contained in DO 31-97 are the results of a rigorous process and cannot be the sole handiwork of a mere Assistant Revenue District Officer like Torres.

As explained during the March 25, 2008 oral arguments, the current relevant zonal valuation of an area is arrived at following

a particular process. The BIR forms a technical committee to gather all the recent sales and conveyances submitted to the BIR for purposes of capital gains tax, estate tax and VAT in a particular area. The committee likewise gets the schedule of values from the local assessor's office. Armed with these data, the committee conducts a public hearing where the landowners, brokers, businessmen and those who will be affected by the resultant zonal valuation usually attend. Thereafter, an executive committee of the BIR endorses the proposed zonal valuation to the Commissioner of Internal Revenue (CIR) who, in turn, recommends the same to the Secretary of Finance for approval. The July 9, 2002 Certification of Asst. RDO Torres has not been shown to have been the product of such process and, hence, is not worthy of weight or credit. Thus, Judge Tac-an, as a veteran trial judge, should have known of the existence of DO 31- 97 and taken judicial notice thereof. Judge Tac-an's stance of using the Torres certification instead of DO 31-97 only reveals his failure to keep abreast with the recent developments in law and jurisprudence as required of all magistrates under the Code of Judicial Conduct.

Had Judge Tac-an repaired to the zonal values contained in DO 31-97, he would have readily known that the zonal value of the lots in Brgy. Calicanto, Batangas City, is PhP 400 per square meter and PhP 290 per square meter for lots in Brgy. Bolbok. In both *barangay*s, the classification of all the lots were agricultural and not industrial as declared in the assailed December 2, 2003 Order. The zonal values of PhP 400 per square meter for Calicanto lots and Ph~~P~~ 290 per square meter for Bolbok lots were a far cry from the amount of PhP 4,250 per square meter fixed by Torres, which was undeniably unconscionable and unjust. Thus, the December 2, 2003 Order has to be nullified; and — together with the December 18, 2003, February 13, 2004, March 24, 2004, April 12, 2004, and April 15, 2004 Orders—must, like a stack of cards, fall to the ground for total absence of support and basis.

G.R. No. 168272

The Issue

Petitioners Rosalinda Buenafe and Melencio Castillo argue that the CA erred in setting aside the RTC decision of November 6, 2003 and related processes that allowed execution *vis-à-vis* their claim for just compensation of PhP 5,500 per square meter based on the RTC's July 10, 2000 Order.[118]

The Court's Ruling

This petition concerns only lot owners Rosalinda Buenafe and Melencio Castillo, who, after securing a favorable ruling on November 6, 2003 from the RTC, lost in CA-G.R. SP No. 82917, on the issue of whether or not they are included within the ambit of the July 10, 2000 RTC Order (First Compensation Order).

To recall, the trial court issued the just compensation order—the July 10, 2000 Order[119] — the *fallo* of which reads:

> WHEREFORE, **plaintiff is hereby ordered to pay the above-named defendants** the price of ₱5,500.00 per square meter of their lands subject of expropriation as a condition precedent for transferring ownership, pursuant to Sec. 4, Rule 67 of the Revised Rules of Court.
>
> SO ORDERED.[120] (Emphasis ours.)

The Order listed and enumerated the following defendants: 1. Spouses Ernesto Curata & Lourdes F. Curata; 2. Eduardo M. Montalbo; 3. Spouses Marcelino Dalangin & Vitaliana Dalangin; 4. Pablo Sumanga; 5. Heirs of Mateo Macaraig; 6. Heirs of Paulina Acosta; 7. Heirs of Nicolas Aldover; 8. Spouses Marciano Manalo & Lucila Gabia, Gregorio Faltado, Silverio Rosales and Cesario Ilao; 9. Heirs of Aldover; 10. Catalina Perez, Lorna Pantangco, Sonia Pantangco, Belen Pantangco,

---

[118] *Rollo* (G.R. No. 168272), p. 20.

[119] *Supra* note 4.

[120] *Rollo* (G.R. Nos. 154211-12), p. 217.

Ireneo Pantangco, Jr., Pedro Chavez, Saturnina Perez, Estelita C. Perez, Estelita M. Perez, Romeo Perez, Ruben Perez, Mario Perez, Nabocho Donaza Perez, Manuel Perez, Herminigildo Perez, Mayhayda Perez, Alfredo Perez, Ernesto Perez and Araceli Perez (represented by Rosario Perez Rosel); 11. Fred M. Hernandez (married to Susana Ilao) and Vicente Gutierrez; 12. Maria Lacsamana;13. Juana Macaladlad; 14.Felisa Hernandez, Felino Hernandez and Florentino Macatangay; 15. Heirs of Basilio Macaraig and Pacienca del Mundo.

Since petitioners Buenafe and Castillo are not among those listed in the July 10, 2000 Order, then the CA correctly ruled that they were not covered by said order and could not benefit therefrom. Said First Compensation Order speaks for itself, and there is no room for doubt as to its coverage. Plainly, Buenafe and Castillo cannot claim compensation, for the assailed order has no legal force and effect on them.

In a vain attempt on the part of Buenafe and Castillo to use the July 10, 2000 Order as basis for a writ of execution, they filed a Motion on October 14, 2002 asking the trial court to implement the September 29, 2000 writ of execution pursuant to the questioned July 10, 2000 Order. On November 6, 2003, the trial court issued an order granting the issuance of the writ of execution, thus:

> Considering that the landowners/defendants Rosalinda Buenafe married to Melencio Castillo is included in the complaint and that she had filed an Answer; that the area involved is 2,092 sq. m. with fair market value arrived by the Court at Php5,500.00; that she was included in the Writ of Execution dated September 29, 2000 and that she was not included as party defendant in the appeal filed by plaintiff; let a Writ of Execution be issued, it appearing that the amounts subject of execution has become final and executory.
>
> SO ORDERED.

The CA nullified the afore-quoted Order on the ground that the July 10, 2000 Order had not attained finality with respect to Buenafe and Castillo, since they were not included in said order in the first place, and therefore there was no need to include them in the appeal interposed by PPA from the said

July 10, 2000 Order. The lot owners challenge the CA ruling in the instant petition.

The plea of Buenafe and Castillo must fail.

It is simple logic that said petitioners were not included in the PPA's appeal, since they were not covered by the July 10, 2000 Order. Hence, they cannot claim that because they were not included in the appeal, then they can demand execution of an order that does not apply to them in the first place. More importantly, since they are not included in the First Compensation Order, then such order cannot be considered as an adjudication in their favor. Consequently, the nullification of the November 6, 2003 Order utilizing the July 10, 2000 Order is proper. Where the Order of execution is not in harmony with and exceeds the final order that gives it life, the order has *pro tanto* no validity.

Even if we concede that petitioners Buenafe and Castillo are included in the August 15, 2000 Order (the Second Compensation Order) based on the catch-all clause "those similarly situated, including those who did not file answer" in said order, still the November 6, 2003 Order granting to them PhP 5,500 per square meter has to be amended in light of our ruling in **G.R. No. 173392** on just compensation.

G.R. No. 170683 and G.R. No. 173392

The Issues

In **G.R. No. 170683 –** Petitioner PPA raises the following grounds for our consideration:

I.

PETITIONER WAS DEPRIVED OF ITS RIGHT TO A PRE-TRIAL AND TO PRESENT EVIDENCE AND, HENCE, ITS RIGHT TO DUE PROCESS.

II

THE EXPROPRIATED LOTS ARE AGRICULTURAL LOTS.

III

THE [CA] MISAPPREHENDED THE FACTS AND ACTED WITH GRAVE ABUSE OF DISCRETION IN AFFIRMING THE TRIAL COURT'S ORDER DATED SEPTEMBER 7, 2000.[121]

In **G.R. No. 170683 –** PPA seeks reconsideration of the Court's August 27, 2007 Decision on the following grounds:

I.

THE GOVERNMENT TIMELY INTERPOSED AN APPEAL FROM THE AUGUST 15, 2000 ORDER, WHICH IS THE FINAL ORDER THAT DISPOSED OF THE MERITS OF THE EXPROPRIATION CASE.

II.

RULES ON CIVIL CASES RELATIVE TO EXECUTIONS PENDING APPEAL SHOULD NOT BE APPLIED TO THE SPECIAL CIVIL ACTION OF EMINENT DOMAIN, LEST THE REMEDY OF APPEAL BECOMES NUGATORY.

III.

THE "JUST COMPENSATION" AS DEFINED BY THE TRIAL COURT IN ITS AUGUST 15, 200 ORDER, THAT IS—₱5,500.00 PER SQUARE METER OF RAW MARSHLAND IN BATANGAS (INACCESSIBLE AND SUBMERGED IN WATER AT THE TIME OF THE TAKING)—IS PATENTLY UNJUST.

IV.

THE INTEREST RATE APPLICABLE TO EXPROPRIATION PROCEEDINGS IS 6% PER ANNUM.[122]

Given that the petitions in **G.R. Nos. 154211-12**, **G.R. No. 170683** and **G.R. No. 173392** involve related appeals from the RTC Orders fixing just compensation at PhP 5,500 per square meter, as well as the three (3) other petitions bearing on the same issue of the proper compensation, the Court, to avoid repetitiousness, will enter a joint ruling on the said issue of just

---

[121] *Rollo* (G.R. No. 170683), p. 1026.

[122] *Rollo* (G.R. No. 173392), pp. 1310-1311.

compensation that should be paid to the lot owners subject of Civil Case No. 5447.

In the interest of expeditious dispensation of justice, the Court will no longer await the resolution of the issue of just compensation subject of PPA's reinstated appeal in CA-G.R. SP No. 60314, involving the July 10, 2000 Order (First Compensation Order), and instead decide PPA's appeal in these consolidated petitions. Likewise, the legality and propriety of all assailed orders of the Batangas RTC relating to the main issue of just compensation in Civil Case No. 5447 shall be resolved jointly in these petitions.

The Court's Initial Ruling in G.R. No. 173392

On August 24, 2007, the Court, through its First Division, rendered the Decision, now under reconsideration, denying PPA's petition for review on *certiorari* and affirming the resolution of the CA in the consolidated cases CA-G.R. CV No. 77668 and CA-G.R. SP Nos. 87844 and 90796.

In dismissing PPA's petition, the August 24, 2007 Decision (First Division of the Court) explained that the August 15, 2000 Order was interlocutory and, therefore, could not be the subject of appeal. Even if it were, the Court adopted the finding of the CA that the just compensation at PhP 5,500 per square meter had basis and was consistent with statutory standards. It further ruled that PPA's petition before the CA assailing the May 29, 2001 Order granting the execution of the August 23, 2000 Order (Cruz Group) and related RTC orders was filed late, having been filed more than three (3) years and six (6) months from receipt of the May 29, 2001 Order. Even if filed on time, there was no error on the part of the trial court, since there was no appeal filed by PPA from the August 23, 2000 Order (in favor of the Cruz Group) which had become final and executory. Anent the third issue, it was ruled that the immediate payment of the zonal value of the subject lots based on the July 9, 2002 BIR certification of Asst. RDO Torres pursuant to RA 8974 was proper, and that the RTC did not commit any grave abuse of discretion in ordering the payment thereof. Lastly, the petition to cite Judge Tac-an for contempt of court has become moot

and academic as he has retired compulsorily from the Judiciary.

The *fallo* of the Decision under reconsideration reads:

WHEREFORE, we DENY the petition. The assailed Resolution of the Court of Appeals in these consolidated cases: CA-G.R. CV No. 77668, CA-G.R. SP No. 87844, and CA-G.R. SP No. 90796 is AFFIRMED**.**

The TRO we issued on August 7, 2006 is LIFTED.

The trial court is directed to implement its **final and executory Order** dated August 23, 2000 requiring petitioner [PPA] to pay respondents, represented by Atty. Cesar Cruz, just compensation at ₱5,500.00 per square meter of their expropriated lots, with 12% interest per annum from the date of petitioner's entry on the lots or on September 11, 2001 until fully paid.

Likewise, the trial court is directed to implement the following **final and executory Orders** requiring petitioner to pay respondents just compensation at ₱5,500.00 per square meter pursuant to its Order dated August 15, 2000, with 12% interest per annum from the date of expropriation on September 11, 2001 until fully paid:

1. Order dated July 10, 2000 for respondents represented by Atty. Reynaldo Dimayacyac;

2. Order dated August 17, 2000 for respondents represented by Atty. Emmanuel Agustin;

3. Order dated August 18, 2000 for respondents represented by Atty. Gregorio Ortega; and

4. Order dated August 23, 2000 for respondent Pastor Realty Corporation.

It is understood that the zonal value per square meter of the expropriated lots, classified as industrial, is increased from ₱400.00 to ₱4,250.00 per square meter. The initial deposit paid by petitioner to respondents shall be deducted from the total amount of just compensation payable to them.

SO ORDERED.[123]

The *fallo* reveals that the legality of the July 10, 2000 Order

[123] *Supra* note 14, at 1194-1195.

(First Compensation Order) issued in favor of the Dimayacyac Group, which was actually the subject of the unresolved appeal in CA-G.R. SP No. 60314 before the CA, was decided by the Court (First Division) in G.R. No. 173392.

On September 7, 2007, PPA interposed a motion for reconsideration.

On December 10, 2007, the August 24, 2007 Decision of the First Division in **G.R. No. 173392**, with the pending motion for reconsideration, was referred *en consulta* to the Court *En Banc*. On January 29, 2008, it was accepted as a case for the Court *En Banc*.[124]

In its motion for reconsideration, PPA argues that: (1) the government timely interposed an appeal from the August 15, 2000 Order, which was the final order that disposed of the merits of the expropriation case; (2) rules on civil cases relative to executions pending appeal should not be applied to the special civil action of eminent domain, lest the remedy of appeal becomes nugatory; (3) "just compensation" as defined by the trial court in its August 15, 2000 Order — that is, Php 5,500 per square meter of raw marshland in Batangas (inaccessible and submerged in water at the time of the taking) — is patently unjust; and (4) the interest rate applicable to expropriation proceedings is 6% per annum.

Before we decide the main issue of just compensation, we first resolve the procedural issue of whether or not the August 15, 2000 Order (Second Compensation Order) is a final or interlocutory order.

A second hard look constrains the Court to recall its previous ruling that the assailed order is interlocutory in nature.

---

[124] In the same *En Banc* Resolution of January 29, 2008, G.R. No. 173392 was consolidated with G.R. No. 158252, which was likewise earlier referred to the Court *En Banc* on October 17, 2007, and *En Banc* case G.R. No. 166200.

Distinction between an interlocutory and a final order

In *Investments, Inc. v. Court of Appeals*, this Court explained the nature of a final order and how it differs from one that is interlocutory, in the following wise:

> The concept of "*final judgment,*" as distinguished from one which has "become final" . . . is definite and settled. A "final" judgment or order is one that finally disposes of a case, leaving nothing more to be done by the Court in respect thereto, *e.g.*, an adjudication on the merits which, on the basis of the evidence presented at the trial, declares categorically what the rights and obligations of the parties are and which party is in the right; x x x. Once rendered, the task of the Court is ended, as far as deciding the controversy or determining the rights and liabilities of the litigants is concerned. **Nothing more remains to be done by the Court except to await the parties' next move** (which, among others, may consist of the filing of a motion for new trial or reconsideration, or the taking of an appeal) **and ultimately, of course, to cause the execution of the judgment once it becomes "final"** or, to use the established and more distinctive term, "*final and executory*."
>
> x x x x x x x x x
>
> Conversely, an order that does not finally dispose of the case, and does not end the court's task of adjudicating the parties' contentions and determining their rights and liabilities as regards each other, but obviously indicates that other things remain to be done by the Court, is "interlocutory," *e.g.*, x x x. Unlike a "final" judgment or order, which is appealable, as above pointed out, an interlocutory order may not be questioned on appeal except only as part of an appeal that may be eventually taken from the final judgment rendered in this case.[125] (Emphasis ours.)

According to Sec. 1, Rule 141 of the Rules of Court, governing appeals from the regional trial courts to the CA, an appeal may be taken only from a judgment or final order that completely disposes of the case or of a matter therein when declared by the Rules to be appealable. Said provision, thus, explicitly states that no appeal may be taken from an interlocutory order.

---

[125] No. 60036, January 27, 1987, 147 SCRA 334, 339-341.

While the general rule proscribes the appeal of an interlocutory order, there are also recognized exceptions to that rule. Where special circumstances clearly demonstrate the inadequacy of an appeal, then the special civil action of *certiorari* or prohibition may exceptionally be allowed.[126] This Court recognizes that, under certain situations, recourse to extraordinary legal remedies, such as a petition for *certiorari*, is considered proper to question the denial of a motion to quash (or any other interlocutory order) in the interest of a "more enlightened and substantial justice;"[127] or to promote public welfare and public policy;[128] or when the cases "have attracted nationwide attention, making it essential to proceed with dispatch in the consideration thereof;"[129] or when the order was rendered with grave abuse of discretion.[130] *Certiorari* is an appropriate remedy to assail an interlocutory order: (1) when the tribunal issued such order without or in excess of jurisdiction or with grave abuse of discretion; and (2) when the assailed interlocutory order is patently erroneous, and the remedy of appeal would not afford adequate and expeditious relief.[131]

August 15, 2000 Order (Second Compensation Order) is a final order

Essentially, an expropriation suit is commenced because the parties concerned cannot come to an agreement as to the price offered for the lot needed by the expropriating agency. Once expropriation is ruled to be proper, then the first compensation for the lot to be taken must be determined. Once the just

---

[126] *Principio v. Barrientos*, G.R. No. 167025, December 19, 2005, 478 SCRA 639, 646.

[127] *Mead v. Hon. Argel*, 200 Phil. 650, 656 (1982); *Yap v. Lutero*, 105 Phil. 1307, 1308 (1959).

[128] *Pineda v. Bartolome*, 95 Phil. 930, 937 (1954); citing *People v. Zulueta*, 89 Phil. 752, 756 (1951).

[129] *Id*.

[130] *Id*.

[131] *Casil v. Court of Appeals*, 349 Phil. 187, 196-197 (1998).

compensation is fixed, then the rights of the landowners and the corresponding obligation of the expropriating government agency are contextually defined and settled, and there is really nothing to be done save the enforcement of the corresponding order. As this Court stressed in *Municipality of Biñan v. Garcia*: "The order fixing the just compensation on the basis of the evidence before [the court], and findings of, the commissioners would be **final**, too[, as it] would x x x leave nothing more to be done by the [c]ourt regarding [this] issue."[132]

The pertinent portion of the Second Compensation Order (August 15, 2000 Order) reads:

Based on the foregoing considerations, the Court hereby sets the fair market value of PhP 5,500 per square meter of the lots of the above-named defendants and those similarly situated including those who did not file answer.

The Court rules that the August 15, 2000 Order is a final order.

Our ruling on the meaning of a final order in *BA Finance Corp. v. CA* is illuminating:

Section 2, Rule 41 of the Revised Rules of Court provides that "(o)nly final judgments or orders shall be subject to appeal." Interlocutory or incidental judgments or orders do not stay the progress of an action nor are they subject of appeal "until final judgment or order is rendered for one party or the other." The test to determine whether an order or judgment is interlocutory or final is this: "Does it leave something to be done in the trial court with respect to the merits of the case? If it does, it is interlocutory; if it does not, it is final." A court order is final in character if it puts an end to the particular matter resolved or settles definitely the matter therein disposed of, such that no further questions can come before the court except the execution of the order. The term "final" judgment or order signifies a judgment or an order which disposes of the cause as to all the parties, reserving no further questions or directions for future determination. The order or

---

[132] G.R. No. 69260, December 22, 1989, 180 SCRA 576, 584; cited in *National Power Corporation v. Jocson*, G.R. Nos. 94193-99, February 25, 1992, 206 SCRA 520, 536.

judgment may validly refer to the entire controversy or to some definite and separate branch thereof. "In the absence of a statutory definition, a final judgment, order or decree has been held to be x x x one that finally disposes of, adjudicates, or determines the rights, or some right or rights of the parties, either on the entire controversy or on some definite and separate branch thereof, and which concludes them until it is reversed or set aside." The central point to consider is, therefore, the effects of the order on the rights of the parties.[133]

From the foregoing, it is beyond any equivocation that the assailed Order definitely settles the issue of what is the just compensation for the defendants outside of the Dimayacyac Group who were covered by the July 10, 2000 Order which is by the way also a final order. The August 15, 2000 Order finally disposes of the issue of valuation for the lots of said defendants, leaving nothing more for future determination. It, thus, fixed the just compensation at PhP 5,500 per square meter and nothing remains except the execution of the Order. The trial court was actually about to execute the final August 15, 2000 Order and other implementing orders were it not for the restraining order and writ of injunction issued by the Court.

Furthermore, even a simple perusal of the Second Compensation Order easily reveals the justification and arguments in support of the trial court's finding that the just compensation is at PhP 5,500 per square meter (2nd paragraph of August 15, 2000 Order). It cited the July 10, 2000 Order fixing the just compensation for the lots of Dimayacyac Group at PhP 5,500 per square meter. It cited the findings and recommendations of Cuervo Appraisers, Inc. that the fair market value ranges from PhP 5,500 to a maximum of PhP 6,000. It mentioned the sales in favor of Demetrio Marasigan, Andrea Palacios and First Gas where the prices ranged from PhP 5,000 per square meter to PhP 10,000 per square meter. It likewise considered *Dimaano v. PPA*, which pegged the price at PhP 10,000 per square meter. Lastly, it cited *Toledo City v. Fernandes* where it was ruled that the fair market valuation is greatly guided by prior sales near the date of expropriation.

---

[133] G.R. No. 84294, October 16, 1989, 178 SCRA 589, 596.

The text of the assailed order and the concluding paragraph pegging the just compensation at PhP 5,500 per square meter fully complies with Sec. 1 of Rule 36 which reads:

Rendition of judgments and final orders. — A judgment or final order determining the merits of the case shall be in writing personally and directly prepared by the judge, stating clearly and distinctly the facts and the law on which it is based, signed by him, and filed with the clerk of the court.

The August 15, 2000 Order was signed by the issuing judge who stated therein the facts and the law on which it was based. The same order declared the rights of the lot owners to just compensation and the obligation of PPA to pay the private respondents just compensation for their lots taken to be well-nigh defined or at least ascertainable. The Order is, therefore, an adjudication on the merits of the issue of just compensation, as it declares the just compensation at PhP 5,500 per square meter. Such finding is in favor of the above-named defendants and those similarly situated including those who did not file an answer. Perforce, we vacate our holding in the assailed August 24, 2007 Decision in **G.R. No. 173392** that the August 15, 2000 RTC Order is an interlocutory order. Indeed said order was a final order that could be the subject of appeal, which was timely interposed by PPA.

While it is true that the concluding paragraph is not the typical dispositive portion that starts with the word "WHEREFORE" or the phrase "IN VIEW OF THE FOREGOING," the flaw, if it can be considered as such, relates only to form and is unimportant. What is clear to the Court is that the concluding paragraph contains the disposition of the trial court, which finally resolves the issue of just compensation.

Subsequent Orders implementing the August 15, 2000 Order are mere interlocutory orders

The orders issued to enforce the Second Compensation Order are the RTC Orders dated August 17, 18, and 23, 2000, which named and specified the lot owners indicated in the August 15,

2000 Order as "above-named defendants and those similarly situated including those who did not file answer." All these orders are anchored or based on the August 15, 2000 Order as they are all uniformly prefaced as having been issued **"Pursuant to the Order of 15 August 2000."** Clearly the mother order was the August 15, 2000 Order which ruled on the just compensation for the expropriated lots. The subsequent orders principally served merely to implement the August 15, 2000 Order and were mere interlocutory, as the issue of just compensation had already been resolved in the August 15, 2000 Order, a final order. The subsequent orders (August 17, 18, and 23, 2000 Orders) did not dispose of the issue of just compensation or declare the rights and obligations of the parties, as these matters were already decided in the August 15, 2000 Order. Said orders were issued simply to clarify the August 15, 2000 Order, for the question of who were "the above-named defendants and those similarly situated including those who did not file answer" had to be straightened out. These were simply clarificatory and implementing orders of the August 15, 2000 Order, but nevertheless of interlocutory nature and did not need to be appealed, as the August 15, 2000 Order had already been subject of an appeal to the CA (CA-G.R. CV No. 77668). Hence, the August 17, 18, and 23, 2000 Orders, specifically mentioning the lot owners, cannot be executed on the sole ground that the same have became final. These orders will rise or fall depending on the outcome of the appeal from the August 15, 2000 Order in CA-G.R. CV No. 77668.

Even if it is conceded that the August 17, 18, and 23, 2000 Orders are final orders, PPA need not interpose an appeal from each one, since it has already appealed the principal order — the August 15, 2000 Order – and the decision in said appeal will be binding and conclusive on the said implementing orders.

Just compensation

In view of our ruling that the August 15, 2000 Order is the final order that can be appealed to the CA, thus removing the technical hurdle, the correctness of the ruling of the trial court

that the just compensation is PhP 5,500 per square meter will have to be examined anew on the merits.

As earlier stated, **G.R. No. 173392**, which was an appeal from CA-G.R. CV No. 77668 and CA-G.R. SP No. 87844 that stemmed from the August 15, 2000 Order (Second Compensation Order), revolves around the issue of just compensation. The other six petitions — particularly **G.R. Nos. 154211-12**, which pertain to the appeal of PPA from the July 10, 2000 Order (First Compensation Order) affecting lot owners Ernesto Curata, *et al.* (Dimayacyac Group) — are to be resolved jointly with G.R. No. 173392, as these also pivot on the issue of just compensation.

Fair market value, as an eminent domain concept, is determined by, among other factors, the **character of the property at the time of the taking of the property.**[134] It is basic that the nature and character of the land at the time of the taking is the principal criterion for determining how much just compensation is to be given to the lot owner,[135] not the potential of the expropriated area.[136] With these principles in mind, it is clear that the fact that the subject lots would eventually be developed as an integral part of the BPZ and consequently devoted to industrial use is of little moment for purposes of determining just compensation. And the adaptability for conversion in the future of the lots found within the BPZ is a factor, but not the ultimate in determining just compensation.

After a circumspect reevaluation and analysis of the records and evidence at hand and taking into careful account the information gathered from the oral arguments, **the Court arrives at the conclusion that the just compensation or the full**

---

[134] *Municipal Government of Sagay v. Jison*, 104 Phil. 1026, 1033 (1958).

[135] *National Power Corporation v. Chiong*, G.R. No. 152436, June 20, 2003, 404 SCRA 527, 539, citing *National Power Corporation v. Henson*, G.R. No. 129998, December 29, 1998, 300 SCRA 751, 756.

[136] *National Power Corporation v. Court of Appeals*, G.R. No. 56378, June 22, 1984, 129 SCRA 665, 673; citing *Municipal Government of Sagay v. Jison*, *supra* note 134.

and fair equivalent of the property sought to be expropriated[137] at the time of taking is PhP 425 per square meter.

The reasons for recalling our previous ruling affirming the CA decision pegging the just compensation at PhP 5,500 per square meter are:

No land classification under EO 385 and 431

First, the subject expropriated properties at the time of the taking were classified as neither industrial nor commercial, since EO 385[138] and EO 431[139] did not convert the subject lots within the BPZ into industrial or commercial.

EO 385, as couched, did no more than set the metes and bounds of, in fine delineate, the BPZ to facilitate and regulate the taking of private properties for the development of the port zone. The complementing EO 431 expanded the BPZ. Both EOs are not land-reclassifying instruments. The texts of both executive acts suggest as much. Contrary to what the respondents maintain, the issuances EOs 385 and 431, standing alone, did not convert the lots within the zone from agricultural into industrial or commercial.

Aerial photographs show actual characterization of land

Second, the characterization of the disputed lots is undeniably agricultural lands coming in the form of horticultural land, salt bed, fish ponds and swampy areas. Since EO 385 and EO 431 did not *ipso facto* reclassify the subject expropriated lands into commercial or industrial, they remain agricultural. Adding corroborative, but certainly significant, support to the above conclusion on the agricultural nature of the lots at the proposed

---

[137] *Manila Railroad Co. v. Velasquez*, 32 Phil. 286 (1915); *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform*, G.R. Nos. 78742, 79310, 79744, and 79777, July 13, 1989, 175 SCRA 378.

[138] *Supra* note 20.

[139] *Supra* note 21.

port site are the uncontroverted aerial photographs[140] of the areas that were submitted by the PPA. If the adage "*pictures don't lie*" is to be followed, then those aerial photographs give a conclusive dimension to what they depict.

Tax Declarations show subject lands are agricultural lands

Third, the tax declarations of private respondents — veritable admissions against interest — clearly show that the subject expropriated lots were agricultural. The exhibits[141] submitted

[140] *Rollo* (G.R. No. 173392), pp. 1355-1360.

[141] Record, G.R. No. 173392, Folder for Exhibits 1-96, defendants represented by Atty. Gregorio Ortega. The exhibits however are numbered until 97. No reason has been given for the inconsistency.

The complete list is as follows:

Owner's name/Party	Description of land	Location of land	Area (sq. m)	Market Value	Exhibit
1. Aurea Acosta	Agricultural	Barangay Bolbok, Batangas City	12,241	PhP 41,451.33	1
2. Aurea Acosta	Agricultural	Barangay Bolbok, Batangas City	8,301	PhP 27,240.06	2
3. Consuelo Alcantara	Agricultural	Barangay Bolbok, Batangas City	3,003	PhP 4,432.42	3
4. Lucila Aldover	Agricultural	Barangay Bolbok, Batangas City	618	PhP 2,027.99	4
5. Spouses Moises Macatangay and Andrea Balina	Agricultural	Barangay Bolbok, Batangas City	2,287	PhP 7,504.88	5
6. Evarista Bauan	Agricultural	Barangay Bolbok, Batangas City	1,220.50	PhP 4,260.77	6

7. Rafael S. Berba	Horticultural land	Barangay Bolbok, Batangas City	2,691	PhP 9,393.45	7
8. Amelia M. Berba	Horticultural land	Barangay Bolbok, Batangas City	2,691	PhP 9,112.45	8
9. Pacita M. Berba	Horticultural land	Barangay Bolbok, Batangas City	2,691	PhP 9,112.45	9
10. Pacita M. Berba	Horticultural land	Barangay Bolbok, Batangas City	2,793	PhP 9,457.85	10
11. Maria B. Caedo	Horticultural land	Barangay Bolbok, Batangas City	2,795	PhP 9,464.62	11
12. Maria Clara T. Berba	Horticultural land	Barangay Bolbok, Batangas City	2,690	PhP 9,109.06	12
13.Adoracion A. Cabral	Agricultural	Barangay Bolbok, Batangas City	3,489	PhP 11,449.29	13
14.Adoracion Acosta Cabral	Agricultural	Barangay Bolbok, Batangas City	2,530	PhP 8,302.29	14
15. Maria B. Caedo	Horticultural land	Barangay Bolbok, Batangas City	2,691	PhP 9,112.45	15
16. Benjamin Castillo	Agricultural	Barangay Bolbok, Batangas City	4,835	PhP 15,826.86	16
17. Erlinda Laredo Castillo	Agricultural	Barangay Bolbok, Batangas City	1,733	PhP 5,686.90	17

18. Augusto M. Claveria	Agricultural	Barangay Bolbok, Batangas City	2,653	PhP 8,705.32	18
19. Mariano Diokno	Horticultural land	Barangay Bolbok, Batangas City	2,690	PhP 9,109.06	19
20. Spouses Carlito Casas and Enriqueta Casas (½) and Spouses Emilio Berberabe and Pacita C. Acosta	Agricultural	Barangay Bolbok, Batangas City	10,066	PhP 21,020.00	20
21. Esperanza Dimaandal	Industrial	Barangay Bolbok, Batangas City	4,000	PhP 388,000.00	21
22. Maria Espanol	Agricultural	Barangay Bolbok, Batangas City	1,493	PhP 4,899.33	22
23. Agrifina Garcia	Agricultural	Barangay Bolbok, Batangas City	1,671	PhP 5,483.45	23
24.Spouses Rufino B. Geron and Matilde P. Geron	Agricultural	Barangay Bolbok, Batangas City	1,364	PhP 4,476.01	24
25.Segundina B. Gualberto	Agricultural	Barangay Bolbok, Batangas City	5,437	PhP 17,907.36	25
26. Segundina B. Gualberto	Horticultural land	Barangay Bolbok, Batangas City	1,153	PhP 3,904.36	26
27. Segundina B. Gualberto	Horticultural land	Barangay Bolbok, Batangas City	1,429	PhP 4,838.97	27

28. Segundina B. Gualberto	Residential	Barangay Bolbok, Batangas City Barangay	257	PhP 118,220.00	28
29. Luisa B. Montalbo	Horticultural land	Bolbok, Batangas City Barangay Bolbok,	2,691	PhP 9,112.45	29
30. Corazon Ilao	Agricultural	Batangas City Barangay Bolbok, Batangas City	4,243	PhP 13,923.57	31
31. Corazon Ilao	Agricultural	Barangay Bolbok, Batangas City Barangay Bolbok,	6,175	PhP 20,263.50	32
32. Corazon Ilao	Agricultural	Batangas City Barangay Bolbok, Batangas City	1,058	PhP 3,471.86	33
33. Maria Lacsamana	Agricultural	Barangay Bolbok, Batangas City	1,157	PhP 3,796.74	34
34. Maria Lacsamana	Agricultural	Barangay Bolbok, Batangas City	1,414	PhP 4,640.09	35
35. Spouses Basilio Macaraig and Pacencia Del Mundo	Agricultural	Barangay Bolbok, Batangas City	5088	PhP 16,696.47	36
36. Spouses Basilio Macaraig and Pacencia Del Mundo	Agricultural	Barangay Bolbok, Batangas City	4,926	PhP 16,164.86	37
37. Pedro Marasigan	Agricultural	Barangay Bolbok, Batangas City	1,705	PhP 5,595.02	40
38. Pablo D. Mendoza	Agricultural Residential	Barangay Bolbok, Batangas City	3,000 (Agricultural) 447 (Residential)	PhP 10,158.81 PhP205,620.00	41

39. Spouses Jaime Tauro and Reynada D. Tauro	Agricultural	Barangay Bolbok, Batangas City	609	PhP 1,689.19	43
40. Spouses Jaime Tauro and Reynada D. Tauro	Agricultural	Barangay Bolbok, Batangas City	1,584	PhP 3,307.39	44
41. Lauro C. Abraham	Agricultural	Barangay Calicanto, Batangas City	5,441	PhP 17,854.85	45
42. Arsenio Abacan	Agricultural	Barangay Calicanto, Batangas City	1,454	PhP 4,771.35	46
43. Francisco Abacan and Letecia A Claveria	Agricultural	Barangay Calicanto, Batangas City	12,384	PhP 41,935.56	47
44. Gerardo Abacan	Agricultural	Barangay Calicanto, Batangas City	3,983	PhP 13,070.37	48
45. Gerardo Abacan	Agricultural	Barangay Calicanto, Batangas City	3,128	PhP 10,264.65	49
46. Spouses Gerardo Abacan and Alicia Fabul	Agricultural	Barangay Calicanto, Batangas City	10,011	PhP 32,851.49	50
47. Spouses Manuel Amul and Marcosa Amul	Agricultural	Barangay Calicanto, Batangas City	5,360	PhP 17,589.05	51
48. Azucena and Arnel Perez	Agricultural	Barangay Calicanto, Batangas City	2,158	PhP 7,081.58	52
49. Cecile Olivia F. Cuisia	Agricultural	Barangay Calicanto, Batangas City	6,700	PhP 21,986.31	53
50. Alfredo Bautista	Horticultural land	Barangay Calicanto, Batangas City	643	PhP 2244.71	54

51. Marciana Buenafe	Agricultural	Barangay Calicanto, Batangas City	2,106	PhP 6910.91	55
52. Marciana Buenafe	Agricultural	Barangay Calicanto, Batangas City	3,796	PhP 12,456.72	56
53. Marciana Buenafe	Agricultural	Barangay Calicanto, Batangas City	1,090	PhP 3,576.87	57
54. Priscila Buenafe	Agricultural	Barangay Calicanto, Batangas City	2,222	PhP 7,291.58	58
55. Generosa Buenafe	Agricultural	Barangay Calicanto, Batangas City	2,128	PhP 6,983.11	59
56. Eulalio Buenafe	Agricultural	Barangay Calicanto, Batangas City	3,053	PhP 10,018.54	60
57. Esteban Espino	Agricultural	Barangay Calicanto, Batangas City	2,804	PhP 9,201.43	63
58. Dr. Efrem P. Espino, *et al.*	Agricultural	Barangay Calicanto, Batangas City	14,590	PhP 50,933.69	64
59. Guadalupe Dayanghirang	Agricultural	Barangay Calicanto, Batangas City	6,642	PhP 21,795.98	65
60. Felino Fernandez, *et al.*	Agricultural	Barangay Calicanto, Batangas City	11,365	PhP 39,675.21	66
61. Rafael Llana and Rustica Llana Perez	Agricultural	Barangay Calicanto, Batangas City	13,395	PhP 43,956.22	67
62. Brigido Lontoc, *et al.*	Agricultural	Barangay Calicanto,	1,115	PhP 3,658.92	68

63. Daniel Magadia	Agricultural	Barangay Calicanto, Batangas City	2,140	PhP 7,022.40	69
64. Pedro T. Magadia and Rose Magadia	Agricultural	Barangay Calicanto, Batangas City	1,084	PhP 3,557.18	70
65. Rosa D. Magadia	Agricultural	Barangay Calicanto, Batangas City	1,085	PhP 3,560.47	71
66. Spouses Jose Maranan and Concha M. Maranan	Agricultural	Barangay Calicanto, Batangas City	2,292	PhP 7,5521.28	72
67. Librada Macatangay	Agricultural	Barangay Calicanto, Batangas City	1,694	PhP 5,558.92	73
68. Librada Macatangay	Agricultural	Barangay Calicanto, Batangas City	463	PhP 1,519.35	74
69. Francisco Abacan and Letecia A. Claveria	Agricultural	Barangay Calicanto, Batangas City	12,384	PhP 41,935.56	75
70. Constancia Villamor-Barcelo	Horticultural land	Barangay Calicanto, Batangas City	8,371	PhP 27,469.77	76
71. Maria M. Montales	Agricultural	Barangay Calicanto, Batangas City	5,041	PhP 16,552.08	78
72. Luisa B. Montalbo	Agricultural	Barangay Calicanto, Batangas City	11,788	PhP 39,917.35	79
73. Luisa B. Montalbo	Horticultural land	Barangay Calicanto, Batangas City	5,486	PhP 18,002.53	80
74. Godofredo Rosales	Agricultural	Barangay Calicanto, Batangas City	11,080	PhP 38,680.38	81

75. Maria Consolacion Sarmiento	Agricultural	Barangay Calicanto, Batangas City	13,583	PhP 44,573.15	82
76. Luisa Villanueva	Agricultural	Barangay Calicanto, Batangas City	945	PhP 3,101.05	83
77. Luisa Villanueva	Agricultural	Barangay Calicanto, Batangas City	18,209	PhP 59,753.56	84
78. Spouses Pedro A. Alcantara and Dorotea Macatangay	Horticultural land	Barangay Sta. Clara, Batangas City	1,581	PhP 5,188.11	85
79. Lucila Aldover	Agricultural	Barangay Sta. Clara, Batangas City	1,251	PhP 4,105.20	86
80. Andrea Albina	Horticultural land	Barangay Sta. Clara, Batangas City	4,051	PhP 13,293.51	87
81. Gregoria Dapat	Salinal(Salt land)	Barangay Sta. Clara, Batangas City	11,938	PhP 109,097.55	88
82. Corazon Ilao, *et al.*	Horticultural land	Barangay Sta. Clara, Batangas City	9,351	PhP 30,685.68	89
83. Milagros Macatangay	Fishpond Salt bed	Barangay Sta. Clara, Batangas City	34,620 (Fishpond) 2,000 (Salt bed)	PhP 69,240.00 PhP 40,000.00	90
84. Milagros Macatangay	Fishpond	Barangay Sta. Clara, Batangas City	29,319	PhP 58,640.00	92
85. Lilia Suingimoto	Salt bed	Barangay Sta. Clara, Batangas City	12,349	PhP 112,853.55	94
86. Popula Llana	Salt bed (17,999)	Barangay Sta. Clara,	187,853	PhP 1,166,897.82	95

by, *inter alia*, the private respondents, represented by Atty. Ortega (Ortega Group), indicate that all but three described their landholdings as agricultural. In the ordinary scheme of things, these exhibits carry a high evidentiary value, being, as to the tax-declaring respondents, in the nature of admissions against interest.

A scrutiny of these tax declarations in question readily shows that only three (3), out of some 88 lot owners, characterized their lands as non-agricultural. We refer to Esperanza Dimaandal, who declared her property in Brgy. Bolbok to be industrial.[142] "Residential," on the other hand, was how Pablo D. Mendoza, with respect to one of his lots,[143] and Segundina B. Gualberto as to her landholding[144] in the same *barangay*, declared their respective properties. But whether or not any of the three actually used his or her land for residential or industrial purposes was an important factual matter left undetermined by the trial court. Such claim, moreover, was not buttressed by clear and convincing proof.

	Horticultural land (25,769) Swampy (46,016) Fishpond (98,069)	Batangas City			
87. Luis C. Lira	Salt bed	Barangay Sta. Clara, Batangas City	19,630	PhP 179,392.29	96
88. Rosario Perez, *et al.*	Horticultural land	Barangay Sta. Clara, Batangas City	17,777	PhP 58,335.93	97

[142] *Id.*, Exhibit No. 21.

[143] *Id.*, Exhibit No. 41.

[144] *Id.*, Exhibit No. 28.

Judging from said tax declarations, it may safely be deduced that the lands sought to be occupied by the BPZ are generally, if not wholly, agricultural, salt bed, horticultural and/or swampy fishponds. The nagging fact, however, remains — that an overwhelming majority of the lots were neither commercial nor industrial in character and were not viewed or even used as such by the very owners themselves.

DO 31-97 shows agricultural classification of subject lands

Fourth, the adverted DO 31-97, setting zonal valuation of several localities in Batangas City, which include Barangays Bolbok and Calicanto where the subject lands are located, clearly indicates that the subject expropriated lands were agricultural.

As discussed above in our resolution of **G.R. No. 166200**, DO 31-97 covering the barrios/*barangay*s where the expropriated lands are located did not have any lot classified as industrial. This is another piece of evidence that accentuates the real nature of subject lands as agricultural prior to and during the taking by PPA.

Per DO 31-97, the expropriated lots located at Brgy. Calicanto, Batangas City, were assigned the value of PhP 400 per square meter; and those located at Brgy. Bolbok, Batangas City, the value of PhP 290 per square meter. The valuation made under DO 31-97 is reflected in the Batangas City BIR Revenue District No. 58 zonal valuation as zonal valuation of agricultural lands in Barangays Calicanto and Bolbok.[145] This is not to mention that the subject expropriated lots are duly itemized in the Lists for Deposit Based on the 1998 Zonal Valuation as per Court Order.[146]

Regarding the lots found in Brgy. Sta. Clara, DO 31-97 does not have any zonal valuation for said lots. However, under the guidelines set for BIR zonal valuations through department orders, the rule is that—where there is no zonal value prescribed for a

---

[145] *Rollo* (G.R. No. 173392), pp. 596-614.

[146] *Rollo* (G.R. No. 158252), pp. 146-151.

particular classification of real property in one *barangay*—the zonal value prescribed for the same classification of real property located in an adjacent *barangay* of similar conditions shall be used. No. 1(b) of the guidelines under DO 31-97 covering RDO No. 58, Batangas City pertinently provides:

> CERTAIN GUIDELINES IN THE IMPLEMENTATION OF ZONAL VALUATION OF REAL PROPERTIES FOR RD No. 58-Batangas City
>
> 1. No Zonal Value has been prescribed for a particular classification of Real Property.
>
> Where in the approved Schedule of Zonal Values for a particular *Barangay* —
>
> a) No Zonal Value has been prescribed for a particular classification in a particular street/subdivision in a *Barangay*, the Zonal Value prescribed for the same classification of real property located in the other street/subdivision within the same *Barangay* of similar conditions shall be used; and
>
> b) **No Zonal Value has been prescribed for a particular classification of Real Property in one *Barangay*, the Zonal Value prescribed for the same classification of Real Property located in an adjacent *Barangay* of similar conditions shall be used**.
>
> x x x x x x x x x

Pursuant to the above guidelines, it is clear that Brgy. Sta. Clara, being adjacent to Brgys. Bolbok and Calicanto, with the subject lots therein having similar conditions as the latter, would have a zonal value of either PhP 290 and PhP 400—the zonal valuation of Brgys. Bolbok and Calicanto, respectively—or a zonal value within the range of the two.

Subject lands were undeveloped and vacant, except for fishponds

Fifth, the subject lands were undeveloped and vacant except for fishponds, as can be gleaned from the judicial admissions during the March 25, 2008 oral arguments of Atty. Cruz and

Atty. Dimayacyac, counsels of some of the private respondents, that the lands of their clients were vacant, undeveloped and earning no income prior to and during the time of the taking, except for the fishponds.

This lends corroborative evidence to the agricultural nature and classification of subject expropriated lands. When asked during the March 25, 2008 oral arguments, Atty. Cruz admitted that, at least, the properties of his clients were vacant, without any income and totally undeveloped. Some excerpts of Atty. Cruz' answers:

ASSOCIATE JUSTICE VELASCO: Do you agree that the lots of your clients are commercial in nature? What were found at that time on the lots of your clients?

ATTY. CRUZ: Well, it was vacant land, Your Honor.

J. VELASCO: It was vacant. Do you think that said lots can be treated as commercial if they are not being used for commercial purposes?

ATTY. CRUZ: Yes, Your Honor. Because there is such principle, that the owner of the land is entitled to the highest and best use of the property. It need not be referring to the actual use at the time it was expropriated, as Republic Act 8974 says: "The classification and the suitability of the use of the land whether it is for commercial, industrial or residential."[147]

x x x x x x x x x

J. VELASCO: WHAT are the buildings, if any, in Barangay Calicanto in 1989?

ATTY. CRUZ: There are no buildings, if we are talking of buildings, but we are talking of what is the potential of the property.

x x x x x x x x x

J. VELASCO: To what particular use did your clients devote their lots in 1989, what did they do with it?

ATTY. CRUZ: In 1989, Your Honor, as I said, the property is vacant

[147] TSN, March 25, 2008 Oral Arguments, pp. 209-210.

because of the Executive Orders of President Aquino of 1989 and 1990.

x x x x x x x x x

J. VELASCO: Prior to that particular issuance, what is the use to which the particular lots of your client are devoted to? How did they use it, prior to the declaration of the Court?

ATTY. CRUZ: Well, all that I can say, Your Honor, is it is vacant because our clients, American citizens and Canadian citizens, they reside in Boston and in Canada so they don't know what is being used except that it is a vacant lot.

J. VELASCO: So they are not using it, you have to admit at that time, because your clients were abroad in Canada, as you said.

ATTY. CRUZ: Yes, Your Honor.

J. VELASCO: And they did not, apparently, derive any income from the lot since they have not been using it, is that correct?

ATTY. CRUZ: Well, presumably.[148]

The same factual situation can be said of the other expropriated lands except for those that were used as fishponds, which clearly were under water during high tide as shown by the aerial photographs. Moreover, Atty. Dimayacyac, Sr. also categorically affirmed that the seaside properties of his clients were not developed beach resorts of any kind at the time of the taking.[149]

Conveyance of some of the subject lots

Sixth, the compromise and/or purchase agreements entered into by and between PPA and around 28 of private respondents from the year 2002 and onwards priced their respective lands at PhP 500 per square meter. The purchase price as consideration for the conveyances persuasively shows the actual fair market value of the subject expropriated lands. These agreements represent clear and convincing evidence that was ignored by

---

[148] *Id.* at 211-215.

[149] *Id.* at 299-300.

the trial court and the CA but should have been assigned strong weight and credit.

The landowners, among others,[150] were the spouses Gerardo Abacan and Alicia Fabul,[151] Manuel D. Magadia married to Aida Catala,[152] and the Heirs of Eulalio Buenafe.[153] A very recent compromise agreement was executed on October 15,

---

[150] Other landowners who sold their properties to PPA pending the instant expropriation case are: 1) Cecile Olivia F. Cuisia; 2) Pastor Realty Company; 3) Cecile Olivia F. Cuisia; 4) Caridad Buenafe Ramos; 5) Manuel D. Magadia; 6) Manuel D. Magadia; 7) J.L. Gandionco Realty Development Corporation by: Romana S. Gandionco; 8) J.L. Gandionco Realty Development Corporation by: Romana S. Gandionco; 9) Pastor Realty Company; 10) Gerardo Abacan and Alicia Fabul; 11) Brigido Lontoc, Juana Cornero and Adelaida Belegal; 12) Luz Balmes; 13) Heirs of Esteban Espino; 14) Gabriela and Estanislawa Acosta; 15) Rufino B. Geron and Matilde Geron; 16) Raymund T. Pastor and Carlo G. Pastor; 17) Segundina Gualberto; 18) Anita Escano; 19) Anita Escano; 20) Anita Escano. Annexes SS to SS-16 of Petition for Review, *Rollo* (G.R. No. 173392), pp. 642-728. *See* also Annexes AA—AA-15 of Petition for Review, *Rollo* (G.R. No. 170683), pp. 437-523 on the landowners who sold their properties to PPA pending resolution of the expropriation case: 1) Anita G. Escano, Lydia G. Capulong & Erlinda Gonzales-Germar; 2) Anita G. Escano, Lydia G. Capulong, Romulo G. Gonzales & Erlinda Gonzales-Germar; 3) Heirs of Esteban B. Espino (Flordeliza E. Cantos, Juana L. Carnero, Manuel del Mundo, Severion Espino, Dionisia D. Vellon, Ricardo Espino, Alfredo P. Espino, Jr.); 4) Ligaya Villanueva-Lontok, Juana L. Carnero & Adelaida L. Belegal; 5) Pastor Realty Company; 6) Alex Buenafe, Brenda Buenafe, Eulalio Buenafe, Jr. & Caridad Buenafe; 7) Cecile Olivia F. Cuisia; 8) Spouses Gerardo Abacan & Alicia Fabul; 9) Manuel D. Magadia; 10) J.L. Gandionco Realty Development Corporation; 11) Luz Balmes; 12) Heirs of Gabriela & Estanislawa Acosta (Mario A. Castillo, Luis A. Castillo, Elpidia Resurreccion Castillo & Antonio A. Castillo); 13) Spouses Rufino B. Geron & Matilde P. Geron; 14) Raymund T. Pastor & Carlo G. Pastor; and, 15) Segundina B. Gualberto.

[151] *Rollo* (G.R. No. 158252), pp. 188-190.

[152] *Id.* at 191-193.

[153] *Id.* at 194-196. The heirs are: (1) Alex Buenafe married to Cenelinda Balmes; (2) Brenda Buenafe married to Virgilito Mangalino; (3) Dennis Buenafe and (4) Eulalio Buenafe, Jr., represented by their Attorney-in-Fact, Caridad Buenafe-Ramos.

2007 between PPA and Pacita Berba-Panopio covering an area of 2,230 square meters located at Bolbok, Batangas City also for the price of PhP 500 per square meter. Unlike in the three sales in 1996 and 1997 adverted to in the aforementioned commissioners' report, the unit cost price agreed upon in the conveyances effected by respondents Abacan, *et al*., reflected the true fair market value of the expropriated lots at the time of the taking, which was in the vicinity of PhP 500 per square meter.

On the other hand, the RTC committed reversible error in the two (2) compensation orders when it relied on evidence not worthy of weight and credit, thus:

> (1) 3 prior land sales/transactions purportedly within the [BPZ] between 1996-1997 ([a] deed of absolute sale between Demetrio Marasigan in favor of PPA dated December 11, 1996 at PhP 5,000 per square meter; [b] judgment via compromise agreement in Civil Case No. 4641 between Andrea Palacios and the City Government of Batangas for a road right of way at PhP 5,211 per square meter; [c] purchase of land fronting Batangas Bay by First Gas Co. purportedly at PhP 10,000 per square meter.);[154]
>
> (2) the January 20, 1999 Decision by Compromise Agreement in the [CA] in <u>*Dimaano v. PPA*</u> with a PhP 10,000 per square meter price;
>
> (3) the report of Salvador D. Oscianas of the Cuervo Appraisers, Inc.

The facts disclosed during the oral arguments shed light on the aforementioned conveyances. The more telling of these was that the said prior sales involved lands of different categorization and located outside the area covered by Phase II of the port project. For instance, the residential 350-square-meter Marasigan property PPA bought in December 1996 for PhP 5,000 per square meter was residential in character and

---

[154] *Supra* note 14, at 1179-1180.

had a bungalow standing thereon. It was located outside BPZ Phase II. The same can be said of the September 1997 Batangas City-Andrea Palacios compromise agreement, covering the acquisition of a road right-of-way with an area of 43 square meters found a kilometer away from BPZ Phase II. Standing on the lot of Palacios, which was residential in nature, were a bodega, a garage and some mango trees, which may explain why a higher valuation was agreed to by the city government of Batangas.

What was more telling was the slide presentation by the OSG during the March 25, 2008 oral arguments. When Justice Carpio posed clarificatory questions to Solicitor General Devanadera, the latter showed that these properties, as shown by the map slides, were unquestionably outside the BPZ Phase II project, thus:

> ASSOCIATE JUSTICE CARPIO: Okay. Can you flash again the—that slide on the three lots that was mentioned by the Cuervo Appraisal, the three lots, the residential, those small lots that were purchased from five thousand?
>
> SOL. GENERAL DEVANADERA: The three lots, Your Honor.
>
> *J.* CARPIO: Okay. What barrio is the first lot located?
>
> S.G. DEVANADERA: Marasigan property, Your Honor.
>
> *J.* CARPIO: Yeah. What is the barrio?[155]
>
> x x x x x x x x x
>
> S.G. DEVANADERA: Santa Clara, Your Honor.
>
> *J.* CARPIO: Is that Santa Clara?
>
> S.G. DEVANADERA: Yes, Your Honor. That is outside, Your Honor. That is outside the project.
>
> *J.* CARPIO: Yeas (sic), that is outside the project.
>
> S.G. DEVANADERA: Yes, Your Honor.[156]

---

[155] TSN, March 25, 2008, pp. 45-46.

[156] *Id.* at 47-48.

x x x x x x x x x

J. CARPIO:So these are quite far from the area (interrupted)

S.G. DEVANADERA: The subject of this expropriation case, Your Honor.[157]

Moreover, the RTC, in the First Compensation Order of July 10, 2000, categorically made reference to the First Partial Report of the court-appointed commissioners, who described the Marasigan and Palacios properties as being far from the questioned lots, thus:

NOW THEREFORE, BE IT RESOLVED AS IT IS HEREBY RESOLVED, that in view of all the foregoing, it is the most considered view of the herein Commissioners to submit the cost of **FOUR THOUSAND EIGHT HUNDRED PESOS (₱4,800.00)** per square meter, for payment of just compensation, subject to further review, evaluation, discretion and sound judgment of this Honorable Court.

Commissioner Lauro C. Andaya appeared in Court in behalf of other Commissioners to identify the said report and to answer to the clarificatory question propounded by the court and the parties. He stated that the basis of the ₱4,800.00 compensation per square meter was the **Deed of Absolute Sale executed by Demetrio E. Marasigan in favor of the Philippine Ports Authority, executed on December 11, 1996** (Exhibit "3"). He admitted that he is aware of the **compromise agreement between Andrea Palacios and the City Government of Batangas which was the basis of the judgment by compromise on September 22, 1997 on Civil Case No. 4641, presided by Regional Trial Court, Branch 84**. The price per square meter was agreed upon to be ₱5,211.00. **The land area involved is about 7 kilometers upon the properties in question.** x x x (Emphasis supplied.)

It is, thus, clear that these properties were clearly located outside and far from the subject expropriated properties.

Not much detail was presented regarding the undocumented First Gas purchase of land fronting Batangas Bay at a purported

---

[157] *Id.* at 51.

price of PhP 10,000 per square meter, save for the fact that the transaction transpired from 1995 to 1997. Significantly, the appraisal report adduced in evidence by the Ortega Group only mentioned that **reportedly** said acquisition by First Gas of raw land property was at a price of PhP 10,000 without documentary support. At any rate, like the two other transactions, the said First Gas purchase covers a lot outside the Phase II development zone, which was confirmed by Atty. Dimayacyac during the oral argument:

> ASSOCIATE JUSTICE VELASCO: When you aver in your answer that the fair market value is ₱8,000.00, did you use as basis the sale in favor of Palacios, Marasigan and First Gas? did you use that as basis?
>
> ATTY. DIMAYACYAC: We consider that, we don't consider the First Gas because that is far away although it has been re-classified. It is far, far away and we did not consider that. We consider the ₱5,211.00 and may I mention along that line, Your Honor, x x x.[158]

As to the Dimaano lot, allegedly worth PhP 10,000 per square meter, we take note that no details were provided by the RTC about the Compromise Agreement in *Dimaano v. PPA*. The agreement was not presented, albeit it was mentioned in passing during the August 15, 2000 hearing. It should be noted also that the price or value of a lot that is subject of a transfer covered by a compromise agreement between the parties to a case cannot be a reliable gauge or basis of the determination of the fair market value that must be assigned to a lot subject of an expropriation case. The price can be consented to by the parties, even without much regard for the current fair market value, as there may have been other considerations that came into play in the price-fixing for the lot. Verily, the RTC should not have relied on the acquisition of the Dimaano property to prop up the fair market value of PhP 5,500 per square meter for want of factual basis.

---

[158] *Id.* at 281-282.

The Oscianas Report of Cuervo Appraisers, Inc., dated July 17, 2000, deserves scant weight or credit. For one, the services of Mr. Oscianas were engaged and paid for by the Ortega Group. Thus, he can be considered a biased witness for the lot buyers. A witness is biased when his relationship to a party is such that he has an incentive to exaggerate or give false color to his statements or "suppress or revert the truth." It is said that bias is a "disposition to see and report matters as they wished for rather than as they are."[159]

Bias on the part of Mr. Oscianas was revealed when he justified his recommendation of PhP 6,000 per square meter this way:

> Mr. Oscianas stated that the lands in the area in question are for commercial/light industrial purposes. These are developed areas as per his ocular inspection. It is accessible by National highways (Calicanto) from Batangas City Hall and the Bauan/Diversion Road as well as Municipal Road (the bypass road), and by the sea (Port of Batangas). It has water, lighting, communications and garbage facilities. Batangas City and province enjoy continuous boom of industrial and commercial developments. It has not experienced recession, unlike other regions, although it has experienced also the depreciation of the peso and the rise of the prices of prime commodities and real properties, much higher than ₱15,000.00 per square meter than the recorded past sales prices.[160]

These findings of Mr. Oscianas are totally bereft of factual basis. The aerial photographs of Phase II, where the lots in question are located, indubitably demonstrate that said lots are agricultural or horticultural lands, salt beds, fishponds and swampy lands. Even the lot owners themselves admit that said lots are classified as agricultural per their respective tax declarations, and not industrial or commercial as Mr. Oscianas erroneously concluded. Contrary to the bare claim of Mr. Oscianas that these lots are developed areas, Attys. Cruz and Dimayacyac

---

[159] II Moore on Facts 1225.

[160] August 15, 2000 Order.

during the March 25, 2008 oral arguments revealed that the lots of their clients were vacant, totally undeveloped and unable to generate income. The seaside lots were not developed beach resorts or used for commercial purposes. The Oscianas Report was likewise controverted by the findings of the CA in CA-G.R. SP No. 81091 entitled *Philippine Ports Authority v. Tac*-an — where it nullified the October 29, 2003 RTC Order directing payment to the heirs of Popula Llana at PhP 5,500 per square meter — anchored on the Second Compensation Order of August 15, 2000. Said CA Decision characterized the lot of Llana, which was similarly situated as other lots in question, as swampy, salt bed and horticultural in nature. It succinctly elucidated why the subject lots could not command the price of Ph₱ 5,500 per square meter, thus:

> Also, the just compensation of ₱5,500.00 in Civil Case No. 5447 for the expropriated lands of the other defendants which are situated in different *barangays*, cannot be a fair gauge specially considering that the property was a swamp land at the time PPA condemned the same. Moreover, subject property cannot be compared to those near Rizal Avenue, as the LLANA Heirs assert, considering that these two (2) properties — Rizal Avenue and Barangay Sta. Clara — are differently situated. It only happened that part, or even the whole, of Rizal Avenue is located at Barangay Sta. Clara like the subject property. However, there is evidence on record showing that Rizal Avenue teems with residential and commercial establishments. On the other hand, the photographs of subject property reveal that it is not even suitable for residential use as it is a swamp land. Therefore, the amount for ₱798,375,250.00 for a parcel of 187,853 square meters which is bound on the Northern and Eastern portions by a creek, and the Western portion by a river, with only a provisional value of ₱54,477,370.00 at ₱290.00 per square meter obviously based upon its assessed value appearing on the BIR Certification dated 09 July 2002, is indeed, unconscionable. x x x No saltbed, horticultural and swampy land located beside a pier, with no residences nor commercial establishments and almost no structure at all which are seen or found thereon could command such a fantabulous price. x x x

The CA's decision is final with respect to lot owner Popula Llana. While it may be true that said ruling specifically deals

with the Llana lot, still, the CA's findings can be taken judicial cognizance of by the Court, considering that the Llana lot is located in the same area as the lots of other lot owners.

Lastly, the appraisal report of Mr. Oscianas cannot be given weight or credit by reason of the sudden increase in the valuation of the lots from PhP 1,100 per square meter when the same lots were appraised by Cuervo Appraisers, Inc. on August 24, 1999 to PhP 5,500 to PhP 6,000 per square meter based on the report of Oscianas of the same Cuervo Appraisers, Inc., submitted on July 17, 2000. The August 14, 1999 Cuervo Report was commissioned by the Cruz Group, while the July 17, 2000 Cuervo Report (Oscianas' prepared report) was commissioned by the Ortega Group. One year had not yet passed from August 14, 1999, and yet the Cuervo Report prepared by Oscianas on July 17, 2000 revealed a highly unusual increase of 400% in the fair market value of the lots in question. It is unbelievable that the lots in question were suddenly transformed from agricultural to industrial in less than one (1) year.

Moreover, it is a cause for concern that Judge Tac-an accepted Mr. Oscianas as *amicus curiae*, when the former fully knew that the latter was commissioned by the lot owners (Ortega Group) to make an examination of the lots in question and submit a report thereon, in consideration of a fee for his services. In this sense, the testimony of Mr. Oscianas is of doubtful value and subject to serious challenge on the ground that he was a biased witness who gave baseless and untruthful statements.

The Court rules, therefore, that the August 15, 2000 Order fixing the just compensation at PhP 5,500 per square meter has no solid factual leg to stand on; and said order, together with other implementing orders, is nullified for want of factual basis.

Based on the foregoing considerations, the Court finds that the value of PhP 425 per square meter is a reasonable and fair compensation for the expropriated lots in Civil Case No. 5447, especially taking into account that the highest BIR zonal valuation for said lots per DO 31-97 does not exceed PhP 400 per square meter.

Anent our holding that the May 29, 2001 Order granting the execution of the August 23, 2000 Order in favor of the Cruz Group are final orders and can be executed, the same has to be recalled and set aside in the light of our disposition that the August 15, 2000 Order was the final order that set the just compensation at PhP 5,500 per square meter, and that the assailed August 23, 2000 Order is merely an interlocutory order that does not attain finality. As a consequence, the subsequent May 29, 2001 Order, as well as other orders implementing the August 23, 2000 Order, is annulled. Lastly, said orders have been rendered moot by our ruling on the just compensation, which drastically changed the payments, subject of said orders.

Anent the third issue, our ruling that the immediate payment of the zonal valuation, per the July 9, 2002 Torres Certification pursuant to RA 8974, has to be reversed. This reversal is in view of our ruling that it is BIR DO 31-97, not the July 9, 2002 Torres Certification, that is the legal basis for payment under RA 8974; and in view of the more cogent reason that RA 8974 does not apply to Civil Case No. 5447.

Judge Paterno Tac-an guilty of contempt

With regard to the citation of Judge Paterno Tac-an for contempt, the following antecedent facts and/or events related to Civil Case No. 5447 are relevant:

1. August 15, 2000 Order fixing in general the just compensation of PhP 5,500 per square meter for the lots of defendant-owners excluding the Dimayacyac Group.

2. August 23, 2000 Order listing the names of the lot owners represented by different lawyers led by Atty. Cesar C. Cruz (Cruz Group), the tax declarations of the lots, the area, and the compensation to be paid for each lot.

3.May 29, 2001 Order granting the motion for execution of the August 23, 2000 Order filed by the Cruz Group.

4. November 18, 2004 Order granting the motion of the Cruz Group for the issuance of a writ of execution.

5. November 18, 2004 Supplemental Order.

6. The issuance of the November 22, 2004 Writ of Execution.

7.The issuance of the November 23, 2004 Notices of Garnishment addressed to the National Treasury, DBP, PNB and PVB.

8. On December 15, 2004, the filing by PPA of a petition for *certiorari* with the CA, docketed as CA-G.R. SP No. 87844 questioning the aforementioned May 29, 2001 and November 18, 2004 Orders, November 18, 2004 Supplemental Order, November 22, 2004 Writ of Execution and November 23, 2004 Notices of Garnishments against the National Treasury and several banks.

9. December 16, 2004 Order granting the execution of the November 24, 2004 Supplemental Order.

10. December 16, 2004 Order denying the PVB Reply and Manifestation dated November 30, 2004.

11. January 5, 2005 Order rejecting the reply and manifestation of PVB.

12. January 6, 2005 Order directing DBP to deliver PPA's deposit of PhP 441,067,893.63 to the Cruz Group.

13. January 10, 2005 Order directing the BT to hold in escrow PPA's investments in treasury bills maturing on January 12, 2005, January 19, 2005, and April 13, 2005.

14. On January 10, 2005, the TRO that the CA in CA-G.R. SP No. 87844 issued through a Resolution of even date enjoining respondent judge from implementing and enforcing the May 29, 2001 and November 18, 2004 Orders, November 18, 2004 Supplemental Order, November 22, 2004 Writ of Execution, and November 23, 2004 Notices of Garnishment against the National Treasury and several banks, thus:

ORDER is hereby issued ENJOINING the public respondent Hon. Paterno V. Tac-an and all persons acting under his authority from implementing the assailed *Orders* dated May 29, 2001 and November 18, 2004, the Supplemental *Order* dated November 18, 2004, the *Writ of Execution* dated November 22, 2004, the *Notices of*

Garnishment dated November 23, 2004 addressed to the National Treasury, the [DBP], the [PNB], and the [VBP].

The TRO was valid up to March 10, 2005.

15. The issuance by Judge Tac-an, despite the effectivity of the January 10, 2005 TRO, of the following orders, to wit:

a. February 1, 2005 Order directing the issuance of a writ of execution of the November 24, 2004 Supplemental Order;

b. February 2, 2005 Writ of Execution;

c. February 3, 2005 Notice of Garnishment addressed to the PVB.

16. On February 7, 2005, the filing by PPA of a Supplemental Petition in CA-G.R. SP No. 87844, assailing the February 1, 2005 Order, the February 2, 2005 Writ of Execution and the February 3, 2005 Notice of Garnishment against PVB.

17. On March 15, 2005, the writ of preliminary injunction issued by the CA's Ninth Division in relation to the assailed orders and processes subject of the January 10, 2005 Resolution granting the TRO, thus:

WHEREFORE, let a Writ of Preliminary Injunction issue under Rule 58 of the 1997 Rules of Civil Procedure, as amended. The public respondent, his officials, and agents are hereby prohibited and restrained from causing the execution of the assailed *Orders* dated May 29, 2001 and November 18, 2004, the Supplemental *Order* dated November 18, 2004, the *Writ of Execution* dated November 22, 2004, the *Notices of Garnishment* dated November 23, 2004 addressed to the National Treasury, the Development Bank of the Philippines, the Philippine National Bank, and the Veterans Bank of the Philippines.

18. On April 19, 2005, the issuance by the CA's Ninth Division of a TRO against Judge Tac-an, which reads:

In order not to render ineffectual the instant petition and considering that with the advent of the supervening events which transpired after the issuance by this Court of its Resolution dated March 15, 2005, great or irreparable injury would result to the herein petitioner if

the acts complained of are not restrained, a TEMPORARY RESTRAINING ORDER is hereby issued ENJOINING the public respondent Hon. Judge Paterno V. Tac-an and all persons acting under his authority from implementing the following orders and processes:

I. The Order dated December 16, 2004 granting the private respondents' Motion For Execution dated December 13, 2004 of the Supplemental Order dated November 24, 2004;

II. The Order dated December 16, 2004 denying the petitioner's Motion for Reconsideration dated December 6, 2004 from the Order and Supplemental Order both dated November 18, 2004;

III. The Order dated December 16, 2004 rejecting the **Philippine Veterans Bank** (PVB) Reply and Manifestation dated November 30, 2004;

IV. The Order dated January 5, 2005 rejecting the aforesaid reply and manifestation of the Philippine Veterans Bank for the second time;

V. The Order dated January 6, 2005 directing the **Development Bank of the Philippines** to deliver the petitioner's deposits amounting to P441,067,893.63 to private respondents;

VI. The Order dated January 10, 2005 directing the **Bureau of Treasury** to hold in escrow the petitioner's investments on treasury bills maturing on January 12, 2005, January 19, 2005, and April 13, 2005;

VII. The Order dated January 11, 2005 denying the petitioner's Motion For Reconsideration dated December 10, 2004 of the Supplemental Order dated November 24, 2004;

VIII. The Order dated February 1, 2005 denying the petitioner's motion for reconsideration of the Supplemental Order dated November 24, 2004 and directing the immediate issuance of the corresponding writ of execution;

IX. The Writ of Execution dated February 2, 2005 issued pursuant to the Supplemental Order dated February 1, 2005; and

X. The Notice of Garnishment dated February 3, 2005 addressed to the **Philippine Veterans Bank** and the **National Treasurer**.

19. On April 14, 2005, the Manifestation and Motion filed by the Bureau of Treasury (BT).

20. On April 20, 2005, the Order issued by Judge Tac-an setting the BT's Manifestation and Motion for hearing on April 25, 2005 at 10:00 a.m.

21. On April 25, 2005, the failure of the hearing to push through because of the filing by the BT of another Manifestation and Motion dated April 21, 2005, praying that it be excused from attending the hearing.

22. On June 3, 2005, the issuance by the CA's 10th Division of a Resolution in the consolidated cases of CA-G.R. CV No. 77668 and CA-G.R. SP No. 87844, enjoining respondent Judge from further proceeding with Civil Case No. 5447, the *fallo* of which reads:

> WHEREFORE, premises considered, this Court hereby orders as follows:
>
> (1) the Temporary Restraining Order issued by the Honorable Court through its Resolution promulgated on 19 April 2005 extends to respondent Judge Paterno V. Tac-an's Orders dated 5 and 26 April 2005 and all other orders and processes issued by him subsequent to the filing of Petitioner's [PPA] Supplemental Petition dated 7 February 2005 which implement the orders and processes assailed in said supplemental petition and which threaten to render the present cases moot and academic;
>
> (2) **respondent Judge should forthwith cease and desist from further proceeding with Civil Case No. 5447 until further orders from the Honorable Court.**
>
> SO ORDERED. (Emphasis ours.)

23. On June 21, 2005, despite the June 3, 2005 CA cease-and-desist Order in the consolidated cases CA-G.R. CV No. 77668 and CA-G.R. SP No. 87844, Judge Tac-an's decision to proceed with a hearing in Civil Case No. 5447, despite resistance thereto.

24. On August 8, 2005, the petition filed by PPA before the CA to cite Judge Tac-an for contempt, docketed as **CA-G.R. SP No. 90796**.

Judge Tac-an filed his comment on the petition (CA-G.R. SP No. 90796).

In its assailed July 3, 2006 Resolution, the CA's Tenth Division denied PPA's "Petition to Cite Respondent Paterno V. Tac-an in Contempt" for lack of merit, reasoning this way:

> With respect to the "Petition to Cite Respondent Paterno V. Tac-an In Contempt," the same must be denied for lack of merit. According to PPA, therein respondent Judge committed indirect contempt of Court when he conducted a hearing on 20 April 2005 and heard a motion on 21 June 2005 despite the issuance of a [TRO] by this Court contained in its Resolution of 19 April 2005. Herein respondent Judge explained that there was no hearing scheduled or conducted on 20 April 2005 with regard to Civil Case No. 5447 although an Order dated 20 April 2005 was issued in connection with the Manifestation and Motion dated 14 April 2005 filed by the Bureau of Treasury represented by the [OSG] setting the same for hearing on 21 April 2005. The Order dated 20 April 2005 issued by herein respondent Judge merely states that: "(t)here being no proof of receipt to the opposing counsel, schedule the Manifestation and Motion filed by the Bureau of Treasury on 25 April 2005 at 10:00 in the morning. The scheduled hearing on 25 April 2005 did not push through because the Bureau of Treasury filed a Manifestation and Motion dated 21 April 2005 praying that it be excused from attending the hearing. We see no contumacious act in regard to this instance on the part of herein respondent Judge. Neither can We rule as contumacious the act of herein respondent Judge in hearing a motion filed by defendants not parties in the main and Supplemental Petitions of the PPA on 21 June 2005. In Our Resolution of 19 October 2005, We made it clear that the [TRO] issued by this Court in its Resolution of 19 April 2005 had already expired on June 19, 2005 and a hearing was set on 28 October 2005 for PPA's application for the issuance of a writ of preliminary injunction. Moreover, the hearing on 21 June 2005 does not involved the private respondents in the main and Supplemental Petition.

On the other hand, the First Division of the Court considered as moot the issue raised by PPA on the denial of its contempt

petition, in view of the compulsory retirement of Judge Tac-an on July 8, 2007.

PPA, in its September 6, 2007 Motion for Reconsideration in **G.R. No. 173392**, assails the denial of its contempt petition by the CA. PPA moves for reconsideration of our August 24, 2007 Decision rejecting, for being moot, its challenge of the CA's denial of its petition to cite Judge Tac-an for contempt.

The threshold issue is whether the retirement of Judge Tac-an has rendered unnecessary the resolution of PPA's petition to set aside the CA's July 3, 2005 Resolution denying the petition to cite said respondent for contempt.

We rule for PPA.

The objective of criminal contempt is to vindicate public authority. It is an effective instrument of preserving and protecting the dignity and authority of courts of law. Any act or omission that degrades or demeans the integrity of the court must be sanctioned, lest it prejudice the efficient administration of justice if left unpunished. Contempt of court applies to all persons, whether in or out of government. Thus, it covers government officials or employees who retired during the pendency of the petition for contempt. Otherwise, a civil servant may strategize to avail himself of an early retirement to escape the sanctions from a contempt citation, if he perceives that he would be made responsible for a contumacious act. The higher interest of effective and efficient administration of justice dictates that a petition for contempt must proceed to its final conclusion despite the retirement of the government official or employee, more so if it involves a former member of the bench. While there is still no definitive ruling on this issue when the respondent charged with contempt has retired, we apply by analogy the settled principle in administrative disciplinary cases that separation from service does not render the case moot and academic.[161]

---

[161] See *Pagano v. Nazarro, Jr.*, G.R. No. 149072, September 21, 2007, 533 SCRA 622, 628, citing *Office of the Court Administrator v. Juan*, A.M. No. P-03-1726, 22 July 2004, 434 SCRA 654, 658 and *Baquerfo v. Sanchez*, A.M. No. P-05-1974, 6 April 2005, 455 SCRA 13, 19-20; *Re: Report on*

Now to the issue whether respondent Judge Tac-an is guilty of indirect contempt for alleged disregard of the CA resolutions.

We find that Judge Tac-an committed contumacious acts in utter disobedience of the January 10, 2005, March 15, 2005, April 19, 2005 and June 3, 2005 Resolutions of the CA. Consider the following:

1. Prior to the Order of Judge Tac-an on April 20, 2005 setting the Manifestation and Motion of the Bureau of Treasury for hearing on April 25, 2005 at 10:00 a.m., he was already aware of the January 10, 2005 Resolution of the CA's Ninth Division granting a TRO. This TRO prohibited him from implementing his May 29, 2001 Order granting the execution of the August 23, 2000 Order, fixing the compensation at PhP 5,500 per square meter in favor of the Cruz Group; and the November 18, 2004 Order granting the Writ of Execution and the November 23, 2004 Notice of Garnishment addressed to the Bureau of Treasury.

The TRO was effective for sixty (60) days from notice to the party enjoined, pursuant to Sec. 5, Rule 58. Assuming that the January 10, 2005 TRO was received by the trial court on the same day, the TRO lapsed on March 9, 2005. Yet on February 1, 2005, Judge Tac-an issued an order directing that a Writ of Execution be issued to implement the November 24, 2004 Supplemental Order. On February 2, 2005, he also issued the Writ of Execution and on February 3, 2005, a Notice of Garnishment addressed to PVB. From these facts, it is clear that Judge Tac-an violated the January 10, 2005 TRO.

---

the Judicial Audit Conducted in the Regional Trial Court, Branch 4, Dolores, Eastern Samar, A.M. No. 06-6-340-RTC, October 17, 2007, 536 SCRA 313, 338, citing *Concerned Trial Lawyers of Manila v. Veneracion*, A.M. No. RTJ-05-1920, 26 April 2006, 488 SCRA 285, 298-299 and *Aquino, Jr. v. Miranda*, A.M. No. P-01-1453, 27 May 2004, 429 SCRA 230, 239; *Santos v. Lacurom*, A.M. No. RTJ-04-1823, August 28, 2006, 499 SCRA 639, 648, citing *Neri v. Hurtado, Jr.*, A.M. No. RTJ-00-1584, 18 February 2004, 423 SCRA 200.

2. On March 15, 2005 or thereafter, Judge Tac-an was already notified that a writ of preliminary injunction was issued against him, prohibiting and restraining him from executing the May 29, 2001 and November 18, 2004 Orders and the Notice of Garnishment addressed to the National Treasury and several banks. To effectively restrain Judge Tac-an from implementing the assailed May 29, 2001 and November 18, 2004 Orders and the Notice of Garnishment, the CA again issued another TRO on April 19, 2005 notwithstanding the issuance of a writ of preliminary injunction per the March 15, 2005 CA Resolution to specifically prohibit Judge Tac-an from implementing certain orders, which were designed to implement the May 29, 2001 and November 18, 2004 Orders, all relating to the payment of just compensation to the Cruz Group.

Despite the March 15, 2005-issued writ of preliminary injunction and the April 19, 2005 TRO, Judge Tac-an still acted on the Manifestation and Motion of the Bureau of Treasury pertaining to the money deposited by PPA with said bureau, when he knew fully well that such incident was already subject of the injunctive writ and the CA TRO, which was a clear breach of said processes. Respondent Judge should not have acted on BT's Manifestation and Motion by setting it for hearing on April 25, 2005. By such act, Judge Tac-an betrayed his intention to continue implementing the compensation order in favor of the Cruz Group. We deem his actuation as a contumacious breach of the CA's injunctive writ and TRO.

3. Again on April 26, 2005, Judge Tac-an issued another order further implementing the February 2, 2005 Writ of Execution and ordering the BT to deliver the escrowed proceeds, again in violation of the April 19, 2005 TRO and the May 15, 2005 injunctive writ. The breach was explained by the CA in its June 3, 2005 Resolution:

Respondent Judge in issuing the 26 April 2005 Order clearly defies the Resolution of 19 April 2005 issued by the Ninth Division of this Court. x x x Be that as it may, once the lower court learned of the issuance of the temporary restraining order issued by the Ninth Division of this Court, it should have refrained

from doing any act to implement any order or issuance listed in the temporary restraining order. x x x While the 5 and 26 April 2005 Orders, were not part of the Resolution of 19 April 2005 of this Court, **the fact remains that said 5 April 2005 and 26 April 2005 Orders of the respondent Judge were issued pursuant to the orders and issuances which had already been restrained by the Ninth Division of this Court**.

4. Lastly, Judge Tac-an set and conducted a hearing of Civil Case No. 5447 on June 21, 2005.

On June 21, 2005, the Judge was already notified of the June 3, 2005 CA Resolution ordering him to "cease and desist from further proceeding in Civil Case No. 5447 until further orders from the Honorable Court." Yet, over the objection in open court by petitioner PPA, he continued with the hearing of (1) the "Motion for the Release of Additional Sum for Humanitarian Purposes" filed by defendants Gregorio Baliwag, Eliseo Baliwag and Crisanta Baliwag, who had no counsel, but placed under the Cruz Group and included in the August 23, 2000 Order the subject matter of both CA-G.R. CV No. 77668 and CA-G.R. SP No. 87844; and (2) the "Urgent Motion for Immediate Payment of the 100% zonal valuation of the properties of Caridad Aldover Blay, Jovencio Z. Aldover, Alvaro Z. Aldover, Lamberto Z. Aldover, Danilo Z. Aldover, *et al*." filed by the property owners, not the defendants, in Civil Case No. 5447.

While it may be true that the June 21, 2005 hearing also refers to other lot owners (Aldovers)—not parties to consolidated cases CA-G.R. CV No. 77668 and CA-G.R. SP No. 87844 which principally involved some of the respondents belonging to the Cruz Group—still, respondent Judge was aware that CA-G.R. CV No. 77668 was PPA's appeal from the August 15, 2000 Order (Second Compensation Order) setting the just compensation at PhP 5,500 per square meter. Based on the August 15, 2000 Order, he issued the August 23, 2000 Order, specifically naming the Cruz Group as the lot owners referred to in the August 15, 2000 Order.

The June 21, 2005 setting refers to the hearing of the two motions filed by defendant Baliwags, who were named in the

August 23, 2000 RTC Order as property owners and not defendants in Civil Case No. 5447, but who were asserting rights in the instant expropriation case. Thus, the June 3, 2005 TRO in the consolidated cases CA-G.R. CV No. 77668 and CA-G.R. SP No. 87844 covered the motion of defendants Baliwags, which pertains to the subject matter of the appeal in CA-G.R. CV No. 77668 and CA-G.R. SP No. 87844 pertaining to the August 23, 2000 Order. Assuming even for the sake of argument that the June 21, 2005 hearing did not relate to CA-G.R. CV No. 77668 and CA-G.R. SP No. 87844, still, the fact that there was a CA TRO ordering respondent judge to altogether **cease and desist from proceeding with Civil Case No. 5447** was a clear directive that he should altogether stop acting on said case and wait for further instructions from the appellate court.

Based on the totality of the foregoing circumstances, the Court finds Judge Paterno Tac-an guilty of indirect contempt of court. His acts—issuing the February 1 and 2, 2005 Orders implementing the May 29, 2001 and November 18, 2004 Orders and the related February 2, 2005 Notice of Garnishment in defiance of the January 10, 2005 TRO; setting the Bureau of Treasury's Manifestation and Motion for hearing on April 25, 2005 in disregard of the March 15, 2005 injunctive writ of the CA; issuing the April 26, 2005 Order disobeying the April 19, 2005 TRO and the March 15, 2005 writ of preliminary injunction; and lastly, conducting a hearing on June 21, 2005 for Civil Case No. 5447, thus violating the June 3, 2005 CA Order—are contumacious, continuing acts in clear disobedience and disrespect of the resolutions of the CA.

A person guilty of indirect contempt may be punished by a fine not exceeding PhP 30,000 or imprisonment not exceeding six (6) months or both. Judge Tac-an violated four (4) resolutions/ processes of the CA, namely: the January 10, 2000 TRO, the March 15, 2005 Writ of Preliminary Injunction, the April 19, 2005 TRO and the June 3, 2005 Resolution, for which he is hereby fined PhP 30,000 for each violation. Let this serve as a warning to all trial courts to strictly comply with the resolutions and orders of the appellate courts and this Court.

SUMMARY

The following are our dispositions:

1. In **G.R. Nos. 154211-12**, the Court affirms the July 30, 2001 Decision of the CA and its July 11, 2002 Resolution in the consolidated cases CA-G.R. SP Nos. 60314 and 63576, which granted both petitions of PPA.

In CA-G.R. SP No. 60314, the following Orders of the Batangas RTC in Civil Case No. 5447 were annulled:

a. July 24, 2000 Order granting the Motion for Execution Pending Appeal of respondents Ernesto Curata, *et al.* (Dimayacyac Group);

b. July 31, 2000 Order granting the Writ of Execution;

c. August 2 and 3, 2000 Notices of Garnishment;

d. August 25, 2005 Order denying PPA's notice of appeal with motion for extension to pay appellate docket fees and record on appeal;

e. August 28, 2000 Order denying PPA's Record on Appeal

f. September 18, 2000 Order denying PPA's Motion for Reconsideration of the August 25, 2000 Order;

In CA-G.R. SP No. 63576, the following Orders were annulled and set aside:

a. December 13, 2000 Order dismissing PPA's appeal, striking out the record on appeal, and declaring the August 18, 2000 Order final and executory.

All the assailed orders in CA-G.R. SP Nos. 60314 and 63576 were annulled by the writ of *certiorari* issued by the CA, and PPA's appeal was allowed.

In the instant consolidated petitions, the Court, in the interest of an expeditious dispensation of justice, resolves to dispose of the appeal of PPA on the legality of the July 10, 2000 Order (First Compensation Order) issued in favor of the Dimayacyac

Group, setting the just compensation at PhP 5,500 per square meter; and rules that the just compensation for the lots of the owners specified in the July 10, 2000 Order is PhP 425 per square meter. The July 10, 2000 Order is accordingly amended.

2. In **G.R. No. 158252**, the Court reverses and sets aside the May 16, 2003 Decision of the CA in CA-G.R. SP No. 73848.

Consequently, the following Orders of the Batangas RTC in Civil Case No. 5447 are annulled and set aside:

a. July 12, 2002 Order ordering PPA to release to respondents Remedios Bondoc, *et al.* (Cruz Group) 100% of the zonal valuation of the lots;

b. July 29, 2002 Order denying PPA's Omnibus Motion to Withdraw the June 27, 2002 Manifestation of Atty. Arturo S. Bernardino interposing no objection to the Motion for Partial Reconsideration of respondent Cruz Group;

c. September 5, 2002 Order denying PPA's motion for reconsideration.

In this petition, the Court rules that, to the amount of deposit to be made by PPA in Civil Case No. 5447, Rule 67 of the Rules of Court shall apply and not RA 8974. RA 8974, being a substantive law, does not apply retroactively to Civil Case No. 5447, which was filed before RA 8974's effectivity.

3. In **G.R. No. 166200**, the Court reverses and sets aside the November 22, 2004 CA Decision in CA-G.R. SP No. 83570.

Consequently, the following Orders of the Batangas RTC in Civil Case No. 5447 are annulled and set aside:

a. December 2, 2003 Order ordering PPA to pay 100% zonal value of the lots at PhP 4,250 per square meter;

b. December 18, 2003 Order directing PPA to release in favor of Felipa Acosta, *et al.* (Agustin Group) 10% of the zonal valuation at PhP 4,250 per square meter;

c. February 13, 2004 Order which issued a Writ of Execution ordering PPA to pay to the lot owners the zonal value at PhP 4,250 per square meter;

d. March 24, 2004 Order directing Land Bank of the Philippines to cause the release of 100% of the zonal value at PhP 4,250 per square meter pursuant to the December 2, 2003 Order;

e. April 12, 2004 Order, which ordered the partial execution of the December 2, 2003 in the amount of 50% of the zonal value at PhP 4,250 per square meter;

f. April 15, 2004 Supplemental Order, which directed PPA to pay 50% of the zonal value of the properties at PhP 4,250 per square meter to the lot owners specified therein.m

The Court rules that the resolution of the issues of the legality and propriety of the afore-listed assailed orders has been rendered moot by our ruling that the just compensation be pegged at Ph~~P~~ 425 per square meter. The assailed orders are nullified and set aside, and just compensation payment to respondents Felipa Acosta, *et al*. (Agustin Group) shall be based on Ph~~P~~ 425 per square meter.

4. In **G.R. No. 168272**, the Court affirms the March 31, 2005 Decision and the May 26, 2005 Resolution of the CA in CA-G.R. SP No. 82917. Said CA decision nullified the November 6, 2003 RTC Order granting the writ of execution in favor of lot owners Rosalinda Buenafe and Melencio Castillo.

The Court rules that the just compensation for the lots of Rosalinda Buenafe and Melencio Castillo shall be fixed at PhP 425 per square meter pursuant to our ruling in **G.R. No. 173392** and consolidated petitions.

5. In **G.R. No. 170683**, the Court reverses and sets aside the July 28, 2005 Decision and the November 24, 2005 Resolution of the CA in CA-G.R. CV No. 70023 involving the lots of Caroline B. Acosta, Abigail B. Acosta, Nemesio B. Balina and Erlinda B. Balina.

Consequently, the September 7, 2000 Order of the RTC in Civil Case No. 5447 adopting the July 10, 2000 and August 15, 2000 Orders and setting the fair market value at PhP 5,500 per square meter is annulled and set aside.

The Court rules that the just compensation for lot owners Caroline B. Acosta, *et al.* is fixed at PhP 425 per square meter.

6. In **G.R. No. 173392**, the Court reconsiders and sets aside its August 24, 2007 Decision and grants PPA's basic petition. The July 3, 2006 Resolution of the CA in the consolidated cases CA-G.R. CV No. 77668, CA-G.R. SP No. 87844 and CA-G.R. SP No. 90796 is reversed and set aside. In resolving PPA's appeal (CA-G.R. CV No. 77668 from the August 15, 2000 Order [Second Compensation Order]), the Court amends said order in that the just compensation to be paid for the lots of the Agustin Group, Cruz Group, Ortega Group, Pastor Realty Corp., *et al.* and other lot owners (excluding the Dimayacyac Group) shall be fixed at PhP 425 per square meter.

Consequently the amount of compensation in the RTC Orders in implementation of the August 15, 2000 Order is correspondingly reduced to PhP 425 per square meter, to wit;

a. August 17, 2000 Order for the Agustin Group;

b. August 18, 2000 Order for the Ortega Group;

c. August 23, 2000 Order for the Cruz Group;

d. August 23, 2000 Order for the Pastor Realty Corporation, *et al*.

For all the lots subject of Civil Case No. 5447, the just compensation for their acquisition shall be fixed at PhP 425 per square meter.

In CA-G.R. SP No. 87844, the Court hereby nullifies and sets aside the following orders involving the lots of the Cruz Group:

1. May 29, 2001 Order;

2. November 18, 2004 Order granting the Motion for the issuance of writ of execution;

3. November 18, 2004 Supplemental Order; and

4. November 24, 2004 Supplemental Order.

As to the Supplemental petition of PPA *vis-à-vis* CA-G.R. SP No. 87844, the following RTC Orders are nullified and set aside:

a. The Order dated December 16, 2004 granting the private respondents' Motion For Execution dated December 13, 2004 of the Supplemental Order dated November 24, 2004;

b. The Order dated December 16, 2004 denying the petitioner's Motion for Reconsideration dated December 6, 2004 from the Order and Supplemental Order both dated November 18, 2004;

c. The Order dated December 16, 2004 rejecting the PVB Reply and Manifestation dated November 30, 2004;

d. The Order dated January 5, 2005 rejecting the aforesaid reply and manifestation of the Philippine Veterans Bank for the second time;

e. The Order dated January 6, 2005 directing the Development Bank of the Philippines to deliver PPA's deposits amounting to PhP 441,067,893.63 to private respondents;

f. The Order dated January 10, 2005 directing the Bureau of Treasury to hold in escrow PPA's investments in treasury bills maturing on January 12, 2005, January 19, 2005, and April 13, 2005;

g. The Order dated January 11, 2005 denying PPA's Motion for Reconsideration dated December 10, 2004 of the Supplemental Order dated November 24, 2004; and

h. The Order dated February 1, 2005 denying PPA's motion for reconsideration of the Supplemental Order dated November 24, 2004 and directing the immediate issuance of the corresponding writ of execution.

As earlier ruled, PPA shall pay the amount of PhP 425 per square meter to the lot owners covered by the August 15, 2000 Order as just compensation.

The Court rules that the August 15, 2000 RTC Order is a final order, while the Orders — dated August 17, 2000 (Agustin Group), August 18, 2000 (Ortega Group), August 23, 2000 (Cruz Group), August 23, 2000 (Pastor Realty Corp., *et al.*) and other orders in implementation of the August 15, 2000 Order (Second Compensation Order) — are interlocutory.

In CA-G.R. SP No. 90796, the Court reconsiders its ruling in the assailed August 24, 2007 Decision and grants PPA's petition. Consequently, the ruling in CA-G.R. SP No. 90796 is reversed and set aside. The Court rules that Judge Paterno Tac-an is guilty of indirect contempt and is, thus, ordered to pay a fine in the total amount of PhP 120,000.

WHEREFORE, the Court hereby disposes and orders the following:

1. The petition in **G.R. Nos. 154211-12** is *DENIED* for lack of merit. Accordingly, the July 30, 2001 Decision and July 11, 2002 Resolution of the Court of Appeals in consolidated cases CA-G.R. SP Nos. 60314 and 63576 are hereby *AFFIRMED*.

In the interest of speedy and inexpensive dispensation of justice, the Court resolves the appeal of PPA from the July 10, 2000 Order and amends the same, reducing the just compensation for the lot owners Ernesto Curata, *et al.* (Dimayacyac Group) from PhP 5,500 per square meter to **PhP 425** per square meter.

2. The petition in **G.R. No. 158252** is *GRANTED*. The appealed May 16, 2003 Decision of the Court of Appeals in CA-G.R. SP No. 73848 is hereby *REVERSED* and *SET ASIDE* accordingly. Likewise, the Orders dated July 12, 2002, July 29, 2002 and September 5, 2002 of the Batangas City RTC, Branch 84, in Civil Case No. 5447 are *ANNULLED* and *SET ASIDE*. The Court declares that Rule 67, not RA 8974, applies to Civil Case No. 5447 and the RTC Batangas City, Branch 84, shall act accordingly.

3. The petition in **G.R. No. 166200** is hereby *GRANTED*. The November 22, 2004 CA Decision in CA-G.R. SP No. 83570 is accordingly *REVERSED* and *SET ASIDE*. Likewise, the Orders dated December 2, 2003, December 18, 2003, February 13, 2004, March 24, 2004, April 12, 2004 and the April 15, 2004 Supplemental Order of the Batangas City RTC, Branch 84, in Civil Case No. 5447 are *ANNULLED* and *SET ASIDE*. Felipa Acosta, *et al*. (Agustin Group) shall be paid **PhP 425** per square meter as just compensation for their respective lots, and the initial payment of the compensation or deposit subject of the assailed orders is rendered moot by our ruling on the issue of just compensation.

4. The petition in **G.R. No. 168272** is *DENIED* for lack of merit, and the March 31, 2005 Decision and the May 26, 2005 Resolution of the CA in CA-G.R. SP No. 82917 are hereby *AFFIRMED IN TOTO*. Rosalinda Buenafe and Melencio Castillo shall be paid just compensation for their lots at **PhP 425** per square meter.

5. The petition in **G.R. No. 170683** is *GRANTED*. The July 28, 2005 Decision and the November 24, 2005 Resolution of the CA in CA-G.R. CV No. 70023 are accordingly hereby *REVERSED* and *SET ASIDE*. Correspondingly, the September 7, 2000 RTC Order of the Batangas City RTC, Branch 84 in Civil Case No. 5447 is also *ANNULLED* and *SET ASIDE*. Lot owners Caroline B. Acosta, *et al*. shall be paid **PhP 425** per square meter as just compensation for their respective lots.

6. The Motion for Reconsideration of the Decision in **G.R. No. 173392** is hereby *GRANTED*. Accordingly, the Decision of the Court dated August 24, 2007 is *VACATED*. The July 3, 2006 Resolution of the CA in consolidated cases CA-G.R. CV No. 77668, CA-G.R. SP No. 87844 and CA-G.R. SP No. 90796 is *REVERSED* and *SET ASIDE*. The Orders—dated August 15, 2000 (Second Compensation Order), August 17, 2000 (Agustin Group), August 18, 2000 (Ortega Group), August 23, 2000 (Cruz Group) and August 23, 2000 (Pastor Realty Corporation, *et al*.) — are hereby *AMENDED*, reducing the just compensation from PhP 5,500 per square meter to **PhP 425** per square

meter. The Orders dated May 29, 2001 and November 18, 2004; November 23, 2004 Writ of Execution and November 23, 2004 Notices of Garnishment; November 18 and 24, 2004 Supplemental Orders; three (3) Orders dated December 16, 2004 and Orders dated January 5, January 6, January 10, January 11, and February 1, 2005; and February 2, 2005 Writ of Execution and February 3, 2005 Notice of Garnishment, all issued by the Batangas City RTC, Branch 84, in Civil Case No. 5447, are *ANNULLED* and *SET ASIDE*.

The petition to cite Judge Paterno V. Tac-an for contempt subject of CA-G.R. SP No. 90796 is *GRANTED*. Judge Tac-an is ordered to pay a *FINE* of **PhP 120,000**.

The PPA is hereby *DIRECTED* to pay with dispatch the lot owners who are parties to these consolidated petitions the just compensation for their respective lots at the unit price of **PhP 425 per square meter**, with 12% interest per annum from the date of PPA's entry to the lots or on September 11, 2001 until fully paid,[162] less whatever initial payments they have already received. In case of overpayment, the affected lot owners shall refund the excess to PPA.

No costs.

SO ORDERED.

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

Nachura, J., no part.

Carpio Morales, J., on official leave.

---

[162] *Reyes v. National Housing Authority*, G.R. No. 147511, January 20, 2003, 395 SCRA 494, 505.

THIRD DIVISION

[G.R. No. 161027. June 22, 2009]

FRANCISCO G. CALMA, *petitioner, vs.* **ARSENIO SANTOS, LEONARDO SANTOS, DOMINADOR SANTOS, ALFREDO SANTOS, LETICIA SANTOS, NATIVIDAD SANTOS, LIGAYA SANTOS, ERLINDA SANTOS; the heirs of the deceased JOSE SANTOS, namely, FELICIDAD SANTOS, AURELIA SANTOS, CONRADO SANTOS, LOLITA SANTOS, FLORIDA SANTOS, and DANILO SANTOS; the heirs of the deceased RUBEN SANTOS, namely, THELMA SANTOS, MAURO SANTOS, BIMBO SANTOS, FELY SANTOS, PETER SANTOS, BABY SANTOS, and ANTONIO SANTOS; and the heirs of the deceased FEDERICO SANTOS, namely, ZENAIDA S. ALVIAR, ROMULO SANTOS, JUDY S. AQUINO, MILA S. FULGENCIO and ERNESTO SANTOS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF AND PRESUMPTIONS; A NOTARIAL DOCUMENT HAS IN ITS FAVOR THE PRESUMPTION OF REGULARITY; THE BURDEN OF PROOF TO OVERCOME THE PRESUMPTION OF DUE EXECUTION LIES ON THE PARTY CONTESTING SUCH EXECUTION. — It is a settled rule that a notarial document is evidence of the facts in the clear unequivocal manner therein expressed; and has in its favor the presumption of regularity. Notarization converts a private document into a public document, thus making that document admissible in evidence without further proof of its authenticity. A notarial document is, by law, entitled to full faith and credit upon its face. Courts, administrative agencies, and the public at large must be able to rely upon the acknowledgment executed by a notary public and appended to a private instrument. Indeed, a notarized deed of absolute sale, being a public document, has in its favor the presumption of regularity, which may only be rebutted by evidence so clear, strong, and convincing as to

exclude all controversy as to the falsity of the certificate. Thus, the burden of proof to overcome the presumption of due execution of a notarized document lies on the party contesting such execution.

2. ID.; ID.; ID.; ID.; ID.; PRESUMPTION OF REGULARITY, NOT OVERCOME IN CASE AT BAR; EXPLAINED. — After evaluating the foregoing circumstances, we are of the opinion that they are not sufficient to overcome the presumption of regularity in favor of the validity of the questioned Deed. *First*, notwithstanding the first three circumstances mentioned, petitioner failed to clearly establish that, at the time the Deed was executed, Celestino was no longer capable of entering into any transaction regarding his share of the Fishpond. Even if it is true that Celestino did not personally appear before the notary public in Quezon City, as claimed by petitioner, this alone does not nullify or render the parties' transaction void *ab initio*. It does not overcome the presumption of truthfulness of the statements contained in the notarized document. *Second*, there was no need to present the testimonies of the other heirs of Celestino to confirm the sale, the Deed being a notarized document. *Third*, the fact that it was respondent Arsenio, a lawyer, who prepared the Deed does not affect the validity of the sale. *Fourth*, the fact that the siblings of Arsenio quarreled with him regarding the authenticity of the sale of their father's share to him does not operate to invalidate the sale, especially because petitioner admitted on cross-examination that, in that same meeting, he already saw the assailed Deed. *Fifth*, respondent Arsenio was able to explain in court that the delay in registering the Deed was caused by his having to negotiate with the other heirs to buy their respective shares, and that he was still raising the money to pay for them. He testified that he wanted to register together the deeds of sale in his favor, but his siblings changed their minds. He further said that the deeds executed in his favor by Celestino and his brothers Jose and Leonardo were misplaced, and he was able to locate them only in August 1989. On the other hand, petitioner himself could not amply justify why he never registered the deeds of sale in his favor executed by some of the Santos siblings. And *sixth*, the inclusion in the receipt of the phrase "exact number of hectares still to be determined" notwithstanding, the fact remains that petitioner acknowledged in the said receipt the amount of rent that he was still obliged to pay respondent

Arsenio covering the period up to April 30, 1989. Petitioner's admission that he had to pay rentals up to April 30, 1989 strengthens our view that Celestino's 1/2 share in the Fishpond could not have been validly sold to petitioner.

3. CIVIL LAW; PROPERTY; CO-OWNERSHIP; CO-OWNERS, BEING OWNERS OF THEIR RESPECTIVE ALIQUOTS OR UNDIVIDED SHARES IN THE SUBJECT PROPERTY, CAN VALIDLY AND LEGALLY DISPOSE OF THEIR SHARES EVEN WITHOUT THE CONSENT OF ALL THE OTHER CO-HEIRS; CASE AT BAR. — Article 493 of the Civil Code provides that "(e)ach co-owner shall have the full ownership of his part and of the fruits and benefits pertaining thereto, and he may therefore alienate, assign or mortgage it, and even substitute another person in its enjoyment, except when personal rights are involved.…" Thus, the co-owners, being owners of their respective aliquots or undivided shares in the subject property, can validly and legally dispose of their shares even without the consent of all the other co-heirs. Accordingly, the vendors, co-heirs of respondents, should return whatever amount they received from petitioner corresponding to the 1/2 share of Celestino, which they were supposed to have inherited and sold to petitioner, had Celestino not disposed of this 1/2 share to respondent Arsenio. Moreover, Dominador and Leticia, who both have not yet executed the appropriate deeds of absolute sale despite receipt of the purchase price for their respective shares, must now execute the proper deeds of absolute sale, but only with respect to the shares they own in their own right.

4. ID.; SPECIAL CONTRACTS; SALES; DOUBLE SALE; GOVERNING PRINCIPLE; CASE AT BAR. — With particular reference to the share of Leonardo, this Court notes that the Deed of Absolute Sale in favor of respondent Arsenio was executed on May 10, 1977, while the Deeds of Absolute Sale in favor of petitioner were executed on December 29, 1977. All the deeds are notarized documents and, thus, are presumed valid and regular until the contrary is sufficiently and clearly shown. It appears that Leonardo sold the same property twice. The governing principle in cases of double sale is *primus tempore, potior jure* (first in time, stronger in right), as specifically provided in Article 1544 of the Civil Code. Thus, the one who

acquires it and first records it, in good faith, in the Registry of Property shall be deemed the owner of the property subject of the controversy. In this case, the rightful owner is respondent Arsenio, because he registered the Deed of Absolute Sale in his favor with the Registry of Deeds of Pampanga on September 4, 1989, as evidenced by Entry No. 7587 found in both TCT Nos. 32391-R and 32392-R, while petitioner did not cause the registration of the deeds in his favor. However, Leonardo should reimburse the amount of ₱21,002.00 which he received from petitioner, as evidenced by the 12 receipts executed by him.

5. ID.; ID.; ID.; EXTINGUISHMENT OF SALE; LEGAL REDEMPTION; REQUISITES FOR THE EXERCISE THEREOF. — On the issue of legal redemption, Article 1623 of the Civil Code provides – ART. 1623. The right of legal pre-emption or redemption shall not be exercised except within thirty days from the notice in writing by the prospective vendor, or by the vendor, as the case may be. The deed of sale shall not be recorded in the Registry of Property, unless accompanied by an affidavit of the vendor that he has given written notice thereof to all possible redemptioners. The right of redemption of co-owners excludes that of adjoining owners. Interpreting this provision, we have enumerated the requisites for the exercise of legal redemption, as follows: (1) there must be co-ownership; (2) one of the co-owners sold his right to a stranger; (3) the sale was made before the partition of the co-owned property; (4) the right of redemption must be exercised by one or more co-owners within a period of thirty days to be counted from the time he or they were notified in writing by the co-owner vendor; and (5) the vendee must be reimbursed the price of the sale. With respect to the written notice, the exception is when a co-owner has actual notice of the sale.

6. REMEDIAL LAW; EVIDENCE; ADMISSIBILITY; TESTIMONIAL EVIDENCE; QUALIFICATION OF WITNESSES; AN AGENT CORROBORATING THE TESTIMONY OF HIS PRINCIPAL CANNOT QUALIFY AS AN INDEPENDENT WITNESS.— We note that petitioner's testimony that he verbally notified respondent Arsenio of the sale to him of some undivided portions of the Fishpond was corroborated by another witness, Atty. Avelino Liangco. Thus, petitioner claims that it should be given more weight than the

uncorroborated and lone testimony of respondent Arsenio to the contrary. However, it should be remembered that Atty. Liangco is the counsel of petitioner and, being the agent of the latter, cannot really qualify as an independent witness.

7. CIVIL LAW; SPECIAL CONTRACTS; LEASE; OBLIGATION OF THE LESSEE; LIABILITY TO PAY UNPAID RENTALS, ESTABLISHED IN CASE AT BAR.— x x x [T]here is the matter of petitioner's acknowledgment of rentals due Arsenio up to April 30, 1989 for the latter's share in the Fishpond, although the receipt stated that the exact number of hectares is still to be determined. By acknowledging his obligation to pay rentals, he also impliedly admitted the ownership of Arsenio over the 1/2 share of Celestino. Receipt of the two letters, dated July 18, 1988 and March 14, 1989, sent by respondent Arsenio to petitioner demanding the payment of his outstanding obligation in the amount of ₱300,000.00 was admitted by petitioner. There is nothing on record showing that he ever replied to these letters, much less, question the amount being demanded therein. Not having sufficiently denied the existence of the lease, petitioner is, thus, bound to pay the proper rent in the amount that appears in the receipt and the demand letters. Furthermore, petitioner is still liable for the additional amount of ₱120,000.00, representing the unpaid rentals from April 30, 1989 to October 30, 1989, since it was only on November 1, 1989 that respondent Arsenio was able to take possession of the Fishpond upon the expiration of petitioner's contract of sub-lease with a certain Buenaventura Bautista, which fact was not rebutted by petitioner. In sum, the CA was correct in declaring petitioner liable to pay unpaid rentals on the Fishpond in the total amount of ₱420,000.00.

APPEARANCES OF COUNSEL

Avelino L. Liangco for petitioner.
Melquiades P. De Leon for respondents.

D E C I S I O N

NACHURA, *J.*:

This is a Petition[1] for review on *certiorari* under Rule 45 of the Rules of Court of the Decision[2] dated November 28, 2003 of the Court of Appeals in CA-G.R. CV No. 57786.

The subject of this controversy is a property known as "Calangain Fishpond" (Fishpond), with a total area of 480,229 square meters, located in Calangain, Lubao, Pampanga. It is composed of Lot No. 1094, with an area of 297,605 square meters; Lot No. 7858, with an area of 7,952 square meters; Lot No. 7859, with an area of 6,011 square meters; and 135,350 square-meter portion of Lot No. 1093, with an area of 300,384 square meters; all of the Cadastral Survey of Lubao, and covered by Transfer Certificate of Title (TCT) No. 32391-R[3] of the Registry of Deeds of the Province of Pampanga.[4] The Fishpond also comprises Lot No. 7860, with an area of 19,681 square meters; and Lot No. 7862, with an area of 13,630 square meters, both of the Cadastral Survey of Lubao, and covered by TCT No. 32392-R,[5] also of the Registry of Deeds of Pampanga. Both TCTs are registered in the names of CELESTINO Santos, a widower, with 1/2 share, and of his children, namely: JOSE, married to Felicidad Cruz; ENCARNACION, married to German Escueta; ARCADIO, married to Rosario Cruz; FELIZA, married to Bienvenido Garcia; LEONARDO, widower; ARSENIO,

---

[1] *Rollo,* pp. 9-44.

[2] Penned by Associate Justice Marina L. Buzon, with Associate Justices Sergio L. Pestaño and Jose C. Mendoza, concurring; *id.* at 188-212.

[3] Exhibit "K".

[4] TCT No. 32391-R also includes Lot 1095, with an area of 28,154 square meters.

[5] Exhibit "L".

married to Apolonia dela Cruz; DOMINADOR, married to Marieta Suarez; LETICIA, married to Marcial Santos; NATIVIDAD, single; LIGAYA, married to Rogelio Martin; ALFREDO and ERLINDA, both single.

On April 11, 1975, Celestino Santos died. Aside from his heirs named in the two certificates of title, Celestino had two other children, RUBEN and FEDERICO, who are now both deceased.

On various dates, petitioner Francisco Calma purchased the following shares from the Fishpond,[6] to wit:

1. The 1/12 share of **Encarnacion Santos-Escueta**, owned by her in her own right, to the 1/2 pro indiviso portion of the fishpond, and her 1/14 share, which she inherited from her deceased father, Celestino Santos, to the other 1/2 pro indiviso portion of the fishpond, with an aggregate area of **37,160.57** square meters;[7]

2. The 1/12 share of the deceased **Arcadio Santos**, owned by him in his own right, to the 1/2 pro-indiviso portion of the fishpond, and his 1/14 share, which he inherited from his deceased father, Celestino Santos, to the other one-half (1/2) pro-indiviso portion of the fishpond, with an aggregate area of **37,160.57** square meters;[8]

3. The 1/12 share of **Feliza Santos**, owned by her in her own right, to the 1/2 pro-indiviso portion of the fishpond, and her 1/14 share, which she inherited from her deceased father, Celestino Santos, to the other 1/2 pro-indiviso portion of the fishpond, minus a portion of 5,000 square meters, which was previously sold to a certain Orlando Yamat, with an aggregate area of **32,160.57** square meters;[9]

---

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

[7] As evidenced by the Deeds of Absolute Sale, both dated September 10, 1977, with a total consideration in the amount of ₱35,000.00; Exhibits "A" and "B".

[8] As evidenced by the Extra-Judicial Settlement of Estate with Sale, dated August 2, 1985, with a consideration in the amount of ₱30,000.00, Exhibit "C".

[9] As evidenced by a Deed of Absolute Sale, dated September 8, 1984, with a consideration in the amount of ₱45,000.00; Exhibit "D".

4. Ten Thousand (**10,000**) square meters (one (1) hectare) of the 1/14 share of the herein respondents heirs of the deceased **Federico Santos**, which they inherited from the deceased Celestino Santos, to the 1/2 pro-indiviso portion of the fishpond owned by the said deceased;[10]

5. The 1/12 share of the respondent **Leonardo Santos**, owned by him in his own right, to the 1/2 pro-indiviso portion of the fishpond with an area of **20,009.54** square meters;[11]

6. The 1/12 share of the herein respondent **Alfredo Santos**, owned by him in his own right, to the 1/2 pro-indiviso portion of the portion of 135,350 square meters on the southeastern part of Lot 1093 of the Cadastral Survey of Lubao, which portion of 135,350 square meters is included in and forms part of the Calangain Fishpond, with an area of **5,639** square meters;[12]

7. The 1/12 of the herein respondent **Dominador Santos** (substituted by his heirs), owned by him in his own right, to the 1/2 pro-indiviso portion of the fishpond, and his 1/14 share, which he inherited from his deceased father, Celestino Santos, to the other 1/2 pro-indiviso portion of the fishpond with an aggregate area of **37,160.57** square meters;[13]

8. The 1/12 share of the herein respondent **Leticia Santos**, owned by her in her own right, to the 1/2 pro-indiviso portion of the fishpond, and her 1/14 share, which she inherited

---

[10] As evidenced by a Deed of Absolute Sale, dated July 9, 1979, with a consideration in the amount of ₱10,000.00, and the Special Power of Attorney, dated July 6, 1979, authorizing Federico's wife Catalina to sell the property, Exhibits "E" and "F", respectively.

[11] As evidenced by the Deeds of Absolute Sale, both dated December 29, 1977, with a total consideration in the amount of ₱17,500.00 and the 12 receipts in various amounts, executed on different dates, in the total amount of ₱21,002.00; Exhibits "G" and "H" (for the deeds of sale) and Exhibits "BB" and "BB-1" to "BB-11" (for the receipts).

[12] As evidenced by the Deed of Absolute Sale, dated September 19, 1978, with a consideration in the amount of ₱5,000.00; Exhibit "I".

[13] As evidenced by the 36 receipts in various amounts executed on different dates, in the total amount of ₱33,800.00; Exhibits "Z", and "Z-1" to "Z-35".

from her deceased father, Celestino Santos, to the other pro-indiviso portion of the fishpond, with an aggregate area of **37,160.57** square meters;[14] and

9. The 1/14 share of the herein respondent **Leonardo Santos**, which he inherited from his deceased father, Celestino Santos, to the 1/2 pro-indiviso portion of the fishpond with an area of **17,151.03** square meters.[15] (Emphasis supplied.)

Petitioner then demanded from the other co-owners of the property the identification and segregation of the shares he purchased from the rest of the Fishpond. Due to the failure of respondents to cause the division as demanded, petitioner filed a complaint for specific performance and partition. The case was docketed as Special (SP) Civil Case No. G-63, and was raffled to Branch 50 of the Regional Trial Court of Guagua, Pampanga. Subsequently, the complaint was amended in order to identify the heirs of the deceased Jose, Ruben, and Federico.[16]

Respondents Arsenio, Leonardo, Dominador, Leticia, Natividad, Ligaya, Alfredo and Erlinda jointly filed an answer[17] with compulsory counterclaim. The respondent heirs of deceased Jose (Felicidad, Aurelia, Conrado, Lolita, Florida, and Danilo), the respondent heirs of deceased Federico (Zenaida, Romulo, Judy, and Ernesto), and the respondent heir of the deceased Ruben (Antonio) filed a separate answer with compulsory counterclaim.

In their answers, respondents, in effect, admitted the existence of the deeds of absolute sale and the other agreements covering the sale and transfer of the undivided shares to the Fishpond in favor of petitioner, but alleged as follows:

---

[14] As evidenced by the 20 receipts in various amounts, executed on different dates, in the total amount of ₱47,500.00; Exhibits "AA", and "AA-1" to "AA-19".

[15] *Supra* note 11.

[16] *Id.* at 47-59.

[17] *Id.* at 85-98.

1. The said deeds of sale and agreements were all suffering from insidious, grave and vital defects, vitiating their validity and effectiveness;

2. The deceased Celestino Santos and the deceased Jose Santos have already sold during their lifetime, to the herein respondent Arsenio Santos their respective 1/2 and 1/12 of 1/2 undivided shares to the Calangain Fishpond, and upon their death their said undivided shares were not inherited and transmitted to their children and other heirs;

3. The herein petitioner as lessee of the Calangain Fishpond has been delinquent for many years in the payment of the lease rentals thereon;

4. The herein petitioner has abused his rights as lessee by subleasing portions of the Calangain Fishpond to other persons;

5. The herein petitioner's rights as lessee over the Calangain Fishpond had already expired;

6. The herein petitioner has no cause of action for partition against the herein respondents, as not all the persons who have an interest in the Calangain Fishpond were impleaded as parties in this action;

7. With respect to the shares of Celestino Santos, Jose Santos and Leonardo Santos, the herein respondent Arsenio Santos has prior right thereto superior to that of the herein petitioner; and

8. The herein respondents Arsenio Santos, Natividad Santos, Ligaya Santos and Erlinda Santos have a right of legal redemption over the undivided shares of the Calangain Fishpond sold to the herein petitioner.[18]

Petitioner then filed his answer denying the compulsory counterclaims denying the same.

After pre-trial and trial on the merits, the RTC rendered a Decision[19] dated September 29, 1997 in favor of petitioner, disposing, as follows:

[18] *Id.* at 19-20.

[19] *Id.* at 109-132.

WHEREFORE, in view of all the foregoing, judgment is hereby rendered in favor of the plaintiff and against the defendants as follows:

a.) Ordering the defendant Leonardo Santos to execute in favor of the plaintiff the corresponding deed of absolute sale and/or whatever other documents which may be necessary to properly transfer and vest title and ownership to the plaintiff over his one-fourteenth (1/14) share with a total area of 17,151.03 square meters pro-indiviso portion of the Calangain fishpond inherited from his deceased father, Celestino Santos, which he had sold to the plaintiff;

b.) Ordering the defendant Dominador Santos (now his substituted heirs) to execute in favor of the plaintiff the other corresponding deed of absolute sale and/or whatever other documents which may be necessary to properly transfer and vest title and ownership to the plaintiff over all his shares, consisting of his 1/12 share, belonging to him in his own right, to the ½ pro-indiviso portion, and his 1/14 share, inherited from his deceased father, Celestino Santos, to the other 1/2 pro-indiviso portion of the Calangain Fishpond, with a total area of 37, 160.57 square meters, more or less, which he had sold to the plaintiff;

c.) Ordering the defendant Leticia Santos to execute in favor of the plaintiff the corresponding deed of absolute sale and/or whatever other documents which may be necessary to properly transfer and vest title and ownership to the plaintiff over all her shares, consisting of her 1/12 share, belonging to her in her own right, to the 1/2 pro-indiviso portion, and her 1/14 share, inherited from her deceased father, Celestino Santos, to the other, ½ pro-indiviso portion of the Calangain Fishpond, with a total area of 37,160.57 square meters, more or less, which she had sold to the plaintiff;

d.) Ordering the defendants who still own pro-indiviso shares to the Calangain Fishpond to partition and divide the said fishpond among themselves and the plaintiff and have all the portions thereof sold to and now owned by the plaintiff with a total area of 213,594.88 square meters, more or less, segregated and awarded to the plaintiff and to execute whatever document or documents as may be necessary to properly effect such partition, division and segregation and the issuance of the corresponding certificate of title in the name of the plaintiff over the said portion of 213,594.88 square meters, more or less;

e.) Ordering the defendants, jointly and severally to pay unto the plaintiff the amount of ₱30,000.00 for and as attorney's fees;

f.) Ordering the defendants, jointly and severally, to pay unto the plaintiff the amount of ₱10,000.00 as litigation expenses;

g.) Ordering the defendants, jointly and severally to pay the costs of suit.

SO ORDERED.[20]

Respondents appealed the said RTC Decision to the Court of Appeals. In its assailed Decision dated November 28, 2003, the Court of Appeals reversed and set aside the RTC Decision. The dispositive portion of the CA decision reads:

WHEREFORE, the decision appealed from is **REVERSED** and **SET ASIDE** and another one entered as follows:

1. Declaring the deed of absolute sale dated March 11, 1975 executed by Celestino Santos in favor of defendant-appellant Arsenio Santos as valid;

2. Declaring that defendants-appellants Arsenio Santos, Natividad Santos, Erlinda Santos and Ligaya Santos are entitled to exercise their right of legal redemption under Article 1623 of the Civil Code with respect to the shares of Encarnacion Santos-Escueta, Arcadio Santos, Felisa Santos, Federico Santos, Leonardo Santos, Dominador Santos, Leticia Santos and Alfredo Santos in the Calangain fishpond which were sold by them to plaintiff-appellee, by returning to the latter the consideration stated in their respective deeds of sale within the period of thirty (30) days from the date of finality of this judgment;

3. Ordering plaintiff-appellee to execute the necessary deeds of reconveyance of the aforesaid shares sold to him in the Calangain fishpond, to and in favor of the defendants Arsenio Santos, Natividad Santos, Ligaya Santos and Erlinda Santos upon their exercise of their right of legal redemption; and

4. Ordering plaintiff-appellee to pay to defendant-appellant Arsenio Santos the amount of ₱420,000.00, representing the balance of the unpaid rentals due on the thirty (30) hectare undivided share of the

---

[20] *Id.* at 131-132.

latter in the Calangain fishpond, plus the legal rate of interest thereon from October 25, 1989, the date of the filing of the answer, until said amount shall have been fully paid.

SO ORDERED.[21]

Hence, this petition raising the following issues:

1. The due execution and validity of the deed of absolute sale dated March 11, 1975, executed by the deceased Celestino Santos over his one-half (1/2) pro-indiviso share to the Calangain Fishpond in favor of the herein respondent Arsenio Santos was upheld in the said decision solely for the reason that the said deed of absolute sale is a notarized document duly acknowledged before a notary public and the same has in its favor the presumption of regularity, despite the fact that sufficient proof has been adduced by the herein petitioner during the trial to overcome such presumption of regularity, and, other than the biased, flimsy, self-serving and incredible testimony of the herein respondent Arsenio Santos, no other evidence, oral or documentary, was presented by the herein respondents to sustain the validity and the genuineness and due execution of the said deed of absolute sale;

2. The herein respondents Arsenio Santos, Natividad Santos, Erlinda Santos and Ligaya Santos were declared entitled to exercise their right of legal redemption under Article 1623 of the Civil Code with respect to the shares of Encarnacion Santos-Escueta, Arcadio Santos, Feliza Santos, Federico Santos, Leonardo Santos, Leticia Santos and Alfredo Santos, in the Calangain Fishpond which were sold by them to the herein petitioner, and the latter was ordered to execute the necessary deeds of reconveyance to the said respondents upon their exercise of their right to legal redemption, despite the fact that sufficient evidence exists on record conclusively showing that the said respondents and all the other respondents have actual notice of the said sales and they made the herein petitioner believe that they all approve of the said sales starting from the first sale up to the last sale,

---

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

so much so, that their right to redeem the shares covered by the said sales is now barred by estoppel and or laches, because the said respondents slept on their right to redeem the said shares covered by the said sales for a long time, and it was only when they filed their answer to the amended complaint when the said respondents claimed their right of legal redemption;

3. The herein petitioner was ordered to pay the herein respondent Arsenio Santos the amount of ₱420,000.00, representing the alleged balance of the unpaid rentals due on the alleged thirty (30) hectare undivided share of the said respondent in the Calangain Fishpond, plus interests thereon, at the legal rate from October 25, 1989, until the said amount is fully paid, despite the fact that it is very clear from the evidence on record that the said respondent does not own thirty (30) hectares pro-indiviso share to the Calangain Fishpond, but only a small portion thereof, as he has not validly acquired ownership of the one-half (½) pro-indiviso share of the deceased Celestino Santos to the said fishpond, and that the herein petitioner has already paid to the said respondent more rentals than what is actually due to the said respondents;

4. The reversal and setting aside of the decision dated September 29, 1997, rendered in favor of the herein petitioner by the trial court in SP. CIVIL CASE NO. G-63, and the entry of a new one in favor of the herein respondents, is contrary to applicable laws and the evidence adduced during the trial.[22]

While, admittedly, petitioner purchased several undivided shares to the Fishpond, as shown by the various deeds of sale and receipts of payments he presented in court, one critical question that we must resolve is whether or not these shares include that portion pertaining to the 1/2 share of Celestino Santos.

Respondent Arsenio claimed that the share of Celestino Santos, his father, was sold to him on March 11, 1975, one month before Celestino died. As proof, he presented before the court a Deed of Absolute Sale[23] of even date, with a consideration of ₱24,000.00. The Deed was duly notarized.

[22] *Id.* at 25-26.

[23] Exhibit "4".

It is a settled rule that a notarial document is evidence of the facts in the clear unequivocal manner therein expressed; and has in its favor the presumption of regularity.[24] Notarization converts a private document into a public document, thus making that document admissible in evidence without further proof of its authenticity.[25] A notarial document is, by law, entitled to full faith and credit upon its face. Courts, administrative agencies, and the public at large must be able to rely upon the acknowledgment executed by a notary public and appended to a private instrument.[26] Indeed, a notarized deed of absolute sale, being a public document, has in its favor the presumption of regularity, which may only be rebutted by evidence so clear, strong, and convincing as to exclude all controversy as to the falsity of the certificate. Thus, the burden of proof to overcome the presumption of due execution of a notarized document lies on the party contesting such execution.[27]

In this case, it is the petitioner who has the onus of overcoming the presumed regularity of the Deed of Absolute Sale, dated March 11, 1975, in favor of respondent Arsenio. Petitioner, in attempting to discharge this burden, cited the following circumstances:

1. The alleged deed of sale was executed on March 11, 1975, exactly one (1) month before the deceased Celestino Santos died on April 11, 1975, at the ripe age of more than 75 years;

2. The deceased Celestino Santos was bedridden for a number of weeks before he died;

---

[24] *Abadiano v. Martir*, G.R. No. 156310, July 31, 2008, 560 SCRA 676, 692.

[25] *St. Mary's Farm, Inc. v. Prima Real Properties, Inc.*, G.R. No. 158144, July 31, 2008, 560 SCRA 704, 713.

[26] *Baylon v. Almo*, A.C. No. 6962, June 25, 2008, 555 SCRA 248, 252, citing *Santiago v. Rafanan*, A.C. No. 6252, October 5, 2004, 440 SCRA 91.

[27] *Dailisan v. Court of Appeals*, G.R. No. 176448, July 28, 2008, 560 SCRA 351, 356-357.

3. The deceased Celestino could not read and write;

4. The respondent Arsenio Santos, who is a lawyer, was the one who prepared the deed of sale;

5. Despite the fact that the respondents, who are the children and grandchildren of the deceased Celestino Santos, claim in their answers to the amended complaint filed in this case that the sale made by the deceased Celestino Santos of his ½ pro-indiviso share to the Calangain Fishpond to the respondent Arsenio Santos, was duly executed and valid, with the exception of the respondent Arsenio Santos, none of them, including the respondent Alfredo Santos, who signed as witness to the deed of sale, and the respondent Natividad Santos, who, according to the testimony of respondent Arsenio Santos, accompanied the deceased Celestino Santos, were presented as witnesses in court to testify and confirm the said sale and the due execution and validity of the said deed of sale, when it could have been very easy for them to do so, if the said sale was indeed true and real;

6. In the meeting with regards to the said sale called at the residence of the counsel, Atty. Melquiades de Leon, of the respondents, where the respondents Arsenio Santos, Natividad Santos and Ligaya Santos, together with their said counsel, and the petitioner and his counsel, Atty. Avelino Liangco, were present, the respondent Arsenio Santos, on one hand, and the respondents Natividad Santos and Ligaya Santos, on the other, quarreled, because the respondents Natividad Santos and Ligaya Santos were questioning the validity of the said sale, claiming that the same was not a true and real sale, but the respondent Arsenio Santos was insisting that the said sale was true and real;

7. Despite the fact that the alleged deed of sale (Exhibit "4") over the 1/2 pro-indiviso share of the deceased Celestino Santos to the Calangain Fishpond appears to have been executed as early as March 11, 1975, the same deed of sale was registered by the respondent Arsenio Santos with the Registry of Deeds for the Province of Pampanga only on September 4, 1989, or after more than fourteen (14) years from its execution, and barely a month before the filing of the complaint in this case on October 2, 1989, and only after a demand letter for the segregation of the shares to

the Calangain Fishpond sold to the petitioner was sent to the said respondent; and

8. The insertion of the phrase "number of hectares to be determined" in the receipt marked as Exhibit "6", which was prepared by the respondent Arsenio Santos himself, indicating that he, himself, was not sure of the number of hectares he owns of the Calangain Fishpond, and this clearly shows that he was not yet certain at the time he prepared the said receipt that the 1/2 pro-indiviso share of his deceased father, Celestino Santos, to the Calangain Fishpond which was allegedly sold to him on March 11, 1975, could be included the share that he owns to the said fishpond.[28]

After evaluating the foregoing circumstances, we are of the opinion that they are not sufficient to overcome the presumption of regularity in favor of the validity of the questioned Deed. *First*, notwithstanding the first three circumstances mentioned, petitioner failed to clearly establish that, at the time the Deed was executed, Celestino was no longer capable of entering into any transaction regarding his share of the Fishpond. Even if it is true that Celestino did not personally appear before the notary public in Quezon City, as claimed by petitioner, this alone does not nullify or render the parties' transaction void *ab initio*. It does not overcome the presumption of truthfulness of the statements contained in the notarized document.[29] *Second*, there was no need to present the testimonies of the other heirs of Celestino to confirm the sale, the Deed being a notarized document. *Third*, the fact that it was respondent Arsenio, a lawyer, who prepared the Deed does not affect the validity of the sale. *Fourth*, the fact that the siblings of Arsenio quarreled with him regarding the authenticity of the sale of their father's share to him does not operate to invalidate the sale, especially because petitioner admitted on cross-examination that, in that same meeting, he already saw the assailed Deed.[30] *Fifth*,

---

[28] *Rollo*, pp. 27-28.

[29] *Supra* note 25.

[30] TSN, December 3, 1996, pp. 32-33.

respondent Arsenio was able to explain in court that the delay in registering the Deed was caused by his having to negotiate with the other heirs to buy their respective shares, and that he was still raising the money to pay for them. He testified that he wanted to register together the deeds of sale in his favor, but his siblings changed their minds. He further said that the deeds executed in his favor by Celestino and his brothers Jose and Leonardo were misplaced, and he was able to locate them only in August 1989.[31] On the other hand, petitioner himself could not amply justify why he never registered the deeds of sale in his favor executed by some of the Santos siblings. And *sixth*, the inclusion in the receipt of the phrase "exact number of hectares still to be determined" notwithstanding, the fact remains that petitioner acknowledged in the said receipt[32] the amount of rent that he was still obliged to pay respondent Arsenio covering the period up to April 30, 1989. Petitioner's admission that he had to pay rentals up to April 30, 1989 strengthens our view that Celestino's 1/2 share in the Fishpond could not have been validly sold to petitioner.

However, the other conveyances covered by the deeds of absolute sale and the receipts of payment in favor of petitioner involving the shares of the Santos siblings in their own right cannot be voided. Article 493 of the Civil Code provides that "(e)ach co-owner shall have the full ownership of his part and of the fruits and benefits pertaining thereto, and he may therefore alienate, assign or mortgage it, and even substitute another person in its enjoyment, except when personal rights are involved.…" Thus, the co-owners, being owners of their respective aliquots or undivided shares in the subject property, can validly and legally dispose of their shares even without the consent of all the other co-heirs.[33] Accordingly, the vendors, co-heirs of respondents, should return whatever amount they received

---

[31] TSN, June 28, 1996, pp. 18-20.

[32] Exhibit "6".

[33] *Santos v. Lumbao*, G.R. No. 169129, March 28, 2007, 519 SCRA 408, 427; *Oesmer v. Paraiso Development Corporation*, G.R. No. 157493, February 5, 2007, 514 SCRA 228.

from petitioner corresponding to the ½ share of Celestino, which hey were supposed to have inherited and sold to petitioner, had Celestino not disposed of this ½ share to respondent Arsenio. Moreover, Dominador and Leticia, who both have not yet executed the appropriate deeds of absolute sale despite receipt of the purchase price for their respective shares, must now execute the proper deeds of absolute sale, but only with respect to the shares they own in their own right.

With particular reference to the share of Leonardo, this Court notes that the Deed of Absolute Sale[34] in favor of respondent Arsenio was executed on May 10, 1977, while the Deeds of Absolute Sale[35] in favor of petitioner were executed on December 29, 1977. All the deeds are notarized documents and, thus, are presumed valid and regular until the contrary is sufficiently and clearly shown. It appears that Leonardo sold the same property twice. The governing principle in cases of double sale is *primus tempore, potior jure* (first in time, stronger in right), as specifically provided in Article 1544[36] of the Civil Code. Thus, the one who acquires it and first records it, in good faith, in the Registry of Property shall be deemed the owner of the property subject of the controversy. In this case, the rightful owner is respondent Arsenio, because he registered the Deed of Absolute Sale in his favor with the Registry of Deeds of Pampanga on September 4, 1989, as evidenced by Entry No. 7587 found in both TCT Nos. 32391-R and 32392-R, while petitioner did not cause the registration of the deeds in his favor. However, Leonardo should reimburse the

---

[34] Exhibit "5."

[35] Exhibits "G" and "H."

[36] ART. 1544. If the same thing should have been sold to different vendees, the ownership shall be transferred to the person who may have first taken possession thereof in good faith, if it should be movable property.

Should it be immovable property, the ownership shall belong to the person acquiring it who in good faith first recorded it in the Registry of Property.

Should there be no inscription, the ownership shall pertain to the person who in good faith was first in the possession; and, in the absence thereof, to the person who presents the oldest title, provided there is good faith.

amount of ₱21,002.00 which he received from petitioner, as evidenced by the 12 receipts[37] executed by him.

On the issue of legal redemption, Article 1623 of the Civil Code provides –

> ART. 1623. The right of legal pre-emption or redemption shall not be exercised except within thirty days from the notice in writing by the prospective vendor, or by the vendor, as the case may be. The deed of sale shall not be recorded in the Registry of Property, unless accompanied by an affidavit of the vendor that he has given written notice thereof to all possible redemptioners.
>
> The right of redemption of co-owners excludes that of adjoining owners.

Interpreting this provision, we have enumerated the requisites for the exercise of legal redemption, as follows: (1) there must be co-ownership; (2) one of the co-owners sold his right to a stranger; (3) the sale was made before the partition of the co-owned property; (4) the right of redemption must be exercised by one or more co-owners within a period of thirty days to be counted from the time he or they were notified in writing by the co-owner vendor; and (5) the vendee must be reimbursed the price of the sale.[38] With respect to the written notice, the exception is when a co-owner has actual notice of the sale.[39]

Petitioner argues that his situation falls within the exception; that respondents had actual notice of the sale of the several shares in the Fishpond, and that they are estopped from questioning the lack of written notice to them. We disagree.

We note that petitioner's testimony that he verbally notified respondent Arsenio of the sale to him of some undivided portions of the Fishpond was corroborated by another witness, Atty.

---

[37] Exhibits "BB" and "BB-1" to "BB-11".

[38] *Aguilar v. Aguilar*, G.R. No. 141613, December 16, 2005, 478 SCRA 187, 192.

[39] *Si v. Court of Appeals*, G.R. No. 122047, October 12, 2000, 342 SCRA 463.

Avelino Liangco. Thus, petitioner claims that it should be given more weight than the uncorroborated and lone testimony of respondent Arsenio to the contrary. However, it should be remembered that Atty. Liangco is the counsel of petitioner and, being the agent of the latter, cannot really qualify as an independent witness. Accordingly, we are still confronted with the contradicting claims of petitioner and respondents. On this particular point, we rule in favor of respondents, because of petitioner's admission of the existence of a lease, and of the admitted obligation to pay rent on the subject property.[40] We find such an admission antithetical to the claim that petitioner notified respondents of his purchase of portions of the Fishpond. In this light, we must sustain respondents' entitlement to redeem the portions sold to petitioner upon the finality of judgment in this case. As a necessary consequence, petitioner's action for partition will not prosper, unless respondents fail to redeem the property sold.

Finally, there is the matter of petitioner's acknowledgment of rentals due Arsenio up to April 30, 1989 for the latter's share in the Fishpond, although the receipt stated that the exact number of hectares is still to be determined. By acknowledging his obligation to pay rentals, he also impliedly admitted the ownership of Arsenio over the ½ share of Celestino. Receipt of the two letters, dated July 18, 1988[41] and March 14, 1989,[42] sent by respondent Arsenio to petitioner demanding the payment of his outstanding obligation in the amount of ₱300,000.00 was admitted by petitioner. There is nothing on record showing that he ever replied to these letters, much less, question the amount being demanded therein. Not having sufficiently denied the existence of the lease, petitioner is, thus, bound to pay the proper rent in the amount that appears in the receipt and the demand letters. Furthermore, petitioner is still liable for the additional amount of ₱120,000.00, representing the unpaid rentals

---

[40] Exhibit "6".

[41] Exhibit "7".

[42] Exhibit "8".

from April 30, 1989 to October 30, 1989, since it was only on November 1, 1989 that respondent Arsenio was able to take possession of the Fishpond upon the expiration of petitioner's contract of sub-lease with a certain Buenaventura Bautista,[43] which fact was not rebutted by petitioner. In sum, the CA was correct in declaring petitioner liable to pay unpaid rentals on the Fishpond in the total amount of ₱420,000.00.

WHEREFORE, the assailed Decision dated November 28, 2003 of the Court of Appeals is *AFFIRMED* with the *MODIFICATION* that:

1. Dominador Santos and Leticia Santos, or their heirs, are ordered to execute the proper Deeds of Absolute Sale pertaining to their own shares in the Calangain Fishpond in favor of petitioner;

2. Encarnacion Santos-Escueta, Arcadio Santos, Feliza Santos, Federico Santos, Alfredo Santos, Dominador Santos, and Leticia Santos, or their heirs, are ordered to reimburse petitioner the purchase price pertaining to the share of Celestino Santos, with legal interest thereon from October 25, 1989, the date of the filing of the answer, until said amount shall have been fully paid;

3. Leonardo Santos, or his heirs, are ordered to reimburse petitioner the amount of ₱21,002.00 paid by the latter as purchase price for Leonardo's share of the Calangain Fishpond, with legal interest thereon from October 25, 1989, the date of the filing of the answer, until the said amount shall have been fully paid.

Costs against petitioner.

SO ORDERED.

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

---

[43] TSN, February 5, 1996, pp. 12-13.

THIRD DIVISION

[G.R. No. 163244. June 22, 2009]

SPOUSES JOSE T. VALENZUELA and GLORIA VALENZUELA, *petitioners, vs.* **KALAYAAN DEVELOPMENT & INDUSTRIAL CORPORATION,** *respondent.*

SYLLABUS

1. CIVIL LAW; CONTRACTS; CONTRACT TO SELL DISTINGUISHED FROM CONTRACT OF SALE. — Under a contract to sell, the seller retains title to the thing to be sold until the purchaser fully pays the agreed purchase price. The full payment is a positive suspensive condition, the non-fulfillment of which is not a breach of contract, but merely an event that prevents the seller from conveying title to the purchaser. The non-payment of the purchase price renders the contract to sell ineffective and without force and effect. Unlike a contract of sale, where the title to the property passes to the vendee upon the delivery of the thing sold, in a contract to sell, ownership is, by agreement, reserved to the vendor and is not to pass to the vendee until full payment of the purchase price. Otherwise stated, in a contract of *sale*, the vendor loses ownership over the property and cannot recover it until and unless the contract is resolved or rescinded; whereas, in a contract to *sell*, title is retained by the vendor until full payment of the purchase price. In the latter contract, payment of the price is a positive suspensive condition, failure of which is not a breach but an event that prevents the obligation of the vendor to convey title from becoming effective.

2. ID.; OBLIGATIONS; PURE AND CONDITIONAL OBLIGATION; RESCISSION; INAPPLICABLE IN CASE AT BAR. — Since the obligation of respondent did not arise because of the failure of petitioners to fully pay the purchase price, Article 1191 of the Civil Code would have no application. *Rayos v. Court of Appeals* elucidates: Construing the contracts together, it is evident that the parties executed *a contract to sell and not a contract of sale.* The petitioners retained

ownership without further remedies by the respondents until the payment of the purchase price of the property in full. Such **payment is a positive suspensive condition, failure of which is not really a breach, serious or otherwise, but an event that prevents the obligation of the petitioners to convey title from arising, in accordance with Article 1184 of the Civil Code**. x x x The **non-fulfillment by the respondent of his obligation to pay, which is a suspensive condition to the obligation of the petitioners to sell and deliver the title to the property, rendered the contract to sell ineffective and without force and effect.** The parties stand as if the conditional obligation had never existed. **Article 1191 of the New Civil Code will not apply because it presupposes an obligation already extant. There can be no rescission of an obligation that is still non-existing, the suspensive condition not having happened.** The parties' contract to sell explicitly provides that Kalayaan "shall execute and deliver the corresponding deed of absolute sale over" the subject property to the petitioners "upon full payment of the total purchase price." Since petitioners failed to fully pay the purchase price for the entire property, Kalayaan's obligation to convey title to the property did not arise. Thus, Kalayaan may validly cancel the contract to sell its land to petitioner, not because it had the power to rescind the contract, but because their obligation thereunder did not arise.

3. ID.; ID.; EXTINGUISHMENT OF OBLIGATIONS; NOVATION; ELUCIDATED; NOT APPLICABLE IN CASE AT BAR. — As regards petitioners' claim of novation, we do not give credence to petitioners' assertion that the contract to sell was novated when Juliet was allegedly designated as the new debtor and substituted the petitioners in paying the balance of the purchase price. Novation is the extinguishment of an obligation by the substitution or change of the obligation by a subsequent one which extinguishes or modifies the first, either by changing the object or principal conditions, or by substituting another in place of the debtor, or by subrogating a third person in the rights of the creditor. Article 1292 of the Civil Code provides that "[i]n order that an obligation may be extinguished by another which substitutes the same, it is imperative that it

be so declared in unequivocal terms, or that the old and the new obligations be on every point incompatible with each other." Novation is never presumed. Parties to a contract must expressly agree that they are abrogating their old contract in favor of a new one. In the absence of an express agreement, novation takes place only when the old and the new obligations are incompatible on every point. The test of incompatibility is whether or not the two obligations can stand together, each one having its independent existence. If they cannot, they are incompatible and the latter obligation novates the first. Thus, in order that a novation can take place, the concurrence of the following requisites are indispensable: 1) There must be a previous valid obligation; 2) There must be an agreement of the parties concerned to a new contract; 3) There must be the extinguishment of the old contract; and 4) There must be the validity of the new contract. In the instant case, none of the requisites are present. There is only one existing and binding contract between the parties, because Kalayaan never agreed to the creation of a new contract between them or Juliet. True, petitioners may have offered that they be substituted by Juliet as the new debtor to pay for the remaining obligation. Nonetheless, Kalayaan did not acquiesce to the proposal. Its acceptance of several payments after it demanded that petitioners pay their outstanding obligation did not modify their original contract. Petitioners, admittedly, have been in default; and Kalayaan's acceptance of the late payments is, at best, an act of tolerance on the part of Kalayaan that could not have modified the contract.

4. ID.; EXTRA-CONTRACTUAL OBLIGATIONS; QUASI-CONTRACTS; ABSENT A PROVISION OF FORFEITURE OF PAYMENTS MADE IN THE CONTRACT TO SELL, THE DEBTOR IS ENTITLED TO THE RETURN OF PARTIAL PAYMENTS MADE. — As to the partial payments made by petitioners from September 16, 1994 to December 20, 1997, amounting to ₱788,000.00, this Court resolves that the said amount be returned to the petitioners, there being no provision regarding forfeiture of payments made in the Contract to Sell. To rule otherwise will be unjust enrichment on the part of Kalayaan at the expense of the petitioners.

5. ID.; DAMAGES; LIQUIDATED DAMAGES; REDUCTION THEREOF IS WARRANTED IF THE PENALTY INTEREST

APPEARING IN THE CONTRACT IS PATENTLY INIQUITOUS AND UNCONSCIONABLE; CASE AT BAR. — x x x [T]he three percent (3%) penalty interest appearing in the contract is patently iniquitous and unconscionable as to warrant the exercise by this Court of its judicial discretion. Article 2227 of the Civil Code provides that "[l]iquidated damages, whether intended as an indemnity or a penalty, shall be equitably reduced if they are iniquitous or unconscionable." A perusal of the Contract to Sell reveals that the three percent (3%) penalty interest on unpaid monthly installments (per condition No. 3) would translate to a yearly penalty interest of thirty-six percent (36%). Although this Court on various occasions has eliminated altogether the three percent (3%) penalty interest for being unconscionable, We are not inclined to do the same in the present case. A reduction is more consistent with fairness and equity. We should not lose sight of the fact that Kalayaan remains an unpaid seller and that it has suffered, one way or another, from petitioners' non-performance of its contractual obligations. In view of such glaring reality, We invoke the authority granted to us by Article 1229 of the Civil Code, and as equity dictates, the penalty interest is accordingly reimposed at a reduced rate of one percent (1%) interest per month, or twelve percent (12%) per annum, to be deducted from the partial payments made by the petitioners.

6. ID.; ID.; AWARD OF ATTORNEY'S FEES; PROPER IN CASE AT BAR. — As to the award of attorney's fees, the undeniable source of the present controversy is the failure of petitioners to pay the balance of the purchase price. It is elementary that when attorney's fees is awarded, they are so adjudicated, because it is in the nature of actual damages suffered by the party to whom it is awarded, as he was constrained to engage the services of a counsel to represent him for the protection of his interest. Thus, although the award of attorney's fees to Kalayaan was warranted by the circumstances obtained in this case, we find it equitable to reduce the award from ₱100,000.00 to ₱50,000.00.

APPEARANCES OF COUNSEL

Marvin J. Urmenita for petitioners.
Reynaldo R. Romero for respondent.

D E C I S I O N

PERALTA, *J.*:

This is a petition for review on *certiorari* assailing the Decision[1] dated January 23, 2004 of the Court of Appeals in CA-G.R. CV No. 69814, and its Resolution[2] dated April 20, 2004, denying petitioners' motion for reconsideration.

The factual and procedural antecedents are as follows:

Kalayaan Development and Industrial Corporation (Kalayaan) is the owner of a parcel of land covered by Transfer Certificate of Title (TCT) No. T-133026[3] issued by the Register of Deeds of Metro Manila, District III. Later, petitioners, Spouses Jose T. Valenzuela and Gloria Valenzuela (Gloria), occupied the said property and introduced several improvements thereon.

When Kalayaan discovered that the lot was being illegally occupied by the petitioners, it demanded that they immediately vacate the premises and surrender possession thereof. Petitioners then negotiated with Kalayaan to purchase the portion of the lot they were occupying. On August 5, 1994, the parties executed a Contract to Sell[4] wherein they stipulated that petitioners would purchase 236 square meters of the subject property for ₱1,416,000.00. Petitioners initially gave ₱500,000.00 upon

---

[1] Penned by Associate Justice B.A. Adefuin-De la Cruz, with Associate Justices Eliezer R. De los Santos and Jose C. Mendoza, concurring; *rollo*, pp. 76-82.

[2] *Id.* at 94.

[3] Records, pp. 153-155.

[4] *Id.* at 156-157.

signing the contract and agreed to pay the balance of ₱916,000.00 in twelve (12) equal monthly installments, or ₱76,333.75 a month until fully paid.[5] The parties also agreed that, in case petitioners failed to pay any of the installments, they would be liable for liquidated penalty at the rate of 3% a month compounded monthly until fully paid. It was also stipulated that Kalayaan shall execute the corresponding deed of absolute sale over the subject property only upon full payment of the total purchase price.[6]

Thereafter, petitioners made the following payments: ₱70,000.00 on October 20, 1994; ₱70,000.00 on November 23, 1994; and ₱68,000.00 on December 20, 1994, or a total of ₱208,000.00. After these payments, petitioners failed to pay the agreed monthly installments.

In a letter[7] dated September 6, 1995, petitioners requested Kalayaan that they be issued a deed of sale for the 118 sq. m. portion of the lot where their house was standing, considering that they no longer had the resources to pay the remaining balance. They reasoned that, since they had already paid one-half of the purchase price, or a total of ₱708,000.00 representing 118 sq. m. of the subject property, they should be issued a deed of sale for the said portion of the property.

In a letter[8] dated December 15, 1995, Kalayaan reminded petitioners of their unpaid balance and asked that they settle it within the next few days. In a demand letter[9] dated January 30, 1996, Kalayaan, through counsel, demanded that petitioners pay their outstanding obligation, including the agreed penalties, within ten (10) days from receipt of the letter, or they would be constrained to file the necessary actions against them. Again, in

---

[5] *Id.* at 156.

[6] *Id.* at 157.

[7] *Id.* at 228.

[8] *Id.* at 165.

[9] *Id.* at 163.

a letter[10] dated March 30, 1996, Kalayaan gave petitioners another opportunity to settle their obligation within a period of ten (10) days from receipt thereof.

On June 13, 1996, petitioners wrote Atty. Atilano Huaben Lim, then counsel of Kalayaan, and requested him to intercede on their behalf and to propose to Kalayaan that Gloria's sister, Juliet Flores Giron (Juliet), was willing to assume payment of the remaining balance for the 118 sq. m. portion of the subject property at ₱10,000.00 a month.[11] Petitioners stated that they had already separated the said 118 sq. m. portion and had the property surveyed by a licensed geodetic engineer to determine the unpaid portion of the property that needed to be separated from their lot.

On January 20, 1997, March 20, 1997, April 20, 1997, June 20, 1997, July 20, 1997, September 20, 1997, October 20, 1997, and December 20, 1997, Juliet made payments of ₱10,000.00 per month to Kalayaan, which the latter accepted for and in behalf of her sister Gloria.[12]

Thereafter, Kalayaan's in-house counsel, Atty. Reynaldo Romero, demanded that petitioners pay their outstanding obligation. However, his demands remained unheeded. Thus, on June 19, 1998, Kalayaan filed a Complaint for Rescission of Contract and Damages[13] against petitioners before the Regional Trial Court (RTC) of Caloocan City, Branch 126, which was later docketed as Civil Case No. C-18378.

On September 3, 1998, petitioners filed their Answer with Counterclaim[14] praying, among other things, that the RTC dismiss the complaint and for Kalayaan to deliver the corresponding TCT to the subject property, so that the same may be cancelled

---

[10] *Id.* at 162.

[11] *Id.* at 229.

[12] *Rollo*, p. 80.

[13] Records, pp. 1-6.

[14] *Id.* at 22-30.

and a new one issued in the name of the petitioners. Petitioners also prayed for the award of exemplary damages, moral damages, attorney's fees, and cost of suit.[15]

After filing their respective pleadings, trial on the merits ensued. On August 2, 2000, the RTC rendered a Decision[16] in favor of Kalayaan, rescinding the contract between the parties; ordering the petitioners to vacate the premises; and to pay the amount of ₱100,000.00 as attorney's fees. The decretal portion of the Decision reads:

> IN VIEW OF ALL THE FOREGOING, judgment is hereby rendered rescinding the contract between the plaintiff and the defendants and ordering the defendants and all persons claiming rights under them to vacate the premises and to surrender possession thereof to the plaintiff. Moreover, defendants shall pay the amount of ₱100,000.00 as attorney's fees.
>
> The counterclaim of the defendants is hereby ordered DISMISSED for lack of merit.
>
> SO ORDERED.[17]

Aggrieved, petitioners sought recourse before the Court of Appeals (CA) in their appeal docketed as CA-G.R. CV No. 163244. Petitioners argued that the RTC erred when:

> IT RULED THAT THE PLAINTIFF-APPELLEE MADE A VALID FORMAL DEMAND UPON THE DEFENDANTS-APPELANTS TO PAY THE LATTER'S DUE AND OUTSTANDING OBLIGATION;
>
> IT RULED THAT THE PRINCIPLE OF NOVATION OF AN EXISTING OBLIGATION IS NOT APPLICABLE IN THE INSTANT CASE;
>
> IT RULED THAT THE PRINCIPLE OF RESCISSION IS APPLICABLE IN THE CASE AND THAT THE PLAINTIFF-APPELLEE IS

---

[15] *Id.* at 29.

[16] *Rollo*, pp. 34-44.

[17] *Id.* at 44.

ENTITLED THERETO *VIS-À-VIS* THE DEFENDANTS-APPELLANTS;

IT FAILED TO RULE THAT THE PLAINTIFF-APPELLEE IS BARRED BY ESTOPPEL FROM ASKING FOR THE RESCISSION OF THE CONTRACT TO SELL.

IT RULED THAT THE DEFENDANTS-APPELLANTS DID NOT HAVE THE FINANCIAL CAPACITY TO PAY THE REMAINING BALANCE OF THE OBLIGATION AND THAT, CONSEQUENTLY, COMPLIANCE WITH THE TERMS OF THE SAID OBLIGATION HAS BECOME IMPOSSIBLE.

IT RULED THAT THE PLAINTIFF-APPELLEE IS ENTITLED TO ITS CLAIM FOR ATTORNEY'S FEES AND THE COST OF SUIT.[18]

On January 23, 2004, the CA rendered a Decision affirming the Decision of the RTC, the dispositive portion of which reads:

WHEREFORE, premises considered, the ***assailed decision dated August 2, 2000 is hereby AFFIRMED, and the present appeal is hereby DISMISSED for lack of merit.***

SO ORDERED. (Emphasis supplied.)[19]

Petitioners filed a Motion for Reconsideration,[20] but it was denied for lack of merit in a Resolution[21] dated April 20, 2004.

Hence, the present petition assigning the following errors:

I. THE HONORABLE COURT OF APPEALS ERRED IN FAILING TO APPLY THE PROVISIONS OF THE NEW CIVIL CODE REGARDING SUBSTANTIAL PERFORMANCE IN THE JUST RESOLUTION OF THE PETITIONERS' APPEAL.

II. THE HONORABLE COURT OF APPEALS SHOULD HAVE APPLIED THE APPLICABLE PROVISIONS OF THE LAW

---

[18] *Id.* at 51.

[19] *Id.* at 81.

[20] *Id.* at 82-88.

[21] *Id.* at 94.

VIS-À-VIS THE RESCISSION OF CONTRACTS TO SELL REAL PROPERTY, SPECIFICALLY THE REQUIREMENT OF A PRIOR AND VALIDLY NOTARIZED LETTER OF DEMAND.

III. THE HONORABLE COURT OF APPEALS FAILED TO APPLY TO THE INSTANT CASE THE PERTINENT PROVISIONS OF THE NEW CIVIL CODE REGARDING THE PRINCIPLE OF NOVATION AS A MODE OF EXTINGUISHING AN OBLIGATION.

IV. THE AWARD, BY THE COURT OF APPEALS, OF ATTORNEY'S FEES, WAS NOT IN ACCORD WITH THE FACTS AND THE LAW.

Petitioners maintain that they should have been entitled to get at least one-half of the subject property, because payment equivalent to its value has been made to, and received by Kalayaan. Petitioners posit that the RTC should have applied Article 1234[22] of the Civil Code to the present case, considering that it has been factually established that they were able to pay at least one-half of the total obligation in good faith.

Petitioners contend that Kalayaan allowed Juliet to continue with the payment of the other half of the property in installments of ₱10,000.00 a month. They also insist that they or Juliet was not given proper demand. They maintain that the demand letters that were previously sent to them were for their previous obligation with Kalayaan and not for the new agreement between Juliet and Kalayaan to assume payment of the unpaid portion of the subject property. Petitioners aver that, for a demand of rescission to be valid, it is an absolute requirement that should be made by way of a duly notarized written notice.

Petitioners likewise claim that there was a valid novation in the present case. They aver that the CA failed to see that the original contract between the petitioners and Kalayaan was altered,

[22] Art. 1234. If the obligation has been substantially performed in good faith, the obligor may recover as though there had been a strict and complete fulfillment, less damages suffered by the obligee.

changed, modified and restructured, as a consequence of the change in the person of the principal debtor and the monthly amortization to be paid for the subject property. When they agreed to a monthly amortization of ₱10,000.00 per month, the original contract was changed; and Kalayaan recognized Juliet's capacity to pay, as well as her designation as the new debtor. The original contract was novated and the principal obligation to pay for the remaining half of the subject property was transferred from petitioners to Juliet. When Kalayaan accepted the payments made by the new debtor, Juliet, it waived its right to rescind the previous contract. Thus, the action for rescission filed by Kalayaan against them, was unfounded, since the contract sought to be rescinded was no longer in existence.

Finally, petitioners question the RTC's award of attorney's fees. They maintain that there was no basis for the RTC to have awarded the same. They claim that Kalayaan was not forced, by their acts, to litigate, because Juliet was offering to pay the installments, but the offer was denied by Kalayaan. Moreover, since there were no awards for moral and exemplary damages, the award of attorney's fees would have no basis and should be deleted.

The petition is devoid of merit.

In the present case, the nature and characteristics of a contract to sell is determinative of the propriety of the remedy of rescission and the award of attorney's fees.

Under a contract to sell, the seller retains title to the thing to be sold until the purchaser fully pays the agreed purchase price. The full payment is a positive suspensive condition, the non-fulfillment of which is not a breach of contract, but merely an event that prevents the seller from conveying title to the purchaser. The non-payment of the purchase price renders the contract to sell ineffective and without force and effect.[23] Unlike a contract of sale, where the title to the property passes to the vendee

---

[23] *Cordero v. F.S. Management and Development Corporation*, G.R. No. 167213, October 31, 2006, 506 SCRA 451, 461-462.

upon the delivery of the thing sold, in a contract to sell, ownership is, by agreement, reserved to the vendor and is not to pass to the vendee until full payment of the purchase price. Otherwise stated, in a contract of *sale*, the vendor loses ownership over the property and cannot recover it until and unless the contract is resolved or rescinded; whereas, in a contract to *sell*, title is retained by the vendor until full payment of the purchase price. In the latter contract, payment of the price is a positive suspensive condition, failure of which is not a breach but an event that prevents the obligation of the vendor to convey title from becoming effective.[24]

Since the obligation of respondent did not arise because of the failure of petitioners to fully pay the purchase price, Article 1191[25] of the Civil Code would have no application.

Rayos v. Court of Appeals[26] elucidates:

> Construing the contracts together, it is evident that the parties executed *a contract to sell and not a contract of sale*. The petitioners retained ownership without further remedies by the respondents until the payment of the purchase price of the property in full. Such **payment is a positive suspensive condition, failure of which is not really a breach, serious or otherwise, but an event that prevents the obligation of the petitioners to convey title from arising, in accordance with Article 1184 of the Civil Code**. x x x
>
> x x x x x x x x x
>
> The **non-fulfillment by the respondent of his obligation to pay, which is a suspensive condition to the obligation of the**

---

[24] *Spouses Cornelio Joel I. Orden and Maria Nympha A. Orden, et al. v. Spouses Arturo and Melodia Aurea, et al.*, G.R. No. 172733, August 20, 2008.

[25] Art. 1191. The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.

x x x x x x x x x

[26] 478 Phil. 477, 495-496 (2001). (Emphasis supplied; citations omitted.)

petitioners to sell and deliver the title to the property, rendered the contract to sell ineffective and without force and effect. The parties stand as if the conditional obligation had never existed. **Article 1191 of the New Civil Code will not apply because it presupposes an obligation already extant. There can be no rescission of an obligation that is still non-existing, the suspensive condition not having happened.**

The parties' contract to sell explicitly provides that Kalayaan "shall execute and deliver the corresponding deed of absolute sale over" the subject property to the petitioners "upon full payment of the total purchase price." Since petitioners failed to fully pay the purchase price for the entire property, Kalayaan's obligation to convey title to the property did not arise. Thus, Kalayaan may validly cancel the contract to sell its land to petitioner, not because it had the power to rescind the contract, but because their obligation thereunder did not arise.

Petitioners failed to pay the balance of the purchase price. Such payment is a positive suspensive condition, failure of which is not a breach, serious or otherwise, but an event that prevents the obligation of the seller to convey title from arising.[27] The non-fulfillment by petitioners of their obligation to pay, which is a suspensive condition for the obligation of Kalayaan to sell and deliver the title to the property, rendered the Contract to Sell ineffective and without force and effect. The parties stand as if the conditional obligation had never existed.[28] Inasmuch as the suspensive condition did not take place, Kalayaan cannot be compelled to transfer ownership of the property to petitioners.

As regards petitioners' claim of novation, we do not give credence to petitioners' assertion that the contract to sell was novated when Juliet was allegedly designated as the new debtor and substituted the petitioners in paying the balance of the purchase price.

---

[27] *Leaño v. Court of Appeals*, 420 Phil. 836, 846 (2001).

[28] *Supra* note 24.

Novation is the extinguishment of an obligation by the substitution or change of the obligation by a subsequent one which extinguishes or modifies the first, either by changing the object or principal conditions, or by substituting another in place of the debtor, or by subrogating a third person in the rights of the creditor.[29]

Article 1292 of the Civil Code provides that "[i]n order that an obligation may be extinguished by another which substitutes the same, it is imperative that it be so declared in unequivocal terms, or that the old and the new obligations be on every point incompatible with each other." Novation is never presumed. Parties to a contract must expressly agree that they are abrogating their old contract in favor of a new one. In the absence of an express agreement, novation takes place only when the old and the new obligations are incompatible on every point.[30] The test of incompatibility is whether or not the two obligations can stand together, each one having its independent existence. If they cannot, they are incompatible and the latter obligation novates the first.[31]

Thus, in order that a novation can take place, the concurrence of the following requisites are indispensable:

1) There must be a previous valid obligation;
2) There must be an agreement of the parties concerned to a new contract;
3) There must be the extinguishment of the old contract; and
4) There must be the validity of the new contract.

In the instant case, none of the requisites are present. There is only one existing and binding contract between the parties, because Kalayaan never agreed to the creation of a new contract between them or Juliet. True, petitioners may have offered

---

[29] *Agro Conglomerates, Inc. v. Court of Appeals*, 401 Phil. 644, 655 (2000).

[30] *Rillo v. Court of Appeals*, G.R. No. 125347, June 19, 1997, 274 SCRA 461, 469.

[31] *Fabrigas v. San Francisco del Monte, Inc.*, G.R. No. 152346, November 25, 2005, 467 SCRA 247, 259.

that they be substituted by Juliet as the new debtor to pay for the remaining obligation. Nonetheless, Kalayaan did not acquiesce to the proposal.

Its acceptance of several payments after it demanded that petitioners pay their outstanding obligation did not modify their original contract. Petitioners, admittedly, have been in default; and Kalayaan's acceptance of the late payments is, at best, an act of tolerance on the part of Kalayaan that could not have modified the contract.

As to the partial payments made by petitioners from September 16, 1994 to December 20, 1997, amounting to ₱788,000.00, this Court resolves that the said amount be returned to the petitioners, there being no provision regarding forfeiture of payments made in the Contract to Sell. To rule otherwise will be unjust enrichment on the part of Kalayaan at the expense of the petitioners.

Also, the three percent (3%) penalty interest appearing in the contract is patently iniquitous and unconscionable as to warrant the exercise by this Court of its judicial discretion. Article 2227 of the Civil Code provides that "[l]iquidated damages, whether intended as an indemnity or a penalty, shall be equitably reduced if they are iniquitous or unconscionable." A perusal of the Contract to Sell reveals that the three percent (3%) penalty interest on unpaid monthly installments (per condition No. 3) would translate to a yearly penalty interest of thirty-six percent (36%).

Although this Court on various occasions has eliminated altogether the three percent (3%) penalty interest for being unconscionable,[32] We are not inclined to do the same in the present case. A reduction is more consistent with fairness and equity. We should not lose sight of the fact that Kalayaan remains an unpaid seller and that it has suffered, one way or another, from petitioners' non-performance of its contractual obligations.

---

[32] *Palmares v. Court of Appeals*, 351 Phil. 664 (1998); Minute Resolution in *Magallanes v. Court of Appeals*, G.R. No. 112614, May 16, 1994.

In view of such glaring reality, We invoke the authority granted to us by Article 1229[33] of the Civil Code, and as equity dictates, the penalty interest is accordingly reimposed at a reduced rate of one percent (1%) interest per month, or twelve percent (12%) per annum,[34] to be deducted from the partial payments made by the petitioners.

As to the award of attorney's fees, the undeniable source of the present controversy is the failure of petitioners to pay the balance of the purchase price. It is elementary that when attorney's fees is awarded, they are so adjudicated, because it is in the nature of actual damages suffered by the party to whom it is awarded, as he was constrained to engage the services of a counsel to represent him for the protection of his interest.[35] Thus, although the award of attorney's fees to Kalayaan was warranted by the circumstances obtained in this case, we find it equitable to reduce the award from ₱100,000.00 to ₱50,000.00.

WHEREFORE, premises considered, the Decision of the Regional Trial Court in Civil Case No. C-18378, dated August 2, 2000, is hereby *MODIFIED* to the extent that the contract between the parties is cancelled and the attorney's fees is reduced to ₱50,000.00. Respondent is further ordered to refund the amount paid by the petitioners after deducting the penalty interest due. In all other aspects, the Decision stands.

Subject to the above disquisitions, the Decision dated January 23, 2004 and the Resolution dated April 20, 2004, of the Court of Appeals in CA-G.R. CV No. 69814, are *AFFIRMED*.

---

[33] Art. 1229. The judge shall equitably reduce the penalty when the principal obligation has been partly or irregularly complied with by the debtor. Even if there has been no performance, the penalty may also be reduced by the courts if it is iniquitous or unconscionable.

[34] *Segovia Development Corporation v. J.L. Dumatol Realty and Development Corporation*, 416 Phil. 528, 541 (2001).

[35] *Mactan Cebu International Airport Authority v. Hontanosas, Jr.*, A.M. No. RTJ-03-1815, October 25, 2004, 411 SCRA 229, 244-245.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 164584. June 22, 2009]

PHILIP MATTHEWS, *petitioner, vs.* **BENJAMIN A. TAYLOR and JOSELYN C. TAYLOR,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; NATIONAL PATRIMONY; ALIENS, WHETHER INDIVIDUALS OR CORPORATIONS, ARE DISQUALIFIED FROM ACQUIRING LANDS OF PUBLIC DOMAIN AS WELL AS PRIVATE LANDS; EXPLAINED. — Section 7, Article XII of the 1987 Constitution states: Section 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. Aliens, whether individuals or corporations, have been disqualified from acquiring lands of the public domain. Hence, by virtue of the aforecited constitutional provision, they are also disqualified from acquiring private lands. The primary purpose of this constitutional provision is the conservation of the national patrimony. Our fundamental law cannot be any clearer. The right to acquire lands of the public domain is reserved only to Filipino citizens or corporations at least sixty percent of the capital of which is owned by Filipinos. The rule is clear and inflexible: aliens are absolutely not allowed to acquire public or private lands in the Philippines, save only in constitutionally recognized exceptions. There is no rule more settled than this constitutional prohibition, as more and more aliens attempt

to circumvent the provision by trying to own lands through another. In a long line of cases, we have settled issues that directly or indirectly involve the above constitutional provision. We had cases where aliens wanted that a particular property be declared as part of their father's estate; that they be reimbursed the funds used in purchasing a property titled in the name of another; that an implied trust be declared in their (aliens') favor; and that a contract of sale be nullified for their lack of consent.

2. CIVIL LAW; SPECIAL CONTRACTS; LEASE; VALIDITY OF AGREEMENT OF LEASE UPHELD IN CASE AT BAR; ELUCIDATED. — x x x Benjamin has no right to nullify the Agreement of Lease between Joselyn and petitioner. Benjamin, being an alien, is absolutely prohibited from acquiring private and public lands in the Philippines. Considering that Joselyn appeared to be the designated "vendee" in the Deed of Sale of said property, she acquired sole ownership thereto. This is true even if we sustain Benjamin's claim that he provided the funds for such acquisition. By entering into such contract knowing that it was illegal, no implied trust was created in his favor; no reimbursement for his expenses can be allowed; and no declaration can be made that the subject property was part of the conjugal/community property of the spouses. In any event, he had and has no capacity or personality to question the subsequent lease of the Boracay property by his wife on the theory that in so doing, he was merely exercising the prerogative of a husband in respect of conjugal property. To sustain such a theory would countenance indirect controversion of the constitutional prohibition. If the property were to be declared conjugal, this would accord the alien husband a substantial interest and right over the land, as he would then have a decisive vote as to its transfer or disposition. This is a right that the Constitution does not permit him to have. In fine, the Agreement of Lease entered into between Joselyn and petitioner cannot be nullified on the grounds advanced by Benjamin. Thus, we uphold its validity.

APPEARANCES OF COUNSEL

Policarpio Pangulayan and Azura Law Office for petitioner.
Cyril A. Tagle for Benjamin A. Taylor.

D E C I S I O N

NACHURA, *J.*:

Assailed in this petition for review on *certiorari* are the Court of Appeals (CA) December 19, 2003 Decision[1] and July 14, 2004 Resolution[2] in CA-G.R. CV No. 59573. The assailed decision affirmed and upheld the June 30, 1997 Decision[3] of the Regional Trial Court (RTC), Branch 8, Kalibo, Aklan in Civil Case No. 4632 for *Declaration of Nullity of Agreement of Lease with Damages*.

On June 30, 1988, respondent Benjamin A. Taylor (Benjamin), a British subject, married Joselyn C. Taylor (Joselyn), a 17-year old Filipina.[4] On June 9, 1989, while their marriage was subsisting, Joselyn bought from Diosa M. Martin a 1,294 square-meter lot (Boracay property) situated at Manoc-Manoc, Boracay Island, Malay, Aklan, for and in consideration of ₱129,000.00.[5] The sale was allegedly financed by Benjamin.[6] Joselyn and Benjamin, also using the latter's funds, constructed improvements thereon and eventually converted the property to a vacation and tourist resort known as the Admiral Ben Bow Inn.[7] All required permits and licenses for the operation of the resort were obtained in the name of Ginna Celestino, Joselyn's sister.[8]

---

[1] Penned by Associate Justice Sergio L. Pestaño, with Associate Justices Marina L. Buzon and Jose C. Mendoza, *concurring*; *rollo*, pp. 54-61.

[2] *Id.* at 52.

[3] Penned by Acting Presiding Judge Pepito T. Ta-ay; CA *rollo*, pp. 102-115.

[4] Evidenced by a Marriage Contract; Exh "A", Folder of Exhibits of the Plaintiff.

[5] The sale was evidenced by a Deed of Sale duly executed by the parties and registered with the Registry of Deeds of Aklan; Exh. "D", Folder of Exhibits of the Plaintiff.

[6] *Rollo*, p. 55.

[7] *Id*.

[8] The licenses and permits were under the name of Joselyn's sister because at the time of the application, Joselyn was still a minor.

However, Benjamin and Joselyn had a falling out, and Joselyn ran away with Kim Philippsen. On June 8, 1992, Joselyn executed a Special Power of Attorney (SPA) in favor of Benjamin, authorizing the latter to maintain, sell, lease, and sub-lease and otherwise enter into contract with third parties with respect to their Boracay property.[9]

On July 20, 1992, Joselyn as lessor and petitioner Philip Matthews as lessee, entered into an Agreement of Lease[10] (Agreement) involving the Boracay property for a period of 25 years, with an annual rental of ₱12,000.00. The agreement was signed by the parties and executed before a Notary Public. Petitioner thereafter took possession of the property and renamed the resort as Music Garden Resort.

Claiming that the Agreement was null and void since it was entered into by Joselyn without his (Benjamin's) consent, Benjamin instituted an action for Declaration of Nullity of Agreement of Lease with Damages[11] against Joselyn and the petitioner. Benjamin claimed that his funds were used in the acquisition and improvement of the Boracay property, and coupled with the fact that he was Joselyn's husband, any transaction involving said property required his consent.

No Answer was filed, hence, the RTC declared Joselyn and the petitioner in defeault. On March 14, 1994, the RTC rendered judgment by default declaring the Agreement null and void.[12] The decision was, however, set aside by the CA in CA-G.R. SP No. 34054.[13] The CA also ordered the RTC to allow the petitioner to file his Answer, and to conduct further proceedings.

---

[9] Exh. "V"; Folder of Exhibits of the Plaintiff.

[10] Exh. "T"; Folder of Exhibits of the Plaintiff.

[11] Records, pp. 1-3.

[12] *Id.* at 132-137.

[13] Penned by Associate Justice Ruben T. Reyes, with Associate Justices Oscar M. Herrera and Angelina Sandoval-Gutierrez, *concurring*; *Id.* at 139-148.

In his Answer,[14] petitioner claimed good faith in transacting with Joselyn. Since Joselyn appeared to be the owner of the Boracay property, he found it unnecessary to obtain the consent of Benjamin. Moreover, as appearing in the Agreement, Benjamin signed as a witness to the contract, indicating his knowledge of the transaction and, impliedly, his conformity to the agreement entered into by his wife. Benjamin was, therefore, estopped from questioning the validity of the Agreement.

There being no amicable settlement during the pre-trial, trial on the merits ensued.

On June 30, 1997, the RTC disposed of the case in this manner:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff and against the defendants as follows:

1. The Agreement of Lease dated July 20, 1992 consisting of eight (8) pages (Exhibits "T", "T-1", "T-2", "T-3", "T-4", "T-5", "T-6" and "T-7") entered into by and between Joselyn C. Taylor and Philip Matthews before Notary Public Lenito T. Serrano under Doc. No. 390, Page 79, Book I, Series of 1992 is hereby declared NULL and VOID;

2. Defendants are hereby ordered, jointly and severally, to pay plaintiff the sum of SIXTEEN THOUSAND (₱16,000.00) PESOS as damages representing unrealized income for the residential building and cottages computed monthly from July 1992 up to the time the property in question is restored to plaintiff; and

3. Defendants are hereby ordered, jointly and severally, to pay plaintiff the sum of TWENTY THOUSAND (₱20,000.00) PESOS, Philippine Currency, for attorney's fees and other incidental expenses.

SO ORDERED.[15]

---

[14] *Id.* at 201-201-m.

[15] *Id.* at 355.

The RTC considered the Boracay property as community property of Benjamin and Joselyn; thus, the consent of the spouses was necessary to validate any contract involving the property. Benjamin's right over the Boracay property was bolstered by the court's findings that the property was purchased and improved through funds provided by Benjamin. Although the Agreement was evidenced by a public document, the trial court refused to consider the alleged participation of Benjamin in the questioned transaction primarily because his signature appeared only on the last page of the document and not on every page thereof.

On appeal to the CA, petitioner still failed to obtain a favorable decision. In its December 19, 2003 Decision,[16] the CA affirmed the conclusions made by the RTC. The appellate court was of the view that if, indeed, Benjamin was a willing participant in the questioned transaction, the parties to the Agreement should have used the phrase "with my consent" instead of "signed in the presence of." The CA noted that Joselyn already prepared an SPA in favor of Benjamin involving the Boracay property; it was therefore unnecessary for Joselyn to participate in the execution of the Agreement. Taken together, these circumstances yielded the inevitable conclusion that the contract was null and void having been entered into by Joselyn without the consent of Benjamin.

Aggrieved, petitioner now comes before this Court in this petition for review on *certiorari* based on the following grounds:

4.1. THE MARITAL CONSENT OF RESPONDENT BENJAMIN TAYLOR IS NOT REQUIRED IN THE AGREEMENT OF LEASE DATED 20 JULY 1992. GRANTING *ARGUENDO* THAT HIS CONSENT IS REQUIRED, BENJAMIN TAYLOR IS DEEMED TO HAVE GIVEN HIS CONSENT WHEN HE AFFIXED HIS SIGNATURE IN THE AGREEMENT OF LEASE AS WITNESS IN THE LIGHT OF THE RULING OF THE SUPREME COURT IN THE CASE OF *SPOUSES PELAYO VS. MELKI PEREZ*, G.R. NO. 141323, JUNE 8, 2005.

---

[16] *Supra* note 1.

4.2. THE PARCEL OF LAND SUBJECT OF THE AGREEMENT OF LEASE IS THE EXCLUSIVE PROPERTY OF JOCELYN C. TAYLOR, A FILIPINO CITIZEN, *IN THE LIGHT OF CHEESMAN VS. IAC*, G.R. NO. 74833, JANUARY 21, 1991.

4.3. THE COURTS *A QUO* ERRONEOUSLY APPLIED ARTICLE 96 OF THE FAMILY CODE OF THE PHILIPPINES WHICH IS A PROVISION REFERRING TO THE ABSOLUTE COMMUNITY OF PROPERTY. THE PROPERTY REGIME GOVERNING THE PROPERTY RELATIONS OF BENJAMIN TAYLOR AND JOSELYN TAYLOR IS THE CONJUGAL PARTNERSHIP OF GAINS BECAUSE THEY WERE MARRIED ON 30 JUNE 1988 WHICH IS PRIOR TO THE EFFECTIVITY OF THE FAMILY CODE. ARTICLE 96 OF THE FAMILY CODE OF THE PHILIPPINES FINDS NO APPLICATION IN THIS CASE.

4.4. THE HONORABLE COURT OF APPEALS IGNORED THE PRESUMPTION OF REGULARITY IN THE EXECUTION OF NOTARIAL DOCUMENTS.

4.5. THE HONORABLE COURT OF APPEALS FAILED TO PASS UPON THE COUNTERCLAIM OF PETITIONER DESPITE THE FACT THAT IT WAS NOT CONTESTED AND DESPITE THE PRESENTATION OF EVIDENCE ESTABLISHING SAID CLAIM.[17]

The petition is impressed with merit.

In fine, we are called upon to determine the validity of an Agreement of Lease of a parcel of land entered into by a Filipino wife without the consent of her British husband. In addressing the matter before us, we are confronted not only with civil law or conflicts of law issues, but more importantly, with a constitutional question.

It is undisputed that Joselyn acquired the Boracay property in 1989. Said acquisition was evidenced by a Deed of Sale with Joselyn as the vendee. The property was also declared for taxation purposes under her name. When Joselyn leased the property to petitioner, Benjamin sought the nullification of the contract on two grounds: *first*, that he was the actual owner of the property since he provided the funds used in purchasing the same; and

[17] *Rollo*, pp. 554-556.

second, that Joselyn could not enter into a valid contract involving the subject property without his consent.

The trial and appellate courts both focused on the property relations of petitioner and respondent in light of the Civil Code and Family Code provisions. They, however, failed to observe the applicable constitutional principles, which, in fact, are the more decisive.

Section 7, Article XII of the 1987 Constitution states:[18]

> Section 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.

Aliens, whether individuals or corporations, have been disqualified from acquiring lands of the public domain. Hence, by virtue of the aforecited constitutional provision, they are also disqualified from acquiring private lands.[19] The primary purpose of this constitutional provision is the conservation of the national patrimony.[20] Our fundamental law cannot be any clearer. The right to acquire lands of the public domain is reserved only to Filipino citizens or corporations at least sixty percent of the capital of which is owned by Filipinos.[21]

---

[18] A similar provision was set forth in the 1935 and 1973 Constitutions, *viz*:

Section 5, Article XIII of the 1935 Constitution states:

"Save in cases of hereditary succession, no private agricultural land shall be transferred or assigned except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain in the Philippines."

Section 14, Article XIV of the 1973 Constitution also states:

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

[19] *Muller v. Muller*, G.R. No. 149615, August 29, 2006, 500 SCRA 65, 71; Frenzel *v. Catito*, 453 Phil. 885, 904 (2003).

[20] *Muller v. Muller*, *Id.*

[21] *Ting Ho, Jr. v. Teng Gui*, G.R. No. 130115, July 16, 2008, 558 SCRA 421.

In *Krivenko v. Register of Deeds*,[22] cited in *Muller v. Muller*,[23] we had the occasion to explain the constitutional prohibition:

Under Section 1 of Article XIII of the Constitution, "natural resources, with the exception of public agricultural land, shall not be alienated," and with respect to public agricultural lands, their alienation is limited to Filipino citizens. But this constitutional purpose conserving agricultural resources in the hands of Filipino citizens may easily be defeated by the Filipino citizens themselves who may alienate their agricultural lands in favor of aliens. It is partly to prevent this result that Section 5 is included in Article XIII, and it reads as follows:

"Section 5. Save in cases of hereditary succession, no private agricultural land will be transferred or assigned except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain in the Philippines."

This constitutional provision closes the only remaining avenue through which agricultural resources may leak into alien's hands. It would certainly be futile to prohibit the alienation of public agricultural lands to aliens if, after all, they may be freely so alienated upon their becoming private agricultural lands in the hands of Filipino citizens. x x x

x x x x x x x x x

If the term "private agricultural lands" is to be construed as not including residential lots or lands not strictly agricultural, the result would be that "aliens may freely acquire and possess not only residential lots and houses for themselves but entire subdivisions, and whole towns and cities," and that "they may validly buy and hold in their names lands of any area for building homes, factories, industrial plants, fisheries, hatcheries, schools, health and vacation resorts, markets, golf courses, playgrounds, airfields, and a host of other uses and purposes that are not, in appellant's words, strictly agricultural." (Solicitor General's Brief, p. 6) That this is obnoxious to the conservative spirit of the Constitution is beyond question.[24]

---

[22] 79 Phil. 461 (1947).

[23] *Supra*.

[24] *Id.* at 71-72; *Krivenko v. Register of Deeds of Manila*, 79 Phil. 461, 473-476 (1947).

The rule is clear and inflexible: aliens are absolutely not allowed to acquire public or private lands in the Philippines, save only in constitutionally recognized exceptions.[25] There is no rule more settled than this constitutional prohibition, as more and more aliens attempt to circumvent the provision by trying to own lands through another. In a long line of cases, we have settled issues that directly or indirectly involve the above constitutional provision. We had cases where aliens wanted that a particular property be declared as part of their father's estate;[26] that they be reimbursed the funds used in purchasing a property titled in the name of another;[27] that an implied trust be declared in their (aliens') favor;[28] and that a contract of sale be nullified for their lack of consent.[29]

In *Ting Ho, Jr. v. Teng Gui*,[30] Felix Ting Ho, a Chinese citizen, acquired a parcel of land, together with the improvements thereon. Upon his death, his heirs (the petitioners therein) claimed the properties as part of the estate of their

---

[25] The instances when aliens may be allowed to acquire private lands in the Philippines are:

(a) By hereditary succession (*Section 7, Article XII, Philippine Constitution).*

(b) A natural-born citizen of the Philippines who has lost his Philippine citizenship may be a transferee of private lands, subject to limitations provided by law (*Section 8, Article XII, Philippine Constitution).* Republic Act No. 8179 now allows a former natural-born Filipino citizen to acquire up to 5,000 square meters of urban land and 3 hectares or rural land, and he may now use the land not only for residential purposes, but even for business or other purposes.

(c) Americans who may have acquired title to private lands during the effectivity of the Parity Agreement shall hold valid title thereto as against private persons (*Section 11, Article XVII, 1973 Constitution).*

[26] *Ting Ho, Jr. v. Teng Gui*, *supra* note 21.

[27] *Muller v. Muller*, *supra* note 19; *Frenzel v. Catito, supra* note 19.

[28] *Muller v. Muller, Id.*

[29] *Cheesman v. Intermediate Appellate Court*, G.R. No. 74833, January 21, 1991, 193 SCRA 93.

[30] *Supra*.

deceased father, and sought the partition of said properties among themselves. We, however, excluded the land and improvements thereon from the estate of Felix Ting Ho, precisely because he never became the owner thereof in light of the above-mentioned constitutional prohibition.

In *Muller v. Muller*,[31] petitioner Elena Buenaventura Muller and respondent Helmut Muller were married in Germany. During the subsistence of their marriage, respondent purchased a parcel of land in Antipolo City and constructed a house thereon. The Antipolo property was registered in the name of the petitioner. They eventually separated, prompting the respondent to file a petition for separation of property. Specifically, respondent prayed for reimbursement of the funds he paid for the acquisition of said property. In deciding the case in favor of the petitioner, the Court held that respondent was aware that as an alien, he was prohibited from owning a parcel of land situated in the Philippines. He had, in fact, declared that when the spouses acquired the Antipolo property, he had it titled in the name of the petitioner because of said prohibition. Hence, we denied his attempt at subsequently asserting a right to the said property in the form of a claim for reimbursement. Neither did the Court declare that an implied trust was created by operation of law in view of petitioner's marriage to respondent. We said that to rule otherwise would permit circumvention of the constitutional prohibition.

In *Frenzel v. Catito*,[32] petitioner, an Australian citizen, was married to Teresita Santos; while respondent, a Filipina, was married to Klaus Muller. Petitioner and respondent met and later cohabited in a common-law relationship, during which petitioner acquired real properties; and since he was disqualified from owning lands in the Philippines, respondent's name appeared as the vendee in the deeds of sale. When their relationship turned sour, petitioner filed an action for the recovery of the

---

[31] *Supra*.

[32] *Supra*.

real properties registered in the name of respondent, claiming that he was the real owner. Again, as in the other cases, the Court refused to declare petitioner as the owner mainly because of the constitutional prohibition. The Court added that being a party to an illegal contract, he could not come to court and ask to have his illegal objective carried out. One who loses his money or property by knowingly engaging in an illegal contract may not maintain an action for his losses.

Finally, in *Cheesman v. Intermediate Appellate Court*,[33] petitioner (an American citizen) and Criselda Cheesman acquired a parcel of land that was later registered in the latter's name. Criselda subsequently sold the land to a third person without the knowledge of the petitioner. The petitioner then sought the nullification of the sale as he did not give his consent thereto. The Court held that assuming that it was his (petitioner's) intention that the lot in question be purchased by him and his wife, he acquired no right whatever over the property by virtue of that purchase; and in attempting to acquire a right or interest in land, vicariously and clandestinely, he knowingly violated the Constitution; thus, the sale as to him was null and void.

In light of the foregoing jurisprudence, we find and so hold that Benjamin has no right to nullify the Agreement of Lease between Joselyn and petitioner. Benjamin, being an alien, is absolutely prohibited from acquiring private and public lands in the Philippines.Considering that Joselyn appeared to be the designated "vendee" in the Deed of Sale of said property, she acquired sole ownership thereto.This is true even if we sustain Benjamin's claim that he provided the funds for such acquisition. By entering into such contract knowing that it was illegal, no implied trust was created in his favor; no reimbursement for his expenses can be allowed; and no declaration can be made that the subject property was part of the conjugal/community property of the spouses. In any event, he had and has no capacity or personality to

[33] *Supra*.

question the subsequent lease of the Boracay property by his wife on the theory that in so doing, he was merely exercising the prerogative of a husband in respect of conjugal property. To sustain such a theory would countenance indirect controversion of the constitutional prohibition.If the property were to be declared conjugal, this would accord the alien husband a substantial interest and right over the land, as he would then have a decisive vote as to its transfer or disposition. This is a right that the Constitution does not permit him to have.[34]

In fine, the Agreement of Lease entered into between Joselyn and petitioner cannot be nullified on the grounds advanced by Benjamin. Thus, we uphold its validity.

With the foregoing disquisition, we find it unnecessary to address the other issues raised by the petitioner.

WHEREFORE, premises considered, the December 19, 2003 Decision and July 14, 2004 Resolution of the Court of Appeals in CA-G.R. CV No. 59573, are *REVERSED* and *SET ASIDE* and a new one is entered *DISMISSING* the complaint against petitioner Philip Matthews.

SO ORDERED.

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

---

[34] *Cheesman v. Intermediate Appellate Court, supra* at 103-104.

FIRST DIVISION

[G.R. No. 167017. June 22, 2009]

SERAFIN CHENG, *petitioner, vs.* **SPOUSES VITTORIO and MA. HELEN DONINI,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEAL BY *CERTIORARI* TO SUPREME COURT; GENERALLY, AN APPELLATE COURT WILL NOT REVIEW ERRORS THAT ARE NOT ASSIGNED BEFORE IT. — As the correctness of the CA's ruling regarding (1) the lack of agreement on the deposit and rentals; (2) respondents' breach of the terms of the verbal agreement and (3) the lack of valid rescission by petitioner was never put in issue, this decision will be confined only to the issues raised by petitioner, that is, the award of reimbursement and the deletion of the award of damages. It need not be stressed that an appellate court will not review errors that are not assigned before it, save in certain exceptional circumstances and those affecting jurisdiction over the subject matter as well as plain and clerical errors, none of which is present in this case.

2. CIVIL LAW; EQUITY; APPLIED ONLY IN THE ABSENCE OF, AND NEVER AGAINST, STATUTORY LAW OR JUDICIAL RULES OF PROCEDURE. — Petitioner, however, correctly argued that the principle of equity did not apply in this case. Equity, which has been aptly described as "justice outside legality," is applied only in the absence of, and never against, statutory law or judicial rules of procedure. Positive rules prevail over all abstract arguments based on equity *contra legem*. Neither is the principle of unjust enrichment applicable since petitioner (who was to benefit from it) had a valid claim.

3. ID.; SPECIAL CONTRACTS; LEASE; REIMBURSEMENT OF USEFUL IMPROVEMENTS AND ORNAMENTAL EXPENSES; RULE. — The relationship between petitioner and respondents was explicitly governed by the Civil Code provisions on lease, which clearly provide for the rule on reimbursement of useful improvements and ornamental

expenses after termination of a lease agreement. Article 1678 states: If the lessee makes, in good faith, useful improvements which are suitable to the use for which the lease is intended, without altering the form or substance of the property leased, the lessor upon the termination of the lease shall pay the lessee one-half of the value of the improvements at that time. Should the lessor refuse to reimburse said amount, the lessee may remove the improvements, even though the principal thing may suffer damage thereby. He shall not, however, cause any more impairment upon the property leased than is necessary. With regard to ornamental expenses, the lessee shall not be entitled to any reimbursement, but he may remove the ornamental objects, provided no damage is caused to the principal thing, and the lessor does not choose to retain them by paying their value at the time the lease is extinguished.

4. ID.; ID.; ID.; A LESSEE IS NEITHER A BUILDER NOR A POSSESSOR IN GOOD FAITH; EXPLAINED. — Contrary to respondents' position, Articles 448 and 546 of the Civil Code did not apply. Under these provisions, to be entitled to reimbursement for useful improvements introduced on the property, respondents must be considered builders in good faith. Articles 448 and 546, which allow full reimbursement of useful improvements and retention of the premises until reimbursement is made, apply only to a possessor in good faith or one who builds on land in the belief that he is the owner thereof. A builder in good faith is one who is unaware of any flaw in his title to the land at the time he builds on it. But respondents cannot be considered possessors or builders in good faith. As early as 1956, in *Lopez v. Philippine & Eastern Trading Co., Inc.*, the Court clarified that a lessee is neither a builder nor a possessor in good faith – x x x This principle of possessor in good faith naturally cannot apply to a lessee because as such lessee he knows that he is not the owner of the leased property. Neither can he deny the ownership or title of his lessor. Knowing that his occupation of the premises continues only during the life of the lease contract and that he must vacate the property upon termination of the lease or upon the violation by him of any of its terms, **he introduces improvements on said property at his own risk in the sense that he cannot recover their value from the lessor, much less retain the premises until such reimbursement**. Being mere lessees, respondents knew that their right to occupy the premises existed only for

the duration of the lease. *Cortez v. Manimbo* went further to state that: If the rule were otherwise, 'it would always be in the power of the tenant to improve his landlord out of his property.

5. ID.; ID.; ID.; RULE ON REIMBURSEMENT OF USEFUL IMPROVEMENTS; ELUCIDATED. — Under Article 1678 of the Civil Code, the lessor has the primary right (or the first move) to reimburse the lessee for 50% of the value of the improvements at the end of the lease. If the lessor refuses to make the reimbursement, the subsidiary right of the lessee to remove the improvements, even though the principal thing suffers damage, arises. Consequently, on petitioner rests the primary option to pay for one-half of the value of the useful improvements. It is only when petitioner as lessor refuses to make the reimbursement that respondents, as lessees, may remove the improvements. Should petitioner refuse to exercise the option of paying for one-half of the value of the improvements, he cannot be compelled to do so. It then lies on respondents to insist on their subsidiary right to remove the improvements even though the principal thing suffers damage but without causing any more impairment on the property leased than is necessary.

6. ID.; ID.; ID.; A LESSEE IS NOT ENTITLED TO REIMBURSEMENT OF ORNAMENTAL EXPENSES; EXPLAINED. — As regards the ornamental expenses, respondents are not entitled to reimbursement. Article 1678 gives respondents the right to remove the ornaments without damage to the principal thing. But if petitioner appropriates and retains said ornaments, he shall pay for their value upon the termination of the lease. The fact that petitioner will benefit from the improvements introduced by respondents is beside the point. In the first place, respondents introduced these improvements at their own risk as lessees. Respondents were not forced or obliged to splurge on the leased premises as it was a matter of necessity as well as a business strategy. In fact, had respondents only complied with their obligation to pay the deposit/rent, there would have been no dispute to begin with. If they were able to shell out more than a million pesos to improve the property, the measly ₱34,000 deposit demanded by petitioner was a mere "drop in the bucket," so to speak. More importantly, the unequivocal terms of Article 1678 of the Civil Code should be the foremost consideration.

7. ID.; EXTRA-CONTRACTUAL OBLIGATIONS; QUASI-CONTRACT; TO PREVENT UNJUST ENRICHMENT, THE LESSOR SHOULD INDEMNIFY THE LESSEES HALF THE VALUE OF USEFUL IMPROVEMENTS WHEN IT IS NO LONGER FEASIBLE FOR THE LATTER TO REMOVE THE IMPROVEMENTS FROM THE PROPERTY; CASE AT BAR. — x x x [T]he 50% value of the useful improvements to be reimbursed by petitioner, if he chose to do so, should be based on ₱513,301.90. Since petitioner did not exercise his option to retain these useful improvements, then respondents could have removed the same. This was the legal consequence of the application of Article 1678 under ordinary circumstances. The reality on the ground ought to be recognized. For one, as disclosed by respondents' counsel, he no longer knows the exact whereabouts of his clients, only that they are now in Europe and he has no communication with them at all. For another, it appears that as soon as respondents vacated the premises, petitioner immediately reclaimed the property and barred respondents from entering it. Respondents also alleged, and petitioner did not deny, that the property subject of this case had already been leased to another entity since 1991. This is where considerations of equity should come into play. It is obviously no longer feasible for respondents to remove the improvements from the property, if they still exist. The only equitable alternative then, given the circumstances, is to order petitioner to pay respondents one-half of the value of the useful improvements (50% of ₱513,301.90) introduced on the property, or ₱256,650.95. To be off-set against this amount are respondents' unpaid ₱17,000 monthly rentals for the period of December 1990 to April 1991, or ₱85,000. **Petitioner should, therefore, indemnify respondents the amount of ₱171,650.95.** This is in accord with the law's intent of preventing unjust enrichment of a lessor who now has to pay one-half of the value of the useful improvements at the end of the lease because the lessee has already enjoyed the same, whereas the lessor can enjoy them indefinitely thereafter.

8. ID.; DAMAGES; MORAL DAMAGES; DETERMINATION OF APPROPRIATE VALUE/AWARD. — Petitioner is entitled to moral damages but not in the amount of ₱500,000 awarded by the RTC, which the Court finds to be excessive. While trial courts are given discretion to determine the amount of moral damages, it "should not be palpably and scandalously

excessive." Moral damages are not meant to enrich a person at the expense of the other but are awarded only to allow the former to obtain means, diversion or amusements that will serve to alleviate the moral suffering he has undergone due to the other person's culpable action. It must always reasonably approximate the extent of injury and be proportional to the wrong committed. The award of ₱100,000 as moral damages is sufficient and reasonable under the circumstances.

9. ID.; ID.; EXEMPLARY DAMAGES; AWARDED TO SERVE AS A DETERRENT AGAINST OR AS A NEGATIVE INCENTIVE TO CURB SOCIALLY DELETERIOUS ACTIONS.— Exemplary damages are imposed not to enrich one party or impoverish another but to serve as a deterrent against or as a negative incentive to curb socially deleterious actions.

10. ID.; ID.; ATTORNEY'S FEES; AWARD THEREOF PROPER IN CASE AT BAR. — x x x Article 2208 of the Civil Code allows recovery of attorney's fees when exemplary damages are awarded or when the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest. Petitioner is entitled to it since exemplary damages were awarded in this case and respondents' act in filing Civil Case No. 60769 compelled him to litigate. The amount of ₱25,000 is in accord with prevailing jurisprudence.

APPEARANCES OF COUNSEL

Villareal Rosacia Diño & Patag for petitioner.
Domingo B. Tejero for respondents.

D E C I S I O N

CORONA, *J.*:

The subject of this petition is an oral lease agreement that went sour. Petitioner Serafin Cheng agreed to lease his property located at 479 Shaw Blvd., Mandaluyong City to respondents, Spouses Vittorio and Ma. Helen Donini, who intended to put

up a restaurant thereon. They agreed to a monthly rental of ₱17,000, to commence in December 1990.

Bearing an *Interim Grant of Authority* executed by petitioner, respondents proceeded to introduce improvements in the premises. The authority read:

> I, Serafin Cheng, of legal age and with office address at Room 310 Federation Center Building Muelle de Binondo, Manila, owner of the building/structure located at 479 Shaw Boulevard, Mandaluyong, Metro Manila, *pursuant to a lease agreement now being finalized and to take effect December 1, 1990*, hereby grants VITTORIO DONINI (Prospective Lessee) and all those acting under his orders to make all the necessary improvements on the prospective leased premises located at 479 Shaw Blvd., Mandaluyong, Metro Manila, and for this purpose, to enter said premises and perform, all such works and activities to make the leased premises operational as a restaurant or similar purpose.
>
> Manila, 31 October 1990.[1]

However, before respondents' business could take off and before any final lease agreement could be drafted and signed, the parties began to have serious disagreements regarding its terms and conditions. Petitioner thus wrote respondents on January 28, 1991, demanding payment of the deposit and rentals, and signifying that he had no intention to continue with the agreement should respondents fail to pay. Respondents, however, ignoring petitioner's demand, continued to occupy the premises until April 17, 1991 when their caretaker voluntarily surrendered the property to petitioner.

Respondents then filed an action for specific performance and damages with a prayer for the issuance of a writ of preliminary injunction in the Regional Trial Court (RTC) of Pasig City, Branch 67, docketed as Civil Case No. 60769. Respondents prayed that petitioner be ordered to execute a written lease contract for five years, deducting from the deposit and rent the cost of repairs in the amount of ₱445,000, or to order petitioner to return their investment in the amount of ₱964,000 and

---

[1] Record, p. 127; Exhibit "E".

compensate for their unearned net income of ₱200,000 with interest, plus attorney's fees.[2]

Petitioner, in his answer, denied respondents' claims and sought the award of moral and exemplary damages, and attorney's fees.[3]

After trial, the RTC rendered its decision in favor of petitioner, the dispositive portion of which provided:

> WHEREFORE, in view of all the foregoing, this Court finds the preponderance of evidence in favor of the [petitioner] and hereby renders judgment as follows:
>
> 1. The Complaint is dismissed.
>
> 2. On the counterclaim, [respondents] are ordered, jointly and severally, to pay the [petitioner] ₱500,000.00 as moral damages; ₱100,000.00 as exemplary damages; and ₱50,000.00 as attorney's fees.
>
> 3. [Respondents] are likewise ordered to pay the costs.
>
> SO ORDERED.[4]

Respondents appealed to the Court of Appeals (CA) which, in its decision[5] dated March 31, 2004, recalled and set aside the RTC decision, and entered a new one ordering petitioner to pay respondents the amount of ₱964,000 representing the latter's expenses incurred for the repairs and improvements of the premises.[6]

Petitioner filed a motion for reconsideration on the ground that the award of reimbursement had no factual and legal bases,[7]

---

[2] *Id.*, pp. 9-10.

[3] *Id.*, p. 48.

[4] *Id.*, p. 522.

[5] Penned by Associate Justice Amelita G. Tolentino and concurred in by Associate Justice Eloy R. Bello, Jr. (retired) and Associate Justice Magdangal M. de Leon of the Sixteenth Division of the Court of Appeals.

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

[7] *Id.*, p. 95.

but this was denied by the CA in its resolution dated February 21, 2005.[8]

Hence, this petition for *certiorari* under Rule 45 of the Rules of Court, with petitioner arguing that:

THE COURT OF APPEALS DECIDED THIS CASE NOT IN ACCORD WITH LAW AND WITH APPLICABLE DECISIONS OF THIS HONORABLE COURT. PUT OTHERWISE:

A. BY ORDERING PETITIONER TO REIMBURSE RESPONDENTS THE FULL VALUE OF EXPENSES FOR THEIR ALLEGED REPAIRS AND IMPROVEMENTS OF THE LEASED PREMISES, THE COURT OF APPEALS ERRONEOUSLY CONSIDERED RESPONDENTS NOT AS MERE LESSEES BUT POSSESSORS IN GOOD FAITH UNDER ARTICLES 448 AND 546 OF THE CIVIL CODE.

B. THE COURT OF APPEALS DECIDED THIS CASE NOT IN ACCORD WITH ARTICLE 1678 OF THE CIVIL CODE WHICH GIVES THE LESSOR THE OPTION TO REIMBURSE THE LESSEE ONE-HALF OF THE VALUE OF USEFUL IMPROVEMENTS OR, IF HE DOES NOT WANT TO, ALLOW THE LESSEE TO REMOVE THE IMPROVEMENTS.

C. LIKEWISE, BY ORDERING PETITIONER TO REIMBURSE THE VALUE OF ORNAMENTAL EXPENSES, THE COURT OF APPEALS CONTRAVENED THE SECOND PARAGRAPH OF ARTICLE 1678.

D. THE COURT OF APPEALS ERRED IN APPLYING THE PRINCIPLE OF EQUITY IN FAVOR OF THE RESPONDENTS.

E. THE COURT OF APPEALS ERRED IN NOT AFFIRMING THE DECISION OF THE TRIAL COURT AWARDING DAMAGES TO PETITIONER.

F. THE COURT OF APPEALS SERIOUSLY ERRED AND/OR GRAVELY ABUSED ITS DISCRETION IN FIXING THE

[8] *Id.*, p. 106.

AMOUNT OF ₱961,000.00[9] CONTRARY TO RESPONDENTS' OWN REPRESENTATION AND EVIDENCE.[10]

Respondents were required to file their comment on the petition but their counsel manifested that he could not file one since his clients' whereabouts were unknown to him.[11] Counsel also urged the Court to render a decision on the basis of the available records and documents.[12] Per resolution dated August 30, 2006, copies of the resolutions requiring respondents to file their comment were sent to their last known address and were deemed served. The order requiring respondents' counsel to file a comment in their behalf was reiterated.[13]

In their comment, respondents argued that they were possessors in good faith, hence, Articles 448 and 546 of the Civil Code applied and they should be indemnified for the improvements introduced on the leased premises. Respondents bewailed the fact that petitioner was going to benefit from these improvements, the cost of which amounted to ₱1.409 million, in contrast to respondents' rental/deposit obligation amounting to only ₱34,000. Respondents also contended that petitioner's rescission of the agreement was in bad faith and they were thus entitled to a refund.[14]

In settling the appeal before it, the CA made the following findings and conclusions:

1. there was no agreement that the deposit and rentals accruing to petitioner would be deducted from the costs of repairs and renovation incurred by respondents;

---

[9] The CA decision awarded the amount of ₱964,000.00, not ₱961,000.00 as alleged in the petition.

[10] *Rollo*, pp. 14-15.

[11] *Id.*, pp. 62, 71.

[12] *Ibid.*

[13] *Id.*, p. 93.

[14] *Id.*, pp. 105-108.

2. respondents committed a breach in the terms and conditions of the agreement when they failed to pay the rentals;

3. there was no valid rescission on the part of petitioner;

4. respondents were entitled to reimbursement for the cost of improvements under the principle of equity and unjust enrichment; and

5. the award of damages in favor of petitioner had no basis in fact and law.[15]

As the correctness of the CA's ruling regarding (1) the lack of agreement on the deposit and rentals; (2) respondents' breach of the terms of the verbal agreement and (3) the lack of valid rescission by petitioner was never put in issue, this decision will be confined only to the issues raised by petitioner, that is, the award of reimbursement and the deletion of the award of damages. It need not be stressed that an appellate court will not review errors that are not assigned before it, save in certain exceptional circumstances and those affecting jurisdiction over the subject matter as well as plain and clerical errors, none of which is present in this case.[16]

Remarkably, in ruling that respondents were entitled to reimbursement, the CA did not provide any statutory basis therefor and instead applied the principles of equity and unjust enrichment, stating:

> It would be inequitable to allow the defendant-appellee, as owner of the property to enjoy perpetually the improvements introduced by the plaintiffs-appellants without reimbursing them for the value of the said improvements. Well-settled is the rule that no one shall be unjustly enriched or benefitted at the expense of another.[17]

---

[15] *Id.*, pp. 34-40.

[16] *Enriquez v. Court of Appeals*, G.R. No. 140473, 28 January 2003, 396 SCRA 377, 384.

[17] *Rollo*, p. 39.

Petitioner, however, correctly argued that the principle of equity did not apply in this case. Equity, which has been aptly described as "justice outside legality," is applied only in the absence of, and never against, statutory law or judicial rules of procedure.[18] Positive rules prevail over all abstract arguments based on equity *contra legem*.[19] Neither is the principle of unjust enrichment applicable since petitioner (who was to benefit from it) had a valid claim.[20]

The relationship between petitioner and respondents was explicitly governed by the Civil Code provisions on lease, which clearly provide for the rule on reimbursement of useful improvements and ornamental expenses after termination of a lease agreement. Article 1678 states:

> If the lessee makes, in good faith, useful improvements which are suitable to the use for which the lease is intended, without altering the form or substance of the property leased, the lessor upon the termination of the lease shall pay the lessee one-half of the value of the improvements at that time. Should the lessor refuse to reimburse said amount, the lessee may remove the improvements, even though the principal thing may suffer damage thereby. He shall not, however, cause any more impairment upon the property leased than is necessary.
>
> With regard to ornamental expenses, the lessee shall not be entitled to any reimbursement, but he may remove the ornamental objects, provided no damage is caused to the principal thing, and the lessor does not choose to retain them by paying their value at the time the lease is extinguished.

Article 1678 modified the (old) Civil Code provision on reimbursement where the lessee had no right at all to be reimbursed for the improvements introduced on the leased property, he

---

[18] *Conte v. Commission on Audit*, G.R. No. 116422, 4 November 1996, 264 SCRA 19 , 33.

[19] *Republic of the Philippines v. Court of Appeals*, G.R. No. 100709, 14 November 1997, 281 SCRA 639, 649.

[20] *Car Cool Philippines, Inc. v. Ushio Realty and Development Corporation*, G.R. No. 138088, 23 January 2006, 479 SCRA 404, 413.

being entitled merely to the rights of a usufructuary – the right of removal and set-off but not to reimbursement.[21]

Contrary to respondents' position, Articles 448 and 546 of the Civil Code did not apply. Under these provisions, to be entitled to reimbursement for useful improvements introduced on the property, respondents must be considered builders in good faith. Articles 448 and 546, which allow full reimbursement of useful improvements and retention of the premises until reimbursement is made, apply only to a possessor in good faith or one who builds on land in the belief that he is the owner thereof. A builder in good faith is one who is unaware of any flaw in his title to the land at the time he builds on it. [22]

But respondents cannot be considered possessors or builders in good faith. As early as 1956, in *Lopez v. Philippine & Eastern Trading Co., Inc.*,[23] the Court clarified that a lessee is neither a builder nor a possessor in good faith –

> x x x This principle of possessor in good faith naturally cannot apply to a lessee because as such lessee he knows that he is not the owner of the leased property. Neither can he deny the ownership or title of his lessor. Knowing that his occupation of the premises continues only during the life of the lease contract and that he must vacate the property upon termination of the lease or upon the violation by him of any of its terms, **he introduces improvements on said property at his own risk in the sense that he cannot recover their value from the lessor, much less retain the premises until such reimbursement**. (Emphasis supplied)

Being mere lessees, respondents knew that their right to occupy the premises existed only for the duration of the lease.[24] *Cortez v. Manimbo*[25] went further to state that:

---

[21] *Parilla v. Pilar*, G.R. No. 167680, 30 November 2006, 509 SCRA 420, 425-426.

[22] *Florentino v. Supervalue, Inc.*, G.R. No. 172384, 12 September 2007, 533 SCRA 156, 170-171.

[23] 98 Phil. 348, 354 (1956).

[24] *Lopez v. Sarabia*, G.R. No. 140357, 24 September 2004, 439 SCRA 35, 51.

[25] 113 Phil. 363, 366 (1961).

If the rule were otherwise, 'it would always be in the power of the tenant to improve his landlord out of his property.

These principles have been consistently adhered to and applied by the Court in many cases.[26]

Under Article 1678 of the Civil Code, the lessor has the primary right (or the first move) to reimburse the lessee for 50% of the value of the improvements at the end of the lease. If the lessor refuses to make the reimbursement, the subsidiary right of the lessee to remove the improvements, even though the principal thing suffers damage, arises. Consequently, on petitioner rests the primary option to pay for one-half of the value of the useful improvements. It is only when petitioner as lessor refuses to make the reimbursement that respondents, as lessees, may remove the improvements. Should petitioner refuse to exercise the option of paying for one-half of the value of the improvements, he cannot be compelled to do so. It then lies on respondents to insist on their subsidiary right to remove the improvements even though the principal thing suffers damage but without causing any more impairment on the property leased than is necessary.

As regards the ornamental expenses, respondents are not entitled to reimbursement. Article 1678 gives respondents the right to remove the ornaments without damage to the principal thing. But if petitioner appropriates and retains said ornaments, he shall pay for their value upon the termination of the lease.

The fact that petitioner will benefit from the improvements introduced by respondents is beside the point. In the first place, respondents introduced these improvements at their own risk as lessees. Respondents were not forced or obliged to splurge on the leased premises as it was a matter of necessity as well

---

[26] See *Florentino case*, *supra*, note 22; *Lopez case*, *supra*, note 24; *Geminiano v. Court of Appeals*, G.R. No. 120303, 24 July 1996, 259 SCRA 344; *Salonga v. Farrales*, G.R. No. L-47088, 10 July 1981, 105 SCRA 359; *Philippine National Bank v. Pineda*, G.R. No. L-29748, 29 August 1969, 29 SCRA 262.

as a business strategy.[27] In fact, had respondents only complied with their obligation to pay the deposit/rent, there would have been no dispute to begin with. If they were able to shell out more than a million pesos to improve the property, the measly ₱34,000 deposit demanded by petitioner was a mere "drop in the bucket," so to speak. More importantly, the unequivocal terms of Article 1678 of the Civil Code should be the foremost consideration.

The Court notes that the CA pegged the total value of the improvements made on the leased premises at ₱964,000, which was apparently based on the allegation in respondents' complaint that it was their total investment cost.[28] The CA lumped together **all** of respondents' expenses, which was a blatant error. A qualification should have been made as to how much was spent for useful improvements (or those which were suitable to the use for which the lease was intended) and how much was for ornamental expenses. Respondent Vittorio Donini testified that he spent ₱450,000 for necessary repairs, while ₱500,000 was spent for adornments.[29] The evidence on record, however, showed respondents' expenses for useful improvements to be as follows:

EXPENSE	**AMOUNT**	
Electrical	₱31,893.65	Exh. "F", *et seq.* [30]
Roofing	₱14,856.00	Exhibit "O"[31]
Labor	₱19,909.75	Exh. "P", *et seq.*[32]
Ceiling	₱65,712.00	Exh. "Q", *et seq.*[33]

---

[27] *Supra*, *Florentino case*, note 22.

[28] Record, pp. 4-5.

[29] TSN, June 5, 1991, p. 18.

[30] Record, pp. 128-129.

[31] *Id.*, p. 144.

[32] *Id.*, pp. 146-154.

[33] *Id.*, pp. 155-164.

Labor	₱38,689.20	Exh. "R", *et seq.*[34]
Electrical (phase 2)	₱76,539.10	Exh. "S", *et seq.*[35]
Door	₱41,371.75	Exh. "T", *et seq.*[36]
Labor	₱25,126.00	Exh. "U", *et seq.*[37]
Water	₱ 8,031.00	Exhs. "W" & "W-1"[38]
Gutters	₱ 35,550.05	Exhs. "X" & "X-1"[39]
Outside Wall	₱ 24,744.00	Exh. "X-2"[40]
Inside Wall	₱ 22,186.10	Exh. "X-3"[41]
Electrical (phase 3)	₱ 88,698.30	Exhs. "X-8" to "X-11"[42]
Labor	₱ 19,995.00	Exhibit "Y"[43]
Total	**₱513,301.90**	

Accordingly, the 50% value of the useful improvements to be reimbursed by petitioner, if he chose to do so, should be based on ₱513,301.90. Since petitioner did not exercise his option to retain these useful improvements, then respondents could have removed the same. This was the legal consequence of the application of Article 1678 under ordinary circumstances.

The reality on the ground ought to be recognized. For one, as disclosed by respondents' counsel, he no longer knows the

---

[34] *Id.*, pp. 165-173.

[35] *Id.*, pp. 174-223.

[36] *Id.*, pp. 224-233.

[37] *Id.*, pp. 234-247.

[38] *Id.*, pp. 254-255.

[39] *Id.*, pp. 265-266.

[40] *Id.*, p. 267.

[41] *Id.*, p. 268.

[42] *Id.*, pp. 273-276.

[43] *Id.*, pp. 311-312.

exact whereabouts of his clients, only that they are now in Europe and he has no communication with them at all.[44] For another, it appears that as soon as respondents vacated the premises, petitioner immediately reclaimed the property and barred respondents from entering it. Respondents also alleged, and petitioner did not deny, that the property subject of this case had already been leased to another entity since 1991.[45] This is where considerations of equity should come into play. It is obviously no longer feasible for respondents to remove the improvements from the property, if they still exist. The only equitable alternative then, given the circumstances, is to order petitioner to pay respondents one-half of the value of the useful improvements (50% of ₱513,301.90) introduced on the property, or ₱256,650.95. To be off-set against this amount are respondents' unpaid ₱17,000 monthly rentals for the period of December 1990 to April 1991,[46] or ₱85,000. **Petitioner should, therefore, indemnify respondents the amount of ₱171,650.95.** This is in accord with the law's intent of preventing unjust enrichment of a lessor who now has to pay one-half of the value of the useful improvements at the end of the lease because the lessee has already enjoyed the same, whereas the lessor can enjoy them indefinitely thereafter.[47]

Respondents are not entitled to reimbursement for the ornamental expenses under the express provision of Article 1678. Moreover, since they failed to remove these ornaments despite the opportunity to do so when they vacated the property, then they were deemed to have waived or abandoned their right of removal.

---

[44] *Id.*, pp. 62, 67, 75.

[45] *Id.*, pp. 106-107.

[46] Article 1687 of the Civil Code creates the presumption that when the rent agreed upon is from month to month, the period for the lease is understood to be such.

[47] *Supra*, *Parilla case*, note 21.

The CA also erred when it deleted the awards of moral and exemplary damages and attorney's fees.

Petitioner is entitled to moral damages but not in the amount of ₱500,000 awarded by the RTC, which the Court finds to be excessive. While trial courts are given discretion to determine the amount of moral damages, it "should not be palpably and scandalously excessive."[48] Moral damages are not meant to enrich a person at the expense of the other but are awarded only to allow the former to obtain means, diversion or amusements that will serve to alleviate the moral suffering he has undergone due to the other person's culpable action.[49] It must always reasonably approximate the extent of injury and be proportional to the wrong committed.[50] The award of ₱100,000 as moral damages is sufficient and reasonable under the circumstances.

The award of ₱100,000 as exemplary damages is likewise excessive. Exemplary damages are imposed not to enrich one party or impoverish another but to serve as a deterrent against or as a negative incentive to curb socially deleterious actions.[51] We think ₱50,000 is reasonable in this case.

Finally, Article 2208 of the Civil Code allows recovery of attorney's fees when exemplary damages are awarded or when the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest.[52] Petitioner is entitled to it since exemplary damages were awarded in this case and respondents' act in filing Civil

---

[48] *Bank of the Philippine Islands v. Leobrera*, G.R. No. 137147, 18 November 2003, 416 SCRA 15, 22.

[49] *Philippine Airlines, Inc. v. Court of Appeals*, G.R. No. 127473, 8 December 2003, 417 SCRA 196, 211-212.

[50] *Solidbank Corporation v. Arrieta*, G.R. No. 152720, 17 February 2005, 451 SCRA 711, 721-722.

[51] *Bataan Seedling Association, Inc. v. Republic of the Philippines*, G.R. No. 141009, 2 July 2002, 383 SCRA 590, 600-601.

[52] *Sandejas v. Ignacio*, G.R. No. 155033, 19 December 2007, 541 SCRA 61, 83-84.

Case No. 60769 compelled him to litigate. The amount of ₱25,000 is in accord with prevailing jurisprudence.[53]

WHEREFORE, the petition is *PARTIALLY GRANTED.* The decision dated March 31, 2004 rendered by the Court of Appeals in CA-G.R. CV No. 54430 is hereby *MODIFIED* in that –

(1) petitioner Serafin Cheng is *ORDERED* to pay respondents, spouses Vittorio and Ma. Helen Donini, the amount of ₱171,650.95 as indemnity for the useful improvements; and

(2) respondents, spouses Vittorio and Ma. Helen Donini, are *ORDERED* to pay petitioner Serafin Cheng the following sums:

a) ₱100,000.00 moral damages;

b) ₱50,000.00 exemplary damages and

c) ₱25,000.00 attorney's fees.

Let copies of this decision be furnished respondents, spouses Vittorio and Ma. Helen Donini, at their last known address, and their counsel of record.

SO ORDERED.

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

---

[53] *Cagungun v. Planters Development Bank*, G.R. No. 158674, 17 October 2005, 473 SCRA 259; *Padillo v. Court of Appeals*, G.R. No. 119707, 29 November 2001, 371 SCRA 27; *Lucas v. Royo*, G.R. No. 136185, 30 October 2000, 344 SCRA 481.

FIRST DIVISION

[G.R. No. 168184. June 22, 2009]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **RUBY LEE TSAI,** *respondent.*

SYLLABUS

1. CIVIL LAW; LAND TITLES AND DEEDS; LAND REGISTRATION; PRESIDENTIAL DECREE 1529 (PROPERTY REGISTRATION DECREE); APPLICATION FOR REGISTRATION OF TITLE UNDER SECTION 14(1) THEREOF; REQUISITES. — The Court notes that in respondent's original application before the trial court, she claimed that she was entitled to the confirmation and registration of her title to the subject property under PD 1529. However, respondent did not specify under what paragraph of Section 14 of PD 1529 she was filing the application. But going over respondent's application and the evidence she presented before the trial court, it appears that respondent filed her application under Section 14(1) of PD 1529, which states: 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: (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**. Thus, there are three requisites for the filing of an application for registration of title under Section 14(1) of PD 1529: (1) that the property in question is alienable and disposable land of the public domain; (2) that the applicant by himself or through his predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation; and (3) **that such possession is under a *bona fide* claim of ownership since 12 June 1945 or earlier**. The right to file the application for registration derives from a *bona fide* claim of ownership going back to 12 June 1945 or earlier, by reason of the claimant's open, continuous, exclusive and notorious

possession of alienable and disposable land of the public domain.

2. ID.; ID.; ID.; COMMONWEALTH ACT 141, AS AMENDED (PUBLIC LAND ACT); APPLICATION FOR CONFIRMATION; RULE. — A similar right is given under Section 48(b) of CA 141, as amended by PD 1073, which provides: Sec. 48. The following described citizens of the Philippines, occupying lands of the public domain or claiming to own any such land or an interest therein, but whose titles have not been perfected or completed, may apply to the Court of First Instance of the province where the land is located for confirmation of their claims and the issuance of a certificate of title therefor, under the Land Registration Act, to wit: x x x (b) Those who by themselves or through their predecessors in interest have been in open, continuous, exclusive, and notorious possession and occupation of agricultural lands of the public domain, under a *bona fide* claim of acquisition of ownership, **since June 12, 1945, or earlier**, immediately preceding the filing of the application for confirmation of title, except when prevented by war or *force majeure*. These shall be conclusively presumed to have performed all the conditions essential to a Government grant and shall be entitled to a certificate of title under the provisions of this chapter.

3. ID.; ID.; ID.; ID.; ID.; ID.; ELUCIDATED. — According to the Court of Appeals, respondent need not prove possession of the subject property since 12 June 1945 or earlier because Section 48(b) of CA 141 was amended by RA 1942, which provided for a simple 30-year prescriptive period. The Court of Appeals appears to have an erroneous interpretation of Section 48(b) of CA 141. Through the years, Section 48(b) of the CA 141 has been amended several times. The Court of Appeals failed to consider the amendment introduced by PD 1073. In *Republic v. Doldol*, the Court provided a summary of these amendments: The original Section 48(b) of C.A. No.141 provided for possession and occupation of lands of the public domain **since July 26, 1894**. This was superseded by R.A. No. 1942, which provided for a **simple thirty-year prescriptive period** of occupation by an applicant for judicial confirmation of imperfect title. The same, however, has already been amended by Presidential

Decree No. 1073, approved on January 25, 1977. x x x As the law now stands, a mere showing of possession and occupation for 30 years or more is not sufficient. Therefore, since the effectivity of PD 1073 on 25 January 1977, it must now be shown that possession and occupation of the piece of land by the applicant, by himself or through his predecessors-in-interest, started on **12 June 1945 or earlier**. This provision is in total conformity with Section 14(1) of PD 1529.

4. ID.; ID.; ID.; PRESIDENTIAL DECREE 1529 (PROPERTY REGISTRATION DECREE); APPLICATION FOR REGISTRATION OF TITLE UNDER SECTION 14(1); REQUISITE THAT THE SUBJECT PROPERTY HAS BEEN DECLARED ALIENABLE AND DISPOSABLE WAS NOT COMPLIED WITH.— x x x [R]espondent also failed to prove that the subject property has been declared alienable and disposable by the President or the Secretary of the Department of Environment and Natural Resources. In *Republic v. T.A.N. Properties, Inc.*, the Court said: [T]he applicant for land registration must prove that the DENR Secretary had approved the land classification and released the land of the public domain as alienable and disposable, and that the land subject of the application for registration falls within the approved area per verification through survey by the PENRO or CENRO. In addition, the applicant for land registration must present a copy of the original classification approved by the DENR Secretary and certified as a true copy by the legal custodian of the official records. These facts must be established to prove that the land is alienable and disposable.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Padlan Sutton & Associates 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 30 January 2004 Decision[2] and 12 May 2005 Resolution[3] of the Court of Appeals in CA G.R. CV No. 70006. The 30 January 2004 Decision affirmed the 21 September 1998 Decision[4] of the Regional Trial Court of Tagaytay City, Branch 18 (trial court) in LRC Case No. TG-788[5] which approved the application of respondent Ruby Lee Tsai for the confirmation and registration of Lot No. 7062, described in plan Ap-04-010084, Cad-355, Tagaytay Cadastre, with an area of 888 square meters (subject property). The 12 May 2005 Resolution denied the motion for reconsideration of petitioner Republic of the Philippines (Republic).

The Facts

On 3 December 1996, respondent filed an application[6] for the confirmation and registration of the subject property under Presidential Decree No. 1529 (PD 1529).[7] Respondent alleged that she is the owner of the subject property and the improvements thereon. Respondent stated that on 31 May 1993, she purchased the subject property from Manolita Gonzales *Vda. de* Carungcong (Carungcong), through Wendy Mitsuko Sato, Carungcong's

---

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

[2] *Rollo*, pp. 25-30. Penned by Associate Justice Elvi John S. Asuncion, with Associate Justices Godardo A. Jacinto and Lucas P. Bersamin (now Associate Justice of the Supreme Court), concurring.

[3] *Id.* at 32.

[4] CA *rollo*, pp. 35-36. Penned by Judge Alfonso S. Garcia.

[5] Erroneously appears in the 21 September 1998 Decision as LRC Case No. TG-588.

[6] Records, pp. 1-4.

[7] Also known as "The Property Registration Decree."

daughter and attorney in fact.[8] Respondent declared that she and her predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of the subject property for more than 30 years.

Except for the Republic, there were no other oppositors to the application. The Republic opposed respondent's application on the following grounds: (1) that respondent and her predecessors-in-interest failed to present sufficient evidence to show that they have been in open, continuous, exclusive and notorious possession and occupation of the subject property since 12 June 1945 or earlier as required by Section 48(b)[9] of Commonwealth Act No. 141 (CA 141),[10] as amended by Presidential Decree No. 1073 (PD 1073);[11] (2) that the tax declarations and tax receipt payments attached to the application do not constitute competent and sufficient evidence of a *bona fide* acquisition of the land applied for or of respondent's open, continuous, exclusive and notorious possession and occupation of the subject property in the concept of an owner since 12 June 1945 or earlier; and (3) that the subject property forms part of the public domain and is not subject to private appropriation.[12]

---

[8] Records, pp. 8-9.

[9] Section 48(b) of Commonwealth Act No. 141, as amended by Presidential Decree No. 1073, reads:SEC. 48. The following described citizens of the Philippines, occupying lands of the public domain or claiming to own any such lands or interest therein, but whose titles have not been perfected or completed, may apply to the Regional Trial Court of the province or city where the land is located for confirmation of their claims and the issuance of a certificate of title therefor, under the Property Registration Decree, to wit: (b) Those who by themselves or through their predecessors in interest have been in open, continuous, exclusive, and notorious possession and occupation of alienable and disposable agricultural lands of the public domain, under a *bona fide* claim of acquisition or ownership, since June 12, 1945, except when prevented by war or *force majeure*. These shall be conclusively presumed to have performed all the conditions essential to a Government grant and shall be entitled to a certificate of title under the provisions of this chapter.

[10] Also known as "The Public Land Act."

[11] Approved on 25 January 1977.

[12] Records, pp. 33-34.

After establishing the jurisdictional facts, respondent presented the following documents to support her application:

1. Deed of Absolute Sale dated 31 May 1993 between respondent and Carungcong;

2. Tax Declarations corresponding to different years showing that the subject property has been declared under the name of Carungcong for tax purposes: Tax Declaration No. 02226-A for the year 1948, Tax Declaration No. 010158-A for the year 1960, Tax Declaration No. 013976-A for the year 1965, Tax Declaration No. 07209-B for the year 1974, Tax Declaration No. 016-0635 for the year 1980, Tax Declaration No. GR-016-0735 for the year 1985 and Tax Declaration No. GR-016-1610 for the year 1992;[13]

3. Tax Declaration Nos. GR-016-1776-R and 016-1084 for the year 1994 showing that the subject property has been declared under the name of respondent for tax purposes;[14]

4. Official Receipts corresponding to different years showing the payment of real property taxes under the name of Carungcong: Official Receipt No. 4641772 dated 27 May 1991, Official Receipt No. 2326477 dated 10 December 1992, Official Receipt No. 0535585 dated 10 June 1992, Official Receipt No. 4879666 dated 28 May 1993 and Official Receipt No. 4879620 dated 3 June 1993;[15]

5. Official Receipts corresponding to different years showing the payment of real property taxes under the name of respondent: Official Receipt No. 4997840 dated 10 January 1994, Official Receipt No. 7304615 dated 15 February 1995 and Official Receipt No. 9115050 dated 31 March 1997;[16] and

---

[13] *Id.* at 64-70 (Exhibits "J" to "J-5" and "I-4").

[14] *Id.* at 71-72 (Exhibits "J-6" and "J-7").

[15] *Id.* at 73-77 (Exhibits "K" to "K-4").

[16] *Id.* at 78-80 (Exhibits "K-5" to "K-7").

6. Certification of the City Treasurer of Tagaytay City stating that the real property taxes for the years 1994 to 1997 were paid.[17]

On 21 September 1998, the trial court granted respondent's application for registration. The dispositive portion states:

> WHEREFORE, this court hereby approves this application for registration and thus places under the operation of Act 141, Act 496 and/or P.D. 1529, otherwise known as Property Registration Law, the land, Lot 7062 described in plan Ap-04-010084, Cad-355, Tagaytay Cadastre, situated in the Brgy. of San Jose, City of Tagaytay, containing an area of Eight Hundred Eighty Eight (888) Square Meters in the name of RUBY LEE TSAI, married to Tsai Yu Lung, both of legal age and residents of Sun Valley Subdivision, Sta. Ana Drive, Parañaque, Metro Manila.
>
> Once this Decision becomes final and executory, the corresponding decree of registration shall forthwith issue.
>
> SO ORDERED.[18]

The Republic appealed to the Court of Appeals on the ground that the trial court erred in granting the application for registration despite respondent's failure to prove open, continuous, exclusive and notorious possession of the subject property since 12 June 1945 or earlier. According to the Republic, it is not sufficient that respondent proved possession of the subject property for more than 30 years.

In the assailed 30 January 2004 Decision, the Court of Appeals affirmed the trial court's decision.

The Republic filed a motion for reconsideration. The Court of Appeals denied Republic's motion.

Hence, this petition.

The Ruling of the Regional Trial Court

According to the trial court, respondent was able to establish her title and interest over the subject property. The trial court

[17] *Id.* at 81 (Exhibit "L").

[18] CA *rollo*, p. 36.

found that respondent and her predecessors-in-interest have been in actual possession of the subject property for more than 30 years. The trial court also declared that the subject property was residential and not within any forest zone or the public domain.

The Ruling of the Court of Appeals

The Court of Appeals affirmed the trial court's finding that respondent and her predecessors-in-interest have been in open, continuous, exclusive and notorious possession of the subject property in the concept of an owner for more than 30 years. According to the Court of Appeals, respondent need not prove that she and her predecessors-in-interest have been in possession of the subject property since 12 June 1945 or earlier because Section 48(b) of CA 141 was already superseded by Republic Act No. 1942 (RA 1942),[19] which provides for a simple 30 year prescriptive period of occupation by an applicant for judicial confirmation of title.

The Issue

The Republic raises the sole issue of whether the trial court can grant the application for registration despite the lack of proof of respondent's open, continuous, exclusive and notorious possession of the subject property since 12 June 1945 or earlier.

The Court's Ruling

The petition has merit.

The Republic argues that respondent failed to present sufficient evidence to show that she and her predecessors-in-interest have been in open, continuous, exclusive and notorious possession of the subject property in the concept of an owner since 12 June 1945 or earlier. According to the Republic, respondent only proved possession since 1948, which is in violation of Section 48(b) of CA 141, as amended by PD 1073.[20]

---

[19] Approved on 22 June 1957. Republic Act No. 1942 amended Section 48(b) of Commonwealth Act No. 141 by shortening the period of possession to "at least thirty years immediately preceding the filing of the application."

[20] Amended further by Republic Act No. 9176 entitled "An Act Extending the Period until December 31, 2020 for the Filing of Applications for

On the other hand, respondent insists that it is sufficient that she proved that she and her predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of the subject property under a *bona fide* claim of ownership for more than 30 years.

The Court notes that in respondent's original application before the trial court, she claimed that she was entitled to the confirmation and registration of her title to the subject property under PD 1529. However, respondent did not specify under what paragraph of Section 14 of PD 1529 she was filing the application. But going over respondent's application and the evidence she presented before the trial court, it appears that respondent filed her application under Section 14(1) of PD 1529, which states:

> 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:
>
> (1) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a *bona fide* claim of ownership **since June 12, 1945, or earlier**.(Emphasis supplied)

Thus, there are three requisites for the filing of an application for registration of title under Section 14(1) of PD 1529: (1) that the property in question is alienable and disposable land of the public domain; (2) that the applicant by himself or through his predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation; and (3) **that such possession is under a *bona fide* claim of ownership since 12 June 1945 or earlier**. The right to file the application for registration derives from a *bona fide* claim of ownership going back to 12 June 1945 or earlier, by reason of the claimant's

---

Administrative Legalization (Free Patent) and Judicial Confirmation of Imperfect and Incomplete Titles to Alienable and Disposable Lands of the Public Domain, Amending for this Purpose Commonwealth Act Numbered 141, as amended, otherwise known as The Public Land Act." Approved on 13 November 2002.

open, continuous, exclusive and notorious possession of alienable and disposable land of the public domain.

A similar right is given under Section 48(b) of CA 141, as amended by PD 1073, which provides:

> Sec. 48. The following described citizens of the Philippines, occupying lands of the public domain or claiming to own any such land or an interest therein, but whose titles have not been perfected or completed, may apply to the Court of First Instance of the province where the land is located for confirmation of their claims and the issuance of a certificate of title therefor, under the Land Registration Act, to wit:
>
> x x x x x x x x x
>
> (b) Those who by themselves or through their predecessors in interest have been in open, continuous, exclusive, and notorious possession and occupation of agricultural lands of the public domain, under a *bona fide* claim of acquisition of ownership, **since June 12, 1945, or earlier**, immediately preceding the filing of the application for confirmation of title, except when prevented by war or *force majeure*. These shall be conclusively presumed to have performed all the conditions essential to a Government grant and shall be entitled to a certificate of title under the provisions of this chapter. (Emphasis supplied)

According to the Court of Appeals, respondent need not prove possession of the subject property since 12 June 1945 or earlier because Section 48(b) of CA 141 was amended by RA 1942, which provided for a simple 30-year prescriptive period. The Court of Appeals appears to have an erroneous interpretation of Section 48(b) of CA 141.

Through the years, Section 48(b) of the CA 141 has been amended several times.[21] The Court of Appeals failed to consider the amendment introduced by PD 1073. In *Republic v. Doldol*,[22] the Court provided a summary of these amendments:

---

[21] *Del Rosario-Igtiben v. Republic*, 484 Phil. 145 (2004).

[22] 356 Phil. 671 (1998).

The original Section 48(b) of C.A. No.141 provided for possession and occupation of lands of the public domain **since July 26, 1894**. This was superseded by R.A. No. 1942, which provided for a **simple thirty-year prescriptive period** of occupation by an applicant for judicial confirmation of imperfect title. The same, however, has already been amended by Presidential Decree No. 1073, approved on January 25, 1977. As amended, Section 48(b) now reads:

(b) Those who by themselves or through their predecessors in interest have been in open, continuous, exclusive, and notorious possession and occupation of agricultural lands of the public domain, under a *bona fide* claim of acquisition of ownership, **since June 12, 1945, or earlier**, immediately preceding the filing of the application for confirmation of title, except when prevented by war or *force majeure*. These shall be conclusively presumed to have performed all the conditions essential to a Government grant and shall be entitled to a certificate of title under the provisions of this chapter.[23] (Emphasis supplied)

As the law now stands, a mere showing of possession and occupation for 30 years or more is not sufficient. Therefore, since the effectivity of PD 1073 on 25 January 1977, it must now be shown that possession and occupation of the piece of land by the applicant, by himself or through his predecessors-in-interest, started on **12 June 1945 or earlier**. This provision is in total conformity with Section 14(1) of PD 1529.[24]

In this case, respondent failed to comply with the period of possession and occupation of the subject property, as required by both PD 1529 and CA 141. We agree with the Republic that respondent's evidence was not enough to prove that her possession of the subject property started since 12 June 1945 or earlier because respondent's earliest evidence can be traced back to a tax declaration issued in the name of her predecessors-in-interest only in the year 1948. In view of the lack of sufficient showing that respondent and her predecessors-in-interest possessed the subject property under a *bona fide* claim of ownership since 12 June 1945 or earlier, respondent's application for confirmation

[23] *Id.* at 676-677.

[24] *Id*.

and registration of the subject property under PD 1529 and CA 141 should be denied.

Finally, we note that respondent also failed to prove that the subject property has been declared alienable and disposable by the President or the Secretary of the Department of Environment and Natural Resources. In *Republic v. T.A.N. Properties, Inc.*,[25] the Court said:

> [T]he applicant for land registration must prove that the DENR Secretary had approved the land classification and released the land of the public domain as alienable and disposable, and that the land subject of the application for registration falls within the approved area per verification through survey by the PENRO or CENRO. In addition, the applicant for land registration must present a copy of the original classification approved by the DENR Secretary and certified as a true copy by the legal custodian of the official records. These facts must be established to prove that the land is alienable and disposable.[26]

WHEREFORE, we *GRANT* the petition. We *SET ASIDE* the 30 January 2004 Decision of the Court of Appeals in CA G.R. CV No. 70006 and the 21 September 1998 Decision of the Regional Trial Court of Tagaytay City, Branch 18, in LRC Case No. TG-788. We *DENY* respondent Ruby Lee Tsai's application for confirmation and registration of Lot No. 7062 described in plan Ap-04-010084, Cad-355, Tagaytay Cadastre.

SO ORDERED.

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

---

[25] G.R. No. 154953, 26 June 2008, 555 SCRA 477.

[26] *Id.* at 489.

[*] Designated additional member per Special Order No. 660.

THIRD DIVISION

[G.R. No. 170782. June 22, 2009]

SIAIN ENTERPRISES, INC., *petitioner, vs.* **CUPERTINO REALTY CORP. and EDWIN R. CATACUTAN,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF THE TRIAL COURT ARE ACCORDED THE HIGHEST DEGREE OF RESPECT AND GREAT WEIGHT ON APPEAL; EXCEPTIONS; ABSENT IN CASE AT BAR. — Well-entrenched in jurisprudence is the rule that factual findings of the trial court, especially when affirmed by the appellate court, are accorded the highest degree of respect and are considered conclusive between the parties. A review of such findings by this Court is not warranted except upon a showing of highly meritorious circumstances, such as: (1) when the findings of a trial court are grounded entirely on speculation, surmises or conjectures; (2) when a lower court's inference from its factual findings is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion in the appreciation of facts; (4) when the findings of the appellate court go beyond the issues of the case, or fail to notice certain relevant facts which, if properly considered, will justify a different conclusion; (5) when there is a misappreciation of facts; (6) when the findings of fact are conclusions without mention of the specific evidence on which they are based, are premised on the absence of evidence, or are contradicted by evidence on record. None of these exceptions necessitating a reversal of the assailed decision obtains in this instance.

2. ID.; EVIDENCE; BURDEN OF PROOF; THE PLAINTIFF HAS THE DUTY TO PRESENT A PREPONDERANCE OF EVIDENCE TO ESTABLISH ITS CLAIM; CASE AT BAR. — x x x [P]etitioner was the plaintiff in the trial court, the party that brought suit against respondent. Accordingly, it had the burden of proof, the duty to present a preponderance of evidence to establish its claim. However, petitioner's evidence

consisted only of a barefaced denial of receipt and a vaguely drawn theory that in their previous loan transaction with respondent covered by the first promissory note, it did not receive the proceeds of the ₱37,000,000.00. Petitioner conveniently ignores that this particular promissory note secured by the real estate mortgage was under an escrow arrangement and taken out to pay its obligation to DBP. Thus, petitioner, quite obviously, would not be in possession of the proceeds of the loan. Contrary to petitioner's contention, there is no precedent to explain its stance that respondent undertook to release the ₱160,000,000.00 loan only after it had first signed the Amended Real Estate Mortgage.

3. MERCANTILE LAW; CORPORATIONS; PIERCING THE VEIL OF CORPORATE FICTION, WHEN PROPER; CASE AT BAR. — As a general rule, a corporation will be deemed a separate legal entity until sufficient reason to the contrary appears. But the rule is not absolute. A corporation's separate and distinct legal personality may be disregarded and the veil of corporate fiction pierced when the notion of legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime. In this case, Cupertino presented overwhelming evidence that petitioner and its affiliate corporations had received the proceeds of the ₱160,000,000.00 loan increase which was then made the consideration for the Amended Real Estate Mortgage. We quote with favor the RTC's and the CA's disquisitions on this matter: That the checks, debit memos and the pledges of the jewelries, condominium units and trucks were constituted not exclusively in the name of [petitioner] but also either in the name of Yuyek Manufacturing Corporation, Siain Transport, Inc., Cua Leleng and Alberto Lim is of no moment. For the facts established in the case at bar has convinced the Court of the propriety to apply the principle known as "piercing the veil of the corporate entity" by virtue of which, the juridical personalities of the various corporations involved are disregarded and the ensuing liability of the corporation to attach directly to its responsible officers and stockholders. x x x The conjunction of the identity of the [petitioner] corporation in relation to Siain Transport, Inc. (Siain Transport), Yuyek Manufacturing Corp. (Yuyek), as well as the individual personalities of Cua Leleng and Alberto Lim has been indubitably shown in the instant case x x x.

APPEARANCES OF COUNSEL

Misa & Gonzales Law Offices for petitioner.
Dy Tagra & Yam Law Firm for respondents.

D E C I S I O N

NACHURA, *J.*:

Before us is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the decision of the Court of Appeals in CA-G.R. CV No. 71424[1] which affirmed the decision of the Regional Trial Court, Branch 29, Iloilo City in Civil Case No. 23244.[2]

On April 10, 1995, petitioner Siain Enterprises, Inc. obtained a loan of ₱37,000,000.00 from respondent Cupertino Realty Corporation (Cupertino) covered by a promissory note signed by both petitioner's and Cupertino's respective presidents, Cua Le Leng and Wilfredo Lua. The promissory note authorizes Cupertino, as the creditor, to place in escrow the loan proceeds of ₱37,000,000.00 with Metropolitan Bank & Trust Company to pay off petitioner's loan obligation with Development Bank of the Philippines (DBP). To secure the loan, petitioner, on the same date, executed a real estate mortgage over two (2) parcels of land and other immovables, such as equipment and machineries.

Two (2) days thereafter, or on April 12, 1995, the parties executed an amendment to promissory note which provided for a seventeen percent (17%) interest per *annum* on the ₱37,000,000.00 loan.[3] The amendment to promissory note was likewise signed by Cua Le Leng and Wilfredo Lua on behalf of petitioner and Cupertino, respectively.

On August 16, 1995, Cua Le Leng signed a second promissory note in favor of Cupertino for ₱160,000,000.00. Cua Le Leng

[1] Penned by Associate Justice Vicente L. Yap, with Associate Justices Isaias P. Dicdican and Enrico A. Lanzanas, concurring; *rollo*, pp. 66-81.

[2] Penned by Judge Rene B. Honrado; *rollo*, pp. 159-179.

[3] Records, p. 438.

signed the second promissory note as maker, on behalf of petitioner, and as co-maker, liable to Cupertino in her personal capacity. This second promissory note provides:

PROMISSORY NOTE

AMOUNT DATE: AUGUST 16, 1995
ONE HUNDRED SIXTY MILLION PESOS
(PHP 160,000,000.00)

FOR VALUE RECEIVED, after one (1) year from this date on or August 16, 1996, WE, SIAIN ENTERPRISES INC. with Metro Manila office address at 306 J.P. Rizal St., Mandaluyong City, represented herein by its duly authorized President, Ms. LELENG CUA, (a copy of her authority is hereto attached as Annex "A") and Ms. LELENG CUA in her personal capacity, a resident of ILOILO CITY, jointly and severally, unconditionally promise to pay CUPERTINO REALTY CORPORATION, or order, an existing corporation duly organized under Philippine laws, the amount/sum of ONE HUNDRED SIXTY MILLION PESOS (PHP 160,000,000.00), Philippine Currency, without further need of any demand, at the office of CUPERTINO REALTY CORPORATION;

The amount/sum of ONE HUNDRED SIXTY MILLION PESOS (PHP 160,000,000.00) shall earn a compounding interest of 30% per annum which interest shall be payable to CUPERTINO REALTY CORPORATION at its above given address ON THE FIRST DAY OF EVERY MONTH WITHOUT THE NEED OF DEMAND.

In case We fail to pay the principal amount of this note at maturity or in the event of bankruptcy or insolvency, receivership, levy of execution, garnishment or attachment or in case of conviction for a criminal offense carrying with it the penalty of civil interdiction or in any of the cases covered by Article 1198 of the Civil Code of the Philippines, then the entire principal of this note and other interests and penalties due thereon shall, at the option of CUPERTINO REALTY CORPORATION, immediately become due and payable and We jointly and severally agree to pay additionally a penalty at the rate of THREE PERCENT (3%) per month on the total amount/sum due until fully paid. Furthermore, We jointly and severally agree to pay an additional sum equivalent to 20% of the total amount due but in no case less than PHP 100,000.00 as and for attorney's fees in addition to expenses and costs of suit.

We hereby authorize and empower CUPERTINO REALTY CORPORATION at its option at any time, without notice, to apply to the payment of this note and or any other particular obligation or obligations of all or any one of us to CUPERTINO REALTY CORPORATION, as it may select, irrespective of the dates of maturity, whether or not said obligations are then due, any and all moneys, checks, securities and things of value which are now or which may hereafter be in its hand on deposit or otherwise to the credit of, or belonging to, both or any one of us, and CUPERTINO REALTY CORPORATION is hereby authorized to sell at public or private sale such checks, securities, or things of value for the purpose of applying the proceeds thereof to such payments of this note.

We hereby expressly consent to any extension and/or renewals hereof in whole or in part and/or partial payment on account which may be requested by and granted to us or any one of us for the payment of this note as long as the remaining unpaid balance shall earn an interest of THREE percent (3%) a month until fully paid. Such renewals or extensions shall, in no case, be understood as a novation of this note or any provision thereof and We will thereby continue to be liable for the payment of this note.

We submit to the jurisdiction of the Courts of the City of Manila or of the place of execution of this note, at the option of CUPERTINO REALTY CORPORATION without divesting any other court of the its jurisdiction, for any legal action which may arise out of this note. In case of judical (sic) execution of this obligation, or any part of it, we hereby waive all our rights under the provisions of Rule 39, section 12 of the Rules of Court.

We, who are justly indebted to CUPERTINO REALTY CORPORATION, agree to execute respectively a real estate mortgage and a pledge or a chattel mortgage covering securities to serve as collaterals for this loan and to execute likewise an irrevocable proxy to allow representatives of the creditor to be able to monitor acts of management so as to prevent any premature call of this loan. We further undertake to execute any other kind of document which CUPERTINO REALTY CORPORATION may solely believe is necessary in order to effect any security over any collateral.

For this purpose, Ms. LELENG CUA, upon the foregoing promissory note, has this 16th day of Aug 1995, pledged her shares of stocks in SIAIN ENTERPRISES, INC., worth PHP 1,800,000.00

which she hereby confesses as representing 80% of the total outstanding shares of the said company.

In default of payment of said note or any part thereof at maturity, Ms. LELENG CUA hereby authorizes CUPERTINO REALTY CORPORATION or its assigns, to dispose of said security or any part thereof at public sale. The proceeds of such sale or sales shall, after payment of all expenses and commissions attending said sale or sales, be applied to this promissory note and the balance, if any, after payment of this promissory note and interest thereon, shall be returned to the undersigned, her heirs, successors and administrators; it shall be optional for the owner of the promissory note to bid for and purchase the securities or any part thereof.

(signed)

SIAIN ENTERPRISES, INC. LELENG CUA
In her personal capacity
CO-MAKER

By:

(signed)
LELENG CUA
MAKER

WITNESSES:

(signed)
EDGARDO LUA

(signed)
ROSE MARIE RAGODON[4]

Parenthetically, on even date, the parties executed an amendment of real estate mortgage, providing in pertinent part:

WHEREAS, on 10 April 1995, the [petitioner] executed, signed and delivered a Real Estate Mortgage to and in favor of [Cupertino] on certain real estate properties to secure the payment to [Cupertino] of a loan in the amount of THIRTY SEVEN MILLION PESOS

[4] *Id.* at 439-441.

(₱37,000,000.00) Philippine Currency, granted by [Cupertino] was ratified (sic) on 10 April 1995 before Constancio Mangoba, Jr., Notary Public in Makati City, as Doc. No. 242; in Page No. 50; Book No., XVI; Series of 1995, and duly recorded in the Office of the Register of Deeds for the said City of Iloilo;

WHEREAS, the [petitioner] has increased its loan payable to [Cupertino] which now amounts to ONE HUNDRED NINETY SEVEN MILLION PESOS (197,000,000.00); and

WHEREAS, the [petitioner] and [Cupertino] intend to amend the said Real Estate Mortgage in order to reflect the current total loan secured by the said Real Estate Mortgage;

NOW, THEREFORE, for and in consideration of the foregoing premises, the parties hereto have agreed and by these presents do hereby agree to amend said Real Estate Mortgage dated 10 April 1995 mentioned above by substituting the total amount of the loan secured by said Real Estate Mortgage from ₱37,000,000.00 to ₱197,000,000.00.

It is hereby expressly understood that with the foregoing amendment, all other terms and conditions of said Real Estate Mortgage dated 10 April 1995 are hereby confirmed, ratified and continued to be in full force and effect, and that this agreement be made an integral part of said Real Estate Mortgage.[5]

Curiously however, and contrary to the tenor of the foregoing loan documents, petitioner, on March 11, 1996, through counsel, wrote Cupertino and demanded the release of the ₱160,000,000.00 loan increase covered by the amendment of real estate mortgage.[6] In the demand letter, petitioner's counsel stated that despite repeated verbal demands, Cupertino had yet to release the ₱160,000,000.00 loan. On May 17, 1996, petitioner demanded anew from Cupertino the release of the ₱160,000,000.00 loan.[7]

In complete refutation, Cupertino, likewise through counsel, responded and denied that it had yet to release the ₱160,000,000.00 loan. Cupertino maintained that petitioner had

[5] *Id.* at 24-25.

[6] *Id.* at 27-28.

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

long obtained the proceeds of the aforesaid loan. Cupertino declared petitioner's demand as made to "abscond from a just and valid obligation," a mere afterthought, following Cupertino's letter demanding payment of the ₱37,000,000.00 loan covered by the first promissory note which became overdue on March 5, 1996.

Not surprisingly, Cupertino instituted extrajudicial foreclosure proceedings over the properties subject of the amended real estate mortgage. The auction sale was scheduled on October 11, 1996 with respondent Notary Public Edwin R. Catacutan commissioned to conduct the same. This prompted petitioner to file a complaint with a prayer for a restraining order to enjoin Notary Public Catacutan from proceeding with the public auction.

The following are the parties' conflicting claims, summarized by the RTC, and quoted verbatim by the CA in its decision:

"The verified complaint alleges that [petitioner] is engaged in the manufacturing and retailing/wholesaling business. On the other hand, Cupertino is engaged in the realty business. That on April 10, 1995, [petitioner] executed a Real Estate Mortgage over its real properties covered by Transfer Certificates of title Nos. T-75109 and T-73481 ("the mortgage properties") of the Register of Deeds of Iloilo in favor of Cupertino to secure the former's loan obligation to the latter in the amount of Php37,000,000.00. That it has been the agreement between [petitioner] and Cupertino that the aforesaid loan will be non-interest bearing. Accordingly, the parties saw to it that the promissory note (evidencing their loan agreement) did not provide any stipulation with respect to interest. On several occasions thereafter, [petitioner] made partial payments to Cupertino in respect of the aforesaid loan obligation by the former to the latter in the total amount of Php7,985,039.08, thereby leaving a balance of Php29,014,960.92. On August 16, 1995, [petitioner] and Cupertino executed an amendment of Real Estate Mortgage (Annex "C") increasing the total loan covered by the aforesaid REM from Php37,000,000.00 to ₱197,000,000.00. This amendment to REM was executed preparatory to the promised release by Cupertino of additional loan proceeds to [petitioner] in the total amount of Php160,000,000.00. However, despite the execution of the said amendment to REM and its subsequent registration with the Register of Deeds of Iloilo City and notwithstanding the clear agreement

between [petitioner] and Cupertino and the latter will release and deliver to the former the aforesaid additional loan proceeds of ₱160,000,000.00 after the signing of pertinent documents and the registration of the amendment of REM, Cupertino failed and refused to release the said additional amount for no apparent reason at all, contrary to its repeated promises which [petitioner] continuously relied on. On account of Cupertino's unfulfilled promises, [petitioner] repeatedly demanded from Cupertino the release and/or delivery of the said Php160,000,000.00 to the former. However, Cupertino still failed and refused and continuously fails and refuses to release and/or deliver the Php160,000,000.00 to [petitioner]. When [petitioner] tendered payment of the amount of Php29,014,960.92 which is the remaining balance of the Php37,000,000.00 loan subject of the REM, in order to discharge the same, Cupertino unreasonably and unjustifiably refused acceptance thereof on the ground that the previous payment amounting to Php7,985,039.08, was applied by Cupertino to alleged interests and not to principal amount, despite the fact that, as earlier stated, the aforesaid loan by agreement of the parties, is non-interest bearing. Worst, unknown to [petitioner], Cupertino was already making arrangements with [respondent] Notary Public for the extrajudicial sale of the mortgage properties even as [petitioner] is more than willing to pay the Php29,014,960.92 which is the remaining balance of the Php37,000,000.00 loan and notwithstanding Cupertino's unjustified refusal and failure to deliver to [petitioner] the amount of Php160,000,000.00. In fact, a notarial sale of the mortgaged properties is already scheduled on 04 October 1996 by [respondent] Notary Public at his office located at Rm. 100, Iloilo Casa Plaza, Gen Luna St., Iloilo City. In view of the foregoing, Cupertino has no legal right to foreclose the mortgaged properties. In any event, Cupertino cannot extrajudicially cause the foreclosure by notarial sale of the mortgage properties by [respondent] Notary Public as there is nothing in the REM (dated 10 April 1995) or in the amendment thereto that grants Cupertino the said right.

x x x x x x x x x

"Respondents] finally filed an answer to the complaint, alleging that the loan have (sic) an interest of 17% per annum: that no payment was ever made by [petitioner], that [petitioner] has already received the amount of the loan prior to the execution of the promissory note and amendment of Real Estate Mortgage, xxx."

"[Petitioner] filed a supplemental complaint alleging subsequent acts made by defendants causing the subsequent auction sale and registering the Certificates of Auction Sale praying that said auction sale be declared null and void and ordering the Register of Deeds to cancel the registration and annotation of the Certificate of Notarial Sale."

Thereafter, the Pre-Trial conference was set. Both parties submitted their respective Brief and the following facts were admitted, *viz*:

1. Execution of the mortgage dated April 10, 1995;
2. Amendment of Real Estate Mortgage dated August 16, 1995;
3. Execution of an Extra-Judicial Foreclosure by the [Cupertino];
4. Existence of two (2) promissory notes;
5. Existence but not the contents of the demand letter March 11, 1996 addressed to Mr. Wilfredo Lua and receipt of the same by [Cupertino]; and
6. Notice of Extra-Judicial Foreclosure Sale."

For failing to arrive at an amicable settlement, trial on the merits ensued. The parties presented oral and documentary evidence to support their claims and contentions. [Petitioner] insisted that she never received the proceeds of Php160,000,000.00, thus, the foreclosure of the subject properties is null and void. [Cupertino] on the other hand claimed otherwise.[8]

After trial, the RTC rendered a decision dismissing petitioner's complaint and ordering it to pay Cupertino ₱100,000.00 each for actual and exemplary damages, and ₱500,000.00 as attorney's fees. The RTC recalled and set aside its previous order declaring the notarial foreclosure of the mortgaged properties as null and void. On appeal, the CA, as previously adverted to, affirmed the RTC's ruling.

In dismissing petitioner's complaint and finding for Cupertino, both the lower courts upheld the validity of the amended real estate mortgage. The RTC found, as did the CA, that although the amended real estate mortgage fell within the exceptions to

---

[8] *Rollo*, pp. 67-70.

the parol evidence rule under Section 9, Rule 130 of the Rules of Court, petitioner still failed to overcome and debunk Cupertino's evidence that the amended real estate mortgage had a consideration, and petitioner did receive the amount of ₱160,000,000.00 representing its incurred obligation to Cupertino. Both courts ruled that as between petitioner's bare denial and negative evidence of non-receipt of the ₱160,000,000.00, and Cupertino's affirmative evidence on the existence of the consideration, the latter must be given more weight and value. In all, the lower courts gave credence to Cupertino's evidence that the ₱160,000,000.00 proceeds were the total amount received by petitioner and its affiliate companies over the years from Wilfredo Lua, Cupertino's president. In this regard, the lower courts applied the doctrine of "piercing the veil of corporate fiction" to preclude petitioner from disavowing receipt of the ₱160,000,000.00 and paying its obligation under the amended real estate mortgage.

Undaunted, petitioner filed this appeal insisting on the nullity of the amended real estate mortgage. Petitioner is adamant that the amended real estate mortgage is void as it did not receive the agreed consideration therefor *i.e.* ₱160,000,000.00. Petitioner avers that the amended real estate mortgage does not accurately reflect the agreement between the parties as, at the time it signed the document, it actually had yet to receive the amount of ₱160,000,000.00. Lastly, petitioner asseverates that the lower courts erroneously applied the doctrine of "piercing the veil of corporate fiction" when both gave credence to Cupertino's evidence showing that petitioner's affiliates were the previous recipients of part of the ₱160,000,000.00 indebtedness of petitioner to Cupertino.

We are in complete accord with the lower courts' rulings.

Well-entrenched in jurisprudence is the rule that factual findings of the trial court, especially when affirmed by the appellate court, are accorded the highest degree of respect and are considered conclusive between the parties.[9] A review of such findings by

[9] *Titan Construction Corporation v. Uni-Field Enterprises, Inc.*, G.R. No. 153874, March 1, 2007, 517 SCRA 180, 180; *Sigaya v. Mayuga*, G.R.

this Court is not warranted except upon a showing of highly meritorious circumstances, such as: (1) when the findings of a trial court are grounded entirely on speculation, surmises or conjectures; (2) when a lower court's inference from its factual findings is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion in the appreciation of facts; (4) when the findings of the appellate court go beyond the issues of the case, or fail to notice certain relevant facts which, if properly considered, will justify a different conclusion; (5) when there is a misappreciation of facts; (6) when the findings of fact are conclusions without mention of the specific evidence on which they are based, are premised on the absence of evidence, or are contradicted by evidence on record.[10] None of these exceptions necessitating a reversal of the assailed decision obtains in this instance.

Conversely, we cannot subscribe to petitioner's faulty reasoning.

First. All the loan documents, on their face, unequivocally declare petitioner's indebtedness to Cupertino:

1. Promissory Note dated April 10, 1995, prefaced with a "[f]or value received," and the escrow arrangement for the release of the ₱37,000,000.00 obligation in favor of DBP, another creditor of petitioner.

2. Mortgage likewise dated April 10, 1995 executed by petitioner to secure its ₱37,000,000.00 loan obligation with Cupertino.

3. Amendment to Promissory Note for ₱37,000,000.00 dated April 12, 1995 which tentatively sets the interest rate at seventeen percent (17%) per annum.

4. Promissory Note dated August 16, 1995, likewise prefaced with "[f]or value received," and unconditionally promising to pay Cupertino ₱160,000,000.00 with a stipulation on compounding interest at thirty percent (30%) per annum. The Promissory Note requires, among others, the execution of a real estate

---

No. 143254, August 18, 2005, 467 SCRA 341, 343.

[10] *Ilao-Quianay v. Mapile*, G.R. No. 154087, October 25, 2005, 474 SCRA 246, 247; *See Child Learning Center, Inc. v. Tagorio*, G.R. No. 150920, November 25, 2005, 476 SCRA 236, 236-237.

mortgage to serve as collateral therefor. In case of default in payment, petitioner, specifically, through its president, Cua Le Leng, authorizes Cupertino to "dispose of said security or any part thereof at [a] public sale."

5. Amendment of Real Estate Mortgage also dated August 16, 1995 with a recital that the mortgagor, herein petitioner, has increased its loan payable to the mortgagee, Cupertino, from ₱37,000,000.00 to ₱197,000,000.00. In connection with the increase in loan obligation, the parties confirmed and ratified the Real Estate Mortgage dated April 10, 1995.

Unmistakably, from the foregoing chain of transactions, a presumption has arisen that the loan documents were supported by a consideration.

Rule 131, Section 3 of the Rules of Court specifies that a disputable presumption is satisfactory if uncontradicted and not overcome by other evidence. Corollary thereto, paragraphs (r) and (s) thereof and Section 24 of the Negotiable Instruments Law read:

SEC. 3. *Disputable presumptions*.— The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:

x x x x x x x x x

(r) That there was sufficient consideration for a contract;

(s) That a negotiable instrument was given or indorsed for a sufficient consideration;

x x x x x x x x x

SEC. 24. *Presumption of consideration*.— Every negotiable instrument is deemed *prima facie* to have been issued for a valuable consideration; and every person whose signature appears thereon to have become a party thereto for value.

Second. The foregoing notwithstanding, petitioner insists that the Amended Real Estate Mortgage was not supported by a consideration, asserting non-receipt of the ₱160,000,000.00 loan increase reflected in the Amended Real Estate Mortgage. However, petitioner's bare-faced assertion does not even dent, much less,

overcome the aforesaid presumptions on consideration for a contract. As deftly pointed out by the trial court:

> x x x In this case, this Court finds that the [petitioner] has not been able to establish its claim of non-receipt by a preponderance of evidence. Rather, the Court is inclined to give more weight and credence to the affirmative and straightforward testimony of [Cupertino] explaining in plain and categorical words that the Php197,000,000.00 loan represented by the amended REM was the total sum of the debit memo, the checks, the real estate mortgage and the amended real estate mortgage, the pledges of jewelries, the trucks and the condominiums plus the interests that will be incurred which all in all amounted to Php197,000,000.00. It is a basic axiom in this jurisdiction that as between the plaintiff's negative evidence of denial and the defendant's affirmative evidence on the existence of the consideration, the latter must be given more weight and value. Moreover, [Cupertino's] foregoing testimony on the existence of the consideration of the Php160,000,000.00 promissory note has never been refuted nor denied by the [petitioner], who while initially having manifested that it will present rebuttal evidence eventually failed to do so, despite all available opportunities accorded to it. By such failure to present rebutting evidence, [Cupertino's] testimony on the existence of the consideration of the amended real estate mortgage does not only become impliedly admitted by the [petitioner], more significantly, to the mind of this Court, it is a clear indication that [petitioner] has no counter evidence to overcome and defeat the [Cupertino's] evidence on the matter. Otherwise, there is no logic for [petitioner] to withhold it if available. Assuming that indeed it exists, it may be safely assumed that such evidence having been willfully suppressed is adverse if produced.
>
> The presentation by [petitioner] of its cash Journal Receipt Book as proof that it did not receive the proceeds of the Php160,000,000.00 promissory note does not likewise persuade the Court. In the first place, the subject cash receipt journal only contained cash receipts for the year 1995. But as appearing from the various checks and debit memos issued by Wilfredo Lua and his wife, Vicky Lua and from the former's unrebutted testimony in Court, the issuance of the checks, debit memos, pledges of jewelries, condominium units, trucks and the other components of the Php197,000,000.00 amended real estate mortgage had all taken place prior to the year 1995, hence, they could not have been recorded therein. What is more, the said cash receipt journal appears to be prepared solely at the behest of

the [petitioner], hence, can be considered as emanating from a "poisonous tree" therefore self-serving and cannot be given any serious credibility.[11]

Significantly, petitioner asseverates that the parol evidence rule, which excludes other evidence, apart from the written agreement, to prove the terms agreed upon by the parties contained therein,[12] is not applicable to the Amended Real Estate Mortgage. Both the trial and appellate courts agreed with petitioner and did not apply the parol evidence rule. Yet, despite the allowance to present evidence and prove the invalidity of the Amended Real Estate Mortgage, petitioner still failed to substantiate its claim of non-receipt of the proceeds of the ₱160,000,000.00 loan increase.

Moreover, petitioner was the plaintiff in the trial court, the party that brought suit against respondent. Accordingly, it had the burden of proof, the duty to present a preponderance of evidence to establish its claim.[13] However, petitioner's evidence consisted only of a barefaced denial of receipt and a vaguely drawn theory that in their previous loan transaction with respondent covered by the first promissory note, it did not receive the proceeds of the ₱37,000,000.00. Petitioner conveniently ignores that this particular promissory note secured by the real estate mortgage was under an escrow arrangement and taken out to pay its obligation to DBP. Thus, petitioner, quite obviously, would not be in possession of the proceeds of the loan. Contrary to petitioner's contention, there is no precedent to explain its stance that respondent undertook to release the ₱160,000,000.00 loan only after it had first signed the Amended Real Estate Mortgage.

Third. Petitioner bewails the lower courts' application of the doctrine of "piercing the veil of corporate fiction."

---

[11] *Rollo*, pp. 173-174.

[12] RULES OF COURT, Rule 130, Sec. 9.

[13] *See* RULES OF COURT, Rule 131, Sec. 1.

As a general rule, a corporation will be deemed a separate legal entity until sufficient reason to the contrary appears.[14] But the rule is not absolute. A corporation's separate and distinct legal personality may be disregarded and the veil of corporate fiction pierced when the notion of legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime.[15]

In this case, Cupertino presented overwhelming evidence that petitioner and its affiliate corporations had received the proceeds of the ₱160,000,000.00 loan increase which was then made the consideration for the Amended Real Estate Mortgage. We quote with favor the RTC's and the CA's disquisitions on this matter:

> That the checks, debit memos and the pledges of the jewelries, condominium units and trucks were constituted not exclusively in the name of [petitioner] but also either in the name of Yuyek Manufacturing Corporation, Siain Transport, Inc., Cua Leleng and Alberto Lim is of no moment. For the facts established in the case at bar has convinced the Court of the propriety to apply the principle known as "piercing the veil of the corporate entity" by virtue of which, the juridical personalities of the various corporations involved are disregarded and the ensuing liability of the corporation to attach directly to its responsible officers and stockholders. x x x
>
> x x x x x x x x x
>
> The conjunction of the identity of the [petitioner] corporation in relation to Siain Transport, Inc. (Siain Transport), Yuyek Manufacturing Corp. (Yuyek), as well as the individual personalities of Cua Leleng and Alberto Lim has been indubitably shown in the instant case by the following established considerations, to wit:
>
> *1. Siain and Yuyek have [a] common set of [incorporators], stockholders and board of directors;*
>
> *2. They have the same internal bookkeeper and accountant in the person of Rosemarie Ragodon;*
>
> *3. They have the same office address at 306 Jose Rizal St., Mandaluyong City;*

---

[14] CORPORATION CODE, Sec. 2. *See* also CIVIL CODE, Art. 44.

[15] *United States v. Milwaukee Refirigerator Transit Co.*, 142 Fed. 247 (1905).

4. They have the same majority stockholder and president in the person of Cua Le Leng; and

5. In relation to Siain Transport, Cua Le Leng had the unlimited authority by and on herself, without authority from the Board of Directors, to use the funds of Siain Trucking to pay the obligation incurred by the [petitioner] corporation.

Thus, it is crystal clear that [petitioner] corporation, Yuyek and Siain Transport are characterized by oneness of operations vested in the person of their common president, Cua Le Leng, and unity in the keeping and maintenance of their corporate books and records through their common accountant and bookkeeper, Rosemarie Ragodon. Consequently, these corporations are proven to be the mere alter-ego of their president Cua Leleng, and considering that Cua Leleng and Alberto Lim have been living together as common law spouses with three children, this Court believes that while Alberto Lim does not appear to be an officer of Siain and Yuyek, nonetheless, his receipt of certain checks and debit memos from Willie Lua and Victoria Lua was actually for the account of his common-law wife, Cua Leleng and her alter ego corporations. While this Court agrees with Siain that a corporation has a personality separate and distinct from its individual stockholders or members, this legal fiction cannot, however, be applied to its benefit in this case where to do so would result to injustice and evasion of a valid obligation, for well settled is the rule in this jurisdiction that the veil of corporate fiction may be pierced when it is used as a shield to further an end subversive of justice, or for purposes that could not have been intended by the law that created it; or to justify wrong, or for evasion of an existing obligation. Resultantly, the obligation incurred and/or the transactions entered into either by Yuyek, or by Siain Trucking, or by Cua Leleng, or by Alberto Lim with Cupertino are deemed to be that of the [petitioner] itself.

The same principle equally applies to Cupertino. Thus, while it appears that the issuance of the checks and the debit memos as well as the pledges of the condominium units, the jewelries, and the trucks had occurred prior to March 2, 1995, the date when Cupertino was incorporated, the same does not affect the validity of the subject transactions because applying again the principle of piercing the

corporate veil, the transactions entered into by Cupertino Realty Corporation, it being merely the alter ego of Wilfredo Lua, are deemed to be the latter's personal transactions and vice-versa.[16]

x x x x x x x x x

x x x **Firstly.** As can be viewed from the extant record of the instant case, Cua Leleng is the majority stockholder of the three (3) corporations namely, Yuyek Manufacturing Corporation, Siain Transport, Inc., and Siain Enterprises Inc., at the same time the President thereof. **Second.** Being the majority stockholder and the president, Cua Le leng has the unlimited power, control and authority without the approval from the board of directors to obtain for and in behalf of the [petitioner] corporation from [Cupertino] thereby mortgaging her jewelries, the condominiums of her common law husband, Alberto Lim, the trucks registered in the name of [petitioner] corporation's sister company, Siain Transport Inc., the subject lots registered in the name of [petitioner] corporation and her oil mill property at Iloilo City. And, to apply the proceeds thereof in whatever way she wants, to the prejudice of the public.

As such, [petitioner] corporation is now estopped from denying the above apparent authorities of Cua Le Leng who holds herself to the public as possessing the power to do those acts, against any person who dealt in good faith as in the case of Cupertino.[17]

WHEREFORE, premises considered, the petition is *DENIED.* The Decision of the Court of Appeals in CA-G.R. CV No. 71424 is *AFFIRMED.* Costs against the petitioner.

SO ORDERED.

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

---

[16] *Rollo,* pp. 174-176.

[17] *Id.* at 75.

THIRD DIVISION

[G.R. No. 178461. June 22, 2009]

CALIFORNIA MANUFACTURING COMPANY, INC., *petitioner, vs.* **THE CITY OF LAS PIÑAS and the HON. RIZAL Y. DEL ROSARIO, CITY TREASURER,** *respondents.*

SYLLABUS

1. CIVIL LAW; CONTRACTS; CHARACTERISTICS OF CONTRACT; AUTONOMY OF CONTRACT; RULE.— Article 1306 of the Civil Code of the Philippines provides that contracting parties may establish such stipulations, clauses, terms, and conditions, as they may deem convenient, provided that they are not contrary to law, morals, good customs, public order, or public policy. x x x

2. ID.; ID.; COMPROMISE AGREEMENT; DEFINED.— x x x A compromise agreement is a contract whereby the parties make reciprocal concessions, avoid litigation, or put an end to one already commenced. It is an accepted, even desirable and encouraged, practice in courts of law and administrative tribunals.

3. ID.; ID.; ID.; JUDICIAL COMPROMISE; NATURE.— A compromise agreement intended to resolve a matter already under litigation is a judicial compromise. Having judicial mandate and entered as its determination of the controversy, it has the force and effect of a judgment. It transcends its identity as a mere contract between the parties as it becomes a judgment that is subject to execution in accordance with the Rules of Court. Thus, a compromise agreement that has been made and duly approved by the court attains the effect and authority of *res judicata*, although no execution may be issued unless the agreement receives the approval of the court where the litigation is pending and compliance with the terms of the agreement is decreed.

APPEARANCES OF COUNSEL

Siguion Reyna Montecillo & Ongsiako and *Danilo L. Cruz* for petitioner.

Zardi Melito D. Abellera and Glenda A. Cerillo-Lucena for respondents.

R E S O L U T I O N

NACHURA, *J.*:

For our consideration and approval is a Joint Petition[1] [Motion] to Withdraw Petition for Review on *Certiorari* dated February 5, 2008.

Earlier, or on June 21, 2007, petitioner filed a Petition[2] for Review on *Certiorari* questioning the assessments issued by the City of Las Piñas through the City Treasurer for local and real property taxes in the amount of ₱73,043,634.47.

After filing of the required Comment[3] and Reply[4], we gave due course to the Petition and directed both parties to submit their respective memoranda.[5]

During the pendency of this case, petitioner offered to compromise the case by paying fifty percent (50%) of the amount assessed. Since petitioner's factory in Las Piñas had already ceased operations and in order to facilitate the issuance of the clearance for the cessation of its business, the decision to enter into a compromise was adopted by the respondents.

Through City Resolution No. 2385-08,[6] the City Council of Las Piñas approved the compromise offer. The City Resolution reads —

---

[1] *Rollo*, pp. 409-411.

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

[3] *Id.* at 234-247.

[4] *Id.* at 272-291.

[5] *Id.* at 305-325 (for respondents) and 343-404 (for petitioner).

[6] *Id.* at. 413-414.

Republic of the Philippines
City of Las Piñas
Office of the City Council

Sponsored by: Honorable Councilors Luis I. Bustamante, Renato P. Dumlao, Danilo V. Hernandez, Eduardo P. Lezarda, Dennis S. Aguilar, Alfredo L. Miranda, Ruben C. Ramos, Rex H. Riguera, Oscar C. Peña, Leopoldo F. Benedicto, Demetrio R. Cristobal, Filemon A. Aguilar, Jr., and Donna Kris R. Alfonso.

CITY RESOLUTION NO. 2385-08
Series of 2008

A RESOLUTION APPROVING THE REQUEST OF CALIFORNIA MANUFACTURING COMPANY, INC., FOR THE SETTLEMENT OF ITS REAL PROPERTY AND BUSINESS TAXES LIABILITIES AND AUTHORIZING THE CITY MAYOR AND/OR CITY TREASURER TO ACCEPT IN BEHALF OF THE CITY THE SETTLEMENT OFFER.

WHEREAS, the Law Offices of Siguion Reyna, Montecillo & Ongsiako, thru Atty. Jose Lis C. Leagogo, the lawyers of California Manufacturing Company, Inc., (now owned by Unilever Philippines, Inc.,) proposed for the settlement of G.R. No. 178461 involving the said company and the City Government pending before the Supreme Court of the Philippines;

WHEREAS, accordingly, the company, without admitting liability but solely for the purpose of buying peace and preventing prolonged and contentious litigation, is considering the compromise settlement of the above-mentioned case;

WHEREAS, the proposal is mutually beneficial and convenient to both parties, bringing not only much needed immediate revenue to the City but also de-clogging the Supreme Court's dockets and assisting and alleviating the plight of investors who had undergone financial distress;

NOW, THEREFORE:

BE IT RESOLVED AS IT IS HEREBY RESOLVED by the Sangguniang Panlungsod of Las Piñas, in session assembled, to approve, as it hereby approves the request of California Manufacturing Company, Inc., (now owned by Unilever Philippines, Inc.,) thru Atty. Jose Lis C. Leagogo of Siguion Reyna, Montecillo & Ongsiako Law Offices, to amicably settle its real property and business income taxes liabilities.

RESOLVED, to authorize as it hereby authorizes the City Mayor and/or City Treasurer to accept in behalf of the City the settlement offer and enter into any compromise agreement, as the case may be, to implement the settlement.

RESOLVED, ALSO, to authorize the City Legal Officer, Atty. Zardi Melito D. Abellera, to file the necessary pleading in the Supreme Court of the Philippines in support of the Compromise Agreement.

RESOLVED, FURTHER, that copies of this Resolution be furnished the Honorable Mayor of the City of Las Piñas, the City Treasurer and the City Legal Officer for their appropriate action.

This Resolution shall take effect immediately upon its approval.

ADOPTED by the Sangguniang Panlungsod of Las Piñas in its regular session today, December 11, 2008.

(Signed)
HON. HENRY C. MEDINA
Vice-Mayor & Presiding Officer

ATTESTED:

(Signed)
ATTY. JERRY A. TANCHUAN
Sangguniang Secretary

APPROVED:

(Signed)
HON. VERGEL A. AGUILAR
City Mayor

Petitioner has already settled and paid the amount of ₱36,522,817.24[7] in accordance with the compromised 50% of the assessed amount.

Article 1306 of the Civil Code of the Philippines provides that contracting parties may establish such stipulations, clauses, terms, and conditions, as they may deem convenient, provided that they are not contrary to law, morals, good customs, public order, or public policy. A compromise agreement is a contract

[7] Official Receipts issued by City of Las Piñas to CMCI; *id.* at 418-424.

whereby the parties make reciprocal concessions, avoid litigation, or put an end to one already commenced.[8] It is an accepted, even desirable and encouraged, practice in courts of law and administrative tribunals.[9]

A compromise agreement intended to resolve a matter already under litigation is a judicial compromise. Having judicial mandate and entered as its determination of the controversy, it has the force and effect of a judgment. It transcends its identity as a mere contract between the parties as it becomes a judgment that is subject to execution in accordance with the Rules of Court. Thus, a compromise agreement that has been made and duly approved by the court attains the effect and authority of *res judicata*, although no execution may be issued unless the agreement receives the approval of the court where the litigation is pending and compliance with the terms of the agreement is decreed.[10]

Finding City Resolution No. 2385-08, Series of 2008 of the Sangguniang Panlungsod of Las Piñas to be validly executed and not contrary to law, morals, good customs, public order or public policy, we therefore, accept and approve the same.

WHEREFORE, the Joint Petition [Motion] to Withdraw Petition for Review on *Certiorari* dated February 5, 2008 is *GRANTED*. Judgment is hereby rendered in accordance with City Resolution No. 2385-08, Series of 2008 of the Sangguniang Panlungsod of Las Piñas. The instant case is *DISMISSED*. No pronouncement as to costs.

SO ORDERED.

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

---

[8] Article 2028, Civil Code of the Philippines; *Harold v. Aliba*, G.R. No. 130864, October 2, 2007, 534 SCRA 478, 486.

[9] *DMG Industries, Inc. v. Philippine American Investments Corporations*, G.R. No. 174114, July 6, 2007, 526 SCRA 682, 687.

[10] *Viesca v. Gilinsky*, G.R. No. 171698, July 4, 2007, 526 SCRA 533, 557-558.

THIRD DIVISION

[G.R. No. 179700. June 22, 2009]

GWYN QUINICOT y CURATIVO, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; GENERALLY, FACTUAL FINDINGS OF THE TRIAL COURT ARE ACCORDED RESPECT ESPECIALLY WHEN SUSTAINED BY THE COURT OF APPEALS. — x x x It is a fundamental rule that the trial court's findings that are factual in nature and that involve credibility are accorded respect when no glaring errors; gross misapprehension of facts; or speculative, arbitrary and unsupported conclusions can be gathered from such findings. The reason for this is that the trial court was in a better position to decide the credibility of witnesses, having heard their testimonies and observed their deportment and manner of testifying during the trial. The rule finds an even more stringent application where said findings are sustained by the Court of Appeals. There being no compelling reasons to deviate from the findings of the trial court and the Court of Appeals, we stick by their findings.

2. ID.; ID.; DISPUTABLE PRESUMPTIONS; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTIES; ABSENT EVIDENCE OF IMPROPER MOTIVE, THE PRESUMPTION STANDS. — The presumption of regularity in the performance of official duties likewise stands in this case. Said presumption was not overcome, as there was no evidence showing that the two police officers were impelled by improper motive. As admitted by petitioner, prior to 21 September 2000, he neither knew nor had any quarrel or misunderstanding with any or both of the afore-named policemen.

3. CRIMINAL LAW; BUY-BUST OPERATIONS; ABSENCE OF A PRIOR SURVEILLANCE OR TEST BUY DOES NOT AFFECT THE LEGALITY THEREOF. — Settled is the rule

that the absence of a prior surveillance or test buy does not affect the legality of the buy-bust operation. There is no textbook method of conducting buy-bust operations. The Court has left to the discretion of police authorities the selection of effective means to apprehend drug dealers. A prior surveillance, much less a lengthy one, is not necessary, especially where the police operatives are accompanied by their informant during the entrapment. Flexibility is a trait of good police work. We have held that when time is of the essence, the police may dispense with the need for prior surveillance. In the instant case, having been accompanied by the informant to the person who was peddling the dangerous drugs, the policemen need not have conducted any prior surveillance before they undertook the buy-bust operation.

4. ID.; ID.; PERIOD OF PLANNING FOR BUY-BUST OPERATIONS VARIES DEPENDING ON THE CIRCUMSTANCES OF EACH CASE. — x x x [T]here is no textbook method of conducting buy-bust operations. The Court has left to the discretion of police authorities the selection of effective means to apprehend drug dealers. If a police operation requires immediate implementation, time is of the essence, and sometimes only hasty preparations are possible. The fact that the police officer who acted as back-up (or any other member of the team) was briefed only for a few minutes does not prove that there was no buy-bust operation that happened. A buy-bust operation can be carried out after a long period of planning or, as in the case on hand, abruptly or forthwith, without much preparation. The conduct thereof depends on the opportunity that may arise under the circumstances. Thus, the period of planning for such operation cannot be dictated to the police authorities who are to undertake such operation. In the case at bar, the buy-bust operation was planned in less than an hour prior to the buy-bust operation, after the informant contacted petitioner and told him that there was a buyer. Under the situation, the briefing of a team member for only a few minutes cannot be taken against the buy-bust team, for the team had to cope with what it had at that instant.

5. ID.; ILLEGAL SALE OF DRUGS; WHAT MATTERS IS NOT THE EXISTING FAMILIARITY BETWEEN THE SELLER AND THE BUYER, BUT THEIR AGREEMENT AND THE ACTS CONSTITUTING THE SALE AND DELIVERY OF

THE DANGEROUS DRUG. — This Court finds that it was not improbable for petitioner to sell *shabu* to a total stranger like PO1 Marchan. We quote with approval the trial court's finding on the matter: The contention of the accused x x x that it would be highly improbable for PO1 Domingo Marchan a complete stranger to the accused to offer to buy *shabu* from the latter is not tenable. What matters in drug related cases is not the existing familiarity between the seller and the buyer, but their agreement and the acts constituting the sale and delivery of the dangerous drug (People vs. Jaymalin, 214 SCRA 685). Besides, drug pushers, especially small quantity or retail pushers, sell their prohibited wares to anyone who can pay for the same, be they strangers or not(People vs. Madriaga, 211 SCRA 711). It is of common knowledge that pushers, especially small-time dealers, peddle prohibited drugs in the open like any articles of commerce (People vs. Merabueno, 239 SCRA 197). Drug pushers do no confine their nefarious trade to known customers and complete strangers are accommodated provided they have the money to pay (People vs. Solon, 244 SCRA 554). It is therefore, not unusual for a stranger like PO1 Domingo Marchan to offer to buy *shabu* and for Gwyn Quinicot to entertain the offer after two days from their initial meeting especially in this case when the subsequent transaction was firmed up thru telephone facilitated by a civilian informant.

6. ID.; ID.; DRUG-PUSHING WHEN DONE IN SMALL SCALE BELONGS TO THAT CLASS OF CRIMES THAT MAY BE COMMITTED AT ANY TIME AND AT ANY PLACE. — It is also not surprising that the buy-bust operation was conducted at noontime. As we have ruled, drug-pushing when done on a small scale, as in this case, belongs to that class of crimes that may be committed at any time and at any place. After the offer to buy is accepted and the exchange is made, the illegal transaction is completed in a few minutes. The fact that the parties are in a public place and in the presence of other people may not always discourage them from pursuing their illegal trade, as these factors may even serve to camouflage the same.

7. REMEDIAL LAW; CRIMINAL PROCEDURE; IN THE PROSECUTION OF DRUG CASES, THE NON-PRESENTATION OF THE CONFIDENTIAL INFORMANT IS NOT FATAL TO THE PROSECUTION; CIRCUMSTANCES WHEN PRESENTATION OF THE INFORMANT IS

NECESSARY. — Petitioner's contention, that the non-presentation of the confidential informant was fatal, is untenable. The presentation of an informant is not a requisite for the prosecution of drug cases. Police authorities rarely, if ever, remove the cloak of confidentiality with which they surround their poseur-buyers and informers, since their usefulness will be over the moment they are presented in court. Moreover, drug dealers do not look kindly upon squealers and informants. It is understandable why, as much as permitted, their identities are kept secret. The non-presentation of the confidential informant is not fatal to the prosecution. Informants are usually not presented in court because of the need to hide their identity and preserve their invaluable service to the police. It is well-settled that except when the petitioner *vehemently denies selling prohibited drugs and there are material inconsistencies* in the testimonies of the arresting officers, *or* there are reasons to believe that the arresting officers had *motives to testify falsely* against the petitioner, *or that only the informant was the poseur-buyer who actually witnessed the entire transaction*, the testimony of the informant may be dispensed with as it will merely be corroborative of the apprehending officers' eyewitness testimonies. There is no need to present the informant in court where the sale was actually witnessed and adequately proved by prosecution witnesses. The testimony of an informant who witnessed the illegal sale of *shabu* is not essential for conviction and may be dispensed with if the poseur-buyer testified on the same, because the informant's testimony would merely corroborate that of the poseur-buyer. What can be fatal is the nonpresentation of the poseur-buyer, if there is no other eyewitness to the illicit transaction — not the non-presentation of the informant whose testimony under certain circumstances would be merely corroborative or cumulative. In the case before us, it is not indispensable for the confidential informant to take the witness stand, considering that the poseur-buyer testified regarding the illegal sale made by petitioner. Furthermore, none of the above circumstances that necessitate the presentation of the informant obtains in this case. While petitioner denies selling *shabu*, there are no material inconsistencies in the testimonies of the arresting officers. Petitioner failed to show that the two police officers had motives to testify falsely against him. As admitted by petitioner, prior to 21 September 2000, he neither knew nor had any quarrel or

misunderstanding with any or both of them. Lastly, the sale and the subsequent recovery of two more sachets of *shabu* from petitioner were adequately shown and proved by the prosecution witnesses, who were present and who dealt with the petitioner in the crime scene.

8. ID.; ID.; SEARCH AND SEIZURE; TWO-WITNESS RULE; INAPPLICABLE IN CASE AT BAR. — The Receipt of Property Seized issued by PO1 Domingo Marchan was validly made. It enumerated the items – three plastic sachets containing white crystalline substance, and other paraphernalia – recovered from petitioner's body after he was arrested for selling *shabu* to the poseur-buyer. The lack of witnesses signing the same, petitioner claims, is evidence of a frame-up. We do not agree. The two witnesses were not required to sign the receipt. This two-witness rule applies only to searches — made under authority of a search warrant — of a house, room, or any other premises in the absence of the lawful occupant thereof or any member of his family. In the case at bar, there was no search warrant issued and no house, room or premises searched.

9. ID.; EVIDENCE; CREDIBILITY OF WITNESSES; POSITIVE TESTIMONIES OF THE PROSECUTION WITNESSES PREVAIL OVER THE ACCUSED'S PLAIN DENIAL OF THE OFFENSES CHARGED. — Petitioner's allegations of frame-up and extortion fall under the evidence adduced by the prosecution. Having been caught *in flagrante delicto*, his identity as seller and possessor of the *shabu* can no longer be disputed. Against the positive testimonies of the prosecution witnesses, petitioner's plain denial of the offenses charged, unsubstantiated by any credible and convincing evidence, must simply fail. Allegations of frame-up and extortion by the police officers are common and standard defenses in most dangerous drugs cases. They are, however, viewed by this Court with disfavor, for such defenses can be easily concocted and fabricated. To prove such defenses, the evidence must be clear and convincing. The police officers are presumed to have performed their duties in accord with law. While such presumption is not conclusive, petitioner was, however, burdened to dispute the same by clear and convincing evidence. In this case, the evidence of the petitioner was utterly insufficient and unconvincing. He failed to provide by clear and convincing evidence that he was framed and that the police officers were

extorting money from him. His allegations remain as such, unsubstantiated by credible and persuasive evidence.

10. CRIMINAL LAW; ILLEGAL SALE OF DRUGS; DEFENSES WHICH CANNOT BE SET UP BY THE ACCUSED. — Petitioner likewise submits, under the facts as presented by the prosecution, that he was instigated to sell *shabu* to PO1 Marchan. We find no instigation in this case. The established rule is that when an accused is charged with the sale of illicit drugs, he cannot set up the following defenses, *viz:* (1) that facilities for the commission of the crime were intentionally placed in his way; or (2) that the criminal act was done at the solicitation of the decoy or poseur-buyer seeking to expose his criminal act; or (3) that police authorities feigning complicity in the act were present and apparently assisted in its commission. The sale of contraband is a kind of offense habitually committed, and the solicitation simply furnishes evidence of the criminal's course of conduct. In the case at bar, after the informant called petitioner informing the latter that there was a buyer of *shabu*, a plan of entrapment was made by the policemen. The buy-bust operation was organized specifically to test the veracity of the informant's tip and to arrest the malefactor if the report proved to be true. The prosecution evidence positively showed that the petitioner agreed to sell ₱300.00 worth of *shabu* to the poseur-buyer and was caught *in flagrante delicto*.

11. ID.; REPUBLIC ACT NO. 6425 (DANGEROUS DRUGS ACT OF 1972); ILLEGAL SALE OF DRUGS; ELEMENTS; PRESENT IN CASE AT BAR. — Petitioner was charged with violations of Sections 15 and 16 of Republic Act No. 6425. He was charged with violation of Section 15 for selling 0.119 gram of *shabu*. The elements necessary for the prosecution of illegal sale of drugs are: (1) the identities of the buyer and the seller, the object, and consideration; and (2) the delivery of the thing sold and the payment therefor. What is material to the prosecution for illegal sale of dangerous drugs is the proof that the transaction took place, coupled with the presentation in court of evidence of *corpus delicti*. The evidence for the prosecution showed the presence of all these elements. The poseur-buyer and his back-up described how the buy-bust happened, and the *shabu* sold was presented and identified in court. The poseur-buyer, PO1 Domingo Marchan, identified petitioner as the seller of the *shabu*. His testimony was

corroborated by PO2 Allen June Germodo. The white crystalline substance weighing 0.119 gram, which was bought from petitioner for ₱300.00, was found to contain *shabu* per Chemistry Report No. D-146-2000.

12. ID.; ID.; ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS; ESTABLISHED IN CASE AT BAR. — Petitioner was likewise charged under Section 16 of Republic Act No. 6425 with possession of two sachets (2.1832 grams and 2.6355 grams) of *shabu* with a total weight of 4.8187 grams. In illegal possession of dangerous drugs, the elements are: (1) the accused is in possession of an item or object that is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possesses the said drug. All these elements have been established. PO2 Allen June Germodo recounted how he recovered the two plastic sachets containing a white crystalline substance, and other drug paraphernalia from petitioner after conducting a body search on the latter after his arrest for selling a sachet containing a white crystalline substance to the poseur-buyer. The substance in the plastic sachets was *shabu* as confirmed by Chemistry Report No. D-146-2000. x x x

13. REMEDIAL LAW; CRIMINAL PROCEDURE; SEARCH AND SEIZURE; A SEARCH INCIDENTAL TO A LAWFUL ARREST NEEDS NO WARRANT FOR ITS VALIDITY. — x x x Because petitioner had been caught *in flagrante delicto*, the arresting officers were duty-bound to apprehend the culprit immediately and to search him for anything that may be used as proof of the commission of the crime. The search, being an incident of a lawful arrest, needed no warrant for its validity.

14. CRIMINAL LAW; REPUBLIC ACT NO. 6425, AS AMENDED (DANGEROUS DRUGS ACT OF 1972); IMPOSABLE PENALTIES IN CASE AT BAR. — x x x [W]e determine the proper imposable penalty. Both courts imposed on petitioner the indeterminate penalty of six months and one day of *arresto mayor*, as minimum, to four years and two months of *prision correccional*, as maximum, for selling 0.119 gram of *shabu*. The sale of less than 200 grams of methampethamine hydrochloride, a regulated drug, is punishable with a penalty ranging from *prision correccional* to *reclusion temporal*, depending on the quantity. The proper penalty to be imposed for the illegal sale of 0.119 gram of *shabu* would be *prision*

correccional, pursuant to the second paragraph of Section 20 of Republic Act No. 6425, as amended by Section 17 of Republic Act No. 7659 and in consonance with the doctrine laid down in *People v. Simon*. Further, applying the Indeterminate Sentence Law, the imposable penalty should be the indeterminate sentence of six months of *arresto mayor*, as minimum, to four years and two months of *prision correccional*, as maximum. The penalty imposed should thus be modified accordingly. Both lower courts likewise found that petitioner possessed 4.8187 grams of methamphetamine hydrochloride and sentenced petitioner to an indeterminate penalty of six months and one day of *arresto mayor*, as minimum, to four years and two months of *prision correccional*, as maximum. As the Court ruled in *People v. Tira*: Under Section 16, Article III of Rep. Act No. 6425, as amended, the imposable penalty of possession of a regulated drug, less than 200 grams, in this case, *shabu*, is *prision correccional* to *reclusion perpetua*. Based on the quantity of the regulated drug subject of the offense, the imposable penalty shall be as follows:

QUANTITY	IMPOSABLE PENALTY
Less than one (1) gram to 49.25 grams	*prision correccional*
49.26 grams to 98.50 grams	*prision mayor*
98.51 grams to 147.75 grams	*reclusion temporal*
147.76 grams to 199 grams	*reclusion perpetua*

Considering that the *shabu* found in the possession of the petitioner was 4.8187 grams, the imposable penalty for the crime is *prision correccional*. Applying the Indeterminate Sentence Law, and modifying the penalty imposed by the lower courts, the petitioner is sentenced to suffer an indeterminate penalty of six months of *arresto mayor*, as minimum, to four years and two months of *prision correccional*, as maximum, for violation of Section 16 of Republic Act No. 6425, as amended. In both cases, no fine is imposable since a fine can be imposed as a conjunctive penalty only if the penalty is *reclusion perpetua* to death.

APPEARANCES OF COUNSEL

Orlando V. Remollo for petitioner.
The Solicitor General for respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

Before Us is an appeal which seeks the reversal of the Decision[1] of the Court of Appeals dated 26 October 2006 in CA-G.R. CR No. 27835 affirming *in toto* the Joint Judgment[2] of the Regional Trial Court (RTC) of Negros Oriental, Branch 30, Dumaguete City, in Criminal Cases No. 14855-14856, and its Resolution[3] dated 6 September 2007 denying petitioner Gwyn C. Quinicot's Motion for Reconsideration.

Two informations both dated 21 September 2000 were filed before the RTC of Negros Oriental charging petitioner Quinicot with violation of Sections 16[4] and 15,[5] respectively, of Republic Act No. 6425, otherwise known as The Dangerous Drugs Act of 1972. The accusatory portions of the informations read:

Crim. Case No. 14855

That on or about the 21st day of September, 2000 in the City of Dumaguete, Philippines, and within the jurisdiction of this Honorable Court, the said accused, not being then authorized by law, did then and there, wilfully, unlawfully and feloniously, have and keep in his possession two (2) transparent plastic sachets containing Methamphetamine Hydrochloride also known as *shabu* weighing more or less 5.1 grams.[6]

Crim. Case No. 14856

That on or about the 21st day of September, 2000 in the City of Dumaguete, Philippines, and within the jurisdiction of this Honorable

---

[1] Penned by Associate Justice Agustin S. Dizon with Associate Justices Pampio A. Abarintos and Priscilla Baltazar-Padilla, concurring. *Rollo*, pp. 36-45.

[2] *Id.* at 46-57.

[3] *Id.* at 77.

[4] Criminal Case No. 14855 – possession.

[5] Criminal Case No. 14856 – sale.

[6] Records, p. 16.

Court, the said accused, not being then authorized by law, did then and there wilfully, unlawfully and feloniously, sell and deliver to a poseur buyer (1) small transparent plastic sachet containing suspected Methamphetamine hydrochloride also known as *shabu* weighing more or less 0.2 grams.[7]

When arraigned, petitioner, assisted by counsel *de parte*, pleaded "Not Guilty" to the crimes charged. After the pre-trial conference, the cases were tried jointly.

The prosecution presented three witnesses: (1) Police Officer (PO) 1 Domingo Marchan, member of the Philippine National Police (PNP) assigned at the 701st Criminal Investigation and Detection Team; (2) PO2 Allen June Germodo, member of the PNP assigned at the Provincial Narcotics Office of Negros Oriental; and (3) Police Inspector (P/Insp.) Josephine S. Llena, Forensic Chemist, PNP Crime Laboratory. From their collective testimonies, the version of the prosecution is as follows:

At around 11:20 a.m. of 21 September 2000, a confidential informant/agent called the petitioner by phone. Thereafter, PO1 Marchan talked to petitioner and informed the latter that he was buying ₱300.00 worth of *shabu*. PO1 Marchan was casually introduced to the petitioner as Dondon. A team was formed by team leader Police Senior Inspector (PSI) Crisaleo Tolentino to conduct a buy-bust operation against petitioner. PO1 Marchan was designated as the poseur-buyer, while the other members who served as back-ups were PO3 Manuel Sanchez, Police Inspector Rolando Caña and PO2 Allen Germodo. PSI Tolentino gave PO1 Marchan three one- hundred peso bills[8] which he marked with his initials.[9]

At around 12:20 p.m., they went to Chin Loong Restaurant and conducted the buy-bust operation. PO2 Germodo was positioned in front of the restaurant, five to ten meters away from PO1 Marchan and petitioner. PO1 Marchan saw petitioner and a woman sitting on a stool in the bar. PO1 Marchan

[7] *Id.* at 3.

[8] Exhs. F, G and H; records, p. 12.

[9] Exhs. F-1, G-1 and H-1; *id.* at 13.

approached petitioner and asked him if he had *shabu* worth ₱300.00. Petitioner answered in the affirmative. PO1 Marchan gave the ₱300.00 marked money, and in return, petitioner gave him a plastic sachet[10] containing a white crystalline substance. When PO1 Marchan executed the pre-arranged signal – touching his hat – PO2 Germodo rushed towards petitioner and PO1 Marchan and identified themselves as police officers. Petitioner was informed he violated the law on selling *shabu*. PO2 Germodo bodily searched petitioner and recovered two plastic sachets[11] from the brown belt purse of the latter. He likewise recovered from petitioner the marked money, a disposable lighter, and a tooter.[12] The petitioner was brought to the police station. PO1 Marchan issued a receipt[13] for the items recovered from the him.

Per request[14] of PSI Tolentino, the three plastic sachets containing white crystalline substance were sent to the Negros Oriental Provincial Crime Laboratory for forensic laboratory examination. P/Insp. Llena conducted the chemical examination on the following: (1) specimen A[15] with a weight of 0.119 gram; (2) specimen B[16] with a weight of 2.1832 grams; and (3) specimen C[17] with a weight of 2.6355 grams. The results as contained in Chemistry Report No. D-146-2000[18] showed that the specimens contained methylamphetamine hydrochloride.

PO1 Marchan disclosed that prior to 21 September 2000, on 19 September at around 5:00 p.m., he first saw petitioner at Music Box and offered to buy from the latter *shabu* without specifying the amount and quantity. Petitioner did not give him

---

[10] Exh. E – Crim. Case No. 14856.

[11] Exhs. E and F – Crim. Case No. 14855.

[12] Exh. I – Crim. Case No. 14855.

[13] Exh. A – Both cases.

[14] Exh. O – Both cases.

[15] Exh. E – Crim. Case No. 14856.

[16] Exh. E — Crim. Case No. 14855.

[17] Exh. F – Crim. Case No. 14855.

[18] Exh. D – Both cases.

shabu, so he (PO1 Marchan) left the place, as he was only instructed to familiarize himself with petitioner's physical features and voice. He added he could not reveal the identity of the informant in court, because it would endanger the life of the latter.

For the defense, Joel D. Patola, a Minister of the Philippine General Council of the Assemblies of God, and the petitioner, an employee of the Department of Public Works and Highways (DPWH), took the stand.

Petitioner alleges that no buy-bust operation occurred and that the evidence – *shabu* – allegedly confiscated from him was planted evidence.

Petitioner narrated that at around 10:00 a.m. of 21 September 2000, he was at Chin Loong Restaurant ordering *pansit* and buttered chicken that he would take out for lunch. While waiting for his order, he saw a certain Narvic Pleider and one Orlyn taking their snacks. Orlyn approached petitioner and offered to pawn a diver's watch to him which the latter declined, saying he had no money. When he was informed by the waiter that his order would still take some time to prepare, he rode his motorcycle and went to St. Paul to fetch his son. He brought his son to the house of his parents-in-law at Purok Kalubihan, Daro, Dumaguete City.

At 11:45 a.m., he went back to Chin Loong Restaurant to get his order. He ordered *siopao* and Coke and asked for the chit. He sat at the outdoor bar and saw Joel Patola taking his snack. When the waiter served the *siopao*, Orlyn, together with two other men, approached him. Orlyn asked him if he knew someone who was selling *shabu,* and he replied that he did not know anyone, and that he had no time because he was in a hurry. The two men, who turned out to be police officers in civilian attire, forced him to go with them. No warrant of arrest or search warrant was presented. He was forced to ride a pedicab and was bought to the police station.

At the police station, he was brought to the Office of the Central Intelligence and Detection Group located at the back of the station. He was made to sit on a chair with Narvic, PO1 Marchan and PO2 Germodo surrounding him. While the two police officers were in the office of PSI Tolentino, Narvic told

him to settle the matter for ₱50,000.00. He asked Narvic what settlement he was talking about, then told him the latter had no money and would not give the amount because he had not committed anything wrong. When PO1 Marchan came out, petitioner asked permission to call his parents. He requested his parents to come to the police station, and they arrived at 1:30 p.m. He informed his father of what happened to him and what Narvic told him regarding the settlement. His father got mad, because he knew Narvic as the one who framed him in a prior case. His father was approached by Narvic, who talked about the settlement. His father got angry and left. When his parents were gone, Narvic asked him if they would settle before 5:00 p.m.; otherwise, a case would be filed against him.

At 5:00 p.m., petitioner's parents came back with Atty. Rommel Erames, who told them to let the police file the case. At 6:00 p.m., an inquest proceeding was conducted before the Office of the City Prosecutor. The *shabu*, wallet, tube[19] and other paraphernalia were presented. During the inquest proceedings, he knew that the police had planted the *shabu*. He denied possession of the *shabu* and ownership of the wallet. He likewise denied selling *shabu* to Narvic or to Orlyn.

Petitioner claimed that Orlyn was the best friend of his sister, while he knew Narvic to be an informer of the Presidential Anti Organized Crime headed by a certain Captain Macabali. He alleged that Narvic once gave him money to buy *shabu* from a certain Ampil, and for that he was arrested on 19 March 1999 at Calindagan for selling *shabu*. He said he was acquitted in said case for lack of evidence.

Petitioner explained he did not call the attention of Joel Patola when he was forced to board the pedicab, because he was afraid. He said he did not file a complaint against the two police officers who arrested him and that, prior to 21 September 2000, he did not know said police officers and had no misunderstanding or quarrel with them.

---

[19] Exh. I.

Joel Patola[20] narrated that at noon of 21 September 2000, he was at the Chin Loong Restaurant eating snacks at the outdoor bar. He saw petitioner arrive and sit one and a half meters away from him. He saw a woman approach petitioner, and the two conversed. Two men sat beside the woman. After three to five minutes of conversation, petitioner was arrested. Patola said he wondered why petitioner was arrested when he was just sitting and eating. He did not see petitioner give anything to the lady. He even saw his former classmate, PSI Tolentino, who joined the two policemen in hailing a pedicab. Petitioner was forced to ride in the pedicab with the two policemen. He claimed he testified voluntarily and no one requested him to do so. Patola claimed that when he was on his way to his office, he saw petitioner in court and told him he would testify.

In its Joint Judgment dated 6 August 2003, the trial court found petitioner guilty as charged. The dispositive portion of the decision reads:

> WHEREFORE, finding the accused Gwyn Quinicot *y* Curativo guilty beyond reasonable doubt of the crime of illegal possession of *shabu* in Criminal Case No. 14855 in violation of Section 16, Article III, Republic Act No. 6425, as amended, and of the offense of illegal selling of shabu (sic) Criminal Case No. 14856 in violation of Section 15, Article III, Republic Act No. 6425, as amended, there being no mitigating or aggravating circumstance, applying the Indeterminate Sentence Law, he is hereby sentenced to suffer in each case imprisonment ranging from a minimum of six (6) months and one (1) day of *arresto mayor* up to four (4) years and two (2) months of *prision correc(c)ional* as maximum penalty.
>
> All the aforestated dangerous drugs subject matter of these cases are hereby declared forfeited in favor of the government to be disposed in accordance with law.
>
> Costs against the accused.[21]

The trial court found petitioner to have violated Sections 15 and 16 of Republic Act No. 6425, as amended, when he sold

---

[20] Sometimes spelled as "Patula."

[21] Records, pp. 152-153.

one plastic sachet containing .0119 gram of methamphetamine hydrochloride to poseur-buyer PO1 Marchan; and that PO2 Germodo recovered from petitioner, *inter alia*, the marked money used in the buy-bust operation amounting to ₱300.00 and two more plastic sachets containing 2.1832 grams and 2.6355 grams of methamphetamine hydrochloride (*shabu)*.

In convicting petitioner, the trial court gave more credence to the testimonies of the prosecution witnesses and upheld the buy-bust operation conducted against petitioner. The defense of frame-up invoked by petitioner was not believed by the trial court.

Aggrieved with the decision, petitioner appealed his conviction to the Court of Appeals assigning as sole error the following:

THE LOWER COURT GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANT ON THE GROUND THAT HIS GUILT HAS NOT BEEN ESTABLISHED BEYOND REASONABLE DOUBT.

On 26 October 2006, the Court of Appeals affirmed *in toto* the RTC's decision.[22] The Motion for Reconsideration[23] filed by petitioner was denied[24] on 6 September 2007.

Petitioner is now before this Court seeking a review of the decision of the Court of Appeals, arguing that the appellate court gravely erred in convicting him on the ground that his guilt had not been proven beyond reasonable doubt.

Petitioner argues that the testimonies of PO1 Marchan and PO2 Germodo are incredible and untrustworthy. He denies that a buy-bust operation took place, and that the evidence against him is planted evidence.

We find the testimonies of PO1 Marchan and PO2 Germodo credible and straightforward. It is a fundamental rule that the trial court's findings that are factual in nature and that involve

---

[22] *Id.* at 45.

[23] *Id.* at 59-66.

[24] *Id.* at 77-78.

credibility are accorded respect when no glaring errors; gross misapprehension of facts; or speculative, arbitrary and unsupported conclusions can be gathered from such findings. The reason for this is that the trial court was in a better position to decide the credibility of witnesses, having heard their testimonies and observed their deportment and manner of testifying during the trial.[25] The rule finds an even more stringent application where said findings are sustained by the Court of Appeals.[26] There being no compelling reasons to deviate from the findings of the trial court and the Court of Appeals, we stick by their findings.

The presumption of regularity in the performance of official duties likewise stands in this case. Said presumption was not overcome, as there was no evidence showing that the two police officers were impelled by improper motive. As admitted by petitioner, prior to 21 September 2000, he neither knew nor had any quarrel or misunderstanding with any or both of the afore-named policemen.

In asserting that there was no buy-bust operation and that he was framed, petitioner asserts that (1) a surveillance was not conducted; (2) it was highly unbelievable that PO1 Marchan would know that petitioner was a drug pusher and that the former, a total stranger, would sell *shabu* to the latter; (3) it was unlikely that the buy-bust operation was conducted at noon; (4) the confidential informant was not presented in court; and (5) the receipt of property seized was signed only by PO1 Marchan without any witnesses.

These assertions will not exonerate the petitioner.

Settled is the rule that the absence of a prior surveillance or test buy does not affect the legality of the buy-bust operation. There is no textbook method of conducting buy-bust operations. The Court has left to the discretion of police authorities the selection of effective means to apprehend drug dealers.[27] A

---

[25] *People v. Julian-Fernandez*, 423 Phil. 895, 910 (2001).

[26] *People v. Cabugatan*, G.R. No. 172019, 12 February 2007, 515 SCRA 537, 547.

[27] *People v. Li Yin Chu*, 467 Phil. 582, 597 (2004).

prior surveillance, much less a lengthy one, is not necessary, especially where the police operatives are accompanied by their informant during the entrapment.[28] Flexibility is a trait of good police work.[29] We have held that when time is of the essence, the police may dispense with the need for prior surveillance.[30] In the instant case, having been accompanied by the informant to the person who was peddling the dangerous drugs, the policemen need not have conducted any prior surveillance before they undertook the buy-bust operation.

Petitioner claims that there was no buy-bust operation because the same was hurriedly planned, and the briefing of the back-up (PO2 Germodo) was done for only two to three minutes.

We do not agree. As above explained, there is no textbook method of conducting buy-bust operations. The Court has left to the discretion of police authorities the selection of effective means to apprehend drug dealers. If a police operation requires immediate implementation, time is of the essence, and sometimes only hasty preparations are possible.[31] The fact that the police officer who acted as back-up (or any other member of the team) was briefed only for a few minutes does not prove that there was no buy-bust operation that happened. A buy-bust operation can be carried out after a long period of planning or, as in the case on hand, abruptly or forthwith, without much preparation. The conduct thereof depends on the opportunity that may arise under the circumstances. Thus, the period of planning for such operation cannot be dictated to the police authorities who are to undertake such operation. In the case at bar, the buy-bust operation was planned in less than an hour prior to the buy-bust operation, after the informant contacted petitioner and told him that there was a buyer. Under the situation, the briefing of a team member for only a few minutes cannot be taken against

---

[28] *People v. Gonzales*, 430 Phil. 504, 514 (2002).

[29] *People v. Cadley*, 469 Phil. 515, 525 (2004).

[30] *People v. Eugenio*, 443 Phil. 411, 423 (2003).

[31] *People v. Li Yin Chu, supra* note 27.

the buy-bust team, for the team had to cope with what it had at that instant.

This Court finds that it was not improbable for petitioner to sell *shabu* to a total stranger like PO1 Marchan. We quote with approval the trial court's finding on the matter:

> The contention of the accused x x x that it would be highly improbable for PO1 Domingo Marchan a complete stranger to the accused to offer to buy *shabu* from the latter is not tenable. What matters in drug related cases is not the existing familiarity between the seller and the buyer, but their agreement and the acts constituting the sale and delivery of the dangerous drug (People v. Jaymalin, 214 SCRA 685). Besides, drug pushers, especially small quantity or retail pushers, sell their prohibited wares to anyone who can pay for the same, be they strangers or not (People v. Madriaga, 211 SCRA 711). It is of common knowledge that pushers, especially small-time dealers, peddle prohibited drugs in the open like any articles of commerce (People v. Merabueno, 239 SCRA 197). Drug pushers do no confine their nefarious trade to known customers and complete strangers are accommodated provided they have the money to pay (People v. Solon, 244 SCRA 554). It is therefore, not unusual for a stranger like PO1 Domingo Marchan to offer to buy *shabu* and for Gwyn Quinicot to entertain the offer after two days from their initial meeting especially in this case when the subsequent transaction was firmed up thru telephone facilitated by a civilian informant.[32]

It is also not surprising that the buy-bust operation was conducted at noontime. As we have ruled, drug-pushing when done on a small scale, as in this case, belongs to that class of crimes that may be committed at any time and at any place. After the offer to buy is accepted and the exchange is made, the illegal transaction is completed in a few minutes. The fact that the parties are in a public place and in the presence of other people may not always discourage them from pursuing their illegal trade, as these factors may even serve to camouflage the same.[33]

---

[32] Records, p. 151.

[33] *People v. Paco*, G.R. No. 76893, 27 February 1989, 170 SCRA 681, 689.

Petitioner's contention, that the non-presentation of the confidential informant was fatal, is untenable. The presentation of an informant is not a requisite for the prosecution of drug cases.[34] Police authorities rarely, if ever, remove the cloak of confidentiality with which they surround their poseur-buyers and informers, since their usefulness will be over the moment they are presented in court. Moreover, drug dealers do not look kindly upon squealers and informants. It is understandable why, as much as permitted, their identities are kept secret.[35]

The non-presentation of the confidential informant is not fatal to the prosecution. Informants are usually not presented in court because of the need to hide their identity and preserve their invaluable service to the police. It is well-settled that except when the petitioner *vehemently denies selling prohibited drugs and there are material inconsistencies* in the testimonies of the arresting officers, *or* there are reasons to believe that the arresting officers had *motives to testify falsely* against the petitioner, *or that only the informant was the poseur-buyer who actually witnessed the entire transaction*, the testimony of the informant may be dispensed with as it will merely be corroborative of the apprehending officers' eyewitness testimonies. There is no need to present the informant in court where the sale was actually witnessed and adequately proved by prosecution witnesses.[36] The testimony of an informant who witnessed the illegal sale of *shabu* is not essential for conviction and may be dispensed with if the poseur-buyer testified on the same, because the informant's testimony would merely corroborate that of the poseur-buyer.[37] What can be fatal is the nonpresentation of the poseur-buyer, if there is no other eyewitness to the illicit transaction[38] — not the nonpresentation of the informant whose

---

[34] *People v. De los Reyes*, G.R. No. 106874, 21 January 1994, 229 SCRA 439, 447.

[35] *People v. Cheng Ho Chua*, 364 Phil. 497, 513 (1999).

[36] *People v. Doria*, 361 Phil. 595, 622 (1999).

[37] *People v. Santiago*, G.R. No. 175326, 28 November 2007, 539 SCRA 198, 223.

[38] *People v. Polizon*, G.R. No. 84917, 18 September 1992, 214 SCRA 56, 61.

testimony under certain circumstances would be merely corroborative or cumulative.[39]

In the case before us, it is not indispensable for the confidential informant to take the witness stand, considering that the poseur-buyer testified regarding the illegal sale made by petitioner. Furthermore, none of the above circumstances that necessitate the presentation of the informant obtains in this case. While petitioner denies selling *shabu*, there are no material inconsistencies in the testimonies of the arresting officers. Petitioner failed to show that the two police officers had motives to testify falsely against him. As admitted by petitioner, prior to 21 September 2000, he neither knew nor had any quarrel or misunderstanding with any or both of them. Lastly, the sale and the subsequent recovery of two more sachets of *shabu* from petitioner were adequately shown and proved by the prosecution witnesses, who were present and who dealt with the petitioner in the crime scene.

The Receipt of Property Seized[40] issued by PO1 Domingo Marchan was validly made. It enumerated the items – three plastic sachets containing white crystalline substance, and other paraphernalia – recovered from petitioner's body after he was arrested for selling *shabu* to the poseur-buyer. The lack of witnesses signing the same, petitioner claims, is evidence of a frame-up.

We do not agree. The two witnesses were not required to sign the receipt. This two-witness rule applies only to searches — made under authority of a search warrant — of a house, room, or any other premises in the absence of the lawful occupant thereof or any member of his family.[41] In the case at bar, there

---

[39] *People v. Li Wai Cheung*, G.R. Nos. 90440-42, 13 October 1992, 214 SCRA 504, 513; *People v. Mendoza*, G.R. No. 92387, 18 December 1992, 216 SCRA 715, 718-719.

[40] Exh. A – both cases; *rollo*, p. 81.

[41] Rules of Court, Rule 126, Sec. 8.

Sec. 8. Search of house, room, or premises to be made in presence of two witnesses. – No search of a house, room, or any other premises shall be

was no search warrant issued and no house, room or premises searched.

Petitioner's allegations of frame-up and extortion fall under the evidence adduced by the prosecution. Having been caught *in flagrante delicto*, his identity as seller and possessor of the *shabu* can no longer be disputed. Against the positive testimonies of the prosecution witnesses, petitioner's plain denial of the offenses charged, unsubstantiated by any credible and convincing evidence, must simply fail.[42] Allegations of frame-up and extortion by the police officers are common and standard defenses in most dangerous drugs cases. They are, however, viewed by this Court with disfavor, for such defenses can be easily concocted and fabricated. To prove such defenses, the evidence must be clear and convincing.[43]

The police officers are presumed to have performed their duties in accord with law. While such presumption is not conclusive, petitioner was, however, burdened to dispute the same by clear and convincing evidence. In this case, the evidence of the petitioner was utterly insufficient and unconvincing. He failed to provide by clear and convincing evidence that he was framed and that the police officers were extorting money from him. His allegations remain as such, unsubstantiated by credible and persuasive evidence.

Petitioner likewise submits, under the facts as presented by the prosecution, that he was instigated to sell *shabu* to PO1 Marchan. We find no instigation in this case. The established rule is that when an accused is charged with the sale of illicit drugs, he cannot set up the following defenses, *viz:* (1) that facilities for the commission of the crime were intentionally placed in his way; or (2) that the criminal act was done at the

---

made except in the presence of the lawful occupant thereof or any member of his family or in the absence of the latter, two witnesses of sufficient age and discretion residing in the same locality.

[42] *People v. Sy*, G.R. No. 171397, 27 September 2006, 503 SCRA 772, 783.

[43] *People v. Yong Fung Yuen*, 467 Phil. 656, 674 (2004).

solicitation of the decoy or poseur-buyer seeking to expose his criminal act; or (3) that police authorities feigning complicity in the act were present and apparently assisted in its commission. The sale of contraband is a kind of offense habitually committed, and the solicitation simply furnishes evidence of the criminal's course of conduct. [44]

In the case at bar, after the informant called petitioner informing the latter that there was a buyer of *shabu*, a plan of entrapment was made by the policemen. The buy-bust operation was organized specifically to test the veracity of the informant's tip and to arrest the malefactor if the report proved to be true. The prosecution evidence positively showed that the petitioner agreed to sell ₱300.00 worth of *shabu* to the poseur-buyer and was caught *in flagrante delicto*.

Petitioner was charged with violations of Sections 15 and 16 of Republic Act No. 6425. He was charged with violation of Section 15 for selling 0.119 gram of *shabu*. The elements necessary for the prosecution of illegal sale of drugs are: (1) the identities of the buyer and the seller, the object, and consideration; and (2) the delivery of the thing sold and the payment therefor.[45] What is material to the prosecution for illegal sale of dangerous drugs is the proof that the transaction took place, coupled with the presentation in court of evidence of *corpus delicti*.[46]

The evidence for the prosecution showed the presence of all these elements. The poseur-buyer and his back-up described how the buy-bust happened, and the *shabu* sold was presented and identified in court. The poseur-buyer, PO1 Domingo Marchan, identified petitioner as the seller of the *shabu*. His testimony was corroborated by PO2 Allen June Germodo. The white crystalline substance weighing 0.119 gram, which was bought

---

[44] *People v. Gonzales*, *supra* note 28.

[45] *People v. Adam*, 459 Phil. 676, 684 (2003).

[46] *People v. Nicolas*, G.R. No. 170234, 8 February 2007, 515 SCRA 187, 198.

from petitioner for ₱300.00, was found to contain *shabu* per Chemistry Report No. D-146-2000.

In this jurisdiction, the conduct of a buy-bust operation is a common and accepted mode of apprehending those involved in illegal sale of prohibited or regulated drugs. It has been proven to be an effective way of unveiling the identities of drug dealers and of luring them out of obscurity.[47] Unless there is clear and convincing evidence that the members of the buy-bust team were inspired by any improper motive or were not properly performing their duty, their testimonies on the operation deserve full faith and credit.[48]

Petitioner was likewise charged under Section 16 of Republic Act No. 6425 with possession of two sachets (2.1832 grams and 2.6355 grams) of *shabu* with a total weight of 4.8187 grams. In illegal possession of dangerous drugs, the elements are: (1) the accused is in possession of an item or object that is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possesses the said drug.[49] All these elements have been established.

PO2 Allen June Germodo recounted how he recovered the two plastic sachets containing a white crystalline substance, and other drug paraphernalia from petitioner after conducting a body search on the latter after his arrest for selling a sachet containing a white crystalline substance to the poseur-buyer. The substance in the plastic sachets was *shabu* as confirmed by Chemistry Report No. D-146-2000. Because petitioner had been caught *in flagrante delicto*, the arresting officers were duty-bound to apprehend the culprit immediately and to search him for anything that may be used as proof of the commission of the crime. The search, being an incident of a lawful arrest, needed no warrant for its validity.[50]

---

[47] *People v. Cabugatan, supra* note 26.

[48] *People v. Del Mundo*, G.R. No. 169141, 6 December 2006, 510 SCRA 554, 565-566.

[49] *People v. Khor*, 366 Phil. 762, 795 (1999).

[50] *People v. Salazar*, 334 Phil. 556, 570 (1997).

Petitioner's claim that the two informations charging him should be voided, because he was not assisted by counsel during the inquest proceedings, does not hold water. From the records, it is clear that the prayer of petitioner for a regular preliminary investigation — despite having been validly arrested without a warrant, and without executing a waiver of the provisions of Article 125 of the Revised Penal Code — was still granted by the trial court. In the preliminary investigation conducted, petitioner was duly assisted by counsel. Unfortunately for petitioner, the prosecutor did not find any reason to alter or amend the informations filed.

Finally, we determine the proper imposable penalty. Both courts imposed on petitioner the indeterminate penalty of six months and one day of *arresto mayor*, as minimum, to four years and two months of *prision correccional*, as maximum, for selling 0.119 gram of *shabu*. The sale of less than 200 grams of methampethamine hydrochloride, a regulated drug, is punishable with a penalty ranging from *prision correccional* to *reclusion temporal*, depending on the quantity. The proper penalty to be imposed for the illegal sale of 0.119 gram of *shabu* would be *prision correcional*, pursuant to the second paragraph of Section 20 of Republic Act No. 6425, as amended by Section 17 of Republic Act No. 7659 and in consonance with the doctrine laid down in *People v. Simon*.[51] Further, applying the Indeterminate Sentence Law, the imposable penalty should be the indeterminate sentence of six months of *arresto mayor*, as minimum, to four years and two months of *prision correccional*, as maximum. The penalty imposed should thus be modified accordingly.

Both lower courts likewise found that petitioner possessed 4.8187 grams of methamphetamine hydrochloride and sentenced petitioner to an indeterminate penalty of six months and one day of *arresto mayor*, as minimum, to four years and two months of *prision correccional*, as maximum. As the Court ruled in *People v. Tira*[52]:

Under Section 16, Article III of Rep. Act No. 6425, as amended, the imposable penalty of possession of a regulated drug, less than 200

[51] G.R. No. 93028, 29 July 1994, 234 SCRA 555.

[52] G.R. No. 139615, 28 May 2004, 430 SCRA 134, 155.

grams, in this case, *shabu*, is *prision correccional* to *reclusion perpetua*. Based on the quantity of the regulated drug subject of the offense, the imposable penalty shall be as follows:

QUANTITY	IMPOSABLE PENALTY
Less than one (1) gram to 49.25 grams	*prision correccional*
49.26 grams to 98.50 grams	*prision mayor*
98.51 grams to 147.75 grams	*reclusion temporal*
147.76 grams to 199 grams	*reclusion perpetua*

Considering that the *shabu* found in the possession of the petitioner was 4.8187 grams, the imposable penalty for the crime is *prision correccional.* Applying the Indeterminate Sentence Law, and modifying the penalty imposed by the lower courts, the petitioner is sentenced to suffer an indeterminate penalty of six months of *arresto mayor*, as minimum, to four years and two months of *prision correccional*, as maximum, for violation of Section 16 of Republic Act No. 6425, as amended.

In both cases, no fine is imposable since a fine can be imposed as a conjunctive penalty only if the penalty is *reclusion perpetua* to death.[53]

WHEREFORE, all the foregoing considered, the decision dated 26 October 2006 of the Court of Appeals affirming the convictions of petitioner Gwyn C. Quinicot for the sale of 0.119 gram of *shabu* and possession of 4.8187 grams of *shabu*, is hereby *AFFIRMED* with the *MODIFICATION* that the penalty of imprisonment imposed on petitioner for each case should be the indeterminate penalty of six (6) months of *arresto mayor*, as minimum, to four (4) years and two (2) months of *prision correccional*, as maximum.

SO ORDERED.

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

---

[53] *People v. Simon*, *supra* note 51 at 573; *People v. Elamparo*, 385 Phil. 1052, 1065-1066 (2000); *People v. Concepcion*, 414 Phil. 247, 266 (2001); *People v. Medina*, 354 Phil. 447, 463 (1998).

THIRD DIVISION

[G.R. No. 181675. June 22, 2009]

Spouses EDUARDO and MAYDA TANKIANG, *petitioners, vs.* **Hon. SELMA P. ALARAZ, in her capacity as the Presiding Judge of the Regional Trial Court (RTC) of Makati, Branch 62, Sheriff ROMEO C. GONZALES, Branch Sheriff of RTC Makati, Branch 62, Sheriff REY B. MAGSAJO, Deputy Sheriff of the Metropolitan Trial Court (MTC), Makati City, Branch 61, and METROPOLITAN BANK & TRUST COMPANY, INC.,** *respondents.*

SYLLABUS

CIVIL LAW; CONTRACTS; AUTONOMY OF CONTRACTS; COMPROMISE AGREEMENT; DEFINED.— Under Article 1306 of the Civil Code of the Philippines, contracting parties may establish such stipulations, clauses, terms, and conditions, as they may deem convenient, provided that these are not contrary to law, morals, good customs, public order, or public policy. A compromise agreement is a contract whereby the parties make reciprocal concessions in order to resolve their differences, thereby putting an end to litigation. Such means of dispute settlement is an accepted, even desirable and encouraged, practice in courts of law and administrative tribunals. Finding the above Compromise Agreement to have been validly executed and not contrary to law, morals, good customs, public order, or public policy, we, therefore, approve the same.

APPEARANCES OF COUNSEL

Quasha Ancheta Peña & Nolasco for petitioners.

Mendoza Navarro-Mendoza and Partners Law Offices for private respondent.

R E S O L U T I O N

NACHURA, *J.*:

Before us is a Manifestation and/or Motion for Judgment Based on a Compromise Agreement[1] filed by petitioner spouses Eduardo Tankiang and Mayda Tankiang (petitioners).

Earlier, petitioners filed their Petition (With Application for Temporary Restraining Order)[2] under Rule 45 of the Rules of Court assailing the Decision[3] dated March 30, 2007 and the Resolution[4] dated February 8, 2008 of the Court of Appeals in CA-G.R. SP No. 89342. Respondent Metropolitan Bank & Trust Company, Inc. (Metrobank) timely filed its Comment.[5] Instead of filing their Reply, petitioners submitted for approval their Manifestation and/or Motion for Judgment with the attached Compromise Agreement[6] dated January 8, 2009 which reads –

COMPROMISE AGREEMENT

This Compromise Agreement ("Agreement") is entered into by and between:

SPS. EDUARDO TANKIANG AND MAYDA TANKIANG, both of legal age, Filipino, and with postal address at **1146 Tamarind Road, Dasmariñas Village, Makati City,** hereinafter referred to as **"Sps. Tankiang;"**

\- and -

LNC 3 ASSET MANAGEMENT INC., a corporation duly organized and existing under and, by virtue of the laws of the Philippines, with office at Karport Building, 32nd Street, Bonifacio Global City, Taguig, Metro Manila, represented herein

---

[1] *Rollo,* pp. 619-623.

[2] *Id.* at 26-80.

[3] *Id.* at 9-20.

[4] *Id.* at 21-22.

[5] *Id.* at 525-575.

[6] *Id.* at 624-634.

by its authorized representatives Jose Romarx Salas and Adrian L. Apostol, herein referred to as **"LNC."**

(Spouses Tankiang and LNC shall be collectively referred to herein as the **"Parties,"** and individually, a "Party.")

- with the conformity of -

METROPOLITAN BANK & TRUST COMPANY, a corporation duly organized and existing under and, by virtue of the laws of the Philippines, with office at Metrobank Plaza, Sen. Gil Puyat Ave., Makati City, represented herein by its authorized representative _____, hereinafter referred to as **"Metrobank."**

WITNESSETH THAT:

WHEREAS, Sps. Eduardo Tankiang and Mayda Tankiang (hereinafter "Sps. Tankiang") and Metropolitan Bank & Trust Company (hereinafter "Metrobank") has filed suits and countersuits now pending in various courts (hereinafter "Civil Cases") in connection with the loan transactions entered into by Sps. Tankiang, as borrower/ mortgagor and Metrobank, as creditor/mortgagee.

WHEREAS, the Sps. Tankiang hereby acknowledge the existence of its loan, which was granted by the original creditor bank, Metrobank. Moreover, Sps. Tankiang also acknowledge the sale, transfer and conveyance of its loan account and the securities/collaterals they executed pursuant to such loan from Metrobank, subsequently to Asia Recovery Corporation and then finally to LNC.

WHEREAS, to buy peace and avoid further litigation, the Parties have agreed to settle their differences subject of the Civil Cases.

NOW, THEREFORE, for and in consideration of the foregoing premises, and subject to the mutual covenants and conditions hereinafter set forth, in the spirit of goodwill and understanding, and to avoid the uncertainties and additional costs of litigation, the Parties have agreed to amicably settle their misunderstandings, including the Civil Cases, and all other and future claims between the Parties arising out of the facts and circumstances alleged in the Civil Cases, and hereby agree as follows:

I. Terms of Settlement:

A. Manner

In view of the mutual desire of the parties to liquidate the properties which are currently in the possession of Sps. Tankiang and Metrobank, the Parties expressly agree that the Sps. Tankiang shall:

a. Buy back the residential property at 1146 Tamarind Road, Dasmariñas Village, Makati City covered by T[ransfer] (sic) Certificate of Title No. 219538 and commercial lots at Roxas Boulevard (Service Road) Brgy. San Rafael, Pasay City, covered by Tranfer (sic) Certificate of Title Nos. 145175 and 145176.

It is understood by the Parties that all taxes, fees and expenses relative to the transfer and consolidation of the properties referred herein to Sps. Tankiang shall be borne exclusively by the latter including but not limited to the consolidation of the titles from Metrobank and any and all succeeding transfer of title as deemed necessary in their favor.

b. Have a right to match any offer to sell the following properties:

(i) residential property at 39 Banaba St., Forbes Park (South), Makati City; and

(ii) residential property at 214 Recoletos St., Urdaneta Village, Makati City;

Sps. Tankiang shall have the right to match an offer for the purchase of the properties in item (b) above by other party on the same terms and conditions as may be set forth in any bona fide offer received by LNC from a third party, in writing. LNC, upon receipt of such offer to purchase, shall promptly transmit the offer to Sps. Tankiang who shall have a period of thirty (30) days to match the offer and all of its terms, covenants and conditions (the "Acceptance Period"). Sps. Tankiang shall send to LNC a written notice of acceptance of the offer within the Acceptance Period. The failure to accept the offer within the Acceptance Period containing the same terms and conditions as set forth in the offer shall be deemed a waiver of Sps. Tankiang's right to match and LNC may therefore sell the property upon all of the terms set forth in the offer. The right to match shall be for a period of eighteen (18) months from the date of signing of this settlement agreement and conditioned on the faithful compliance by Sps. Tankiang of all the terms and conditions stipulated therein. After the lapse of such period, LNC may offer for sale the property to any third party.

The Parties hereby agree that Sps. Tankiang shall inform the tenants of all subject properties, if any, as to the terms and conditions of this Compromise Agreement within thirty (30) days from the date of signing of this Agreement.

However, Metrobank and LNC shall be rendered free and harmless of all and any liability arising out of the sale and liquidation of the properties, provided that Metrobank and LNC comply in good faith with the manner of sale, as stated in this Agreement.

For and in consideration of this opportunity to match any offer to purchase the above-described properties, the Sps. Tankiang hereby unconditionally agree to surrender, within five (5) days from the signing of this Agreement, to LNC or its authorized agents or representatives the possession of the commercial vacant lots at National Hi-way corner Barrio San Isidro, Cabuyao, Laguna. Sps. Tankiang further confirm LNC's (or Metrobank) right of possession over residential property at 39 Banaba St., Forbes Park (South), Makati City; and residential property at 214 Recoletos St., Urdaneta Village, Makati City.

For the properties subject of buyback, particularly the Dasmariñas property, the real property taxes shall continuously be paid by the Sps. Tankiang. For the Roxas Boulevard property, Sps. Tankiang shall reimburse any taxes paid in advance by LNC3. For clarity, cut off date for the computation of the pro-rata reimbursement shall commence from the execution of this agreement.

The Parties hereby agree that the rights granted to Sps. Tankiang in relation to the right to match any offer to sell the subject properties are exclusive and shall not be assigned to any third party.

B. Consideration

The Parties and Metrobank agree to the dismissal, settlement and end to the Civil Cases upon the happening of the following:

a. Payment of the aggregate amount of Pesos: Sixty Five Million (Php 65,000,000.00) to buy back the residential property at 1146 Tamarind Road, Dasmariñas Village, Makati City and commercial lot at Roxas Boulevard (Service Road) Brgy. San Rafael, Pasay City; the said amount payable in three (3) years

with upfront payment of Pesos: Eight Million Five Hundred Thousand (Php 8,500,000.00) payable on 11 November 2008 or the day after Sps. Tankiang's receipt of the Compromise Agreement signed by Metropolitan Bank & Trust Company Inc. (hereinafter "signed copy"), whichever is later. In case Sps. Tankiang receives the signed copy after 11 November 2008, the postdated check issued by the Tankiangs will be exchanged to reflect a later date. The balance of the contract price shall be payable in equal quarterly payments of Php 4,708,333.33 Million commencing on the sixth (6th) month from receipt of the first payment. A schedule of payment is hereto attached an Annex "A" hereof.

b. Upon execution of the Compromise Agreement, the Sps. Tankiang, their assigns, heirs, successor-in-interest, shall fully and unconditionally forever release, waive, and discharge the Metrobank, ARC and LNC, as well as its assigns, successors-in-interest, agents, and employees for any and all causes of action, claims, counterclaims and demands they and their assigns, heirs and successors-in-interest may have at present or in the future whatsoever, pertaining, or having any relation, to the following cases:

1) LRC Case No. M-4507, Regional Trial Court of Makati City, Branch 62;

2) Civil Case No. 04-243, Regional Trial Court of Makati City, Branch 132;

3) CA-GR SP No. 89372, Court of Appeals, 11th Division;

4) GR No. 18322, Supreme Court;

5) LRC Case No. B-3175, Regional Trial Court of Biñan, Laguna, Branch 24;

6) LRC Case No. B-3185, Regional Trial Court of Biñan, Laguna, Branch 24;

7) LRC Case No. B-6380, Regional Trial Court of Biñan, Laguna, Branch 25;

8) CA G.R. SP No. 99236, Court of Appeals, 8th Division;

9) G.R. No. 181675, Supreme Court, 3rd Division; and

10) Civil Case No. 03-0376 CFM, Regional Trial Court of Pasay City, Branch 111;

11) CA-G.R. CV No. 81889, Court of Appeals;

12) CA-G.R. SP No. 83444, Court of Appeals;

13) G.R. No. 166576, Supreme Court;

14) All other cases pending before administrative and judicial bodies relating to the properties involving Metrobank, Asia Recovery Corp. and LNC3.

The Parties hereby agree that upon the signing of this agreement, Sps. Tankiang shall cause the immediate removal of the annotation of *Lis Pendens* on the subject properties and the dismissal of the *certiorari* cases filed in appellate courts. Sps. Tankiang can only cause the removal of the annotation of *Lis Pendens* and cause the dismissal for the cases in which they are parties. They cannot cause the dismissal of the case filed by the Heirs of Clarita Tankiang Sanchez or cause the removal of the notice of *Lis Pendens* annotated by the Heirs of Clarita Tankiang Sanchez. On the assumption that this applies to the Roxas Boulevard property only.

The Parties shall execute and/or cooperate in the execution of the necessary documents for the proper discharge and release of whatever claims against Metrobank, ARC, LNC, its assigns, successors-in-interest, agents, and employees for any and all causes of action, claims, counterclaims and demands that Sps. Tankiang, their assigns, heirs and successors-in-interest may have at present or in the future whatsoever, pertaining, or having any relation, to the above cases.

Subject to the terms and conditions hereof, each Party agrees to do, or cause to be done, all things necessary, proper or advisable under applicable laws and regulations to consummate the transactions contemplated by this settlement agreement as expeditiously as practicable, including, but without limitation to, performance of such further acts or the execution and delivery of any additional instruments or documents to obtain or required for effecting the purposes of this agreement.

A Contract to Sell evidencing the right to buy back the residential property at 1146 Tamarind Road, Dasmariñas Village, Makati City and commercial lots at Roxas Boulevard (Service Road) Brgy. San Rafael, Pasay City shall be immediately executed by the Parties.

The Parties hereby agree that the said contract to sell shall be governed by the terms and conditions of this compromise agreement and subject further to the faithful compliance by the Parties of the terms hereof.

II. Waiver/Release/Discharge;

The Parties agree that upon signing of this agreement, they shall submit this Compromise Agreement for judicial approval in the appropriate civil cases or courts, through a Joint Motion for Judgment Based on a Compromise Agreement.

The Parties agree that upon the occurrence of the events provided in I (B) paragraphs (a) and (b), and subject to the Court's approval, both parties and LNC's successor-in-interest, assigns, representatives, stockholders, officers, directors, agents or employees agree to absolutely and unconditionally release, quitclaim, discharge and hold free and harmless each other, from any and all claims, suits and actions of whatever nature and kind, disclosed and undisclosed, pending or potential, including but not limited to civil, criminal and/or administrative actions, claims for sums of money, or damages, which in the law or equity each party to this Agreement may have against the other, its successors-in-interest and assigns had, now have or may hereafter have by reason of any matter, cause or thing whatsoever, directly or indirectly arising out of, or related to the facts and circumstances mentioned or narrated in the Civil Cases.

The considerations stated in I (B) shall represent the full, final, unconditional and universal settlement of all claims, disclosed or undisclosed between the Parties and Metrobank.

The execution of this Compromise Agreement and/or the delivery and/or the receipt of the consideration stated in I (B), or any portion thereof, is not, and shall not be deemed to constitute an admission, express or implied, by any party of any liability whatsoever, it being understood that the parties have mutually and freely entered into and performed these acts in the spirit of goodwill and understanding and to avoid or terminate protracted and expensive litigation.

III. Representations and Warranties:

The Parties and Metrobank represent and warrant to each other that:

a Each Party has full power and authority to enter into and execute and deliver this Agreement, and to perform his/her/its obligations hereunder which shall constitute respectively as their valid and legally binding obligations in accordance with the terms hereof. Accordingly, prior to the execution hereof each party and Metrobank shall submit to the others their respective original/certified true copies of all pertinent resolutions, consents and authorizations necessary for the execution, delivery and performance by the parties of their respective covenants under this Compromise Agreement and other related documents, certified copies of the authorization and the specimen signature of the officers of each party who are authorized to execute this Compromise Agreement and other related documents.

b) This Agreement constitutes each Party's legal, valid and binding obligation, enforceable in accordance with its terms.

c) All consents, approvals and authorizations required or necessary for the due execution, delivery and performance of this Agreement have been obtained or effected and remain in full force and effect as of the date hereof.

d) Each party has read this Agreement and, before signing the same, has consulted legal counsel, and each has executed or signed this Agreement on their own free and voluntary will.

e) Except as otherwise disclosed, in writing, prior to the execution of this Agreement, no other rights and interests were created by Sps. Tankiang, their heirs, agents and representatives on the properties subject of this Agreement in favor of any third party.

IV. <u>Remedies in case of default:</u>

The Parties herein hereby agree to pray for judgment based on the foregoing Compromise Agreement. In the event of a violation of any provision of this Agreement, the aggrieved party or its assignee, transferee and/or successor-in-interest shall have the right to pursue any and all legal actions it may have, under law and equity, as well as under this Compromise Agreement, including but not limited to the prayer for issuance of a writ of execution based on the Compromise Judgment, claim/s for damages, costs and expenses it may have, and may

still incur, as a result of the violation, as well as to seek injunctive relief.

In the event that the Sps. Tankiang fails to pay LNC the Repurchase Price in accordance with the schedule of payment described in Annex "A" hereof or the Sps. Tankiang fails to comply with any provision of this Agreement and (i) in the case of non-compliance, they fail to correct the non-compliance within 30 days from receipt by the Sps. Tankiang of notice of non-compliance from the LNC (unless otherwise extended by the Creditor), the possession of the properties at 1146 Tamarind Road, Dasmariñas Village, Makati City and their rights over the commercial lots at Roxas Boulevard (Service Road) Brgy. San Rafael, Pasay City shall be immediately surrendered to LNC. Moreover, in case of a default by Sps. Tankiang, any and all payments received by LNC from Sps. Tankiang as consideration for the repurchase of the properties shall be forfeited in favor of LNC as liquidated damages and to cover for other fees and expenses incurred by LNC to effect the terms and conditions of this agreement.

V. Separability and Superseding Clause:

If any of the provisions contained in this Compromise Agreement shall be declared invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired.

VI. Further Acts and Assurances:

A. Transaction Expenses

Transaction expenses shall include, among others, legal fees, financial advisors fees and arranger's fees. Each party shall bear its own transaction expenses.

Taxes

Subject to Clause I (a) hereof, any value added tax or sales tax, documentary stamp tax, local tax and registration fees for the repurchase of the properties shall be borne solely by the Sps. Tankiang.

B. Confidentiality

The Parties, LNC's assignee, transferee and/or successor-in-interest agree to keep the terms of this Compromise Agreement confidential and shall not disclose any information contained herein to any third party, or the matters contained herein (including, without limiting, information provided by or on behalf of any of the parties, its assignee, transferee and/or successor-in-interest in connection with or pursuant to this Compromise Agreement) without prior written consent of the other party, unless otherwise provided by law or required by competent authority.

C. Transferability

LNC may assign or transfer its rights under this Agreement to any third party without the prior written consent of the Sps. Tankiang.

D. Interpretation

To the extent that the terms and conditions of this Settlement Agreement is inconsistent with the terms and conditions of the loan documents covering the Loan, the terms of this agreement shall prevail.

E. Binding Effect

This Agreement (including the documents and instruments referred to herein) supersedes all prior representations, arrangements, understandings and agreements inconsistent herewith between the Parties relating to the subject matter hereof and sets forth the entire and complete and exclusive agreement and understanding between the Parties hereto relating to the subject matter hereof. No party has relied on any representation, agreement or understanding (whether written or oral) not expressly set out or referred to in this Agreement.

F. Binding Effect

This Agreement shall be effective upon the Sps. Tankiang's receipt of the Compromise Agreement signed by Metropolitan Bank and Trust Co., Inc.

IN WITNESS WHEREOF, the Parties have hereunto signed these presents on _____ at _____.

(Signed)
EDUARDO TANKIANG

(Signed)
MAYDA TANKIANG

LNC3 ASSET MANAGEMENT INC.
By:

(Signed)
ADRIAN L. APOSTOL
Authorized Representative

(Signed)
JOSE ROMARX SALAS
Authorized Representative

METROPOLITAN BANK & TRUST COMPANY
By:

(Signed)
ANGELICA H. LAVARES
Senior Vice President

In compliance with the directive of this Court, Metrobank filed its Comment[7] on the Manifestation and/or Motion for Judgment, confirming the fact that the parties had indeed settled their differences subject of the Petition.

Under Article 1306 of the Civil Code of the Philippines, contracting parties may establish such stipulations, clauses, terms, and conditions, as they may deem convenient, provided that these are not contrary to law, morals, good customs, public order, or public policy. A compromise agreement is a contract whereby the parties make reciprocal concessions in order to resolve their differences, thereby putting an end to litigation.[8] Such means of dispute settlement is an accepted, even desirable

---

[7] *Id.* at 637

[8] *Xavierville III Homeowners Association, Inc. v. Xavierville II Homeowners Association, Inc,* G.R. No. 170092, December 6, 2006, 520 SCRA 619; *Magbanua v. Uy*, G.R. No. 161003, May 6, 2005, 458 SCRA 184; *Alonzo v. San Juan*, G.R. No. 137549, February 11, 2005, 451 SCRA 45; *Rivero v. Court of Appeals*, G.R. No. 141273, May 17, 2005, 458 SCRA 714.

and encouraged, practice in courts of law and administrative tribunals.[9]

Finding the above Compromise Agreement to have been validly executed and not contrary to law, morals, good customs, public order, or public policy, we, therefore, approve the same.

WHEREFORE, in light of the foregoing, the Compromise Agreement dated January 8, 2009 is *APPROVED*, and judgment is hereby rendered in accordance therewith. The instant case is *DISMISSED*. No pronouncement as to costs.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 185164. June 22, 2009]

THE PEOPLE OF THE PHILIPPINES, *appellee, vs.* **FREDERICK RICHIE TEODORO *Y* DELA CRUZ,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; PRESENTATION OF AN INFORMANT

---

[9] *Philippine National Oil Company-Energy Development Corporation (PNOC-EDC) v. Abella*, G.R. No. 153904, January 17, 2005, 448 SCRA 549.

[*] Additional Member per Raffle dated April 27, 2009, vice Associate Justice Diosdado M. Peralta, whose wife, CA Associate Justice Fernanda Lampas Peralta, together with Associate Justice Normandie B. Pizarro, concurred in the CA Decision, penned by Associate Justice Edgardo P. Cruz.

IS NOT A REQUISITE IN THE PROSECUTION OF DRUG CASES. — That the informant was not presented by the prosecution does not prejudice the State's case, as all the elements of illegal sale and possession of *shabu* by appellant were satisfactorily proved by testimonial, documentary and object evidence. At best, the testimony of the informant would only have been corroborative of the testimonies of PO1 Climacosa, SPO1 Rico and PO1 Antipasado. It is not indispensable. As held by this Court in *People v. Lopez*: In general, the presentation of an informant in an illegal drugs case is not essential for conviction nor is it indispensable for a successful prosecution because his testimony would be merely corroborative and cumulative. In a case involving the sale of illegal drugs, what should be proven beyond reasonable doubt is the fact of the sale itself. Hence, like the non-presentation of the marked money used in buying the contraband, the non-presentation of the informer would not necessarily create a hiatus in the prosecution's evidence.

2. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); CHAIN OF CUSTODY RULE; COMPLIED WITH IN CASE AT BAR. — [T]he chain of custody of the seized prohibited drugs was shown not to have been broken. After the seizure of the drugs from appellant's possession, PO1 Climacosa and PO1 Antipasado marked the two (2) plastic sachets. The plastic sachet that was sold to PO1 Climacosa was marked MC, while the plastic sachet that was recovered by PO1 Antipasado was marked MC-1. These plastic sachets containing a white crystalline substance were immediately forwarded to the PNP Crime Laboratory in EPD for examination to determine the presence of dangerous drugs. After a qualitative examination conducted on the specimens, PSI Cejes concluded that the white crystalline substance was positive for methylamphetamine hydrochloride (*shabu*), a dangerous drug. There can be no doubt that the drugs seized from appellant were the same ones examined in the crime laboratory. Plainly, the prosecution established the crucial link in the chain of custody of the seized *shabu* from the time they were first discovered until they were brought for examination. Besides, appellant never questioned the custody and disposition of the drug that was taken from him in the proceedings before the RTC. In fact, he stipulated that the drugs subject matter of this case were examined by

PSI Lourdeliza Cejes, and the examination yielded a positive result for methamphetamine hydrochloride, commonly known as *shabu*. We thus find the integrity and the evidentiary value of the drug seized from appellant not to have been compromised.

3. ID.; ID.; ID.; NON-COMPLIANCE WITH SEC. 21, R.A. NO. 9165 WILL NOT RENDER AN ACCUSED'S ARREST ILLEGAL OR THE ITEMS SEIZED OR CONFISCATED FROM HIM INADMISSIBLE. — Jurisprudence teems with pronouncements that non-compliance with Section 21 will not render an accused's arrest illegal or the items seized or 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 this case, it has been shown that the integrity and evidentiary value of the seized items had been preserved. Thus, appellant's claim must fail.

4. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTY BY LAW ENFORCEMENT AGENTS, NOT OVERCOME IN CASE AT BAR. — Apart from his defense that he is a victim of a frame-up and extortion by the police officers, accused-appellant could not present any other viable defense. While the presumption of regularity in the performance of official duty by law enforcement agents should not by itself prevail over the presumption of innocence, for the claim of frame-up to prosper, the defense must be able to present clear and convincing evidence to overcome this presumption of regularity. This, appellant failed to do.

5. CRIMINAL LAW; REPUBLIC ACT NO. 9165; ILLEGAL POSSESSION OF *SHABU*; PROVEN BEYOND REASONABLE DOUBT. — x x x [I]n *Criminal Case No. MC-04-8227-D*, the Court is convinced that the prosecution's evidence more than proved beyond reasonable doubt the charge for violation of Section 11, Article II, R.A. No. 9165 (illegal possession of *shabu*), appellant having knowingly carried with him the plastic sachet of *shabu* without legal authority at the time he was caught during the buy-bust operation.

6. ID.; ID.; ILLEGAL SALE OF *SHABU*; ELEMENTS; ESTABLISHED IN CASE AT BAR.— Likewise proven by

the same *quantum* of evidence is the charge for violation of Section 5, Article II, R.A. No. 9165 in *Criminal Case No. MC-04-8228-D*. The prosecution has established all the elements necessary in every prosecution for the illegal sale of *shabu*, to wit: (i) identity of the buyer and the seller, the object, and the consideration; and (ii) the delivery of the thing sold and the payment therefor.

7. ID.; ID.; ILLEGAL POSSESSION OF *SHABU*; STRAIGHT PENALTY OF IMPRISONMENT IMPOSED BY THE TRIAL COURT, NOT PROPER; EXPLAINED. — For possessing *shabu* weighing .06 gram, the trial court imposed on appellant the straight penalty of twelve (12) years and one (1) day, and a fine of ₱300,000.00. In *People v. Mateo* and *People v. Larry Lopez*, the Court held that the period of imprisonment imposed on the accused should not be a straight penalty, but should be an indeterminate penalty. Thus, the trial court erred in imposing, and the CA in affirming, the straight penalty of imprisonment of twelve (12) years and one (1) day. Section 1 of the Indeterminate Sentence Law provides that when the offense is punished by a law other than the Revised Penal Code, "the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by law and the minimum shall not be less than the minimum term prescribed by the same." Accordingly, in *Criminal Case No. MC-04-8227-D* this Court imposes on appellant an imprisonment of twelve (12) years and one (1) day, as minimum, to fourteen (14) years, as maximum, and a fine of ₱300,000.00.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

NACHURA, *J.*:

On appeal is the May 27, 2008 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 02549 which affirmed the joint decision[2] rendered by Branch 214 of the Regional Trial Court (RTC) of Mandaluyong City, finding appellant Frederick Richie Teodoro y Dela Cruz guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of Republic Act (R.A.) No. 9165 or the *Comprehensive Dangerous Drugs Act of 2002*.

On June 3, 2004, in the RTC of Mandaluyong City, two (2) separate informations were filed against appellant charging him, in the first, with violation of Section 11, Article II of R.A. No. 9165. Docketed as Criminal Case No. MC-04-8227-D, the first Information[3] alleges, as follows:

> That on or about the 28*th* day of May 2004 in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, not having been lawfully authorized to possess any dangerous drug, did, then and there willfully, unlawfully, and knowingly have in his possession and under his custody and control One (1) heat-sealed transparent plastic sachet containing 0.06 gram of white crystalline substance, which was found positive to the test for Methamphetamine Hydrochloride, commonly known as "*Shabu*", a dangerous drug without the corresponding license and prescription, in violation of the above-cited law.

The other Information[4] docketed as Criminal Case No. MC-04-8228-D, charges appellant with violation of Section 5, Article II, also of R.A. No. 9165, allegedly committed in the following manner:

---

[1] Penned by Associate Justice Arcangelita M. Romilla-Lontok, with Associate Justices Mariano C. del Castillo and Ricardo R. Rosario, concurring, *rollo*, pp. 2-12.

[2] CA *rollo*, pp. 16-20.

[3] *Id.* at 8.

[4] *Id.* at 10.

That on or about the 28th day of May 2004 in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, without having been lawfully authorized by law, did, then and there willfully, unlawfully, and feloniously sell, deliver and distribute to PO1 MARLON CLIMACOSA, a poseur-buyer, One (1) heat-sealed transparent plastic sachet containing 0.04 gram of white crystalline substance, which was found positive to the test for Methamphetamine Hydrochloride, commonly known as "*Shabu*," a dangerous drug, for the amount of Two (2) pieces of ₱100.00 bills with Serial Nos. RF390501 and NS581977, Philippine Currency, without the corresponding license or prescription, in violation of the above-cited law.

On arraignment, accused-appellant, assisted by counsel, pleaded "Not Guilty" to both charges. Thereafter, a joint trial ensued.

The People's version of the facts shows that on May 23, 2004, Police Senior Inspector Rodrigo Flores Gadiano (PSI Gadiano), Chief of the Intelligence Unit of Mandaluyong City Police, received information from a confidential asset that a man named Richie was conducting illegal activities at Matamis Street, Barangay Hulo, Mandaluyong City. Acting on the information, PSI Gadiano instructed Police Officer 2 Robert Posadas (PO2 Posadas), PO1 Edgar Antipasado (PO1 Antipasado), and PO1 Marlon Climacosa (PO1 Climacosa) to conduct surveillance. During the surveillance conducted from May 23-27, 2004, the group confirmed that appellant was involved in selling illegal drugs at his home in 741 Matamis Street, Barangay Hulo, Mandaluyong City.[5]

On May 28, 2003, a team, composed of SPO1 Ronaldo de Castro (SPO1 de Castro), SPO1 Romeo Rico (SPO1 Rico), PO1 Climacosa, PO1 Antipasado, PO2 Arsenio Calilong (PO2 Calilong), PO1 Edwin Gonocruz (PO1 Gonocruz), and PO2 Posadas, was organized to conduct a buy-bust operation at the target site. PO1 Climacosa was designated as poseur-buyer while the remaining members of the team served as back up. At the same time, PSI Gadiano coordinated with the Philippine

[5] *Id.*, at 63.

Drug Enforcement Agency (PDEA) on the conduct of the buy-bust operation.[6]

Two (2) marked ₱100.00 bills with serial numbers RF390501 and NS581977 were handed to PO1 Climacosa.[7]

Around 5:30 o' clock in the afternoon of the same day, the team proceeded to the area.[8]

PO1 Climacosa approached appellant who was then standing by the gate of 741 Matamis Street, Barangay Hulo, Mandaluyong City and said, *"Pre, iskor ako ng dalawang piso pang gamit lang."* Appellant replied *"sandali lang."* PO1 Climacosa gave appellant the two marked ₱100.00 bills. Appellant, in turn, handed to PO1 Climacosa a sachet containing a white crystalline substance. PO1 Climacosa removed his cap to signal the consummation of the sale transaction to the other team members who were positioned some 10 meters away.[9]

Thereafter, PO1 Climacosa introduced himself and informed appellant that he was under arrest. Appellant resisted and ran away, but he was eventually accosted by PO1 Climacosa and the other members of the team.[10] PO1 Antipasado then frisked appellant and found the marked money and another sachet of white crystalline substance in appellant's pocket.[11]

Immediately, the team apprised appellant of his constitutional rights. Appellant was, thereafter, brought to the Mandaluyong Medical Center for medical check-up. From the hospital, appellant was turned over to the Criminal Investigation Division of the Mandaluyong City Police Station. In the said office, the confiscated sachets were marked as "MC" and "MC-1" by PO1 Climacosa and PO1 Antipasado, respectively. The marked two

---

[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] *Id.* at 64.

[10] *Id.*

[11] *Id.*

(2) ₱100.00 bills were turned over to the evidence custodian, while the two (2) confiscated sachets were immediately brought to the Philippine National Police (PNP) Crime Laboratory in Eastern Police District (EPD) for laboratory examination. PSI Lourdeliza Cejes, Forensic Chemist, found the two (2) sachets of white crystalline substance to be positive for methamphetamine hydrochloride or *shabu*.[12]

Accordingly, appellant was charged with violation of Sections 5 and 11, Article II of R.A. No. 9165 with the RTC of Mandaluyong City.

Denial, frame up and extortion were accused-appellant's main exculpating line. In his Brief,[13] appellant summarized the version of the defense as follows:

> On May 28, 2004, at around two o'clock (2:00) in the afternoon, **FREDERICK RICHIE TEODORO** was at his house in Pantaleon Street washing the dishes, when three (3) male persons entered the place and introduced themselves as police officers. He was told not to move and PO1 Climacosa told him that "at last, we were able to get you Jimmy." The accused was quick to tell the policemen that he was not "Jimmy", and the person they were looking for lives in the other house. One of the policemen went to the house of certa[i]n "Jimmy." Meanwhile, PO1 Climacosa handcuffed the accused, while the other policeman searched the house. Unable to find anything, the policemen brought him to Mandaluyong Medical Hospital. Afterwards, he was brought to the Mandaluyong City Hall, where he met PO1 Posadas who asked him the whereabouts of the Muslims. He replied that he does not know any Muslim, and he was told to produce thirty thousand (₱30,000.00) pesos. He told PO1 Posadas that he does not have money. Irked by the accused's answer, PO1 Posadas pulled out from his drawer a small plastic sachet and lighter and was told that those are evidence against him.[14]

The trial court, however, disbelieved appellant's defenses and rendered a judgment of conviction, *viz.*:

---

[12] *Id.* at 65.

[13] *Id.* at 32-45.

[14] *Id.* at 39.

WHEREFORE, the prosecution having successfully established the guilt of the accused beyond reasonable doubt, he is hereby sentenced to suffer the following: (1) In **Criminal Case No. 04-8227-D** the penalty of imprisonment of **TWELVE (12) YEARS AND ONE (1) DAY and to pay a fine of Three Hundred Thousand Pesos (₱300,000.00)** and, (2) In **Criminal Case No. 04-8228-D** accused is hereby sentenced to suffer the penalty of **LIFE IMPRISONMENT and to pay a fine of Five Hundred Thousand Pesos (₱500,000.00)**.

Accused is credited in full of the preventive imprisonment he has already served in confinement.

Let the physical evidence subject matter of this case be confiscated and forfeited in favor of the State and referred to PDEA for proper disposition.

SO ORDERED.[15]

The appellant filed an appeal before the CA, claiming that the prosecution failed to prove his guilt beyond reasonable doubt. He argued that the prosecution witnesses had no personal knowledge of his alleged illegal activities. They merely relied on the information given by the confidential asset that he was engaged in the sale of illegal drugs. The prosecution, however, did not present their informant to establish that he is a drug peddler. The appellant, thus, contended that the prosecution failed to prove the charges against him. Appellant added that the chain of custody of the confiscated items had not been established, as the buy-bust team did not comply with Section 2 of Dangerous Drugs Board Regulation No. 1.[16]

---

[15] *Supra* note 2 at 19-20.

[16] *Seizure or Confiscation of Dangerous Drugs or Controlled Chemicals or Laboratory Equipment*.

a. The apprehending team having initial custody of dangerous drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment shall immediately, after the seizure and confiscation, physically inventory and photograph the same in the presence of:

(i) The person from whom such items were confiscated and/or seized or/his/her representative or counsel;

(ii) A representative from the media;

(iii) A representative from the Department of Justice; and

On May 27, 2008, the CA rendered the assailed Decision[17] affirming appellant's conviction. Rejecting appellant's arguments, the CA held that the police officers acquired personal knowledge of appellant's illegal activities after they conducted the surveillance. Thus, the informant's testimony was no longer necessary to establish the fact that appellant was indeed engaged in the sale of illegal drugs. The CA, likewise, brushed aside appellant's argument that the evidence's chain of custody was not established.

The dispositive portion of the CA Decision reads:

> WHEREFORE, in view of the foregoing, the appeal is hereby **DISMISSED**. The joint decision of the Regional Trial Court Mandaluyong City, Branch 214, in Criminal Case Nos. MC-04-8227-D and MC-04-8228-D is **AFFIRMED**.
>
> SO ORDERED.[18]

Appellant is now before this Court submitting for resolution the same matters argued before the CA. Through his Manifestation and Motion in Lieu of Supplemental Brief,[19] appellant stated that he will not file a Supplemental Brief and, in lieu thereof, he will adopt the Appellant's Brief he had filed before the appellate court.

(iv) Any elected public official;

who shall be required to sign copies of the inventory report covering the drugs/equipment and who shall be given a copy thereof; Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served: or at the place where the search warrant is served: or at the nearest police station or at the nearest office of the apprehending officer, whichever is applicable, in case of seizure without warrant; Provided further that non-compliance with these requirement under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizure of and custody over said items.

b. The drugs or controlled chemicals or laboratory equipment shall be properly marked for identification, weighed when possible or counted, sealed, packed and labeled by the apprehending officer/team xxx.

[17] *Supra* note 1.

[18] *Id.* at 11-12.

[19] *Rollo*, pp. 19-20.

The Office of the Solicitor General (OSG) likewise manifested that it is no longer filing a supplemental brief.[20]

Appellant primarily assails the non-presentation of the confidential asset to establish that he was indeed peddling drugs. Thus, he insists that the prosecution failed to prove his guilt beyond reasonable doubt.

After examining the records, we find no reason to overrule the findings of the trial court as affirmed by the Court of Appeals.

Contrary to appellant's assertion, the illegal sale of *shabu* is established by the clear testimony of PO1 Climacosa who acted as the poseur-buyer during the buy-bust operation. He testified as to his own personal knowledge of the sale that had taken place. Senior Police Officer 1 Rico and PO1 Antipasado corroborated PO1 Climacosa's testimony.

The testimonies of the prosecution witnesses established that appellant was caught in the act of selling a sachet containing substances which turned out to be positive for *shabu* to PO1 Climacosa. And as soon he was arrested, he was frisked by the arresting officers, in the course of which a sachet also containing a substance which likewise turned out to be positive for *shabu* was found in his pocket.

That the informant was not presented by the prosecution does not prejudice the State's case, as all the elements of illegal sale and possession of *shabu* by appellant were satisfactorily proved by testimonial, documentary and object evidence. At best, the testimony of the informant would only have been corroborative of the testimonies of PO1 Climacosa, SPO1 Rico and PO1 Antipasado. It is not indispensable.

As held by this Court in *People v. Lopez*:[21]

In general, the presentation of an informant in an illegal drugs case is not essential for conviction nor is it indispensable for a successful prosecution because his testimony would be merely corroborative

[20] *Id.* at 22-23.

[21] *People v. Lopez*, G.R. No. 172369, March 7, 2007, 517 SCRA 749.

and cumulative. In a case involving the sale of illegal drugs, what should be proven beyond reasonable doubt is the fact of the sale itself. Hence, like the non-presentation of the marked money used in buying the contraband, the non-presentation of the informer would not necessarily create a hiatus in the prosecution's evidence.[22]

Thus, in *People v. Marilyn Naquita*,[23] we rejected a similar contention, holding that:

> The presentation of an informant is not a requisite in the prosecution of drug cases. The failure of the prosecution to present the informant does not vitiate its cause as the latter's testimony is not indispensable to a successful prosecution for drug-pushing, since his testimony would be merely corroborative of and cumulative with that of the poseur-buyer who was presented in court and who testified on the facts and circumstances of the sale and delivery of the prohibited drug. Failure of the prosecution to produce the informant in court is of no moment, especially when he is not even the best witness to establish the fact that a buy-bust operation has indeed been conducted. Informants are usually not presented in court because of the need to hide their identities and preserve their invaluable services to the police. It is well-settled that except when the accused vehemently denies selling prohibited drugs and there are material inconsistencies in the testimonies of the arresting officers, or there are reasons to believe that the arresting officers had motives to falsely testify against the accused, or that only the informant was the poseur-buyer who actually witnessed the entire transaction, the testimony of the informant may be dispensed with as it will merely be corroborative of the apprehending officers' eyewitness accounts.
>
> In the case under consideration, none of the exceptions are present that would make the testimony of the confidential informant indispensable. As admitted by appellant, the police officers who testified against her were not known to her before her arrest. We likewise do not find material inconsistencies in their testimonies. Further, the informant is a person different from the poseur-buyer. What we find vital is appellant's apprehension

---

[22] *Id.* at. 757.

[23] *People v. Naquita*, G.R. No. 180511, July 28, 2008, 560 SCRA 430, 445-446.

while peddling and possessing dangerous drugs by PO1 Cosme and PO1 Llanderal.

Appellant further claims that the prosecution failed to establish the evidence's chain of custody because the buy-bust team failed to strictly comply with Section 21[24] of RA 9165 and Section 2 of Dangerous Drugs Board Resolution No. 1.[25] He adds that the policemen's failure to abide by these provisions casts doubt on the admissibility of the evidence adduced against him.

---

[24] Section 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*. The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof;

(2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;

(3) A certification of the forensic laboratory examination results, which shall be done under oath by the forensic laboratory examiner, shall be issued within twenty-four (24) hours after the receipt of the subject item/s: *Provided*, That when the volume of the dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: *Provided, however*, That a final certification shall be issued on the completed forensic laboratory examination on the same within the next twenty-four (24) hours;

xxx

[25] *Supra* note 16.

We disagree.

Contrary to what appellant wants to portray, the chain of custody of the seized prohibited drugs was shown not to have been broken. After the seizure of the drugs from appellant's possession, PO1 Climacosa and PO1 Antipasado marked the two (2) plastic sachets. The plastic sachet that was sold to PO1 Climacosa was marked MC, while the plastic sachet that was recovered by PO1 Antipasado was marked MC-1. These plastic sachets containing a white crystalline substance were immediately forwarded to the PNP Crime Laboratory in EPD for examination to determine the presence of dangerous drugs. After a qualitative examination conducted on the specimens, PSI Cejes concluded that the white crystalline substance was positive for methylamphetamine hydrochloride (*shabu*), a dangerous drug. There can be no doubt that the drugs seized from appellant were the same ones examined in the crime laboratory. Plainly, the prosecution established the crucial link in the chain of custody of the seized *shabu* from the time they were first discovered until they were brought for examination.

Besides, appellant never questioned the custody and disposition of the drug that was taken from him in the proceedings before the RTC. In fact, he stipulated that the drugs subject matter of this case were examined by PSI Lourdeliza Cejes, and the examination yielded a positive result for methamphetamine hydrochloride, commonly known as *shabu*. We thus find the integrity and the evidentiary value of the drug seized from appellant not to have been compromised.

Jurisprudence teems with pronouncements[26] that non-compliance with Section 21 will not render an accused's arrest illegal or the items seized or 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 this case, it has been shown that the integrity and

[26] *People of the Philippines v. Marilyn Naquita, supra* note 23; *People v. Del Monte*, G.R. No. 179940, April 23, 2008, 552 SCRA 627, 636; *People v. Pringas*, G.R. No. 175928, August 31, 2007, 531 SCRA 828, 842-843.

evidentiary value of the seized items had been preserved. Thus, appellant's claim must fail.

This Court finds, as did the trial court and the CA, the accounts of the arresting/entrapping police officers, as to what occurred in the evening of May 28, 2004, credible. For, aside from the presumption that they – the police operatives – regularly performed their duties, we note that these operatives, as prosecution witnesses, gave consistent and straightforward narrations of what transpired on May 28, 2004. As things stand, the police officers uniformly testified to having apprehended the appellant in a buy-bust operation, and that upon being frisked, appellant was also found to be in possession of another sachet containing a white crystalline substance later on found to be methamphetamine hydrochloride, more popularly known as *shabu*.

Apart from his defense that he is a victim of a frame-up and extortion by the police officers, accused-appellant could not present any other viable defense. While the presumption of regularity in the performance of official duty by law enforcement agents should not by itself prevail over the presumption of innocence, for the claim of frame-up to prosper, the defense must be able to present clear and convincing evidence to overcome this presumption of regularity.[27] This, appellant failed to do.

All told, in *Criminal Case No. MC-04-8227-D*, the Court is convinced that the prosecution's evidence more than proved beyond reasonable doubt the charge for violation of Section 11, Article II, R.A. No. 9165 (illegal possession of *shabu*), appellant having knowingly carried with him the plastic sachet of *shabu* without legal authority at the time he was caught during the buy-bust operation.

Likewise proven by the same *quantum* of evidence is the charge for violation of Section 5, Article II, R.A. No. 9165 in *Criminal Case No. MC-04-8228-D*. The prosecution has established all the elements necessary in every prosecution for the illegal sale of *shabu*, to wit: (i) identity of the buyer and

---

[27] *People of the Philippines v. Narciso Agulay y Lopez*, G.R. No. 181747, September 26, 2008.

the seller, the object, and the consideration; and (ii) the delivery of the thing sold and the payment therefor.

We now go to the penalties imposed on appellant for possession and sale of *shabu*.

The possession of dangerous drugs is punished under Section 11, Article II of Republic Act No. 9165. Paragraph 2, No. 3 thereof, reads:

> (3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (₱300,000.00) to Four hundred thousand pesos (₱400,000.00), if the quantities of dangerous drugs are less than five (5) grams of . . . methamphetamine hydrochloride . . .

For possessing *shabu* weighing .06 gram, the trial court imposed on appellant the straight penalty of twelve (12) years and one (1) day, and a fine of ₱300,000.00.

In *People v. Mateo*[28] and *People v. Larry Lopez*,[29] the Court held that the period of imprisonment imposed on the accused should not be a straight penalty, but should be an indeterminate penalty. Thus, the trial court erred in imposing, and the CA in affirming, the straight penalty of imprisonment of twelve (12) years and one (1) day.

Section 1 of the Indeterminate Sentence Law[30] provides that when the offense is punished by a law other than the Revised Penal Code, "the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by law and the minimum shall not be less than the minimum term prescribed by the same."

---

[28] *People v. Mateo*, G.R. No. 179036, July 28, 2008, 560 SCRA 375, 395.

[29] *People of the Philippines v. Larry Lopez*, G.R. No. 181441, November 14, 2008.

[30] An Act to Provide For an Indeterminate Sentence and Parole for All Persons Convicted of Certain Crimes by the Courts of the Philippine Islands; To Create a Board of Indeterminate Sentence and to Provide Funds Therefor; and For Other Purposes, approved and effective on 5 December 1933 (Act No. 4103, as amended).

Accordingly, in *Criminal Case No. MC-04-8227-D* this Court imposes on appellant an imprisonment of twelve (12) years and one (1) day, as minimum, to fourteen (14) years, as maximum, and a fine of ₱300,000.00.

As regards *Criminal Case No. MC-04-8228-D*, the trial court correctly imposed on appellant the penalty of life imprisonment and a fine of ₱500,000.00 for the sale of dangerous drugs, pursuant to Section 5, Article II of Republic Act No. 9165.[31]

In closing, we reiterate that "drug addiction is one of the most pernicious evils that has ever crept into our society." More often than not, it is the young who are the victims. On the other hand, equally reprehensible is the police practice of using the law as a tool for extorting money from hapless victims. Courts must be vigilant in trying drug charges, lest an innocent person be made to suffer the unusually severe penalties for drug offenses.[32] In this case, however, appellant failed to prove his theory of extortion and frame-up, and we entertain no doubt as to his guilt.

WHEREFORE, the appeal is *DISMISSED*. The Court *AFFIRMS* the May 27, 2008 Decision of the Court of Appeals in CA-G.R. CR-HC No. 02549 with the *MODIFICATION* that the penalty in *Criminal Case No. MC-04-8227-D* shall be imprisonment for twelve (12) years and one (1) day, as minimum, to fourteen (14) years, as maximum, and a fine of ₱300,000.00.

SO ORDERED.

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

[31] SEC. 5. Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals. — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

[32] *People vs. Yuan*, 466 Phil 791, 807–808 (2004).

THIRD DIVISION

[G.R. No. 185284. June 22, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JASON SY,** *accused-appellant.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; PRESUMPTION OF INNOCENCE; PREVAILS OVER THE PRESUMPTION OF REGULARITY OF THE PERFORMANCE OF OFFICIAL DUTY. — An accused in criminal prosecutions is to be presumed innocent until his guilt is proven beyond reasonable doubt. This constitutional guarantee cannot be overthrown unless the prosecution has established by such quantum of evidence sufficient to overcome this presumption of innocence and prove that a crime was committed and that the accused is guilty thereof. Under our Constitution, an accused enjoys the presumption of innocence. And this presumption prevails over the presumption of regularity of the performance of official duty.

2.REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; PRESUMPTION OF REGULARITY DOES NOT BY ITSELF CONSTITUTE PROOF OF GUILT BEYOND REASONABLE DOUBT. — This Court is not unmindful of the anomalous practices of some law enforcers in drug-related cases such as planting evidence, physical torture and extortion to extract information from suspected drug dealers or even to harass civilians. Vigilance and caution in trying drug-related cases must be exercised lest an innocent person be made to suffer the unusually severe penalties for drug offenses. This Court reiterates that the presumption of regularity does not, by itself, constitute proof of guilt beyond reasonable doubt. It cannot, by itself, support a judgment of conviction. Clearly, the prosecution must be able to stand or fall on its evidence, for it cannot simply draw strength from the weakness of the evidence for the accused.

3. CRIMINAL LAW; ILLEGAL SALE OF PROHIBITED DRUGS; ELEMENTS; ESTABLISHED IN CASE AT BAR.— In dealing with prosecutions for the illegal sale of drugs, what is material

is proof that the transaction or sale actually took place, coupled with the presentation in court of the prohibited or regulated drug as evidence. Jurisprudence has firmly entrenched the following as elements in the crime of illegal sale of prohibited drugs: (1) the accused sold and delivered a prohibited drug to another, and (2) he knew that what he had sold and delivered was a dangerous drug. In the instant case, the Court finds that the testimonies of the prosecution witnesses adequately establish these elements x x x.

4. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TRIAL COURT'S ASSESSMENT OF THE CREDIBILITY OF WITNESSES MUST BE ACCORDED THE HIGHEST RESPECT; EXPLAINED. — x x x The trial court's assessment of the credibility of witnesses must be accorded the highest respect, because it had the advantage of observing their demeanor and was thus in a better position to discern if they were telling the truth or not. The Court has no reason to doubt the assessment of the trial court regarding the credibility of the prosecution and defense witnesses. The testimony of the buy-bust team established than an entrapment operation against accused-appellant was legitimately and successfully carried out on 3 December 2000, where accused-appellant was caught selling 987.32265 grams of methamphetamine hydrochloride or *shabu*. A scrutiny of the accounts of PO3 Ricardo Amontos, PO2 Christian Trambulo and Senior Inspector Culili, detailing how PO2 Trambulo negotiated, thru cellphone, with accused-appellant on the purchase price and the amount of *shabu* to be delivered, actual delivery of the *shabu*, the giving to the accused the marked and boodle money and the subsequent arrest of the accused show that these were testified to in a clear, straightforward manner. Their testimonies are further bolstered by the physical evidence consisting of the *shabu* presented as evidence before the court.

5. ID.; ID.; A FINDING OF POLICE EXTORTION DOES NOT NECESSARILY NEGATE THE FACT THAT THE ACCUSED COMMITTED THE OFFENSE CHARGED; CASE AT BAR. — The case at bar presents a predicament considering that the RTC found evidence to support that the police officers exacted money from accused-appellant after his arrest in order to facilitate his immediate discharge. In the same case, however,

the RTC still found accused-appellant guilty of the crime charged, based on the totality of evidence adduced by the prosecution. The Court of Appeals, however, did not give credence to accused-appellant's allegations of extortion. Aware of the findings of the RTC on this matter and its subsequent ruling convicting accused-appellant, a conviction later on affirmed by the Court of Appeals, this Court finds accused-appellant guilty beyond reasonable doubt of the crime charged. The RTC Decision found evidence to support that the police officers exacted money from accused-appellant after his arrest in order to facilitate his immediate discharge. This notwithstanding, we examined the entirety of the prosecution evidence and find the same sufficient to convict accused-appellant. In a similar case, *People v. So*, this Court has ruled that the police extortion does not necessarily negate the fact that accused-appellant committed the offense.

6. ID.; CRIMINAL PROSECUTION; PROSECUTION OF OFFENSES; PRESENTATION OF THE INFORMER IS NOT NECESSARY IN THE SUCCESSFUL PROSECUTION OF CASES INVOLVING BUY-BUST OPERATIONS. — Accused-appellant claims that the failure of the prosecution to present the informer in court only demonstrates that the informer is fictitious. According to the defense, this gives rise to the presumption that his testimony would be adverse if produced. In *People v. Doria,* this Court expounded on the rule in determining whether the informer should be presented for a successful prosecution in cases involving buy-bust operations, to wit: [E]xcept when the appellant vehemently denies selling prohibited drugs and there are material consistencies in the testimonies of the arresting officers, or there are reasons to believe that the arresting officers had motives to testify falsely against the appellant, or that only the informant was the poseur-buyer who actually witnessed the entire transaction, the testimony of the informant may be dispensed with as it will be merely corroborative of the apprehending officers' eyewitness testimonies. There is no need to present the informant in court where the sale was actually witnessed and adequately proved by prosecution witnesses. None of the foregoing circumstances are present in the case at bar. As shown from the evidence adduced by the prosecution, the sale was actually witnessed and proven by the prosecution witnesses.

7. CRIMINAL LAW; ILLEGAL SALE OF PROHIBITED DRUGS; INTEGRITY OF THE CHAIN OF CUSTODY OF THE EVIDENCE WAS NOT COMPROMISED IN CASE AT BAR; ELUCIDATED. — The defense casts doubt as to whether the prosecution was able to maintain the chain of custody of the evidence, or the *shabu*, from the time of its alleged retrieval from him, to the time it was presented in court. The same has no merit. The integrity of the chain of custody of the evidence was not compromised. This Court has explained in *People v. Del Monte* that what is of utmost importance is the *preservation of the integrity and evidentiary value of the seized items*, as the same would be utilized in the determination of the guilt or innocence of the accused. The existence of the dangerous drug is a condition *sine qua non* for conviction for the illegal sale of dangerous drugs. SPO2 Trambulo, the poseur-buyer, testified that upon confiscation of the box with the *shabu*, he affixed his initials CVT and the date of confiscation of the box. Thereafter, he placed the evidence in his car until they reached the CIDG office, whereupon he showed the same to P/Inspector Culili and the evidence was inventoried as well. Culili then instructed him to bring the evidence to the crime laboratory for examination. When the duty officer received the evidence at the crime laboratory, Senior Inspector Maria Luisa Gundran-David conducted the laboratory examination. What is material is the delivery of the prohibited drug to the buyer which, in this case, was sufficiently proved by the prosecution through the testimony of the poseur-buyer and the presentation of the article itself before the court.

8. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; POSITIVE TESTIMONY OF POSEUR BUYER PREVAILS OVER ACCUSED'S DENIAL. — x x x [A]s found by the trial court, the testimonies of the defense witnesses have lose ends and are not as plausible as the defense would want to make it appear. Between the positive identification of accused by Trambulo, who acted as poseur-buyer, and accused-appellant's denial, greater weight must be given to the positive testimony of Trambulo.

9. CRIMINAL LAW; ILLEGAL SALE OF DRUGS; PENALTY. — x x x [T]he penalty for the sale of regulated drugs is based, as a rule, on the quantity thereof. The exception is where the victim is a minor or where the regulated drug involved is the

proximate cause of the death of the victim. In such cases, the maximum penalty prescribed in Section 15, *i.e.*, death, shall be imposed, regardless of the quantity of the prohibited drugs involved. This circumstance is absent here. Thus, the penalty to be imposed is based on the quantity of the regulated drug involved. Accused-appellant sold the police operatives a substance weighing 987.32265 grams, which amount is more than the minimum of 200 grams required by law for the imposition of either *reclusion perpetua* or, if there be aggravating circumstances, the death penalty. This Court recognizes the suppletory application of the rules on penalties in the Revised Penal Code to Republic Act No. 6425 after the amendment of the latter by Republic Act No. 7659 on 31 December 1993.Considering there are no mitigating or aggravating circumstances attending accused-appellant's violation of the law, and the aggregate quantity of *shabu* seized was 987.32265 grams, *reclusion perpetua* is the penalty that may be imposed, pursuant to the provisions of the Revised Penal Code. Thus, the penalty imposed by the RTC, as modified by the Court of Appeals is proper.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Arturo U. Barias, Jr. for accused-appellant.

D E C I S I O N

CHICO-NAZARIO, *J.*:

For Review under Rule 45 of the Revised Rules of Court is the Decision[1] dated 28 December 2007 and Resolution[2] dated 12 June 2008 of the Court of Appeals in CA-G.R. CR-HC No. 01108 entitled ***People of the Philippines v. Jason Sy*** which had affirmed the Decision[3] rendered by the Regional Trial Court

[1] Penned by Associate Justice Ricardo R. Rosario with Associate Justices Rebecca De Guia-Salvador and Magdangal M. De Leon, concurring; CA *rollo*, pp. 176-186.

[2] *Id.* at 201.

[3] Penned by Judge Edgar Y. Chua; *id.* at 114-131.

(RTC) of San Fernando, Pampanga, Branch 47, in Criminal Case No. 11379, finding accused-appellant Jason Sy guilty beyond reasonable doubt for violating Section 15, Article III of Republic Act No. 6425, as amended.[4]

The following are the factual antecedents:

Accused-appellant Jason Sy was charged before the RTC of San Fernando, Pampanga, Branch 47, with illegal sale of *shabu* in violation of Section 15, Article III, of Republic Act No. 6425, as amended, in Criminal Case No. 11379. The Information dated 4 December 2000 contained the following allegations against him:

> That on or about the 3rd day of December, 2000, in the municipality of San Fernando, province of Pampanga, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, JASON SY, not having been previously licensed, authorized and/or permitted by law, did then and there willfully, unlawfully and feloniously sell one (1) carton box methamphetamine hydrochloride (*shabu*) weighing nine hundred eighty-seven and thirty-two thousand two hundred sixty-five hundred thousandth (987.32265) grams, a regulated drug, to a poseur-buyer.[5]

During arraignment, accused-appellant entered a plea of "NOT GUILTY."

At the trial, the prosecution presented as witnesses SPO3 Ricardo L. Amontos (member, Special Action Team), Police Inspector Maria Luisa David Gundran (Crime Laboratory Forensic Officer), PO2 Christian Ventura Trambulo and PO Senior Inspector Julieto Culili. The prosecution's versions of the facts are herein summarized by the RTC:

> The first witness to testify was PO3 Ricardo L. Amontos. He declared that he was a member of the Special Action Team 3rd CIDG, Camp Olivas, City of San Fernando, Pampanga. At about 4:00 o'clock in the afternoon of December 2, 2000, he reported to Camp Olivas on instructions of their team leader, Major Julian Caesar Mana. The latter told them that PO2 Christian Trambulo, together with a civilian

---

[4] Comprehensive Dangerous Drugs Act of 2002.

[5] CA *rollo*, p. 13.

informant, were negotiating a drug-deal with a certain person allegedly named Jason Sy. Consequently, at around 2:00 o'clock of the next morning, December 3, 2000, Major Mana conducted a briefing regarding a possible buy-bust operation. Those presents (sic) were Major Mana, Captain Julieto Culili and six (6) other police officers. He was designated as back-up of PO2 Trambulo. His duty was to assist in apprehending the suspect. After the briefing, they proceeded to the designated area at the Chowking Food Chain located at the Gapan-Olongapo Road, Dolores, City of San Fernando, Pampanga. The proceeded thereat in four (4) vehicles. Two vehicles were parked at the parking lot located in front of Chowking Fast Food. One used by PO2 Trambulo and the informer while the other was used by him and PO3 Vasquez. They were ten to fifteen meters away from Trambulo. The two other vehicles were parked along Gapan-Olongapo Road within viewing distance. The place was well-lighted. Lights emanated from the Chowking Fast Food and from a spotlight in the building beside the restaurant. Witness narrated further that at around 3:00 o'clock of the said morning, a color red Nissan Altima arrived at the parking lot. A male person, who was later identified as accused Jason Sy, alighted and walked towards the car where PO2 Trambulo was. Jason Sy and PO2 Trambulo talked for awhile. Then PO2 Trambulo removed his bull cap, which was the pre-arranged signal that the sale has already been consummated. As soon as he saw the signal, he immediately rushed to the place where PO2 Trambulo was standing. At this moment, PO2 Trambulo has already placed Jason Sy under arrest by holding the latter's hand. He recovered the Php5,000.00 marked money and the boodle money from the possession of Jason Sy and apprised him of his constitutional rights. He then turned over possession of the boodle money to PO2 Trambulo. Subsequently, they brought Jason Sy to their office at Camp Olivas. PO2 Trambulo turned over custody of Jason Sy, the buy-bust money and a transparent plastic packed inside of which was a paper bag with the label Jacob Fish cracker, allegedly containing *shabu*, to the police investigator. He also identified the join-affidavit (x x x) which he and PO2 Trambulo executed.

During cross-examination, he recounted that it was Major Mana who gave the ₱5,000.00 marked money to PO2 Trambulo but it was the latter who prepared the boodle money. At the time PO2 Trambulo removed his bull-cap, he, Amontos, was standing beside their car while Narciso Valdez was inside the vehicle. Their superior officers, Julius Caesar Mana and Julieto Culili, who were in two separate cars, later joined them. He informed Jason Sy of his constitutional

rights in English because according to the informant Jason is a Chinese National. He asked Jason whether he understand (sic) English and the latter nodded his head.

Senior Inspector Maria Luisa Gundran-David, the Crime Laboratory forensic chemical officer, testified that she conducted a qualitative examination of the *shabu* specimen by weighing it. The specimen weighs 987.32263 grams. She also conducted a test reaction by Simons Reagent. There was a blue coloration indicating that the sample was positive for *shabu*. She next conducted a confirmatory test using the TLC method, the results of which confirmed her initial impressions. She found as follows:

> FINDINGS:
>
> Qualitative examination conducted on the above-stated specimen gave POSITIVE results to the tests for Methylamphetamine hydrochloride, a regulated drug.

During cross-examination she stressed that it was their technician, using an analytical balance, who weigh (sic) the *shabu* in her presence. She admitted that in this case, the money allegedly recovered or used in the buy-bust operation were not subjected to ultraviolet forensic examination.

The third witness for the prosecution was PO2 Christian Trambulo. He testified that the informant introduced him to Jason thru cellular phone. They conversed in Tagalog. They agreed that he was going to buy one (1) kilogram of methamphetamine hydrochloride or *shabu* for Php5,000. Captain Mana gave him ten (10) pieces of genuine Php500 bills x x x, the boodle money x x x, and placed the original money and the boodle money inside a blue paper bag x x x. He corroborated the testimony of Amontos of the meeting with the informant in their office, the preparations made by the team, the meeting with Jason Sy at the Chowking Restaurant, the details of the exchange, the transfer of the *shabu* from Jason to him and the receipt of the blue paper bag containing the boodle money by Jason, up to the arrest of the accused. He identified the Receipt of Property Seized, dated December 3, 2000 x x x; the booking sheet x x x; the request for physical examination x x x, the request for laboratory examination x x x and request for drug dependency test x x x and the Joint affidavit he executed with Amontos x x x.

During cross examination he disclosed that the team were (sic) composed of eight (8) members and one informant. He stressed that during the briefing[,] Captain Mana told them that the suspect was a Chinese person operating the 3rd Regional area, within their immediate area of jurisdiction and he is fluent in Tagalog. He was able to prove this because he talked with accused personally over the phone. Accused informed him that he, Jason, will be arriving in a car. The informant told him that accused can speal English and Tagalog. The deal for a kilo of *shabu* which had a street value of Php2 Million was made in two to three minutes. He clarified that it was Major Mana who gave him the genuine and boodle money.

The third prosecution witness was Senior Inspector Julieto B. Culili, who corroborated the testimonies of Amontos and Trambulo. He disclosed that they propounded several questions at the confidential informant to determine the sincerity and truthfulness of the information given regarding the illegal drug activities of a certain Jason. He confirmed that they jumped off at around 2:00 a.m. the next morning towards Chowking Restaurant along Olongapo-Gapan Road, Dolores, San Fernando, Pampanga. He recalled the number of vehicles used, how a Chinese looking person alighted from same car and approached Trambulo, how he witnessed Trambulo removed (sic) his bull cap, how they arrested the accused. He investigated Jason Sy after he was arrested. He instructed his men to prepare their affidavit. He was the one who personally prepared the request for Laboratory Examination, Request for Physical Examination, the booking sheet, and other documents for the filing of the case. He instructed his men to bring accused for physical examination and for PO3 Trambulo to bring the evidence to the crime laboratory for examination. He recalled that his men turned over to his custody the one (1) kilo of *shabu,* the person of the accused and the car he used.

During cross-examination, defense counsel made reference to the case of *People vs. Go Lip Tse*, Criminal Case No. 98-0292 filed before the Regional Trial Court of Pasay City, where the witnessed (sic) participated in a buy-bust operation. Defense counsel confronted Culili with a decision of the court acquitting the accused therein because based on the video taken of the incident, it appears that accused Go was merely abducted and there was really no buy-bust. Culili also admitted that he was informed about a criminal case pending against him, Senior Inspector Mana, Medel Pono, Inspector Carlito Dimalanta and Francisco Villaroman for violation of Section

19 of RA 7659 for planting of evidence in order that a person may be charged for violation of RA 7659.[6]

The defense sought to establish its "*hulidap*" theory through the testimonies of the accused-appellant Jason Sy, Henry Ang (helper of accused-appellant), Armando Escala (a taxi driver), Jose Pepito (jeepney driver), Allan Castro (guard at Chowking along Olongapo-Gapan Road), Andrea Co (neighbor of accused-appellant) and Co Kim Eng. The defense presented an entirely different scenario, with the following version of the facts:

> The accused is a businessman engaged in the bussiness of trading in ready-to-wear (RTW) clothes, among others. He delivers his goods in Tutuban, Divisoria, Baclaran and other commercial areas in Metro Manila. He maintains a commercial stall on the 3rd Floor of the Tutuban Shopping Mall and he goes there almost everyday from his residence at 14 Polyteach Street, University Hills, Caloocan City. This has been his daily routine until that fateful day in December 2000.
>
> Accused (sic) life will change on 2 December 2000. On that day, at dawn, accused was illegally abducted while in his car, stalled in momentary traffic, along EDSA in Caloocan City, in form of Max Restaurant and about a hundred (100) meters to the Bonifacio Monument. A witness, Jose Pepito, saw two (2) persons commandeered (sic) accused's car, forced him to move to the back seat, and sped away with him. Accused was initially brought to a place which looks like a cemetery. While the accused could not name the cemetery, he recalled that it was near a toll gate going to the North Expressway.
>
> At the cemetery, his vehicle was ransacked and his person searched, divesting him and his car of his sample RTW products, cash amounting to ₱4,000.00 to ₱5,000.00 and his cellular phone, among others. Thereafter, he was brought to his house at Polyteach Street, University Hills, Caloocan City, where the place was likewise pillaged by these persons numbering about ten (10) by that time. They took all his stock merchandise or inventory and carted them away to their own vehicles. Fifteen (15) to twenty (20) minutes later they left with the accused in his car, and in two (2) other cars. The accused had no idea where they were going.

---

[6] *Id.* at 114-118.

While on board his car, he was asked to call his relatives through his mobile phone. But not having any relatives in the Philippines, he instead called up his mother's friend whom he addresses as "Auntie Kim Ying." He was instructed by his abductors to ask his auntie to raise One Million Five Hundred Thousand (₱1.5M) Pesos in ransom. The phone was immediately taken from him after delivering the message. Thereafter, he was blindfolded and they kept on driving, making only a short stop to take lunch. It was getting dark when they finally arrived at their destination. The accused had no idea where they were at that time.

Unknown to the accused then and while he was being driven by his abductors, Mrs. Co Kim Eng (Kim Ying), upon receiving the call from the accused, had frantically raised the amount of P1.5 Million Peson from her relatives, business associates and friends. She then contacted Mrs. Andrea Co ("Aning" "Annie") in the evening of 2 December 2003 to deliver the money to accused's abductors.

Mrs. Andrea Co, fearful but owed a debt of gratitude to accused as her supplier on credit of various RTW clothing, agreed to undertake the delivery of the money. She accepted the money and a cellular phone, which phone, according to Mrs. Co Kim Eng, was the one being contacted by accused's kidnappers. While Annie Co was waiting for a taxi cab, the said phone rang. The caller was inquiring whether she already had the money, but Andrea Co insisted on talking to the accused first to be assured of his identity and well-being. Thereafter, she was instructed by the caller to proceed to San Fernando City, Pampanga, to find the Total Gas Station there and to wait for the next instruction by phone. She did by hiring a taxi cab to go to San Fernando City.

At about midnight of the same day of 2 December 2000, accused was handed a mobile phone. His other friend whom he calls "Auntie Aning" (Andrea Co), was on the other end of the line confirming his identity and his safety. The mobile phone was immediately taken from him after some short exchanges. He was then left alone in a room without window, "no everything," but guarded by two of his abductors.

Meanwhile, Andrea Co arrived at the Total Gas Station in San Fernando City, Pampanga and waited there for about 30 minutes. Thereafter, she received another call, instructing her to proceed to the dark corner of the street fronting a McDonald's Restaurant along McArthur Highway. Upon arrival at the designated place, she was

ordered to alight from the taxi cab and to bring the money with her. She noticed an L-300 Mitsubishi van slowly parking behind them. Thereafter, several persons alighted from the van and took the money from her. She noticed several persons inside the van carrying Armalite rifles when its sliding door was opened. She was then instructed to go back to the Total Gas Station to wait for the accused.

Back at the Total Gas Station, she received another call ordering them to leave the place. While she complied and left the gas station, she asked the taxi cab driver to wait again at the San Fernando toll gate's entrance to the expressway. While there she tried to call accused's kidnappers. The line was dead. They then proceeded to Manila via the expressway route. She received one last call from accused's abductors assuring her that Jason Sy was with them except that they were taking the "San Simon" route to Manila. She never heard from them anymore until she arrived home at about 4:00 o'clock in the morning of 3 December 2003.

Before dawn the following day, (3 December 2000), (sic) the accused was taken from his holding cell and brought to an office which he learned only later as inside Camp Olivas in San Fernando, Pampanga. Unknown to him, a case of drug trafficking had been prepared by his abductors (now obviously, police officers) for filing before the prosecutor's office on that day. (During the trial, accused recognized P/Inspector Julieto Culili as one of his abductors, when Culili finally testified in court as the prosecution's last witness).

The arresting officers would later claim that the accused was arrested in a "buy-bust operation" at the parking space of Chowking Restaurant at San Fernando City along the Olongapo-Gapan Road at about 2:00 o'clock in the morning of "3 December 2003." Obviously, the police officers had moved the date from 2 December to 3 December 2003 to prevent a charge of arbitrary detention exceeding the maximum thirty-six (36) hours to deliver a detained person to the proper judicial authorities.[7]

After trial on the merits, RTC rendered its Decision convicting accused-appellant of the crime charged in Criminal Case No. 11379, the dispositive portion of which reads:

WHEREFORE, this Court finds the accused Jason Sy guilty beyond reasonable doubt of the crime of violation of Section 15 of R.A.

[7] *Id.* at 81-85.

6425, as amended by R.A. 7659, involving 987.32265 grams of *shabu* and sentenced (sic) him to suffer the penalty of *reclusion perpetua*.[8]

In finding him guilty beyond reasonable doubt, the trial court gave full faith and credence to the testimonies of the prosecution witnesses, noting that they testified in a clear and straightforward manner.

On motion for reconsideration, the trial court affirmed its earlier ruling of conviction.

Subsequently, accused-appellant filed a Notice of Appeal[9] with the RTC on 7 March 2005, claiming that the RTC Decision and Order were contrary to law. The Court of Appeals docketed the case as CA-G.R. CR-H.C. No. 01108.

Agreeing with the factual findings of the trial court, the Court of Appeals gave more weight to the prosecution's claim that the entrapment operation in fact took place at the parking area outside Chowking Restaurant along Olongapo-Gapan road. In resolving the appeal in its Decision dated 28 December 2007, the Court of Appeals sustained accused-appellant's conviction, *viz*:

> IN VIEW WHEREOF, the impugned Decision of the trial court in Criminal Case No. 11379 convicting accused-appellant JASON SY for violation of Section 15, Article III of R.A. 6425, as amended, is AFFIRMED, subject to the MODIFICATION that in addition to the penalty of *reclusion perpetua* imposed by the trial court, the penalty of fine in the amount of Five Hundred Thousand pesos (₱500,000.00) is likewise imposed on accused-appellant.[10]

Thereafter, accused-appellant sought recourse to this Court *via* Notice of Appeal[11] filed with the Court of Appeals on 23 June 2008.

The parties were informed to file their respective supplemental briefs, if they so desire, within thirty (30) days from notice.

---

[8] *Id.* at 131.

[9] Records, p. 52.

[10] CA *Rollo*, p. 185.

[11] Pursuant to Section 13, Rule 124 of the Revised Rules on Criminal Procedure, as amended by A.M. No. 00-5-03-SC, CA *rollo*, pp. 202-203.

Accused-appellant filed his supplemental brief while the prosecution adopted its appellee's brief.

The defense raises several issues –

I. VERSION OF [THE] DEFENSE MORE WORTHY OF CREDENCE AND BELIEF THAN THAT OF THE PROSECUTION.

II. ESTABLISHED DOCTRINE THAT NEGATIVE TESTIMONY CANNOT PREVAIL OVER POSITIVE ASSERTION NOT AN ABSOLUTE RULE AND ADMITS OF EXCEPTIONS.

III. FAILURE TO PRESENT THE CONFIDENTIAL INFORMANT IS FATAL TO THE CAUSE OF THE PROSECUTION.

IV. BUY-BUST MONEY NOT DUSTED WITH FLUORESCENT POWDER AND POLICE OPERATION NOT DULY BLOTTERED TELLTALE SIGNS FOR IRREGULARTIES IN THE CONDUCT OF THE ALLEGED BUY-BUST OPERATION.[12]

For resolution of this Court is the sole issue of whether the prosecution discharged its burden to support accused-appellant's guilt beyond reasonable doubt for the crime charged.

After a painstaking review of the records of the case, we find no merit in the appeal.

An accused in criminal prosecutions is to be presumed innocent until his guilt is proven beyond reasonable doubt.[13] This constitutional guarantee cannot be overthrown unless the prosecution has established by such quantum of evidence sufficient to overcome this presumption of innocence and prove that a crime was committed and that the accused is guilty thereof. Under our Constitution, an accused enjoys the presumption of innocence. And this presumption prevails over the presumption of regularity of the performance of official duty.

This Court is not unmindful of the anomalous practices of some law enforcers in drug-related cases such as planting

[12] *Rollo*, pp. 20-32.

[13] 1987 Constitution, Article III, Section 14(12).

evidence, physical torture and extortion to extract information from suspected drug dealers or even to harass civilians. Vigilance and caution in trying drug-related cases must be exercised lest an innocent person be made to suffer the unusually severe penalties for drug offenses. This Court reiterates that the presumption of regularity does not, by itself, constitute proof of guilt beyond reasonable doubt. It cannot, by itself, support a judgment of conviction. Clearly, the prosecution must be able to stand or fall on its evidence, for it cannot simply draw strength from the weakness of the evidence for the accused.

In dealing with prosecutions for the illegal sale of drugs, what is material is proof that the transaction or sale actually took place, coupled with the presentation in court of the prohibited or regulated drug as evidence.[14] Jurisprudence has firmly entrenched the following as elements in the crime of illegal sale of prohibited drugs: (1) the accused sold and delivered a prohibited drug to another, and (2) he knew that what he had sold and delivered was a dangerous drug.[15]

In the instant case, the Court finds that the testimonies of the prosecution witnesses adequately establish these elements. The trial court's assessment of the credibility of witnesses must be accorded the highest respect, because it had the advantage of observing their demeanor and was thus in a better position to discern if they were telling the truth or not.[16] The Court has no reason to doubt the assessment of the trial court regarding the credibility of the prosecution and defense witnesses. The testimony of the buy-bust team established than an entrapment operation against accused-appellant was legitimately and successfully carried out on 3 December 2000, where accused-appellant was caught selling 987.32265 grams of methamphetamine hydrochloride or *shabu*. A scrutiny of the accounts of PO3 Ricardo Amontos, PO2 Christian Trambulo

[14] *People v. Caparas*, 391 Phil. 271, 280 (2000).

[15] *People v. Lacerna*, 344 Phil. 100, 121 (1997); *People v. Manzano*, G.R. No. 86555, 16 November 1993, 227 SCRA 780, 785.

[16] *People v. Pacis*, 434 Phil. 148, 158 (2002), citing *People v. Ruedas*, G.R. No. 83372, 27 February 1991, 194 SCRA 553, 561.

and Senior Inspector Culili, detailing how PO2 Trambulo negotiated, thru cellphone, with accused-appellant on the purchase price and the amount of *shabu* to be delivered, actual delivery of the *shabu*, the giving to the accused the marked and boodle money and the subsequent arrest of the accused show that these were testified to in a clear, straightforward manner. Their testimonies are further bolstered by the physical evidence consisting of the *shabu* presented as evidence before the court.

The case at bar presents a predicament considering that the RTC found evidence to support that the police officers exacted money from accused-appellant after his arrest in order to facilitate his immediate discharge. In the same case, however, the RTC still found accused-appellant guilty of the crime charged, based on the totality of evidence adduced by the prosecution. The Court of Appeals, however, did not give credence to accused-appellant's allegations of extortion.

Aware of the findings of the RTC on this matter and its subsequent ruling convicting accused-appellant, a conviction later on affirmed by the Court of Appeals, this Court finds accused-appellant guilty beyond reasonable doubt of the crime charged. The RTC Decision found evidence to support that the police officers exacted money from accused-appellant after his arrest in order to facilitate his immediate discharge. This notwithstanding, we examined the entirety of the prosecution evidence and find the same sufficient to convict accused-appellant. In a similar case, *People v. So*,[17] this Court has ruled that the police extortion does not necessarily negate the fact that accused-appellant committed the offense.

Accused-appellant claims that the failure of the prosecution to present the informer in court only demonstrates that the informer is fictitious. According to the defense, this gives rise to the presumption that his testimony would be adverse if produced. In *People v. Doria*,[18] this Court expounded on the rule in determining whether the informer should be presented

---

[17] 421 Phil. 929, 942 (2001).

[18] 361 Phil. 595, 622 (1999).

for a successful prosecution in cases involving buy-bust operations, to wit:

> [E]xcept when the appellant vehemently denies selling prohibited drugs and there are material consistencies in the testimonies of the arresting officers, or there are reasons to believe that the arresting officers had motives to testify falsely against the appellant, or that only the informant was the poseur-buyer who actually witnessed the entire transaction, the testimony of the informant may be dispensed with as it will be merely corroborative of the apprehending officers' eyewitness testimonies. There is no need to present the informant in court where the sale was actually witnessed and adequately proved by prosecution witnesses.

None of the foregoing circumstances are present in the case at bar. As shown from the evidence adduced by the prosecution, the sale was actually witnessed and proven by the prosecution witnesses.

Equally without merit is accused-appellant's contention that the failure of the operatives to record the buy-bust in the police blotter and their failure to apply fluorescent powder to the buy-bust money are signs of irregularities. Firstly, a prior blotter report is neither indispensable nor required in buy-bust operations.[19] Secondly, there is no rule requiring that the police must apply fluorescent powder to the buy-bust money to prove the commission of the offense. The failure of the police operatives to use fluorescent powder on the boodle money is not an indication that the buy-bust operation did not take place. The use of initials to mark the money used in the buy-bust operation has been accepted by this Court.[20] Similar to a prior blotter report, the use of fluorescent powder is not indispensable in such operations, for the prerogative to choose the manner of marking the money to be used in the buy-bust operation belongs exclusively to the prosecution.

The defense casts doubt as to whether the prosecution was able to maintain the chain of custody of the evidence, or the

---

[19] *People v. Zheng Bai Hui,* 393 Phil. 68, 135 (2000).

[20] *Id*.

shabu, from the time of its alleged retrieval from him, to the time it was presented in court.

The same has no merit. The integrity of the chain of custody of the evidence was not compromised. This Court has explained in *People v. Del Monte*[21] that what is of utmost importance is the *preservation of the integrity and evidentiary value of the seized items*, as the same would be utilized in the determination of the guilt or innocence of the accused. The existence of the dangerous drug is a condition *sine qua non* for conviction for the illegal sale of dangerous drugs.[22] SPO2 Trambulo, the poseur-buyer, testified that upon confiscation of the box with the *shabu*, he affixed his initials CVT and the date of confiscation of the box. Thereafter, he placed the evidence in his car until they reached the CIDG office, whereupon he showed the same to P/Inspector Culili and the evidence was inventoried as well. Culili then instructed him to bring the evidence to the crime laboratory for examination. When the duty officer received the evidence at the crime laboratory, Senior Inspector Maria Luisa Gundran-David conducted the laboratory examination.

What is material is the delivery of the prohibited drug to the buyer which, in this case, was sufficiently proved by the prosecution through the testimony of the poseur-buyer and the presentation of the article itself before the court.

The Court finds no material inconsistencies in the testimonies of the prosecution witnesses. The fact that Mana, Culili and Tupil were shown to have committed abduction with extortion in the *Go Lip Tse* case does not mean that they committed the same in this operation, nor does it negate the fact that accused-appellant did not commit the offense.

Finally, as found by the trial court, the testimonies of the defense witnesses have lose ends and are not as plausible as the defense would want to make it appear.

---

[21] G.R. No. 179940, 23 April 2008, 552 SCRA 627, 636-637.

[22] *People v. Mendiola*, G.R. No. 110778, 4 August 1994, 235 SCRA 116, 120.

Between the positive identification of accused by Trambulo, who acted as poseur-buyer, and accused-appellant's denial, greater weight must be given to the positive testimony of Trambulo.

Under Section 15 of Article III of Republic Act No. 6425, as amended by Republic Act No. 7659, the sale of regulated drugs without proper authority is penalized with *reclusion perpetua* to death and a fine ranging from ₱500,000.00 to ₱10,000,000. Section 20 of Republic Act No. 6425 provides that the penalty in Section 15, Article III shall be applied if the dangerous drug involved is, in the case of *shabu* or methamphetamine hydrochloride, 200 grams or more.

Section 15 of Republic Act No. 6425, as amended by Republic Act No. 7659, provides:

SEC. 15. Sale, Administration, Dispensation, Delivery, Transportation and Distribution of Regulated Drugs. — The penalty of *reclusion perpetua* to death and a fine ranging from five hundred thousand persos to ten million pesos shall be imposed upon any person who, unless authorized by law, shall sell, dispense, deliver, transport or distribute any regulated drug.

Notwithstanding the provisions of Section 20 of this Act to the contrary, if the victim of the offense is a minor, or should a regulated drug involved in any offense under this Section be the proximate cause of the death of a victim thereof, the maximum penalty herein provided shall be imposed.

Corollary thereto, Section 20 of the same law, as amended, states:

SEC. 20. Application of Penalties, Confiscation and Forfeiture of the Proceeds or instruments of the Crime. — The penalties for offenses under Sections 3, 4, 7, 8 and 9 of Article II and Sections 14, 14-A, 15 and 16 of Article III of this Act shall be applied if the dangerous drugs involved is in any of the following quantities:

1. 40 grams or more of opium;

2. 40 grams or more of morphine;

3. 200 grams or more of *shabu* or methylamphetamine hydrochloride;

4. 40 grams or more of heroin;

5. 750 grams or more of indian hemp or marijuana;

6. 50 grams or more of marijuana resin or marijuana resin oil;

7. 40 grams or more of cocaine or cocaine hydrochloride; or

8. In the case of other dangerous drugs, the quantity of which is far beyond therapeutic requirements, as determined and promulgated by the Dangerous Drugs Board, after public consultations/hearings conducted for the purpose.

Otherwise, if the quantity involved is less than the foregoing quantities, the penalty shall range from *prision correccional* to *reclusion perpetua*, depending upon the quantity.

From the foregoing provisions, the penalty for the sale of regulated drugs is based, as a rule, on the quantity thereof. The exception is where the victim is a minor or where the regulated drug involved is the proximate cause of the death of the victim. In such cases, the maximum penalty prescribed in Section 15, *i.e.*, death, shall be imposed, regardless of the quantity of the prohibited drugs involved. This circumstance is absent here.

Thus, the penalty to be imposed is based on the quantity of the regulated drug involved.

Accused-appellant sold the police operatives a substance weighing 987.32265 grams, which amount is more than the minimum of 200 grams required by law for the imposition of either *reclusion perpetua* or, if there be aggravating circumstances, the death penalty.

This Court recognizes the suppletory application of the rules on penalties in the Revised Penal Code to Republic Act No. 6425 after the amendment of the latter by Republic Act No. 7659 on 31 December 1993. Considering there are no mitigating or aggravating circumstances attending accused-appellant's violation of the law, and the aggregate quantity of *shabu* seized was 987.32265 grams, *reclusion perpetua* is the penalty that may be imposed, pursuant to the provisions of the Revised Penal Code.

Thus, the penalty imposed by the RTC, as modified by the Court of Appeals is proper.

WHEREFORE, premises considered, the Court of Appeals Decision dated 28 December 2007 and Resolution dated 12 June 2008 in CA-G.R. CR-HC No. 01108, affirming the Decision promulgated on 19 May 2004 by the Regional Trial Court of San Fernando, Pampanga, Branch 47, in Criminal Case No. 11379, finding accused-appellant JASON SY guilty beyond reasonable doubt of unlawfully selling 987.32265 grams of methamphetamine hydrochloride or *shabu*, in violation of Section 15, Article III of Republic Act No. 6425, as amended, and imposing upon him the penalty of *reclusion perpetua*, and a fine of Five Hundred Thousand Pesos (₱500,000.00) is hereby *AFFIRMED*. Let the Secretary of the Department of Interior and Local Government and the Director General of the Philippine National Police be furnished with a copy of this decision for appropriate action concerning the alleged extortion committed by the police operatives against accused-appellant.

SO ORDERED.

Ynares-Santiago (Chairperson), Carpio,[*] *Velasco, Jr.,* and *Peralta, JJ.,* concur.

---

[*] Associate Justice Antonio T. Carpio was designated to sit as additional member replacing Associate Justice Antonio Eduardo B. Nachura per Raffle dated 11 May 2009.

THIRD DIVISION

[A.M. No. P-07-2400. June 23, 2009]
(Formerly OCA IPI No. 07-2589-P)

JUDGE ISIDRA A. ARGANOSA-MANIEGO, *complainant, vs.* **ROGELIO T. SALINAS, UTILITY WORKER I, MUNICIPAL CIRCUIT TRIAL COURT, MACABEBE-MASANTOL, MACABEBE, PAMPANGA,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; IN ADMINISTRATIVE PROCEEDINGS, THE QUANTUM OF PROOF NECESSARY FOR FINDING OF GUILT IS SUBSTANTIAL EVIDENCE; SATISFIED IN CASE AT BAR. — Given Salinas' own admission, taken together with the evidence submitted by Judge Maniego in support of her Complaint, the Court finds substantial evidence to support the administrative charge of grave misconduct and dishonesty against Salinas. In administrative proceedings, the quantum of proof necessary for a finding of guilt is substantial evidence or such relevant evidence as a reasonable mind may accept as adequate to support a conclusion. Well-entrenched is the rule that substantial proof, and not clear and convincing evidence or proof beyond reasonable doubt, is sufficient as basis for the imposition of any disciplinary action upon the employee. The standard of substantial evidence is satisfied where the employer, which is the Court in this case, has reasonable ground to believe that the employee is responsible for the misconduct and his participation therein renders him unworthy of trust and confidence demanded by his position.

2. ID.; ID.; PUBLIC OFFICERS AND EMPLOYEES; GRAVE OFFENSES; MISCONDUCT; GROSS; DEFINED. — Misconduct is a transgression of some established and definite rule of action, a forbidden act, a dereliction from 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."

3. ID.; ID.; ID.; DISHONESTY; DEFINED. — Dishonesty, on the other hand, has been defined as the "(d)isposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray." Indeed, dishonesty is a malevolent act that has no place in the judiciary.

4. ID.; ID.; ID.; CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES; VIOLATED IN CASE AT BAR. — x x x [T]he Code of Conduct and Ethical Standards for Public Officials and Employees provides that every public servant shall at all times uphold public interest over his or her personal interest. Court personnel, from the presiding judge to the lowliest clerk, must adhere to the high ethical standards of public service in order to preserve the Court's good name and standing. Time and again, this Court has exhorted that any act that falls short of the existing standards for public service, especially on the part of those expected to preserve the image of the judiciary, shall not be countenanced. As the administration of justice is a sacred task, the persons involved in it ought to live up to the strictest standard of honesty and integrity. Their conduct, at all times, must not only be characterized by propriety and decorum but, above all else, must be above suspicion. Thus, every employee of the judiciary should be an example of integrity, uprightness and honesty. Salinas, in taking and encashing Judge Maniego's check, on a personal level, violated Judge Maniego's trust in him and deprived Judge Maniego of her property; and, also on a much larger scale, degraded the judiciary and diminished the respect and regard of the people for the court and its personnel. x x x

5. ID.; ID.; ID.; GRAVE OFFENSES; GRAVE MISCONDUCT AND DISHONESTY; PENALTY.— Pursuant to Section 23, Rule XIV of the Omnibus Rules Implementing Book V of Executive Order 292, Grave Misconduct and Dishonesty, being in the nature of grave offenses, carry the extreme penalty of dismissal from the service with forfeiture of retirement benefits except accrued leave credits, and perpetual disqualification for reemployment in government service.

6. ID.; ID.; ID.; ID.; MITIGATING FACTORS; BASIS; APPLIED IN CASE AT BAR. — x x x [I]n several administrative cases, the Court has refrained from imposing the actual penalties in the presence of mitigating factors. Factors such as the respondent's length of service, the respondent's acknowledgement of his or her infractions and feeling of remorse, family circumstances, humanitarian and equitable considerations, respondent's advanced age, among other things, have had varying significance in the Court's determination of the imposable penalty. The compassion extended by the Court in these cases was not without legal basis. Section 53, Rule IV of the Revised Uniform Rules on Administrative Cases in the Civil Service, grants the disciplining authority the discretion to consider mitigating circumstances in the imposition of the proper penalty. The court has also ruled that where a penalty less punitive would suffice, whatever missteps may be committed by labor ought not to be visited with a consequence so severe. It is not only for the law's concern for the workingman; there is, in addition, his family to consider. Unemployment brings untold hardships and sorrows on those dependent on wage earners. Applying the rationale in the aforesaid catena of cases, it is appropriate for this Court, in the case at bar, to consider that this is Salinas' first offense in his more than 10 years in government service, that he acknowledged his infractions and feeling of remorse and restituted the amount involved. Thus, suspension for one year without pay is sufficient, given the circumstances.

D E C I S I O N

CHICO-NAZARIO, *J.*:

This is an administrative complaint for grave misconduct and gross dishonesty, filed by complainant Judge Isidra A. Arganosa-Maniego (Judge Maniego), against Utility Worker I Rogelio T. Salinas (Salinas), both of the Municipal Circuit Trial Court (MCTC), Macabebe-Masantol, Macabebe, Pampanga.

The facts of the case as culled from the records of the case are as follows:

Salinas handed to Judge Maniego, on 17 May 2007, Land Bank Check No. 184461, in the amount of Twenty Thousand pesos (₱20,000.00), representing the latter's Economic and Emergency Allowance (EEA).

When Judge Maniego went to MCTC Apalit-San Simon, Apalit, Pampanga, on 22 May 2007, to attend the cases set for Judicial Dispute Resolution (JDR), she learned from Clerk of Court Maria A. Chico that judges had recently received two checks, one for their EEA, and another for their Special Allowance for Justices and Judges (SAJ). This was confirmed by Judge Teodora Gonzales of the MCTC Apalit-San Simon, Apalit, Pampanga.

Thereafter, Judge Maniego instructed her Court Interpreter Ofelia R. Cunanan (Cunanan), *via* text message, to look for the mailing envelope which contained the EEA checks for their court. Later, Cunanan called Judge Maniego's cellular phone to inform the latter that Salinas received the mail for their court and that Salinas already threw away the mailing envelope Judge Maniego was looking for.

To address her doubts regarding her missing SAJ check, Judge Maniego issued on 24 May 2007 a Memorandum[1] to her staff, namely, Clerk of Court Aris Yabut (Yabut), Clerk Lilian L. Gueverra (Gueverra), Court Stenographers Elsa I. Lagman (Lagman), Ethel I. Pabustan (Pabustan), and Karen I. Villanueva (Villanueva), Process Server Gerardo S. Lagman (Lagman), Cunanan, and respondent, directing them to explain how their EEA checks came to their possession.

Yabut, Guevarra, Lagman, Pabustan, Villanueva, Lagman, and Cunanan, filed their respective replies to Judge Maniego's Memorandum, reporting therein that their EEA checks were individually given to them by Salinas on 17 May 2007.[2]

Salinas separately filed his reply[3] to Judge Maniego's Memorandum, admitting that he received the mailed checks

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

[2] *Id.* at 13-14.

[3] *Id.* at 17.

for Judge Maniego and the employees of her court, and that he retained and encashed Judge Maniego's check, bearing the number 184462, and amounting to ₱2,521.00, because he needed money for the repair of his tricycle. Salinas' reply reads:

Bago po ang lahat, ako ay humihingi ng paumanhin o kapatawaran sa pagpalit ko ng "cash" sa tsekeng "representing the economic assistance for court's personnel."

Ako po ay hindi masamang tao, hindi magnanakaw, hindi tamad, hindi maluho, hindi naglilinis sa opisina gaya ng sinabi ninyo sa akin na ako ay magnanakaw, tamad, maluho at hindi naglilinis sa opisina.

Lakas loob ko pong ginamit ang tseke ""representing the economic assistance for court's personnel" dahil inakala ko na hindi kayo magagalit at mauunawaan ninyo ako, noong araw na iyon ay nasira po ang motor na ginagamit namin. Walang wala po kaming pera nung araw na iyon, naisip ko po wala akong magagamit na motor sakaling magpahatid kayo sa sakayan. Dahil mayroon naman po kaming inaasahang perang darating, mga dalawang araw lang darating na lakas loob ko ng ginamit ang tseke para mapagawa ko ang motor para may magamit ako sakaling magpahatid kayo sa sakayan.

Ang balak ko po ay sasabihin ko sa inyo kinabukasan ang pangyayari na papalitan ko na lang ng "cash" ang tseke kaya lang hindi ako nakapasok. Noong araw na iyon nang pumasok ako kinabukasan ay galit na galit kayo. Nawalan po ako ng pagkakataon makapagpaliwanag dahil sa galit ninyo, nataranta po ako. Maniwala po kayo or hindi sa aking paliwanag ay nasa sa inyo na po. Hindi ko po hawak ang inyong kalooban. Alam po ng Diyos na malinis ang konsensya ko at alam po ng Diyos na sa sampong taon kong pagka Court Aide ay pinagkakatiwalaan ako sa mga tseke at perang pinadedeposito sa banko.

Huwag naman po kayong mawala ng tiwala sa akin kahit na ***pinalitan ko na po ng "cash" ang nasabing "tseke****." Hindi po ako masamang tao. Patawarin po ninyo ako sa inaakalang maling ginawa ko. Bigyan po ninyo akong isa pang pagkakataong alang-alang sa pamilya ko.* (Emphasis supplied.)

Salinas also orally admitted to Judge Maniego that he was able to encash the check in question with the Ignacio Superette,

a supermarket located at the Poblacion, Masantol, Pampanga, by forging Judge Maniego's signature.

Thus, Judge Maniego filed a Verified Complaint[4] dated 25 June 2007 against Salinas, charging the latter with grave misconduct and gross dishonesty. Judge Maniego prayed that Salinas be preventively suspended because her court could not function well when he was present, since everyone would be guarding their things, apprehensive that Salinas might also take them. Judge Maniego reiterated such prayer in her Urgent *Ex-Parte* Motion for Indefinite Preventive Suspension of Respondent [Salinas]. In addition, she also feared that Salinas might commit another unlawful act in connivance with the lawyers and litigants in cases before her court.

On 29 June 2007, the Office of the Court Administrator (OCA) required[5] Salinas to comment on Judge Maniego's complaint within 10 days from receipt of notice.

Judge Maniego filed on 12 July 2007 an *Ex-Parte* Manifestation with Motion,[6] informing the Court that she filed before the Office of the Provincial Prosecutor of Pampanga two criminal complaints against Salinas, particularly, for (1) Qualified Theft and (2) Falsification of Official/Commercial Document. As a result, Judge Maniego sought the immediate resolution of her motion for Salinas' preventive suspension, because with her filing of the said criminal complaints against Salinas, Judge Maniego now feared for her personal safety.

In his Comment[7] on Judge Maniego's Complaint, Salinas denied that he committed grave misconduct and/or gross dishonesty. He asserted that he did not open the mail matter containing the checks without the knowledge of Clerk of Court Yabut and the other court staff. Salinas narrated that when the court staff learned that their mailed checks had arrived at the post office,

---

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

[5] *Id.* at 32.

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

[7] *Id.* at 63-68.

they instructed him to pick up the same and then to distribute the checks to the respective payees.

Anent Judge Maniego's check, Salinas alleged that:

> I personally handed to the complainant [Judge Maniego] the two (2) checks and asked her politely if she can accommodate me in borrowing the amount stated in the second check in the amount of Two Thousand Five Hundred Twenty One Pesos (₱2,521.00) Philippine currency, for I need very badly that amount to have the tricycle I am using in taking her to the jeep terminal whenever she decide (sic) to go home anytime even during office hour (sic). After handing the two (2) checks to her, she entered her chamber and I stayed outside for I was waiting for her answer to (sic) my request. After a few minute (sic) the complainant [Judge Maniego] came out from the chamber and asked, "why do you have to borrow the said amount when you also received your check (sic)? I told her, that the money I just received are (sic) all earmarked for the enrollment of my children and for our daily sustenance. With that answer of mine, complainant [Judge Maniego] handed back to me the said check with a request to return/repay the cash value of the check within one (1) week for she [was] also in need of cash considering that school opening is (sic) fast approaching. She further asked me to have the tricycle be (sic) repaired the soonest. When she handed to me the check it was already signed and advice (sic) me just affixed (sic) also my signature at the dorsal side.[8]

Salinas claimed that he did not encash the subject check without Judge Maniego's knowledge and consent. Neither did he falsify Judge Maniego's signature on the said check. According to Salinas, he only admitted in his reply to Judge Maniego's Memorandum that he encashed the check without Judge Maniego's knowledge and consent because he was assured by the latter that no case would be filed against him. Salinas contended that Judge Maniego only wanted to make it appear that she was not extending financial assistance to Salinas, for the other employees might also borrow money from her.

Salinas further argued that there was no justification for his preventive suspension, considering that he was only a court aide, not likely to exert undue influence on the witnesses who

[8] *Id.* at 65.

were holding higher ranking positions and who had already executed their affidavits. Moreover, the possibility of his tampering with documentary evidence was remote because there was no showing that such documents were under his control or possession.

In a Report dated 1 October 2007, the Office of the Court Administrator (OCA) recommended, among other things, that Salinas be placed under preventive suspension pending the resolution of Judge Maniego's Complaint against him. This recommendation was adopted by the Court.[9]

In a Resolution dated 12 November 2007, the Court referred the present administrative matter to a Consultant of the OCA for investigation, report and recommendation within sixty (60) days from receipt of the records thereof.

Meanwhile, on 12 February 2008, Salinas submitted a "*Sinumpaang Salaysay*"[10] dated 11 February 2008, renouncing the previous allegations in his Comment on Judge Maniego's Complaint, avowing that he did not admit the truth in said Comment for fear of being immediately dismissed from the service. This time, he admitted, among other things, that:

a. Na ako ang tumanggap ng check-letter mail na binanggit ni ma'am sa kanyang demanda na laban sa akin;

b. Na binuksan ko iyon at ako na rin ang nagdistribute noon sa aking mga kasamahan at kay mam (Judge);

c. Na dalawang tseke ang nakalaan para kay ma'am, isang halagang ~~₱~~20,000.00 at isang ~~₱~~2,500.00 plus;

d. Na dahil sa matinding pangangailangan sa araw na iyon, natukso akong kunin ang tseke ni ma'am na may halagang ~~₱~~2,500.00 plus at ang may halagang ~~₱~~20,000.00 ay binigay ko sa kanya;

e. Na pinagpalit ko iyon ng cash sa Ignacio Superrette sa Masantol, Pampanga;

x x x x x x x x x

[9] *Id.* at 81.

[10] *Id.* at 83-85.

Na bilang tao, dumarating ang kahinaan sa buhay at tayo ay hindi perpekto at inuulit kong natukso lang po ako dahil sa matindi kong pangangailangan nung araw na iyon at nahihiya naman akong mang-utang kay judge at sa aking mga kasamahan.[11] (Emphasis ours.)

Salinas pleaded for the Court, out of compassion, not to dismiss him from service, considering that he had four children who were studying and that his wife's salary as a court stenographer would not be able to fully support their family needs.

Given the non-renewal of the service contracts of the OCA Consultants and the subsequent developments in this administrative matter, such as respondent's admission of guilt, a formal investigation was no longer warranted. Hence, the OCA deemed it appropriate to proceed with the evaluation of the administrative matter in order to *expedite* the proceedings, thereby saving the time and resources of this Court.

On 2 May 2008, the OCA submitted its report[12] with the following recommendations:

1. That the *Sinumpaang Salaysay* dated 11 February 2008 be **NOTED** and made of record;

2. That respondent Rogelio Salinas, Utility Worker I, MCTC, Macabebe-Masantol, Macabebe, Pampanga be found GUILTY of DISHONESTY; and

3. That he be meted with the penalty of DISMISSAL from the service with forfeiture of all retirement benefits, except accrued leave credits, and with perpetual disqualification from re-employment in any government agency, including government owned and controlled corporation.[13]

The Court thereafter required[14] the parties to manifest within ten (10) days from notice if they were willing to submit the

---

[11] *Id.* at 83-84.

[12] *Id.* at 88-94.

[13] *Id.* at 94.

[14] *Id.* at 98.

matter for resolution based on the pleadings filed. Judge Maniego and Salinas submitted their separate manifestations on 21 August 2008[15] and 6 February 2009, respectively.[16] Consequently, the administrative matter was submitted for decision based on the pleadings filed.

The Court, after a careful examination of the records herein, is upholding the findings of the OCA that Salinas is indeed responsible for stealing and encashing Check No. 184462 representing the special allowance issued to Judge Maniego, and converting for his personal use the cash he received thereby, but modifies the recommended penalty.

In two written documents, *i.e.*, his reply to Judge Maniego's Memorandum and his *Sinumpaang Salaysay*, respondent had already knowingly and willingly admitted the acts with which he was charged. Despite knowing that the payee of Check No. 184462 was clearly Judge Maniego,[17] Salinas still took and encashed the same for his personal use.

The Court finds nothing in Salinas' explanation to justify his liability for taking what was clearly not his. Neither his purported intense desire to have his tricycle immediately repaired so that he could use it to bring Judge Maniego to the jeepney terminal whenever he was requested to do so, nor his alleged intention to immediately pay the amount of the check the day after his encashment of the same, could excuse his transgression of administrative and ethical standards for court employees. The Court cannot comprehend how Salinas would rather commit a dishonest act by stealing from Judge Maniego, than endure the embarrassment from borrowing money up-front from Judge Maniego or other court employees.

Given Salinas' own admission, taken together with the evidence submitted by Judge Maniego in support of her Complaint, the Court finds substantial evidence to support the administrative

---

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

[16] *Id.* at 101.

[17] *Id.* at 25.

charge of grave misconduct and dishonesty against Salinas. In administrative proceedings, the quantum of proof necessary for a finding of guilt is substantial evidence or such relevant evidence as a reasonable mind may accept as adequate to support a conclusion.[18] Well-entrenched is the rule that substantial proof, and not clear and convincing evidence or proof beyond reasonable doubt, is sufficient as basis for the imposition of any disciplinary action upon the employee. The standard of substantial evidence is satisfied where the employer, which is the Court in this case, has reasonable ground to believe that the employee is responsible for the misconduct and his participation therein renders him unworthy of trust and confidence demanded by his position.[19]

Misconduct is a transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behavior, willful in character, improper or wrong behavior,[20] while "gross" has been defined as "out of all measure; beyond allowance; flagrant; shameful; such conduct as is not to be excused."[21]

Dishonesty, on the other hand, has been defined as the "(d)isposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray."[22] Indeed, dishonesty is a malevolent act that has no place in the judiciary.[23]

---

[18] *Ebero v. Sheriff Camposano*, 469 Phil. 426, 422 (2004).

[19] *Reyno v. Manila Electric Company*, G.R. No. 148105, 22 July 2004, 432 SCRA 660, 668.

[20] BLACK'S LAW DICTIONARY, 5th Edition, p. 901, cited in *Vidallon-Magtolis v. Salud*, A.M. No. CA-05-20-P, 9 September 2005, 469 SCRA 439, 469.

[21] *Id.* at 632, citing *State Board of Dental Examiners v. Savelle*, 90 Colo. 177, 8 P. 2d 693, 697, cited in *Vidallon-Magtolis v. Salud, id.*

[22] *Re: Administrative Case for Dishonesty Against Elizabeth Ting, Court Sec. I & Angelita C. Esmerio, Clerk III, Off. Clerk of Court*, A.M. No. 2001-7-SC & No. 2001-8-SC, 22 July 2005, 464 SCRA 1, 15.

[23] *Cabanatan v. Molina*, 421 Phil. 664, 674 (2001); *Lacurom v. Magbanua*, 443 Phil. 711, 718 (2003), citing *Pizarro v. Villegas*, 398 Phil. 837, 838 (2000).

The Court emphasizes that public service requires utmost integrity and discipline. A public servant must exhibit at all times the highest sense of honesty and integrity for no less than the Constitution mandates the principle that "a public office is a public trust and all public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency."[24] In addition, the Code of Conduct and Ethical Standards for Public Officials and Employees provides that every public servant shall at all times uphold public interest over his or her personal interest.[25]

Court personnel, from the presiding judge to the lowliest clerk, must adhere to the high ethical standards of public service in order to preserve the Court's good name and standing.[26] Time and again, this Court has exhorted that any act that falls short of the existing standards for public service, especially on the part of those expected to preserve the image of the judiciary, shall not be countenanced. As the administration of justice is a sacred task, the persons involved in it ought to live up to the strictest standard of honesty and integrity.[27] Their conduct, at all times, must not only be characterized by propriety and decorum but, above all else, must be above suspicion. Thus, every employee of the judiciary should be an example of integrity, uprightness and honesty.[28]

Salinas, in taking and encashing Judge Maniego's check, on a personal level, violated Judge Maniego's trust in him and deprived Judge Maniego of her property; and, also on a much larger scale, degraded the judiciary and diminished the respect and regard of the people for the court and its personnel. Salinas is not much different from the respondent in *Court Administrator*

---

[24] Section 1, Article XI, 1987 Constitution.

[25] Republic Act No. 6713, Section 2.

[26] *De Chavez v. Lescano*, A.M. No. R-70-P, 8 October 1985, 139 SCRA 103, 106; *Recto v. Racelis*, 162 Phil. 566, 574 (1976).

[27] *Hernandez v. Borja*, 312 Phil. 199, 204 (1995).

[28] *Basco v. Gregorio*, 315 Phil. 681, 688 (1995).

v. Sevillo,[29] whom the Court lamentably regarded as a common thief for stealing mail matters.

Salinas only admitted to Judge Maniego that he took the latter's check and paid the value of the same at 1:00 p.m. on 24 May 2007,[30] after being directly confronted by Judge Maniego. Also working against Salinas' interest is the fact that he lied to this Court in his Comment on Judge Maniego's Complaint. It should be recalled that Salinas, in his reply to Judge Maniego's Memorandum, admitted encashing Judge Maniego's check without the knowledge or consent of the latter. However, in his Comment on Judge Maniego's Complaint before this Court, he changed his story by claiming that Check No. 184462 was voluntarily given to him by Judge Maniego as a loan. Then again, in the *Sinumpaang Salaysay* he subsequently submitted, Salinas again admitted to keeping and encashing Judge Maniego's check, without the latter's knowledge or consent. The foregoing events only further expose Salinas' intent to mislead the Court, as well as his propensity to be dishonest. Salinas' subsequent admission of his wrongdoing in his *Sinumpaang Salaysay* does not at all redeem him, since there would have been no need for the same if he already made such an admission earlier in his Comment.

Pursuant to Section 23, Rule XIV of the Omnibus Rules Implementing Book V of Executive Order 292, Grave Misconduct and Dishonesty, being in the nature of grave offenses, carry the extreme penalty of dismissal from the service with forfeiture of retirement benefits except accrued leave credits, and perpetual disqualification for reemployment in government service.[31]

However, in several administrative cases, the Court has refrained from imposing the actual penalties in the presence of mitigating factors. Factors such as the respondent's length of service, the

---

[29] 336 Phil. 931 (1997).

[30] *Rollo*, p. 6.

[31] *Office of the Court Administrator v. Magno*, 419 Phil. 593, 602 (2001); Sec. 22(a), Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292 (Administrative Code of 1987), as amended by CSC Memorandum Circular No. 19, s. 1999 (a).

respondent's acknowledgement of his or her infractions and feeling of remorse, family circumstances, humanitarian and equitable considerations, respondent's advanced age, among other things, have had varying significance in the Court's determination of the imposable penalty.[32]

---

[32] In *Re: Administrative Case for Dishonesty Against Elizabeth Ting*, Court Secretary I, and Angelita C. Esmerio, Clerk III, Office of the Division Clerk of Court, Third Division (A.M. No. 2001-7-SC & 2001-8-SC, 22 July 2005, 464 SCRA 1), where therein respondents were found guilty of dishonesty, the Court, for humanitarian considerations, in addition to various mitigating circumstances in respondents' favor, meted out a penalty of six months suspension instead of imposing the most severe penalty of dismissal from service. In imposing a lower penalty, the court, for humanitarian considerations, took note of various mitigating circumstances in respondent's favor, to wit: (1) for respondent ANGELITA C. ESMERIO: her continued long years of service in the judiciary amounting to 38 years; her faithful observance of office rules and regulations from the time she submitted her explanation-letter up to the present; her acknowledgment of her infractions and feelings of remorse; her retirement on 31 May 2005; and her family circumstances (*i.e.*, support of a 73-year old maiden aunt and a 7-year old adopted girl); and (2) for ELIZABETH L. TING: her continued long years of service in the judiciary amounting to 21 years; her acknowledgment of her infractions and feelings of remorse; the importance and complexity of the nature of her duties (*i.e.*, the preparation of the drafts of the Minutes of the Agenda); the fact that she stays well beyond office hours in order to finish her duties; and her Performance Rating which has always been "Very Satisfactory" and her total score of 42 points which is the highest among the employees of the Third Division of the Court.

In the case of *Concerned Taxpayer v. Doblada, Jr.* (A.M. No. P-99-1342, 20 September 2005, 470 SCRA 218), the penalty of dismissal was reduced by the Court to six months suspension without pay for the attendant equitable and humanitarian considerations therein: Norberto V. Doblada, Jr. had spent 34 years of his life in government service and he was about to retire; this was the first time that he was found administratively liable per available record; Doblada, Jr. and his wife were suffering from various illnesses that required constant medication, and they were relying on Doblada's retirement benefits to augment their finances and to meet their medical bills and expenses.

In *Civil Service Commission v. Belagan* (G.R. No. 132164, 19 October 2004, 440 SCRA 578, 601), Allyson Belagan, who was charged with sexual harassment and found guilty of Grave Misconduct, was meted out the penalty of suspension from office without pay for one year, instead of the heavier penalty of dismissal, given his length of service, unblemished record in the past, and numerous awards.

The compassion extended by the Court in these cases was not without legal basis. Section 53, Rule IV of the Revised Uniform Rules on Administrative Cases in the Civil Service,[33]

In *Vidallon-Magtolis v. Salud* (A.M. No. CA-05-20-P, 9 September 2005, 469 SCRA 439, 469-470), Cielito M. Salud, a Court of Appeals personnel, was found guilty of inefficiency and gross misconduct, punishable by dismissal from service even for the first-time offenses. However, considering that Salud had not been previously charged nor administratively sanctioned, the Court instead imposed the penalty of suspension for one year and six months.

In *De Guzman, Jr. v. Mendoza* (A.M. No. P-03-1693, 17 March 2005, 453 SCRA 545, 574), Sheriff Antonio O. Mendoza was charged with conniving with another in causing the issuance of an *alias* writ of execution and profiting from the rentals collected from the tenants of the subject property. Mendoza was subsequently found guilty of Grave Misconduct, Dishonesty and Conduct Prejudicial to the Best Interest of the Service; but instead of imposing the penalty of dismissal, the Court meted out the penalty of suspension for one year without pay, it appearing that it was Mendoza's first offense.

In *Buntag v. Pana* (G.R. No. 145564, 24 March 2006, 485 SCRA 302), the Court affirmed the findings of the Court of Appeals and the Ombudsman when they took into consideration Corazon G. Buntag's length of service in the government and the fact that this was her first infraction. thus, the penalty of dismissal for Falsification of Official Document was reduced to merely one-year suspension.

In *Re: Delayed Remittance of Collections of Teresita Lydia Odtuhan* (445 Phil. 220 [2003]), a court legal researcher, Lydia Odtuhan of the Regional Trial Court of Pasay City was found guilty of serious misconduct in office for failing to remit a ₱12,705.00 fund collection to the proper custodian for three years and doing so only after several demands or directives from the clerks of court and from the Office of the Court Administrator (OCA). For humanitarian reasons, the Court found dismissal from the service to be too harsh, considering that Odtuhan **subsequently remitted the entire amount** and she was afflicted with ovarian cancer. She was imposed a fine ₱10,000.00, with a stern warning that a repetition of the same or a similar act will be dealt with more severely.

In *Re: Misappropriation of the Judiciary Fund Collections by Ms. Juliet C. Banag* (465 Phil. 24 [2004]), Juliet C. Banag, the Clerk of Court of the Municipal Trial Court of Plaridel, Bulacan, was delayed in the remittance of her cash collections, which constituting gross neglect of duty under the Civil Service Law. However, the Court took into consideration the lack of bad faith and the fact that Banag **fully remitted all her collections and that she had no outstanding accountabilities.** Because of these attendant circumstances and for humanitarian considerations, the Court merely imposed a fine of ₱20,000.00 and a stern warning that a repetition of the same or similar acts shall be dealt with more severely.

[33] CSC Memorandum Circular No. 19-99, 14 September 1999.

grants the disciplining authority the discretion to consider mitigating circumstances in the imposition of the proper penalty.

The court has also ruled that where a penalty less punitive would suffice, whatever missteps may be committed by labor ought not to be visited with a consequence so severe.[34] It is not only for the law's concern for the workingman; there is, in addition, his family to consider. Unemployment brings untold hardships and sorrows on those dependent on wage earners.[35]

Applying the rationale in the aforesaid catena of cases, it is appropriate for this Court, in the case at bar, to consider that this is Salinas' first offense in his more than 10 years in government service, that he acknowledged his infractions and feeling of remorse and restituted the amount involved. Thus, suspension for one year without pay is sufficient, given the circumstances.

WHEREFORE, Salinas is hereby found *GUILTY* of Gross Misconduct and Dishonesty, and is hereby *SUSPENDED* for a period of ONE (1) YEAR without pay, commencing upon notice of this Decision with warning that a repetition of the same or similar act shall be dealt with more severely.

SO ORDERED.

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

---

[34] *Re: Habitual Absenteeism of Mr. Fernando P. Pascual*, A.M. No. 2005-16-SC, 22 September 2005, 470 SCRA 569, 573

[35] *Mendoza v. Navarro*, A.M. No. P-05-2034, 11 September 2006, 501 SCRA 354, 364.

SECOND DIVISION

[G.R. No. 168863. June 23, 2009]

HI-YIELD REALTY, INCORPORATED, *petitioner, vs.* **HON. COURT OF APPEALS, HON. CESAR O. UNTALAN, in his capacity as PRESIDING JUDGE OF RTC-MAKATI, BRANCH 142, HONORIO TORRES & SONS, INC., and ROBERTO H. TORRES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; WHEN PROPER; PETITION FOR *CERTIORARI* DISTINGUISHED FROM PETITION FOR REVIEW ON *CERTIORARI*. — A petition for *certiorari* is proper if a tribunal, board or officer exercising judicial or quasi-judicial functions acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction and there is no appeal, or any plain, speedy and adequate remedy in the ordinary course of law. Petitioner sought a review of the trial court's Orders dated January 22, 2004 and April 27, 2004 via a petition for *certiorari* before the Court of Appeals. In rendering the assailed decision and resolution, the Court of Appeals was acting under its concurrent jurisdiction to entertain petitions for *certiorari* under paragraph 2, Section 4 of Rule 65 of the Rules of Court. Thus, if erroneous, the decision and resolution of the appellate court should properly be assailed by means of a petition for review on *certiorari* under Rule 45 of the Rules of Court. The distinction is clear: a petition for *certiorari* seeks to correct errors of jurisdiction while a petition for review on *certiorari* seeks to correct errors of judgment committed by the court *a quo*. Indeed, this Court has often reminded members of the bench and bar that a special civil action for *certiorari* under Rule 65 lies only when there is no appeal nor plain, speedy and adequate remedy in the ordinary course of law. In the case at hand, petitioner impetuously filed a petition for *certiorari* before us when a petition for review was available as a speedy and adequate remedy. Notably, petitioner filed the present petition 58 days after it received

a copy of the assailed resolution dated May 26, 2005. To our mind, this belated action evidences petitioner's effort to substitute for a lost appeal this petition for *certiorari.*

2. ID.; ID.; ID.; GRAVE ABUSE OF DISCRETION; WHEN PRESENT. — For the extraordinary remedy of *certiorari* to lie by reason of grave abuse of discretion, the abuse of discretion must be so patent and gross as to amount to an evasion of positive duty, or a virtual refusal to perform the duty enjoined or to act in contemplation of law, or where the power is exercised in an arbitrary and despotic manner by reason of passion and personal hostility. We find no grave abuse of discretion on the part of the appellate court in this case.

3. COMMERCIAL LAW; CORPORATION LAW; CORPORATION; DERIVATIVE SUIT; EXPLAINED. — Simply, the resolution of the issues posed by petitioner rests on a determination of the nature of the petition filed by respondents in the RTC. Both the RTC and Court of Appeals ruled that the action is in the form of a derivative suit although captioned as a petition for annulment of real estate mortgage and foreclosure sale. A derivative action is a suit by a shareholder to enforce a corporate cause of action. Under the Corporation Code, where a corporation is an injured party, its power to sue is lodged with its board of directors or trustees. But an individual stockholder may be permitted to institute a derivative suit on behalf of the corporation 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 control of the corporation. In such actions, the corporation is the real party-in-interest while the suing stockholder, on behalf of the corporation, is only a nominal party.

4. ID.; ID.; ID.; ID.; REQUISITES. — In the case of *Filipinas Port Services, Inc. v. Go,* we enumerated the foregoing requisites before a stockholder can file a derivative suit: a) the party bringing suit should be a shareholder as of the time of the act or transaction complained of, the number of his shares not being material; b) he has tried to exhaust intra-corporate remedies, *i.e.*, has made a demand on the board of directors for the appropriate relief but the latter has failed or refused to heed his plea; and c) the cause of action actually devolves on the corporation, the wrongdoing or harm having been, or

being caused to the corporation and not to the particular stockholder bringing the suit.

5. ID.; ID.; ID.; ID.; REQUIREMENTS TO PROSPER. — Even then, not every suit filed on behalf of the corporation is a derivative suit. For a derivative suit to prosper, the minority stockholder suing for and on behalf of the corporation must allege in his complaint that he is suing on a derivative cause of action on behalf of the corporation and all other stockholders similarly situated who may wish to join him in the suit. The Court finds that Roberto had satisfied this requirement in paragraph five (5) of his petition xxx.

6. ID.; ID.; ID.; ID.; NO LONGER NECESSARY WHERE THE CORPORATION ITSELF IS UNDER THE COMPLETE CONTROL OF THE PERSON AGAINST WHOM THE SUIT IS BEING FILED; CASE AT BAR. — Further, while it is true that the complaining stockholder must satisfactorily show that he has exhausted all means to redress his grievances within the corporation; such remedy is no longer necessary where the corporation itself is under the complete control of the person against whom the suit is being filed. The reason is obvious: a demand upon the board to institute an action and prosecute the same effectively would have been useless and an exercise in futility. Here, Roberto alleged in his petition that earnest efforts were made to reach a compromise among family members/stockholders before he filed the case. He also maintained that Leonora Torres held 55% of the outstanding shares while Ma. Theresa, Glenn and Stephanie excluded him from the affairs of the corporation. Even more glaring was the fact that from June 10, 1992, when the first mortgage deed was executed until July 23, 2002, when the properties mortgaged were foreclosed, the Board of Directors of HTSI did nothing to rectify the alleged unauthorized transactions of Leonora. Clearly, Roberto could not expect relief from the board.

7. ID.; ID.; ID.; ID.; VENUE THEREOF. — Derivative suits are governed by a special set of rules under A.M. No. 01-2-04-SC otherwise known as the Interim Rules of Procedure Governing Intra-Corporate Controversies under Republic Act No. 8799. Section 1, Rule 1 thereof expressly lists derivative suits among the cases covered by it. As regards the venue of derivative suits, Section 5, Rule 1 of A.M. No. 01-2-04-SC

states: ***SEC. 5***. *Venue*. - All actions covered by these Rules shall be commenced and tried in the Regional Trial Court which has jurisdiction over the principal office of the corporation, partnership, or association concerned. Where the principal office of the corporation, partnership or association is registered in the Securities and Exchange Commission as Metro Manila, the action must be filed in the city or municipality where the head office is located. Thus, the Court of Appeals did not commit grave abuse of discretion when it found that respondents correctly filed the derivative suit before the Makati RTC where HTSI had its principal office.

8. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI;* MERE ERRORS OF JUDGMENT ARE NOT PROPER SUBJECTS THEREOF. — There being no showing of any grave abuse of discretion on the part of the Court of Appeals the other alleged errors will no longer be passed upon as mere errors of judgment are not proper subjects of a petition for *certiorari*.

APPEARANCES OF COUNSEL

Bacay Ligan Law Office for petitioner.
G.P. Angeles & Associates Law Office for private respondents.

D E C I S I O N

QUISUMBING, *J.*:

This is a special civil action for *certiorari* seeking to nullify and set aside the Decision[1] dated March 10, 2005 and Resolution[2] dated May 26, 2005 of the Court of Appeals in CA-G.R. SP. No. 83919. The appellate court had dismissed the petition for *certiorari* and prohibition filed by petitioner and denied its reconsideration.

---

[1] *Rollo*, pp. 20-31. Penned by Associate Justice Andres B. Reyes, Jr., with Associate Justices Lucas P. Bersamin (now a member of this Court) and Celia C. Librea-Leagogo concurring.

[2] *Id.* at 33.

The antecedent facts of the case are undisputed.

On July 31, 2003, Roberto H. Torres (Roberto), for and on behalf of Honorio Torres & Sons, Inc. (HTSI), filed a Petition for Annulment of Real Estate Mortgage and Foreclosure Sale[3] over two parcels of land located in Marikina and Quezon City. The suit was filed against Leonora, Ma. Theresa, Glenn and Stephanie, all surnamed Torres, the Register of Deeds of Marikina and Quezon City, and petitioner Hi-Yield Realty, Inc. (Hi-Yield). It was docketed as Civil Case No. 03-892 with Branch 148 of the Regional Trial Court (RTC) of Makati City.

On September 15, 2003, petitioner moved to dismiss the petition on grounds of improper venue and payment of insufficient docket fees. The RTC denied said motion in an Order[4] dated January 22, 2004. The trial court held that the case was, in nature, a real action in the form of a derivative suit cognizable by a special commercial court pursuant to Administrative Matter No. 00-11-03-SC.[5] Petitioner sought reconsideration, but its motion was denied in an Order[6] dated April 27, 2004.

Thereafter, petitioner filed a petition for *certiorari* and prohibition before the Court of Appeals. In a Decision dated March 10, 2005, the appellate court agreed with the RTC that the case was a derivative suit. It further ruled that the prayer for annulment of mortgage and foreclosure proceedings was merely incidental to the main action. The dispositive portion of said decision reads:

WHEREFORE, premises considered, this Petition is hereby **DISMISSED.** However, public respondent is hereby **DIRECTED** to instruct his Clerk of Court to compute the proper docket fees

---

[3] Records, pp. 1-6.

[4] *Id.* at 47-51.

[5] RESOLUTION DESIGNATING CERTAIN BRANCHES OF REGIONAL TRIAL COURTS TO TRY AND DECIDE CASES FORMERLY COGNIZABLE BY THE SECURITIES AND EXCHANGE COMMISSION, took effect on December 15, 2000.

[6] Records, p. 77.

and thereafter, to order the private respondent to pay the same **IMMEDIATELY**.

SO ORDERED.[7]

Petitioner's motion for reconsideration[8] was denied in a Resolution dated May 26, 2005.

Hence, this petition which raises the following issues:

I.

WHETHER THE HONORABLE COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION IN NOT DISMISSING THE CASE AGAINST HI-YIELD FOR IMPROPER VENUE DESPITE FINDINGS BY THE TRIAL COURT THAT THE ACTION IS A REAL ACTION.

II.

WHETHER THE HONORABLE COURT OF APPEALS ERRED IN NOT DISMISSING THE COMPLAINT AS AGAINST HI-YIELD EVEN IF THE JOINDER OF PARTIES IN THE COMPLAINT VIOLATED THE RULES ON VENUE.

III.

WHETHER THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT THE ANNULMENT OF REAL ESTATE MORTGAGE AND FORECLOSURE SALE IN THE COMPLAINT IS MERELY INCIDENTAL [TO] THE DERIVATIVE SUIT.[9]

The pivotal issues for resolution are as follows: (1) whether venue was properly laid; (2) whether there was proper joinder of parties; and (3) whether the action to annul the real estate mortgage and foreclosure sale is a mere incident of the derivative suit.

---

[7] *Rollo*, p. 31.

[8] *Id.* at 92-102.

[9] *Id.* at 141-142.

Petitioner imputes grave abuse of discretion on the Court of Appeals for not dismissing the case against it even as the trial court found the same to be a real action. It explains that the rule on venue under the Rules of Court prevails over the rule prescribing the venue for intra-corporate controversies; hence, HTSI erred when it filed its suit only in Makati when the lands subjects of the case are in Marikina and Quezon City. Further, petitioner argues that the appellate court erred in ruling that the action is mainly a derivative suit and the annulment of real estate mortgage and foreclosure sale is merely incidental thereto. It points out that the caption of the case, substance of the allegations, and relief prayed for revealed that the main thrust of the action is to recover the lands. Lastly, petitioner asserts that it should be dropped as a party to the case for it has been wrongly impleaded as a non-stockholder defendant in the intra-corporate dispute.

On the other hand, respondents maintain that the action is primarily a derivative suit to redress the alleged unauthorized acts of its corporate officers and major stockholders in connection with the lands. They postulate that the nullification of the mortgage and foreclosure sale would just be a logical consequence of a decision adverse to said officers and stockholders.

After careful consideration, we are in agreement that the petition must be dismissed.

A petition for *certiorari* is proper if a tribunal, board or officer exercising judicial or quasi-judicial functions acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction and there is no appeal, or any plain, speedy and adequate remedy in the ordinary course of law.[10]

Petitioner sought a review of the trial court's Orders dated January 22, 2004 and April 27, 2004 via a petition for *certiorari* before the Court of Appeals. In rendering the assailed decision

---

[10] *Banco Filipino Savings and Mortgage Bank v. Court of Appeals*, G.R No. 132703, June 23, 2000, 334 SCRA 305, 315.

and resolution, the Court of Appeals was acting under its concurrent jurisdiction to entertain petitions for *certiorari* under paragraph 2,[11] Section 4 of Rule 65 of the Rules of Court. Thus, if erroneous, the decision and resolution of the appellate court should properly be assailed by means of a petition for review on *certiorari* under Rule 45 of the Rules of Court. The distinction is clear: a petition for *certiorari* seeks to correct errors of jurisdiction while a petition for review on *certiorari* seeks to correct errors of judgment committed by the court *a quo*.[12] Indeed, this Court has often reminded members of the bench and bar that a special civil action for *certiorari* under Rule 65 lies only when there is no appeal nor plain, speedy and adequate remedy in the ordinary course of law.[13] In the case at hand, petitioner impetuously filed a petition for *certiorari* before us when a petition for review was available as a speedy and adequate remedy. Notably, petitioner filed the present petition 58[14] days after it received a copy of the assailed resolution dated May 26, 2005. To our mind, this belated action evidences petitioner's effort to substitute for a lost appeal this petition for *certiorari*.

For the extraordinary remedy of *certiorari* to lie by reason of grave abuse of discretion, the abuse of discretion must be

---

[11] SEC. 4. *When and where petition filed*. - The petition may be filed not later than sixty (60) days from notice of the judgment, order or resolutionsought to be assailed in the Supreme Court or, if it relates to the acts or omissions of a lower court or of a corporation, board, officer or person, in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court whether or not the same is in aid of its appellate jurisdiction, or in the Sandiganbayan if it is in aid of its appellate jurisdiction. If it involves the acts or omissions of a quasi-judicial agency, unless otherwise provided by law or these rules, the petition shall be filed in and cognizable only by the Court of Appeals.

[12] *Banco Filipino Savings and Mortgage Bank v. Court of Appeals*, *supra* at 316.

[13] *Id*.

[14] Petitioner received a copy of the assailed Resolution dated May 26, 2005 on May 31, 2005.

so patent and gross as to amount to an evasion of positive duty, or a virtual refusal to perform the duty enjoined or to act in contemplation of law, or where the power is exercised in an arbitrary and despotic manner by reason of passion and personal hostility.[15] We find no grave abuse of discretion on the part of the appellate court in this case.

Simply, the resolution of the issues posed by petitioner rests on a determination of the nature of the petition filed by respondents in the RTC. Both the RTC and Court of Appeals ruled that the action is in the form of a derivative suit although captioned as a petition for annulment of real estate mortgage and foreclosure sale.

A derivative action is a suit by a shareholder to enforce a corporate cause of action.[16] Under the Corporation Code, where a corporation is an injured party, its power to sue is lodged with its board of directors or trustees. But an individual stockholder may be permitted to institute a derivative suit on behalf of the corporation 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 control of the corporation. In such actions, the corporation is the real party-in-interest while the suing stockholder, on behalf of the corporation, is only a nominal party.[17]

In the case of *Filipinas Port Services, Inc. v. Go*,[18] we enumerated the foregoing requisites before a stockholder can file a derivative suit:

a) the party bringing suit should be a shareholder as of the time of the act or transaction complained of, the number of his shares not being material;

---

[15] *Banco Filipino Savings and Mortgage Bank v. Court of Appeals, supra* at 315.

[16] *R.N. Symaco Trading Corporation v. Santos*, G.R. No. 142474, August 18, 2005, 467 SCRA 312, 329.

[17] *Filipinas Port Services, Inc. v. Go*, G.R. No. 161886, March 16, 2007, 518 SCRA 453, 471.

[18] *Id*.

b) he has tried to exhaust intra-corporate remedies, *i.e.*, has made a demand on the board of directors for the appropriate relief but the latter has failed or refused to heed his plea; and

c) the cause of action actually devolves on the corporation, the wrongdoing or harm having been, or being caused to the corporation and not to the particular stockholder bringing the suit.[19]

Even then, not every suit filed on behalf of the corporation is a derivative suit. For a derivative suit to prosper, the minority stockholder suing for and on behalf of the corporation must allege in his complaint that he is suing on a derivative cause of action on behalf of the corporation and all other stockholders similarly situated who may wish to join him in the suit.[20] The Court finds that Roberto had satisfied this requirement in paragraph five (5) of his petition which reads:

5. Individual petitioner, being a minority stockholder, is instituting the instant proceeding by way of a derivative suit to redress wrongs done to petitioner corporation and vindicate corporate rights due to the mismanagement and abuses committed against it by its officers and controlling stockholders, especially by respondent Leonora H. Torres (Leonora, for brevity) who, without authority from the Board of Directors, arrogated upon herself the power to bind petitioner corporation from incurring loan obligations and later allow company properties to be foreclosed as hereinafter set forth;[21]

Further, while it is true that the complaining stockholder must satisfactorily show that he has exhausted all means to redress his grievances within the corporation; such remedy is no longer necessary where the corporation itself is under the complete control of the person against whom the suit is being filed. The reason is obvious: a demand upon the board to institute an action and prosecute the same effectively would have been useless and an exercise in futility.[22]

---

[19] *Id.* at 472.

[20] *Chua v. Court of Appeals*, G.R. No. 150793, November 19, 2004, 443 SCRA 259, 268.

[21] *Rollo*, p. 35.

[22] *Filipinas Port Services, Inc., v. Go*, *supra* at 472.

Here, Roberto alleged in his petition that earnest efforts were made to reach a compromise among family members/ stockholders before he filed the case. He also maintained that Leonora Torres held 55% of the outstanding shares while Ma. Theresa, Glenn and Stephanie excluded him from the affairs of the corporation. Even more glaring was the fact that from June 10, 1992, when the first mortgage deed was executed until July 23, 2002, when the properties mortgaged were foreclosed, the Board of Directors of HTSI did nothing to rectify the alleged unauthorized transactions of Leonora. Clearly, Roberto could not expect relief from the board.

Derivative suits are governed by a special set of rules under A.M. No. 01-2-04-SC[23] otherwise known as the Interim Rules of Procedure Governing Intra-Corporate Controversies under Republic Act No. 8799.[24] Section 1,[25] Rule 1 thereof expressly lists derivative suits among the cases covered by it.

As regards the venue of derivative suits, Section 5, Rule 1 of A.M. No. 01-2-04-SC states:

SEC. 5. *Venue*. - All actions covered by these Rules shall be commenced and tried in the Regional Trial Court which has jurisdiction over the principal office of the corporation, partnership, or association concerned. Where the principal office of the corporation, partnership or association is registered in the Securities and Exchange Commission as Metro Manila, the action must be filed in the city or municipality where the head office is located.

---

[23] Took effect on April 1, 2001.

[24] THE SECURITIES REGULATION CODE, approved on July 19, 2000.

[25] **SECTION 1.**

(a) *Cases covered.* – These Rules shall govern the procedure to be observed in civil cases involving the following:

x x x x x x x x x

(4) Derivative suits; and

x x x x x x x x x

Thus, the Court of Appeals did not commit grave abuse of discretion when it found that respondents correctly filed the derivative suit before the Makati RTC where HTSI had its principal office.

There being no showing of any grave abuse of discretion on the part of the Court of Appeals the other alleged errors will no longer be passed upon as mere errors of judgment are not proper subjects of a petition for *certiorari*.

WHEREFORE, the instant petition is hereby *DISMISSED*. The Decision dated March 10, 2005 and the Resolution dated May 26, 2005 of the Court of Appeals in CA-G.R. SP. No. 83919 are *AFFIRMED.*

No pronouncement as to costs.

SO ORDERED.

Ynares-Santiago,[*] *Chico-Nazario,*[**] *Leonardo-de Castro,*[***] and *Brion, JJ., concur.*

---

[*] 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. 170447. June 23, 2009]

BIENVENIDO DIÑO and RENATO COMPARATIVO, *petitioners, vs.* **PABLO OLIVAREZ,**[1] *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS*; CERTIORARI;* MAY BE TREATED BY THE SUPREME COURT AS HAVING BEEN FILED UNDER RULE 45 OF THE RULES OF COURT IN THE INTEREST OF JUSTICE AND ESPECIALLY WHERE THE SAME WAS FILED WITHIN THE REGLEMENTARY PERIOD. — At the outset, it should be noted that the appropriate remedy for petitioners is to file a petition for review on *certiorari* under Rule 45 of the Rules of Court, and not a petition for *certiorari* under Rule 65 as petitioners aver in their Manifestation and Motion dated 9 January 2006. However, in accordance with the liberal spirit pervading the Rules of Court and in the interest of justice, this Court has decided to treat the present petition for *certiorari* as having been filed under Rule 45, especially considering that it was filed within the reglementary period for the same. Petitioners received the Court of Appeals' Resolution on 24 November 2005 and filed an Urgent Motion for Extension of Time to Appeal on 6 December 2005, within the 15-day reglementary period for the filing of a petition for review on *certiorari*. This Court granted the motion of petitioners for an extension of 30 days from 9 December 2005, the expiration of the reglementary period, and the petitioners were able to file their petition on 6 January 2006 within the period for extension granted by this Court. It cannot therefore be claimed that this petition is being used as a substitute for appeal after the remedy has been lost through the fault of the petitioner.

2. ID.; CRIMINAL PROCEDURE; INFORMATION; FILING OF THE AMENDED INFORMATIONS NOT IMPROPER IN CASE AT BAR. — Be that as it may, this Court finds that the

[1] Under Section 2, Rule 42 of the Rules of Court, public respondents need not be included in the title as eithet petitioners or respondents.

public prosecutors, in filing the Amended Informations, did not exceed the authority delegated by the COMELEC. Resolution No. 7457, which effectively revoked the deputation of the Office of the City Prosecutor of Parañaque, was issued on 4 April 2005, after the Amended Informations were filed on 28 October 2004. The letter dated 11 October 2004, written by Director Alioden D. Dalaig of the COMELEC Law Department, did not revoke the continuing authority granted to the City Prosecutor of Parañaque. xxx The filing of the Amended Informations was not made in defiance of these instructions by the COMELEC; rather it was an act necessitated by the developments of the case. Respondent filed a Motion to Quash on 11 October 2004 on the ground that more than one offense was charged therein. Section 14, Rule 110 of the Rules on Criminal Procedure, provides: Section 14. *Amendment or substitution*. xxx Since the Rules of Court provided for a remedy that would avert the dismissal of the complaints on the ground that more than one offense was charged, the public prosecutor filed the Amended Informations. The instructions of the COMELEC, in the letter dated 11 October 2004, were clearly intended to allow sufficient time to reconsider the merit of the Joint Resolution, not to have the public prosecutor abandon the prosecution of the case and negligently allow its dismissal by not filing the Amended Informations, thus, leaving the COMELEC in a quandary should it later dismiss the appeal before it. By filing the Amended Informations, the public prosecutor had avoided such an undesirable situation, which would have forced the COMELEC to re-file the cases, waste government resources, and delay the administration of justice. Thus, the precautionary measure taken by the public prosecutor was clearly not intended to disobey the COMELEC, or to flout its authority or diminish its powers to review the appealed Joint Resolution. As such, the filing of the Amended Informations cannot in any way be considered improper. Consequently, Judge Madrona acted in accordance with law when he admitted these Informations and dismissed the respondent's Motion to Quash, as the ground stated therein — the informations charged more than one offense — could no longer be sustained.

3. ID.; ID.; ARREST; ARREST ORDER AGAINST THE RESPONDENT AND CONFISCATION OF HIS CASH BOND DUE TO FAILURE TO APPEAR FOR ARRAIGNMENT,

NOT TAINTED WITH GRAVE ABUSE OF DISCRETION. — Moreover, no abuse of discretion can be attributed to Judge Madrona when he issued the Orders, dated 9 March 2005 and 31 March 2005, for the arrest of the respondent due to his failure to be present for his arraignment and for the confiscation of his cash bond. These Orders are consistent with criminal procedure. The filing of an information in the trial court initiates a criminal action. The trial court thereby acquires jurisdiction over the case. After the filing of the complaint or the information, a warrant for the arrest of the accused is issued by the trial court. When the accused voluntarily submits himself to the court or is duly arrested, the court then acquires jurisdiction over the person of the accused. In this case, the trial court acquired jurisdiction over the persons of the accused Carmelo Jaro, Remedios Malibaran, and the respondent, who posted bail bonds after the trial court issued a Warrant of Arrest on 4 October 2004. While it is true that the fiscal has the quasi-judicial discretion to determine whether or not a criminal case should be filed in court, once the case has been brought to court, whatever disposition the fiscal may feel is proper in the case should be addressed to the consideration of the trial court.

4. ID.; ID.; ARRAIGNMENT; SUSPENSION OF ARRAIGNMENT, GROUND; ARRAIGNMENT OF THE ACCUSED IS NOT INDEFINITELY SUSPENDED BY THE PENDENCY OF AN APPEAL BEFORE THE COMELEC. — Thereafter, arraignment shall follow as a matter of course. Section 11, Rule 116 of the Rules of Criminal Procedure, enumerates the instances that can suspend the arraignment of the accused: Section 11. *Suspension of arraignment*.—Upon motion of the proper party, the arraignment shall be suspended in the following cases: x x x (c) A petition for review of the resolution of the prosecutor is pending at either the Department of Justice, or the Office of the President; *Provided*, That the period of suspension shall not exceed sixty (60) days counted from the filing of the petition with the reviewing office. From the foregoing, it is clear that the arraignment of the accused is not indefinitely suspended by the pendency of an appeal before the Department of Justice or, in this case, Law Department of the COMELEC; rather, the reviewing authority is allowed 60 days within which to decide the appeal. In this case, respondent filed his Appeal of the Joint Resolution at the Office of the City Prosecutor of Parañaque on 7 October 2004. Thus, the

arraignment that was scheduled on 11 October 2004 was re-scheduled to 13 December 2004, approximately 60 days thereafter. On 1 December 2004, the arraignment scheduled on 13 December 2004 was reset to 1 February 2005 because of the pending Motion to Quash. When the respondent failed to appear on the scheduled arraignment, Judge Madrona nonetheless reset the arraignment to 9 March 2005, with the warning that the court would impose the appropriate sanctions, should respondent still fail to appear therein. It was only on 9 March 2005, or five months after the respondent filed his appeal before the Law Department of the COMELEC that Judge Madrona held the arraignment and issued the Bench Warrant of Arrest against respondent. Five months, which far exceeded the sixty days provided by the rules, was ample time for the respondent to obtain from COMELEC a reversal of the Joint Resolution.

5. ID.; ID.; ID.; INDEFINITE SUSPENSION OF THE PROCEEDINGS NOT SANCTIONED BY THE COURT; PRONOUNCEMENT IN SOLAR CASE (393 PHIL. 172, 180 [2000]) NOT APPLICABLE TO CASE AT BAR. — In pronouncing that Judge Madrona acted in grave abuse of discretion when he failed to defer the arraignment of the respondent, the Court of Appeals cited *Solar Team Entertainment, Inc. v. Judge How*, wherein this Court cautioned judges to refrain from precipitately arraigning the accused to avoid any miscarriage of justice. However, this case was decided before the Rules of Criminal Procedure were revised on 1 December 2000; and the rule setting the 60-day period for the suspension of the arraignment of the accused pending an appeal or a petition for review before a reviewing authority was not yet applicable. Nevertheless, it should be noted that even in *Solar*, this Court did not sanction an indefinite suspension of the proceedings in the trial court. Its reliance on the reviewing authority, the Justice Secretary, to decide the appeal at the soonest possible time was anchored on the rule provided under Department Memorandum Order No. 12, dated 3 July 2000, which mandates that the period for the disposition of appeals or petitions for review shall be 75 days.

APPEARANCES OF COUNSEL

Law Firm of Maronilla & Partners for petitioners.
Mendoza Arzaga-Mendoza Law Firm for respondent.

D E C I S I O N

CHICO-NAZARIO, *J.:*

Petitioners Bienvenido Diño and Renato Comparativo assail the Decision[2] of the Court of Appeals dated 28 September 2005 in CA-G.R. SP No. 89230, nullifying the Orders[3] dated 12 January 2005, 9 March 2005, and 31 March 2005 of Judge Fortunito L. Madrona of Branch 274 of the Regional Trial Court (RTC) of Parañaque City, in Criminal Cases No. 04-1104 and No. 04-1105.

Petitioners instituted a complaint for vote buying against respondent Pablo Olivarez. Based on the finding of probable cause in the Joint Resolution issued by Assistant City Prosecutor Antonietta Pablo-Medina, with the approval of the city prosecutor of Parañaque, two Informations[4] were filed before the RTC on 29 September 2004 charging respondent Pablo Olivarez with Violation of Section 261, paragraphs a, b and k of Article XXII of the Omnibus Election Code, which read:

Criminal Case No. 04-1104

That on or about the 10th day of May 2004, in the City of Parañaque, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, Remedios Malibiran and Pablo Olivarez, conspiring and confederating together and both of them mutually helping and aiding one another, did then and there willfully, unlawfully and feloniously, engage in vote buying activities on election day of May 10, 2004, by distributing or giving Uniwide gift certificates,

---

[2] Penned by Associate Justice Renato C. Dacudao with Associate Justices Lucas P. Bersamin (now an Associate Justice of the Supreme Court) and Celia C. Librea-Leagogo, concurring; *rollo*, pp. 10-29.

[3] Penned by Presiding Judge Fortunito L. Madrona; CA *rollo*, pp. 20-26.

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

a thing of value, as consideration to induce or influence the voters to vote for candidate Pablo Olivarez, a candidate for the City Mayor of Parañaque, in violation of Omnibus Election Code.

Criminal Case No. 04-1105

That on or about the 10th day of May, 2004, in the City of Parañaque, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, Carmelo Jaro and Pablo Olivarez, conspiring and confederating together and both of them mutually helping and aiding one another, did then and there willfully, unlawfully and feloniously, engage in vote buying activities on election day of May 10, 2004, by distributing or giving Uniwide gift certificates, a thing of value, as consideration to induce or influence the voters to vote for candidate Pablo Olivarez, a candidate for the City Mayor of Parañaque, in violation of the Omnibus Election Code.

The arraignment of the respondent was initially set on 18 October 2004.[5]

On 7 October 2004, respondent filed before the Law Department of the Commission on Elections (COMELEC) an "[a]ppeal of [the] Joint Resolution of the City Prosecutor of Parañaque City with Motion to Revoke Continuing Authority" pursuant to Section 10, Rule 34 of the 1993 COMELEC Rules of Procedure. Respondent argued that the pendency of the appeal of the Joint Resolution before the COMELEC should prevent the filing of the Informations before the RTC as there could be no final finding of probable cause until the COMELEC had resolved the appeal. Moreover, he argued that the charges made against him were groundless.[6]

In a letter[7] dated 11 October 2004, the Law Department of the COMELEC directed the city prosecutor to transmit or elevate the entire records of the case and to suspend further implementation of the Joint Resolution dated 20 September 2004 until final resolution of the said appeal before the COMELEC *en banc*.

---

[5] *Id.* at 151.

[6] *Id.* at 35-48.

[7] *Id.* at 50.

On 11 October 2004, respondent filed a Motion to Quash the two criminal informations on the ground that more than one offense was charged therein, in violation of Section 3(f), Rule 117 of the Rules of Court, in relation to Section 13, Rule 110 of the Rules of Court.[8] This caused the resetting of the scheduled arraignment on 18 October 2004 to 13 December 2004.[9]

Before Judge Madrona could act on the motion to quash, Assistant Prosecutor Pablo-Medina, with the approval of the city prosecutor, filed on 28 October 2004 its "Opposition to the Motion to Quash and Motion to Admit Amended Informations.[10]" The Amended Informations sought to be admitted charged respondent with violation of only paragraph a, in relation to paragraph b, of Section 261, Article XXII of the Omnibus Election Code.[11]

On 1 December 2004, Judge Madrona issued an Order resetting the hearing scheduled on 13 December 2004 to 1 February 2005 on account of the pending Motion to Quash of the respondent and the Amended Informations of the public prosecutor.[12]

On 14 December 2004, respondent filed an "Opposition to the Admission of the Amended Informations," arguing that no resolution was issued to explain the changes therein, particularly the deletion of paragraph k, Section 261, Article XXII of the Omnibus Election Code. Moreover, he averred that the city prosecutor was no longer empowered to amend the informations, since the COMELEC had already directed it to transmit the entire records of the case and suspend the hearing of the cases before the RTC until the resolution of the appeal before the COMELEC *en banc*.[13]

---

[8] Section 13, Rule 110 of the Rules of Court reads:

Section 13. *Duplicity of the offense*. — A complaint or information must charge only one offense, except when the law prescribes a single punishment for various offenses.

[9] CA *rollo*, p. 151.

[10] *Id* at 213.

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

[12] *Id.* at 151.

[13] *Id.* at 58-64.

On 12 January 2005, Judge Madrona issued an order denying respondent's Motion to Quash dated 11 October 2004, and admitted the Amended Informations dated 25 October 2004.[14] Respondent filed an Urgent Motion for Reconsideration dated 20 January 2005 thereon.[15]

On 1 February 2005, Judge Madrona reset the arraignment to 9 March 2005, with a warning that the arraignment would proceed without any more delay, unless the Supreme Court would issue an injunctive writ.[16]

On 9 March 2005, respondent failed to appear before the RTC. Thereupon, Judge Madrona, in open court, denied the Motion for Reconsideration of the Order denying the Motion to Quash and admitting the Amended Informations, and ordered the arrest of respondent and the confiscation of the cash bond.[17]

On 11 March 2005, respondent filed an "Urgent Motion for Reconsideration and/or to Lift the Order of Arrest of Accused Dr. Pablo Olivarez,"[18] which was denied in an Order dated 31 March 2005. The Order directed that a bench warrant be issued for the arrest of respondent to ensure his presence at his arraignment.[19]

On 5 April 2005, the Law Department of the COMELEC filed before the RTC a Manifestation and Motion[20] wherein it alleged that pursuant to the COMELEC's powers to investigate and prosecute election offense cases, it had the power to revoke the delegation of its authority to the city prosecutor. Pursuant to these powers, the

---

[14] *Id.* at 20-21.

[15] *Id.* at 65-69.

[16] CA *rollo*, pp. 74-75.

[17] *Id.* at 22-23.

[18] *Id.* at 77-78.

[19] *Id.* at 25.

[20] *Id.* at 112-121.

COMELEC promulgated Resolution No. 7457[21] dated 4 April 2005. The dispositive portion of Resolution No. 7457 states:

> Considering the foregoing, the Commission **RESOLVED**, as it hereby **RESOLVES**, to **APPROVE** and **ADOPT** the recommendation of the Law Department as follows:
>
> 1. To revoke the deputation of the Office of the City Prosecutor of Parañaque to investigate and prosecute election offense cases insofar as I.S. Nos. 04-2608 and 04-2774, entitled *"Renato Comparativo vs. Remedios Malabiran and Pablo Olivarez"* and *"Bienvenido et al. vs. Sally Rose Saraos, et. al.,"* respectively, are concerned; and
>
> 2. To direct the Law Department to handle the prosecution of these cases and file the appropriate Motion and Manifestation before the Regional Trial Court of Parañaque, Branch 274, to hold in abeyance further proceedings on Criminal Case Nos. 1104 and 1105 until the Commission has acted on the appeal of respondents.
>
> Let the Law Department implement this Resolution.

Thus, the Law Department of the COMELEC moved (1) that the RTC hold in abeyance further proceedings in Criminal Cases No. 04-1104 and No. 04-1105 until the COMELEC has acted on respondent's appeal; and (2) to revoke the authority of the city prosecutor of Parañaque to prosecute the case, designating therein the lawyers from the Law Department of the COMELEC to prosecute Criminal Cases No. 04-1104 and No. 04-1105.

On 8 April 2005, respondent filed a Special Civil Action for *Certiorari* before the Court of Appeals docketed as CA-G.R. SP No. 89230, assailing the Orders, dated 12 January 2005, 9 March 2005 and 31 March 2005 of the RTC. The appellate court granted the appeal in a Decision dated 28 September 2005 declaring that the COMELEC had the authority to conduct the preliminary investigation of election offenses and to prosecute the same. As such, the COMELEC may delegate such authority to the Chief State Prosecutor, provincial prosecutors, and city

---

[21] *Id.* at 125-133.

prosecutors. The COMELEC, however, has the corresponding power, too, to revoke such authority to delegate. Thus, the categorical order of the COMELEC to suspend the prosecution of the case before the RTC effectively deprived the city prosecutor of the authority to amend the two informations. The appellate court also pronounced that Judge Madrona erred in admitting the amended informations, since they were made in excess of the delegated authority of the public prosecutor, and his orders to arrest the respondent and to confiscate the latter's cash bond were devoid of legal basis.[22] The *fallo* of the Decision reads:

> UPON THE VIEW WE TAKE OF THIS CASE, THUS, the petition at bench must be, as it hereby is, **GRANTED**. The impugned Orders of the public respondent Judge Fortunito L. Madrona of Branch 274, Regional Trial Court of Parañaque City dated 12 January 2005, 9 March 2005, and 31 March 2005 are hereby **VACATED** and **NULLIFIED**. The Temporary Restraining Order issued in the instant petition is made **PERMANENT**. Without costs in this instance.[23]

Hence, the present petition under Rule 65 where the petitioners enumerate the following assignments of error, to wit:

I

THE HONORABLE COURT OF APPEALS ERRED IN NULLIFYING THE ORDER OF THE COURT *A QUO* AS IT BASICALLY ERRED IN ITS APPRECIATION THAT THE TWO AMENDED INFORMATIONS WERE FILED AT A TIME WHEN THE PUBLIC PROSECUTOR HAD NO MORE AUTHORITY TO DO SO;

II

THE HONORABLE COURT OF APPEALS ERRED IN GIVING CREDENCE TO ACCUSED'S ALLEGATION THAT COMELEC RESOLUTION WAS RECEIVED BY THE PROSECUTOR "DAYS BEFORE THE (sic) FILED THE AMENDED INFORMATIONS";

---

[22] *Rollo,* pp. 10-29.

[23] *Id.* at 28.

III

THE HONORABLE COURT OF APPEALS ERRED IN DECLARING AS PERMANENT THE TEMPORARY RESTRAINING ORDER EARLIER ISSUED.[24]

This Court finds merit in the present petition.

At the outset, it should be noted that the appropriate remedy for petitioners is to file a petition for review on *certiorari* under Rule 45 of the Rules of Court, and not a petition for *certiorari* under Rule 65 as petitioners aver in their Manifestation and Motion dated 9 January 2006. However, in accordance with the liberal spirit pervading the Rules of Court and in the interest of justice, this Court has decided to treat the present petition for *certiorari* as having been filed under Rule 45, especially considering that it was filed within the reglementary period for the same. Petitioners received the Court of Appeals' Resolution on 24 November 2005 and filed an Urgent Motion for Extension of Time to Appeal on 6 December 2005, within the 15-day reglementary period for the filing of a petition for review on *certiorari*. This Court granted the motion of petitioners for an extension of 30 days from 9 December 2005, the expiration of the reglementary period, and the petitioners were able to file their petition on 6 January 2006 within the period for extension granted by this Court. It cannot therefore be claimed that this petition is being used as a substitute for appeal after the remedy has been lost through the fault of the petitioner.[25]

The main issues in this case are (1) whether or not the Office of the City Prosecutor of Parañaque had acted in excess of its jurisdiction when it filed the Amended Informations, and whether Judge Madrona had acted in excess of his jurisdiction when he admitted the said Amended Informations and denied the respondent's motion to quash; and (2) whether or not Judge Madrona had acted in accordance with law when he issued the warrant for the arrest of respondent and ordered the confiscation

---

[24] *Id.* at 40, 42 and 44.

[25] *Delsan Transport Lines, Inc. v. Court of Appeals*, 335 Phil. 1066, 1075 (1997).

of his cash bond due to the latter's failure to appear for arraignment.

There is no dispute that the COMELEC is empowered to investigate and prosecute election offenses, and that the Chief State Prosecutor, the provincial prosecutors and city prosecutors, acting on its behalf, must proceed within the lawful scope of their delegated authority. Section 265 of the Omnibus Election Code provides:

> Section 265. *Prosecution*. — The Commission shall, through its duly authorized legal officers, have the exclusive power to conduct preliminary investigation of all election offenses punishable under this Code, and to prosecute the same. The Commission may avail of the assistance of other prosecuting arms of the government: Provided, however, That in the event that the Commission fails to act on any complaint within four months from his filing, the complainant may file the complaint with the office of the fiscal or with the Ministry of Justice for proper investigation and prosecution, if warranted.

Section 2, Rule 34 of the COMELEC Rules of Procedure provides for the continuing delegation of authority to other prosecuting arms of the government, an authority that the COMELEC may revoke or withdraw in the proper exercise of its judgment.

> Section 2. *Continuing Delegation of Authority to Other Prosecution Arms of the Government*.—The Chief State Prosecutor, all Provincial and City Fiscals, and/or their respective assistants are hereby given continuing authority, as deputies of the Commission, to conduct preliminary investigation of complaints involving election offenses under the election laws which may be filed directly with them, or which may be indorsed to them by the Commission or its duly authorized representative and to prosecute the same. Such authority may be revoked or withdrawn any time by the Commission whenever in its judgment such revocation or withdrawal is necessary to protect the integrity of the Commission, promote the common good, or when it believes that successful prosecution of the case can be done by the Commission.

Furthermore, Section 10 of the COMELEC Rules of Procedure provides that the COMELEC is empowered to revise, modify

and reverse the resolution of the Chief State Prosecutor and/or provincial/city prosecutors.

Section 10. *Appeals from the Action of the State Prosecutor, Provincial or City Fiscal*.—Appeals from the resolution of the State Prosecutor or Provincial or City Fiscal on the recommendation or resolution of investigating officers may be made only to the Commission within ten (10) days from receipt of the resolution of said officials, provided, however that this shall not divest the Commission of its power to *motu proprio* review, revise, modify or reverse the resolution of the chief state prosecutor and/or provincial/city prosecutors. The decision of the Commission on said appeals shall be immediately executory and final.

Be that as it may, this Court finds that the public prosecutors, in filing the Amended Informations, did not exceed the authority delegated by the COMELEC. Resolution No. 7457, which effectively revoked the deputation of the Office of the City Prosecutor of Parañaque, was issued on 4 April 2005, after the Amended Informations were filed on 28 October 2004. The letter dated 11 October 2004, written by Director Alioden D. Dalaig of the COMELEC Law Department, did not revoke the continuing authority granted to the City Prosecutor of Parañaque. It simply reads:

In this connection, you are hereby directed to transmit the entire records of the case to the Law Department, Commission on Elections, Intramuros, Manila by the fastest means available. You are further directed to suspend further implementation of the questioned resolution until final resolution of said appeal by the Comelec *En Banc*.[26]

The filing of the Amended Informations was not made in defiance of these instructions by the COMELEC; rather it was an act necessitated by the developments of the case. Respondent filed a Motion to Quash on 11 October 2004 on the ground that more than one offense was charged therein. Section 14, Rule 110 of the Rules on Criminal Procedure, provides:

Section 14. *Amendment or substitution*. **A complaint or information may be amended, in form or in substance, without**

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

leave of court, at any time before the accused enters his plea. After the plea and during the trial, a formal amendment may only be made with leave of court and when it can be done without causing prejudice to the rights of the accused. x x x. (Emphasis provided.)

Since the Rules of Court provided for a remedy that would avert the dismissal of the complaints on the ground that more than one offense was charged, the public prosecutor filed the Amended Informations. The instructions of the COMELEC, in the letter dated 11 October 2004, were clearly intended to allow sufficient time to reconsider the merit of the Joint Resolution, not to have the public prosecutor abandon the prosecution of the case and negligently allow its dismissal by not filing the Amended Informations, thus, leaving the COMELEC in a quandary should it later dismiss the appeal before it. By filing the Amended Informations, the public prosecutor had avoided such an undesirable situation, which would have forced the COMELEC to re-file the cases, waste government resources, and delay the administration of justice. Thus, the precautionary measure taken by the public prosecutor was clearly not intended to disobey the COMELEC, or to flout its authority or diminish its powers to review the appealed Joint Resolution. As such, the filing of the Amended Informations cannot in any way be considered improper. Consequently, Judge Madrona acted in accordance with law when he admitted these Informations and dismissed the respondent's Motion to Quash, as the ground stated therein — the informations charged more than one offense — could no longer be sustained.

Moreover, no abuse of discretion can be attributed to Judge Madrona when he issued the Orders, dated 9 March 2005 and 31 March 2005, for the arrest of the respondent due to his failure to be present for his arraignment and for the confiscation of his cash bond. These Orders are consistent with criminal procedure.

The filing of an information in the trial court initiates a criminal action. The trial court thereby acquires jurisdiction over the case. After the filing of the complaint or the information, a warrant for the arrest of the accused is issued by the trial court. When the accused voluntarily submits himself to the court or is duly arrested,

the court then acquires jurisdiction over the person of the accused.[27] In this case, the trial court acquired jurisdiction over the persons of the accused Carmelo Jaro, Remedios Malibaran, and the respondent, who posted bail bonds after the trial court issued a Warrant of Arrest on 4 October 2004. While it is true that the fiscal has the quasi-judicial discretion to determine whether or not a criminal case should be filed in court, once the case has been brought to court, whatever disposition the fiscal may feel is proper in the case should be addressed to the consideration of the trial court.[28]

Thereafter, arraignment shall follow as a matter of course. Section 11, Rule 116 of the Rules of Criminal Procedure, enumerates the instances that can suspend the arraignment of the accused:

> Section 11. *Suspension of arraignment*.—Upon motion of the proper party, the arraignment shall be suspended in the following cases:
>
> x x x x x x x x x
>
> (c) A petition for review of the resolution of the prosecutor is pending at either the Department of Justice, or the Office of the President; *Provided*, That the period of suspension shall not exceed sixty (60) days counted from the filing of the petition with the reviewing office.

From the foregoing, it is clear that the arraignment of the accused is not indefinitely suspended by the pendency of an appeal before the Department of Justice or, in this case, Law Department of the COMELEC; rather, the reviewing authority is allowed 60 days within which to decide the appeal. In this case, respondent filed his Appeal of the Joint Resolution at the Office of the City Prosecutor of Parañaque on 7 October 2004. Thus, the arraignment

---

[27] *Crespo v. Mogul*, G.R. No. 53373, 30 June 1987, 151 SCRA 462, 469-470.

[28] *Advincula v. Court of Appeals*, 397 Phil. 641, 652 (2000); *Crystal v. Sandiganbayan*, G.R. Nos. 83635-53, 28 February 1989, 170 SCRA 822, 825; *Republic v. Sunga*, G.R. No. L-38634, 20 June 1988, 162 SCRA 191, 202-203; and *Crespo v. Mogul, id.*

that was scheduled on 11 October 2004 was re-scheduled to 13 December 2004, approximately 60 days thereafter. On 1 December 2004, the arraignment scheduled on 13 December 2004 was reset to 1 February 2005 because of the pending Motion to Quash. When the respondent failed to appear on the scheduled arraignment, Judge Madrona nonetheless reset the arraignment to 9 March 2005, with the warning that the court would impose the appropriate sanctions, should respondent still fail to appear therein. It was only on 9 March 2005, or five months after the respondent filed his appeal before the Law Department of the COMELEC that Judge Madrona held the arraignment and issued the Bench Warrant of Arrest against respondent.[29] Five months, which far exceeded the sixty days provided by the rules, was ample time for the respondent to obtain from COMELEC a reversal of the Joint Resolution.

In pronouncing that Judge Madrona acted in grave abuse of discretion when he failed to defer the arraignment of the respondent, the Court of Appeals cited *Solar Team Entertainment, Inc. v. Judge How*,[30] wherein this Court cautioned judges to refrain from precipitately arraigning the accused to avoid any miscarriage of justice. However, this case was decided before the Rules of Criminal Procedure were revised on 1 December 2000; and the rule setting the 60-day period for the suspension of the arraignment of the accused pending an appeal or a petition for review before a reviewing authority was not yet applicable. Nevertheless, it should be noted that even in *Solar*, this Court did not sanction an indefinite suspension of the proceedings in the trial court. Its reliance on the reviewing authority, the Justice Secretary, to decide the appeal at the soonest possible time was anchored on the rule provided under Department Memorandum Order No. 12, dated 3 July 2000, which mandates that the period for the disposition of appeals or petitions for review shall be 75 days.[31]

WHEREFORE, the instant appeal is *GRANTED*. The Decision of the Court of Appeals dated 28 September 2005 in CA-G.R. SP No. 89230 is *REVERSED*. This Court orders the continuation

[29] CA *rollo*, pp. 151-152.

[30] 393 Phil. 172, 180 (2000).

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

of the proceedings in Criminal Cases No. 04-1104 and No. 04-1105 before the RTC, the prosecution of which shall be under the direction of the Law Department of the COMELEC. No costs.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 172400. June 23, 2009]

ZOSIMO OCTAVIO and JESUS ALBONA (substituted by his wife, VIOLETA ALBONA), *petitioners, vs.* **ENRICO R. PEROVANO, *** *respondent.*

SYLLABUS

1. REMEDIAL LAW; COURTS; JURISDICTION OVER THE SUBJECT MATTER OF AN ACTION; CANNOT BE MADE TO DEPEND UPON THE DEFENSES SET UP IN THE ANSWER OR UPON A MOTION TO DISMISS. — At the outset, let us be clear that jurisdiction over the subject matter of an action is determined by the material allegations of the complaint and the law at the time the action is commenced, irrespective of whether the plaintiff is entitled to recover all or some of the claims or reliefs sought therein. It cannot be made to depend upon the defenses set up in the answer or upon a motion to dismiss; otherwise, the question of jurisdiction would depend almost entirely on the defendant.

2. ID.; ID.; MUNICIPAL TRIAL COURT; HAS EXCLUSIVE ORIGINAL JURISDICTION OVER FORCIBLE ENTRY

---

* Spelled as Pirovano in some parts of the records.

AND UNLAWFUL DETAINER CASES. — A scrutiny of the material allegations in respondent's complaint before the MTCC shows that it involves *possession de facto*, the only issue involved in ejectment proceedings. Enrico alleged he is the lawful and registered owner of Lot No. 412 and that on or before the first week of January 1999, petitioners Zosimo and Jesus, by threat, intimidation, strategy and stealth, entered the premises of the land, plowed it and started planting sugarcane. Under *Batas Pambansa Blg*. 129, as amended by Rep. Act No. 7691, the MTC shall have exclusive original jurisdiction over cases of forcible entry and unlawful detainer. The Revised Rules on Summary Procedure governs the remedial aspects of such suits.

3. LABOR AND SOCIAL LEGISLATION; AGRICULTURAL TENANCY; DEPARTMENT OF AGRARIAN REFORM (DAR); JURISDICTION THEREOF; AGRARIAN DISPUTE, EXPLAINED . — Under Section 50 of Rep. Act No. 6657, the DAR is 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." An agrarian dispute refers to any controversy relating to, *inter alia*, tenancy over lands devoted to agriculture. Under Section 3(d) of Rep. Act No. 6657, an agrarian dispute refers to any controversy relating to tenurial arrangements, whether leasehold, tenancy, stewardship or otherwise, over lands devoted to agriculture, including disputes concerning farmworkers' associations or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of such tenurial arrangements. It includes any controversy relating to compensation of lands acquired under this Act and other terms and conditions of transfer of ownership from landowner to farmworkers, tenants and other agrarian reform beneficiaries, whether the disputants stand in the proximate relation of farm operator and beneficiary, landowner and tenant, or lessor and lessee. It refers to any controversy relating to, *inter alia*, tenancy over lands devoted to agriculture.

4. ID.; ID.; ID.; IDENTIFICATION OF FARMER-BENEFICIARIES IS BEST LEFT TO THE DISCRETION OF THE SECRETARY OF AGRARIAN REFORM; ABSENT GRAVE ABUSE OF DISCRETION, THE FACTUAL FINDINGS BY ADMINISTRATIVE AGENCIES ARE GENERALLY ACCORDED GREAT RESPECT, IF NOT

FINALITY. — Petitioners argue that the subject landholding is covered by the CARP and thus the conveyance of the lot by Estefania to her son Enrico after she voluntarily offered to sell her property to the DAR is void. There is no question that the land is covered by the CARP. Records show that DAR Secretary Nasser C. Pangandaman issued an Order on February 3, 2006 reversing the order of DAR Regional Director Dominador B. Andres granting Enrico's petition for exemption of the land. However, whether or not petitioners are duly installed farmer-beneficiaries is a finding of fact. It is well-settled that in a petition for review on *certiorari* under Rule 45 of the Rules of Court, only questions of law may be raised. We have time and again ruled that the factual findings of fact by administrative agencies are generally accorded great respect, if not finality, by the courts because of the special knowledge and expertise of administrative departments over matters falling under their jurisdiction. As held by this Court in *Sta. Rosa Realty v. Court of Appeals, et al.*, the identification of farmer-beneficiaries is best left to the discretion of the Secretary of Agrarian Reform, through its authorized offices, as this is a matter involving strictly the administrative implementation of the CARP, and unless the Court finds that there was grave abuse of discretion committed by the agency involved, which the Court finds absent in this case, it will not substitute its judgment to that of the agency's. Records show that the Department of Agrarian Reform Adjudication Board (DARAB) promulgated on June 3, 2005 a Decision ruling that Zosimo and Jesus are **not** recognized farmer-beneficiaries. xxx

5. ID.; ID.; ID.; PETITIONERS ARE NOT FARMER-BENEFICIARIES BUT MERE USURPERS OF THE SUBJECT LAND; ACTION IN CASE AT BAR IS AN EJECTMENT SUIT WITHIN THE JURISDICTION OF THE MTCC. — Petitioners' argument that the case involves an agrarian matter divesting the regular courts of jurisdiction therefore has no merit. They are not farmer-beneficiaries but mere usurpers of the land. The MTCC properly ruled that: x x x Defendants' [petitioners herein] claim of ownership [as] farmer-beneficiaries is not evidenced [by] any Certificate of Land Ownership Award (CLOA) for nothing is shown that they are CLOA holders. Likewise, it is clearly established that defendants herein Zosimo Octavio and Jesus Alb[o]na remained at plaintiff's [L]ot 414 and did not reside on Lot 412 for they

were residents of Lot 414 for more than 20 years to date as declared by them in their Joint Affidavits executed on November 20, 2000 at Iloilo City. Clearly, therefore, the action is one for ejectment and the MTCC has jurisdiction over it.

APPEARANCES OF COUNSEL

Entila Tubillara Malde and Majarucon Law Offices for petitioners.

Puyat Jacinto & Santos for respondent.

D E C I S I O N

QUISUMBING, *J.*:

Before us is the appeal of petitioners Zosimo Octavio and Jesus Albona (deceased and substituted by his wife Violeta Albona) from the Decision[1] dated January 18, 2006 of the Court of Appeals, Cebu City, Eighteenth Division, in CA-G.R. SP No. 78843. The Court of Appeals affirmed the Decision[2] dated April 14, 2003 and Resolution[3] dated July 3, 2003 of the Regional Trial Court (RTC) of Bacolod City, Branch 46 in Civil Case No. 01-11392 which affirmed *in toto* the Decision[4] of the Municipal Trial Court in Cities (MTCC) of Talisay City, Negros Occidental in Civil Case No. 671 ordering petitioners to vacate a parcel of land registered in the name of respondent Enrico Perovano.

The facts, as culled from the records, are as follows:

On March 9, 1999, respondent Enrico Perovano (Enrico) filed a Complaint[5] for Forcible Entry with Damages and Prayer

[1] *Rollo*, pp. 42-50. Penned by Associate Justice Arsenio J. Magpale, with Associate Justices Vicente L. Yap and Apolinario D. Bruselas, Jr. concurring.

[2] *Id.* at 74-90. Penned by Judge George S. Patriarca.

[3] *Id.* at 108-113. Penned by Judge George S. Patriarca.

[4] *Id.* at 152-156. Dated December 29, 2000. Penned by Judge Antonio L. Jayobo.

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

for Immediate Issuance of Temporary Restraining Order or Writ of Preliminary Injunction against Zosimo Octavio (Zosimo), Jesus Albona (Jesus), and Municipal Agrarian Reform Officer (MARO) Dolores Gulmatico (Dolores) before the MTCC. The complaint was docketed as Civil Case No. 671.

In his complaint, Enrico alleged he is the lawful and registered owner of Lot No. 412 situated at the City of Talisay, Negros Occidental, comprising an area of 48,693 square meters, more or less, and covered by TCT No. T-179767.[6] He averred that on or before the first week of January 1999, Zosimo and Jesus, upon the instruction and direction, and in connivance and conspiracy with Dolores, by threat, intimidation, strategy and stealth, entered the land, plowed it and started planting sugarcane plants inspite of the efforts of Myrna Ayudante, Enrico's Attorney-in-Fact, to prohibit them from trespassing on the property.

In their Answer with Affirmative Defenses and Motion to Dismiss,[7] Zosimo, Jesus and Dolores denied Enrico's allegations and argued that the land was voluntarily offered for sale by Estefania Perovano, Enrico's mother, to the Department of Agrarian Reform (DAR) in 1992. By reason of the Voluntary Offer to Sell (VOS), the landowner (Estefania) placed the land under the coverage of Republic Act No. 6657,[8] otherwise known as the "Comprehensive Agrarian Reform Law of 1998." They further alleged that immediately thereafter, the processing of the VOS Claim Folder was initiated by the DAR Municipal Office of Talisay, Negros Occidental; identification and registration of qualified farmer-beneficiaries pursuant to Section 22[9] of Rep.

[6] Records, p. 210.

[7] *Rollo*, pp. 121-133.

[8] Done and adopted on December 26, 1998.

[9] SEC. 22. *Qualified Beneficiaries*. – The lands covered by the CARP shall be distributed as much as possible to landless residents of the same *barangay*, or in the absence thereof, landless residents of the same municipality in the following order of priority:

(a) agricultural lessees and share tenants;

(b) regular farmworkers;

(c) seasonal farmworkers;

Act No. 6657 was conducted by the DAR Municipal Office of Talisay; and Zosimo and Jesus were among those identified and qualified as farmer-beneficiaries of the land. The VOS Claim Folder was elevated to the DAR Municipal Office for review and evaluation and when the processing of the Claim Folder was completed, the latter was forwarded to the Land Bank of the Philippines for valuation. Afterwards, payment to the landowner was made. Certificates of Land Ownership Award (CLOAs) were then generated in favor of the farmer-beneficiaries. Accordingly, petitioners argue that Estefania ceased to be the owner of the land and it is not true that Enrico is still the lawful and registered owner of the landholding.[10] Petitioners add that

---

(d) other farmworkers;

(e) actual tillers or occupants of public lands;

(f) collectives or cooperatives of the above beneficiaries; and

(g) others directly working on the land.

Provided, however, That the children of landowners who are qualified under Section 6 of this Act shall be given preference in the distribution of the land of their parents; *And provided, further*, That actual tenant -tillers in the landholding shall not be ejected or removed therefrom.

Beneficiaries under Presidential Decree No. 27 who have culpably sold, disposed of, or abandoned their land are disqualified to become beneficiaries under this Program.

A basic qualification of a beneficiary shall be his willingness, aptitude and ability to cultivate and make the land as productive as possible. The DAR shall adopt a system of monitoring the record or performance of each beneficiary, so that any beneficiary guilty of negligence or misuse of the land or any support extended to him shall forfeit his right to continue as such beneficiary. The DAR shall submit periodic reports on the performance of the beneficiaries to the PARC.

If, due to the landowner's retention rights or to the number of tenants, lessees, or workers on the land, there is not enough land to accommodate any or some of them, they may be granted ownership of other lands available for distribution under this Act, at the option of the beneficiaries.

Farmers already in place and those not accommodated in the distribution of privately-owned lands will be given preferential rights in the distribution of lands from the public domain.

[10] *Rollo*, pp. 122-123.

a Memorandum of Agreement[11] was executed between Estefania Perovano and the farmer-beneficiaries wherein they agreed that the farmer-beneficiaries are free to take possession and cultivate the landholding after payment was made to the landowner by the Land Bank of the Philippines.[12] They posit that there is no iota of doubt that the landholding is within the coverage of the Comprehensive Agrarian Reform Program (CARP) and it is only the Provincial Agrarian Reform Adjudication Board which has original and exclusive jurisdiction to entertain any action as per Section 50,[13] Rep. Act No. 6657.[14] They argue that regular courts were already divested of their general jurisdiction to try

---

[11] *Id.* at 141-142.

[12] *Id.* at 124.

[13] 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).

It shall not be bound by technical rules of procedure and evidence but shall proceed to hear and decide all cases, disputes or controversies in a most expeditious manner, employing all reasonable means to ascertain the facts of every case in accordance with justice and equity and the merits of the case. Toward this end, it shall adopt a uniform rule of procedure to achieve a just, expeditious and inexpensive determination of every action or proceeding before it.

It shall have the power to summon witnesses, administer oaths, take testimony, require submission of reports, compel the production of books and documents and answers to interrogatories and issue *subpoena*, and *subpoena duces tecum* and to enforce its writs through sheriffs or other duly deputized officers. It shall likewise have the power to punish direct and indirect contempts in the same manner and subject to the same penalties as provided in the Rules of Court.

Responsible farmer leaders shall be allowed to represent themselves, their fellow farmers or their organizations in any proceedings before the DAR; *Provided, however,* That when there are two or more representatives for any individual or group, the representatives should choose only one among themselves to represent such party or group before any DAR proceeding.

Notwithstanding an appeal to the Court of Appeals, the decision of the DAR shall be immediately executory.

[14] *Rollo,* p. 127.

agrarian reform matters,[15] and the filing of the case is pure and simple harassment with the purpose of preventing or obstructing the implementation of the CARP.[16]

On December 29, 2000, the MTCC of Talisay City rendered a Decision in favor of Enrico and ordered petitioners Zosimo and Jesus to vacate the premises. The dispositive portion of the Decision states:

> WHEREFORE, in view of the foregoing, judgment is hereby rendered in favor of the plaintiff. Defendants herein are ordered:
>
> 1. To vacate Lot 412, Talisay Cadastre, subject of the instant case, remove all improvements introduced thereon and stop further cultivation of the land and to return possession of the same to the plaintiff;
>
> 2. Defendants Zosimo Octavio and Jesus Alb[o]na are ordered to pay solidarily herein plaintiff Enrico Perovano the amount of thirty two thousand pesos (₱32,000.00) as yearly rental of the land from the time of the filing of the complaint until plaintiff is restored to the possession of the lot subject of this case.
>
> 3. Defendants herein Zosimo Octavio, Jesus Alb[o]na and Dolores Gulmatico are ordered to pay or reimburse solidarily plaintiff the amount of ten thousand pesos (₱10,000.00) for attorney's fees as well as ₱500.00 per court appearance.
>
> To pay the cost of the suit.
>
> SO ORDERED.[17]

Petitioners appealed to the RTC of Negros Occidental, Branch 46, which, in a Decision dated April 14, 2003, affirmed the MTCC Decision *in toto*. The dispositive portion of the RTC Decision reads:

> WHEREFORE, in view of the foregoing considerations, this Court finds the Decision of the Municipal Trial Court in Cities, Talisay

---

[15] *Id.* at 129.

[16] *Id.* at 130.

[17] *Id.* at 156.

City, Negros Occidental, dated December 29, 2000 to be supported by law and evidence, and finding no cogent reason to disturb, modify, revise or reverse the same, said Decision is hereby **AFFIRMED** *in toto*. With costs against the defendants-appellants.

SO ORDERED.[18]

The Court of Appeals, in a Decision promulgated on January 18, 2006, affirmed the RTC Decision, as follows:

WHEREFORE, premises considered, the petition is **DENIED**. Accordingly, the Decision dated April 14, 2003 and the Resolution dated July 3, 2003 of the respondent Regional Trial Court of Negros Occidental are **AFFIRMED** *in toto*.

SO ORDERED.[19]

Hence, this petition for review on *certiorari*.

Petitioners raise the following issues for our resolution:

I.

WHETHER OR NOT THE SUBJECT LANDHOLDING LOT 412 IS COVERED BY THE COMPREHENSIVE AGRARIAN REFORM PROGRAM, THUS THE CONVEYANCE OF THE SUBJECT LOT 412 BY ESTEFANIA [PEROVANO] TO HER SON [ENRICO R. PEROVANO]; THE EXECUTION OF A LEASE CONTRACT BY ENRICO [PEROVANO] IN FAVOR OF CARMELA VALLEY CORPORATION; AND OTHER SUBSEQUENT TRANSACTIONS ARE VOID.

II.

WHETHER OR NOT THE CASE FILED BY THE RESPONDENT AGAINST THE HEREIN PETITIONERS IS TANTAMOUNT TO A CASE OF DISQUALIFICATION OF THE LATTER AS DULY INSTALLED FARMER BENEFICIARIES OF THE SUBJECT LOT 412, HENCE AGRARIAN IN CHARACTER.

---

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

[19] *Id.* at 50.

III.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS, CEBU CITY GRAVELY ERRED IN DENYING THE PETITION FILED BY THE PETITIONERS AND IN AFFIRMING THE DECISION DATED APRIL 14, 2003 AND THE RESOLUTION DATED JULY 3, 2003 OF THE HONORABLE REGIONAL TRIAL COURT, BRANCH 46, BACOLOD CITY FOR THE INSTANT CASE INVOLVES THE IMPLEMENTATION OF THE COMPREHENSIVE AGRARIAN REFORM PROGRAM (CARP), WHICH IS AN AGRARIAN MATTER, THEREBY DIVESTING THE REGULAR COURT OF ITS JURISDICTION.[20]

The issue boils down to whether or not the case is an ejectment suit within the exclusive jurisdiction of the trial court or an agrarian dispute within the exclusive jurisdiction of the DAR.

Petitioners in their Memorandum[21] argue that the subject Lot No. 412 of the Talisay Cadastre was subjected to a voluntary offer to sell by no other than the previous owner, Estefania Perovano, on June 18, 1992; that on September 8, 1992, a Memorandum of Agreement was executed between Estefania and the farmer-beneficiaries which included Zosimo and Jesus; the DAR generated a CLOA and the previous title in the name of the previous owner was canceled and thereafter the farmer-beneficiaries took possession of the same; the former landowner had already received payment for the land from the Republic of the Philippines through the Land Bank of the Philippines. Petitioners clarified that since farmer-beneficiaries Arsenio Bene, Ricardo Orocio and Myrna Ayudante who were CLOA holders of the subject Lot No. 412 abandoned the subject property after selling their rights to the landowner, which acts are gross violations of Rep. Act No. 6657, they were recommended for disqualification. In their stead, Zosimo and Jesus were installed as farmer-beneficiaries. They point out that Regional Director

---

[20] *Id.* at 287-288.

[21] *Id.* at 281-310.

Elmo A. Bañares of DAR Region VI, in an Order[22] dated March 11, 1997, denied the protest filed by Enrico Perovano against coverage of Lot No. 412. On January 19, 1998, Regional Director Dominador Andres, DAR, Iloilo City, issued an order granting the exemption of the subject Lot No. 412 from coverage of Rep. Act No. 6657, but said order was reversed on February 3, 2006, by DAR Secretary Nasser C. Pangandaman.

On the other hand, respondent, in his Memorandum,[23] argue that the existence or absence of an agrarian dispute is a question of fact which is not proper for review under Rule 45 of the Rules of Court. Respondent likewise maintains that petitioners herein are not CLOA holders and hence, they have no basis to state that they are farmer-beneficiaries. Further, no tenancy relationship exists between petitioners and respondent. Being an ejectment case, only the issue of possession is involved.

At the outset, let us be clear that jurisdiction over the subject matter of an action is determined by the material allegations of the complaint and the law at the time the action is commenced, irrespective of whether the plaintiff is entitled to recover all or some of the claims or reliefs sought therein. It cannot be made to depend upon the defenses set up in the answer or upon a motion to dismiss; otherwise, the question of jurisdiction would depend almost entirely on the defendant.[24]

A scrutiny of the material allegations in respondent's complaint before the MTCC shows that it involves *possession de facto*, the only issue involved in ejectment proceedings. Enrico alleged he is the lawful and registered owner of Lot No. 412 and that on or before the first week of January 1999, petitioners Zosimo and Jesus, by threat, intimidation, strategy and stealth, entered the premises of the land, plowed it and started planting sugarcane.

---

[22] *Id.* at 197-203.

[23] *Id.* at 319-343.

[24] *Rimasug v. Martin*, G.R. No. 160118, November 22, 2005, 475 SCRA 703, 712.

Under *Batas Pambansa Blg*. 129,[25] as amended by Rep. Act No. 7691,[26] the MTC shall have exclusive original jurisdiction over cases of forcible entry and unlawful detainer. The Revised Rules on Summary Procedure[27] governs the remedial aspects of such suits.[28]

Under Section 50 of Rep. Act No. 6657, the DAR is 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."[29] An agrarian dispute refers to any controversy relating to, *inter alia*, tenancy over lands devoted to agriculture.[30] Under Section 3(d) of Rep. Act No. 6657, an agrarian dispute refers to any controversy relating to tenurial arrangements, whether leasehold, tenancy, stewardship or otherwise, over lands devoted to agriculture, including disputes concerning farmworkers' associations or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of such tenurial arrangements. It includes any controversy relating to compensation of lands acquired under this Act and other terms and conditions of transfer of ownership from landowner to farmworkers, tenants and other agrarian reform beneficiaries, whether the disputants stand in the proximate relation of farm operator and beneficiary, landowner and tenant, or lessor and lessee. It refers to any controversy relating to, *inter alia*, tenancy over lands devoted to agriculture.[31]

---

[25] THE JUDICIARY REORGANIZATION ACT of 1980, approved on August 14, 1981.

[26] AN ACT EXPANDING THE JURISDICTION OF THE METROPOLITAN TRIAL COURTS, MUNICIPAL TRIAL COURTS, AND MUNICIPAL CIRCUIT TRIAL COURTS, AMENDING FOR THE PURPOSE BATAS PAMBANSA BLG. 129, OTHERWISE KNOWN AS THE "JUDICIARY REORGANIZATION ACT OF 1980," approved on March 25, 1994.

[27] Effective on November 15, 1991.

[28] *Rivera v. Santiago*, G.R. No. 146501, August 28, 2003, 410 SCRA 113, 120.

[29] *Id.* at 120-121.

[30] *Id.* at 122.

[31] *Amurao v. Villalobos*, G.R. No. 157491, June 20, 2006, 491 SCRA 464, 474.

Petitioners argue that the subject landholding is covered by the CARP and thus the conveyance of the lot by Estefania to her son Enrico after she voluntarily offered to sell her property to the DAR is void. There is no question that the land is covered by the CARP. Records show that DAR Secretary Nasser C. Pangandaman issued an Order on February 3, 2006 reversing the order of DAR Regional Director Dominador B. Andres granting Enrico's petition for exemption of the land.

However, whether or not petitioners are duly installed farmer-beneficiaries is a finding of fact. It is well-settled that in a petition for review on *certiorari* under Rule 45 of the Rules of Court, only questions of law may be raised. We have time and again ruled that the factual findings of fact by administrative agencies are generally accorded great respect, if not finality, by the courts because of the special knowledge and expertise of administrative departments over matters falling under their jurisdiction.[32] As held by this Court in *Sta. Rosa Realty v. Court of Appeals, et al.*,[33] the identification of farmer-beneficiaries is best left to the discretion of the Secretary of Agrarian Reform, through its authorized offices, as this is a matter involving strictly the administrative implementation of the CARP, and unless the Court finds that there was grave abuse of discretion committed by the agency involved, which the Court finds absent in this case, it will not substitute its judgment to that of the agency's.[34]

Records show that the Department of Agrarian Reform Adjudication Board (DARAB) promulgated on June 3, 2005 a Decision ruling that Zosimo and Jesus are **not** recognized farmer-beneficiaries. The DARAB ruled:

It appears that complainants-appellants (which included Zosimo and Jesus) were not among those three (3) non-CLOA holders occupying portions of Lot Nos. 412 and 04 who were given one-

---

[32] *Pasong Bayabas Farmers Association, Inc. v. Court of Appeals*, G.R. No. 142359, May 25, 2004, 429 SCRA 109, 130-131.

[33] G.R. Nos. 112526 & 118338, September 28, 2005, p. 1 (Unsigned Resolution).

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

hectare land each as disturbance compensation. Otherwise, they would have not filed this case on 23 February 1999. It must be remembered the 19 January 1998 Order was declared final on 19 October 1998 and the original complaint was filed on 23 February 1999.

Thus, this Board is of the opinion that **complainants-appellants were not recognized as farmer-beneficiaries of the subject landholding. Their continued possession thereof was through stealth**. Even if they were not identified as farmer-beneficiaries and not awarded any CLOA, **they arrogated unto themselves the portions of the subject landholding**. As admitted by them in the hearing, they came into the land on the premise that they are farmer-beneficiaries. **Without waiting for an award of any CLOA, complainants-appellants occupied the landholding.** In the process, "expropriating" the property of the landowner without due process of law, prejudicing the rights of the landowner and the legitimate farmer-beneficiaries who were duly awarded with CLOA.

The acts of the complainants-appellants are similar to that of land grabbing. The agrarian reform law is not enacted to give license to anybody to grab somebody else's land. Neither [is it] enacted to protect the land grabbers or the squatters.[35] (Emphasis supplied.)

Petitioners' argument that the case involves an agrarian matter divesting the regular courts of jurisdiction therefore has no merit. They are not farmer-beneficiaries but mere usurpers of the land.

The MTCC properly ruled that:

x x x Defendants' [petitioners herein] claim of ownership [as] farmer-beneficiaries is not evidenced [by] any Certificate of Land Ownership Award (CLOA) for nothing is shown that they are CLOA holders. Likewise, it is clearly established that defendants herein Zosimo Octavio and Jesus Alb[o]na remained at plaintiff's [L]ot 414 and did not reside on Lot 412 for they were residents of Lot 414 for more than 20 years to date as declared by them in their Joint Affidavits executed on November 20, 2000 at Iloilo City.[36]

Clearly, therefore, the action is one for ejectment and the MTCC has jurisdiction over it.

---

[35] *Rollo*, p. 231.

[36] *Id.* at 155.

WHEREFORE, the petition is *DENIED.* The Decision dated January 18, 2006 of the Court of Appeals, Cebu City, Eighteenth Division, in CA-G.R. SP No. 78843 is *AFFIRMED.* No pronouncement as to costs.

SO ORDERED.

Ynares-Santiago,[*] *Chico-Nazario,*[**] *Leonardo-de Castro,*[***] and *Brion, JJ.,* concur.

FIRST DIVISION

[G.R. No. 174316. June 23, 2009]

TEODORICO S. MIRANDA, JR., *petitioner, vs.* **ASIAN TERMINALS, INC. (ATI) and COURT OF APPEALS,** *respondents.*

SYLLABUS

1. LABOR AND SOCAL LEGISLATION; LABOR RELATIONS; LABOR UNION; OFFICERS; UNION SHOP STEWARD IS A UNION POSITION AND NOT A POSITION WITHIN THE COMPANY. — The premise that the union Shop Steward is a position within the respondent company provides a faulty foundation to an already convoluted case. A cursory look at the responsibilities of a shop steward leads to the conclusion that it is a position within the union, and not within the company.

---

[*] 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 Justice Dante O. Tinga.

A shop steward is appointed by the union in a shop, department, or plant and serves as representative of the union, charged with negotiating and adjustment of grievances of employees with the supervisor of the employer. He is the representative of the union members in a building or other workplace. Black's Law Dictionary defines a shop steward as a union official elected to represent members in a plant or particular department. His duties include collection of dues, recruitment of new members and initial negotiations for the settlement of grievances. The position of the shop steward has been acknowledged to be a position within the union; and even in Section 2 of Rule XIX of the Implementing Rules of Book V of the Labor Code, as amended by DOLE Order 40-03, the shop steward is understood to be a union officer who plays an important role in the grievance procedure. xxx In the case at bar, the duties and responsibilities of the Shop Steward stated in the CBA between the union and the respondent company, as well as the manner of the appointment and designation of the Shop Steward show that the shop steward is a union position and not a position within the company.

2. ID.; ID.; ID.; INTRA-UNION CONFLICT EXPLAINED; JURISDICTION TO ACT ON ALL INTER-UNION OR INTRA-UNION CONFLICTS IS LODGED WITH THE BUREAU OF LABOR RELATIONS AND THE LABOR RELATIONS DIVISION. — Since the Shop Steward is a union position, the controversy surrounding his recall from his position as Shop Steward becomes a dispute within the union. An "Internal Union Dispute" or intra-union conflict refers to a conflict within or inside a labor union. It includes all disputes or grievances arising from any violation of or disagreement over any provision of the constitution and by-laws of a union, including any violation of the rights and conditions of union membership provided for in the Code. Article 226 of the Labor Code of the Philippines vests on the Bureau of Labor Relations and the Labor Relations Division jurisdiction to act on all inter-union or intra-union conflicts.

3. ID.; ID.; ID.; FACTS AND FINDINGS OF THE MED-ARBITER AND THE SECRETARY OF LABOR ARE GENERALLY CONCLUSIVE ON APPEAL. — The Med-Arbiter, as affirmed by the Secretary of Labor, ruled that there was neither cause nor due process in the recall of the petitioner from the position

of union Shop Steward. He found that the claim of loss of trust and confidence due to the petitioner's alleged absenteeism was not substantiated and that the recall was not approved by the Board of Directors of the union, as required by the APCWU Constitution and By-Laws. The facts and findings of the Med-Arbiter and the Secretary of Labor are generally conclusive on appeal. This Court is not a trier of facts and it is not its function to examine and evaluate the probative value of all evidence presented to the concerned tribunal which formed the basis of its impugned decision, resolution or order. Following this, it is inappropriate to review the factual findings of the Med-Arbiter and the Secretary of Labor regarding the invalidity of the petitioner's recall due to a violation of the APCWU Constitution and By-Laws which requires that the recall must be approved by the union Board of Directors. They are binding on this Court as we are satisfied that they are supported by substantial evidence.

4. ID.; ID.; ID.; DECISION OF THE LABOR ARBITER CONSIDERED VOID WHERE THE SAME LACKS JURISDICTION OVER THE CASE; EMPLOYER HAS NO OBLIGATION TO INVESTIGATE WHERE THE DISPUTE IS AN INTRA-UNION DISPUTE. — The Labor Arbiter incorrectly assumed jurisdiction over the case due to his confused understanding of the relationship between and among the petitioner, respondent company and the union and his decision on the merits of the case is void for lack of jurisdiction. His disposition of the case, ordering the respondent to pay indemnity for failure to observe due process in the supposed demotion of the petitioner from union Shop Steward to Checker I, cannot be upheld. xxx The requirements imposed on an employer for the valid demotion of an employee do not apply to the reversion of petitioner from union Shop Steward to Checker I because the decision to recall the petitioner from union Shop Steward to Checker I is for the union, not the respondent company, to make. The respondent cannot and should not conduct its own investigation to determine whether the union had cause to recall the petitioner from union Shop Steward because the dispute is an intra-union dispute.

5. ID.; ID.; ID.; PETITIONER CANNOT BE REINSTATED TO SHOP STEWARD DUE TO HIS VALID RETRENCHMENT. — Notwithstanding the determination of the Med-Arbiter, as

affirmed by the Secretary of Labor, that the petitioner should be reinstated to the position of Shop Steward, which is binding on this Court, the petitioner could not be reinstated to the position of Shop Steward because his eventual separation from respondent ATI made reinstatement unfeasible. Employment with respondent ATI and membership in the union are required in order to occupy the position of Shop Steward. But the petitioner is neither a member of the union nor employed with respondent ATI. He was already retrenched from respondent ATI since October 21, 2001, and his retrenchment was finally settled through the execution of a Quit Claim and Release which was executed before the Second Division of the NLRC in NLRC CA No. 032809-02. x x x Because of the petitioner's retrenchment, which was finally settled through the Quit Claim and Release, any order for the reinstatement of the petitioner to the position of union Shop Steward can no longer be executed by the union since the petitioner had been retrenched by the company. The petitioner cannot also be reinstated to the position of Checker I, since he was already retrenched by the respondent from such position and he released the company from any and all claims with respect to his retrenchment.

6. ID.; ID.; ID.; RETRENCHMENT OF THE PETITIONER RENDERED THE CASE AT BAR MOOT AND ACADEMIC. — The events which have taken place during the pendency of the case have rendered the present petition moot and academic. So also in the case of ***Honesto B. Villarosa v. Hon. Cresenciano B. Trajano*** it was held that the case to determine who won in an election of union officers was rendered moot and academic by the expiration of the term of the private respondents by operation of law. xxx So also in the case at bar, a judgment of reinstatement of the petitioner to the position of union Shop Steward would have no practical legal effect since it cannot be enforced. Based on the requirements imposed by law and the APCWU-ATI CBA, and in the nature of things, the subsequent separation of the petitioner from employment with respondent ATI has made his reinstatement to union Shop Steward incapable of being enforced.

APPEARANCES OF COUNSEL

Moreno Pulia & Moreno Law Offices for petitioner.
Jimenez Gonzales Liwanag Bello Valdez Caluya & Fernandez (JGLAW) for respondents.

D E C I S I O N

PUNO, *C.J.*:

At bar is a petition for review on *certiorari* under Rule 45 of the Rules of Court, seeking the review and reversal of the amended decision,[1] dated August 31, 2005, and resolution,[2] dated August 25, 2006, of the Court of Appeals in two separate but consolidated petitions for *certiorari* docketed as CA G.R. SP No. 68283 and CA G.R. SP No. 77174, both entitled *Teodorico S. Miranda, Jr. v. National Labor Relations Commission (NLRC) and Asian Terminals, Inc.* (ATI or the company). The amended decision of the Court of Appeals dismissed the petitioner's consolidated petitions for being moot and academic and the motion for reconsideration of the petitioner was denied by the Court of Appeals.

In this petition for review on *certiorari*, the petitioner seeks the reinstatement of the decision[3] of the Court of Appeals, dated June 27, 2005, which reversed and set aside the resolutions of the NLRC. The NLRC resolutions that were set aside by the Court of Appeals remanded the case to the Labor Arbiter for clarification of his decision and ordered the issuance of a temporary restraining order against the execution of the judgment.

Let us examine the facts.

Petitioner Teodorico S. Miranda, Jr. was employed by respondent ATI in 1991 as Checker I. He also became a member

---

[1] *Rollo*, pp. 211-215.

[2] *Id.* at pp. 217-221.

[3] *Id.* at pp. 307-318.

of the Associated Port Checkers and Workers Union (APCWU or the union).[4] On April 10, 1992, the petitioner, who was then the Vice President of the union, was appointed to the position of Shop Steward which is a union position under the payroll of the company.[5] The Collective Bargaining Agreement (CBA) between the union and ATI provided for the appointment of a Shop Steward from among the union members, upon the recommendation of the union president. The Shop Steward is a field representative of both the company and the union and acts as an independent arbiter of all complaints brought to his attention.[6]

On December 28, 1993, Roger P. Silva, the President of APCWU, wrote a letter[7] to the petitioner regarding the recall of his designation as the union Shop Steward. The union president explained that the petitioner was recalled as union Shop Steward due to loss of trust and confidence in him, pursuant to the "Agreement Amending the MPSI (Marina Port Services, Inc.) - APCWU CBA." The letter further stated that the petitioner refused to heed the union president's reminders concerning his "chronic absenteeism" that "is hurting the interest of the Union members as they are left with no responsible union officer when summoned for investigation concerning alleged infractions of company rules."[8] The union president further wrote that the decision to dismiss the petitioner came only after a series of personal dialogues and after the petitioner had been given ample opportunity to efficiently perform the duties and obligations of a Shop Steward assigned to the night shift. The union president then gave the petitioner five days from receipt of the letter to explain why he should not be recalled as Shop Steward for chronic absenteeism which started from the second week of September 1993 until December 28, 1993.

---

[4] Original Records, vol. 1, p. 36.

[5] *Id.* at p. 37.

[6] *Rollo,* p. 222.

[7] Original Records, vol. 2, p. 284.

[8] *Id.*

A rift then developed between the union leadership and certain union members, including the petitioner.[9] In June 1994, the petitioner and some of the members of APCWU sent an undated letter to ATI protesting the manner in which the APCWU leadership handled the affairs of the union.[10] This led to the formation of a grievance committee to investigate the complaints against the union officers, including the petitioner. The petitioner, however, refused to participate in the investigation.[11]

Upon the conclusion of the investigation, the grievance committee issued its report recommending to ATI the recall of the petitioner as Shop Steward and for his reversion to his former position of Checker I, in accordance with the CBA.[12] The petitioner questioned his recall as union Shop Steward, and the union president, Roger P. Silva, issued a letter which reasoned that the petitioner's recall as Shop Steward was pursuant to Section 13 of the Agreement Amending the MPSI-APCWU CBA, amending Section 2, Article V of the MPSI-APCWU CBA which required that the term of office of the Shop Steward shall be based on trust and confidence and favorable recommendation of the duly elected president of the Union.

Acting on the recommendation of the union, respondent ATI issued a Memorandum[13] to the petitioner regarding his transfer on January 11, 1994. The Memorandum cited the provision of the CBA, *viz.*:

Acting on the two letters dated 10 December 1993 of the APCWU-ATI (Local Chapter) and pursuant to Section 13 of the Agreement Amending of [sic] the APCWU-MPSI (now ATI) CBA which provides that:

> "SECTION 13. — Article V, Section 2 is hereby amended to read as follows:

---

[9] *Rollo*, p. 309.

[10] Original Records, vol. 1, p. 85.

[11] *Id*.

[12] *Id.* at p. 309.

[13] *Id.* at pp. 222-223.

> Section 2. The Shop Steward shall be an independent arbiter of all complaints and grievances brought before him as a field representative both of the COMPANY and the UNION. **Only bonafide [sic] members of the UNION shall be designated as Shop Steward whose designation and term of office shall be based on trust and confidence and upon the favorable recommendation of the duly elected president of the UNION.** In like manner shall the designation of the Union rotation representative posted in the hiring shall be based. [emphasis supplied]
>
> "Section 2-A. **Upon the recall of the designation as Shop Steward,** or union representative, as the case maybe [sic], **the party concerned shall revert back to his position occupied prior to the designation** and shall receive the salary that corresponds to that particular office/position." [emphasis supplied]

[T]he management EFFECTIVE IMMEDIATELY hereby recalls the designation of Mr. Teodorico Miranda as Shop Steward and Mr. Rolando de Luna as Union Rotation Representative and designate[s] Mr. Hipolito Cruz as Shop Steward vice Teodorico Miranda, Jr. and Mr. Elpidio Valdez as Union Rotation Representative vice Mr. Rolando de Luna.

As per amendment quoted above, Messrs. Miranda and de Luna shall revert back to their position as Checker I and shall receive the salary that corresponds therefor.

The abovementioned personnel are directed to report to the Operations Department for further instructions and/or eventual deployment.

(Sgd.)
R.G. CORVITE, JR.[14]

The petitioner first filed a complaint against Roger Silva as the President of APCWU, Marina Local Chapter with the Department of Labor and Employment (DOLE), National Capital Region, docketed as Case No. NCR-OD-M-0403-005, praying

---

[14] *Id*.

for his reinstatement as Shop Steward. In an Order issued by the Mediation Arbiter (Med-Arbiter) on August 1, 1994, the petitioner was ordered reinstated to the position of Shop Steward. The Med-Arbiter found that the union president did not have the authority to recall the petitioner as Shop Steward for lack of approval of the Board of Directors of the union. The Order of the Med-Arbiter was affirmed by the Secretary of Labor in a Resolution[15] dated February 23, 1995,[16] *viz.*:

It is noted that appellant Roger P. Silva relied heavily on the provisions of Article V, Section 2 of its CBA which provides that:

> "Section 2. The shop steward shall be an independent arbiter of all complaints and grievances brought before him as a field representative both of the company and the union. Only bonafide [sic] members of the union shall be designated as shop steward whose designation and term of office shall be based on trust and confidence and upon the favorable recommendation of the duly elected president of the union. In like manner shall the designation of the union rotation representative posted in the hiring shall be based."

A close scrutiny of [t]he said provision however, would reveal that the designation of a shop steward and union rotation representative is only upon the favorable recommendation of the union president. In other words, **it is not the union president who makes the appointment. The union president merely recommends**.

Further, the union constitution and by-laws confers upon the Board of Directors the power "to approve appointments made by the President." The two (2) provisions taken together, would bring us to the conclusion that appointments or recommendations made by the union president needs [sic] the approval of the Board for validity. Consequently, **recall of appointments likewise requires the imprimatur of the Board**.

In the present case, the recall of appointment was made by the union president. It was not shown to be approved by the Board. Hence, it is clear that the recall is invalid, having been made by one unauthorized to do so.

---

[15] *Rollo,* pp. 61-64.

[16] Original Records, vol. 2, p. 144.

Even assuming *arguendo*, that the union president has the power to recall appointments, still the action may not be upheld for being violative of complainants' right to due process.

Teodorico Miranda, Jr. was removed due to loss of trust and confidence primarily arising from alleged absenteeism. Except for such general allegation, no evidence was presented to substantiate the same. In fact, Miranda's subordinates executed affidavits to the effect that he never failed to assist them x x x. [**T]he removal was effected without affording complainants the opportunity to present their side. There was no showing that an investigation was conducted prior to the removal** of the complainants.[17] [emphasis supplied]

On October 3, 1995, the petitioner filed another complaint before the Med-Arbiter involving money claims in the form of allowances, 13th month pay, and attorney's fees. The complaint was dismissed by the Med-Arbiter, ruling that the Mediation Office of the DOLE has no jurisdiction over money claims, which must be brought before the company.[18]

The petitioner also filed a series of complaints before the NLRC. On January 1, 1995, the petitioner filed a complaint for unfair labor practice, which was later amended to illegal demotion with a claim for reduction or diminution in pay, against respondent ATI and/or Richard Barclay, the President of the respondent, and APCWU and/or Roger Silva, which was docketed as NLRC NCR Case No. 01-00881-95 and assigned to Labor Arbiter Donato Quinto, Jr. (Quinto). On July 3, 1996, Labor Arbiter Quinto issued a Decision[19] which dismissed the case against ATI for lack of cause of action reasoning that the petitioner "should institute the appropriate charges/complaint against the erring union official/leadership."[20] And since the petitioner has already obtained a favorable decision from the Secretary of Labor, then he should have the said judgment enforced and

---

[17] *Rollo,* pp. 62-64.

[18] Original Records, vol. 2, p. 145.

[19] Original Records, vol. 1, pp. 413-420.

[20] *Id.* at p. 417.

should compel the union president to have him designated as Shop Steward, under pain of contempt.[21]

While the cases filed by the petitioner were pending, on July 10, 1995, the petitioner was re-assigned from the position of Checker I to Checker I Mobile, which is lower in rank than Checker I.[22] He was further re-assigned to Vessel Operation Checker, which is designated only to Checker Grades II and III and which positions were only assigned to casual Checkers.[23]

The petitioner then filed a second complaint in the NLRC against the respondent for unfair labor practice, illegal demotion and reduction and diminution of pay, docketed as NLRC NCR Case No. 00-02-01192-96, which was assigned to Labor Arbiter Fatima Jambaro-Franco (Jambaro-Franco). On June 18, 1996, Labor Arbiter Jambaro-Franco issued an Order[24] and dismissed the complaint as the case pending before Labor Arbiter Quinto involved the same parties and the same cause of action.

On December 12, 1996, a third complaint for Unfair Labor Practice and Illegal Demotion was filed by the petitioner against union president Roger Silva, the President of ATI, Richard Barclay, and the Operations Manager, Bonifacio Lomotan, which was docketed as NLRC-NCR Case No. 00-12-07641-96. The cause of action of the complaint was later amended on January 23, 1997[25] to illegal demotion in rank and discrimination, amounting to constructive dismissal. [26] The complaint was dismissed by Labor Arbiter Felipe T. Garduque II (Garduque) in an Order[27] issued on March 24, 1997 on the ground that the claim is barred by prior judgment since the decision of Labor Arbiter Quinto and the order of Labor Arbiter Jambaro-Franco were not appealed and

---

[21] *Id*.

[22] *Id.* at p. 38.

[23] *Rollo,* p. 17.

[24] Original Records, vol. 1, pp. 419-420.

[25] Original Records, vol. 2, p. 7.

[26] *Rollo,* p. 309.

[27] Original Records, vol. 2, pp. 27-28.

have become final.[28] The petitioner appealed the order of Labor Arbiter Garduque before the Third Division of the NLRC on April 28, 1997. The Third Division of the NLRC issued an Order[29] remanding the case to the office of origin for further proceedings, reasoning that the principle of *res judicata* cannot be applied because the earlier decision and order rendered by Labor Arbiter Quinto and Labor Arbiter Jambaro-Franco were not decided on the merits of the case but were dismissed based on jurisdictional grounds.[30]

Upon remand of the case to the Arbitration Office of the NLRC, the case was re-raffled to Labor Arbiter Arthur L. Amansec (Amansec). On August 20, 1999, Labor Arbiter Amansec rendered a Decision[31] which ruled that the demotion from union Shop Steward to Checker 1 was for cause but was effected without observance of procedural due process. He ordered the respondent to pay the petitioner indemnity in consonance with the Wenphil Doctrine,[32] which was then the prevailing doctrine with respect to separation for a valid cause but through an invalid procedure. The dispositive

---

[28] *Id*.

[29] *Id.* at p. 243-251.

[30] *Id.* at p. 249.

[31] Original Records, Vol. 1, pp. 34-44; *rollo,* pp. 68-78.

[32] In the case of *Wenphil Corporation v. National Labor Relations Commission*, G.R. No. 80587, February 8, 1989, 170 SCRA 69, the Court ruled that when there is a valid reason to dismiss an employee, but the employer did not follow the proper procedure for the dismissal, the dismissed employee will not be reinstated but the employer will be required to pay an indemnity. The measure of this award depends on the facts of each case and the gravity of the omission committed by the employer. The pertinent portion of the case provides, *viz.:*

x x x The dismissal of an employee must be for just or authorized cause and after due process. Petitioner committed an infraction of the second requirement. Thus, it must be imposed a sanction for its failure to give a formal notice and conduct an investigation as required by law before dismissing petitioner from employment. Considering the circumstances of this case petitioner must indemnify the private respondent the amount of ₱1,000.00. The measure of this award depends on the facts of each case and the gravity of the omission committed by the employer. [G.R. No. 80587, February 8, 1989, 170 SCRA 69, 76].

portion of the decision made matters confusing for the parties since it declared the petitioner to be constructively dismissed and ordered the petitioner to be reinstated.

Labor Arbiter Amansec's decision states:

> Regarding his appointment to the position of Shop Steward, subsequent recall therefrom and reversion to Checker 1, **the management's approval of his recall and termination as Shop Steward cannot be adjudged as one constitutive of constructive dismissal.** This is because when complainant was recalled as Shop Steward, he was immediately reverted to Checker 1, his original position. In other words, he continued to work with the company. He did not quit his employment.
>
> While **complainant cannot validly say that the Union President had no authority to recall him since under the CBA, the Union President was clearly so authorized, the manner of his recall and termination as Shop Steward did not meet the stringent requirements of due process.**
>
> It seems clear that the company approved his recall without providing the complainant an opportunity to explain why he should not be recalled. It is true that the union, through its **Union President, sent him a show-cause letter prior to his recall, a due process compliance** no doubt, but the **company was not empowered to skirt due process by automatically affirming said recall**. Being complainant's employer, the company had the primordial duty to provide the complainant an opportunity to explain why the company should not affirm, approve and adopt the union's recall prior to removing him as Shop Steward. Thus, **the company's failure to observe due process in his recall as Shop Steward and concomitant reversion to Checker 1 entitles complainant to a reasonable indemnity,** following the Wenphil doctrine.
>
> Regarding complainant's assignment, despite being Checker 1, as Checker 1 Mobile, then as Priority Receiving Checker, it will be observed that the position of Checker 1, [sic] Mobile and Priority Receiving Checker are inferior in rank and salary as complainant's position of Checker 1.
>
> **Complainant had the right to refuse complainant's transfer to an inferior position since there appears no justifiable basis therefor.** There is **no competent evidence at all that he did not perform well as Checker 1.**

On the other hand, the respondent company's adamant refusal to allow complainant to perform his duties as Checker 1 amounts to a constructive form of dismissal because there is **no convincing basis for the demotion** and that complainant could not take the psychological shock and discomfort of performing the duties of an inferior position. [emphasis supplied]

x x x x x x x x x

WHEREFORE, judgment is hereby rendered finding complainant to have been demoted from the position of Shop Steward to the position of Checker 1 without due process in 1994 and concomitantly, the respondent company is ordered to pay complainant ₱1,000.00 by way of indemnity. Judgment is likewise made finding complainant to have been constructively dismissed from employment in February, 1996 and therefore the respondent company is ordered to reinstate complainant with backwages.

SO ORDERED. [33]

Confusion followed the decision of Labor Arbiter Amansec when the petitioner filed a motion to be reinstated to the position of union Shop Steward. This was resolved by Labor Arbiter Ramon Valentin C. Reyes (Reyes) in the petitioner's favor; denying the motion to quash of the respondent and directing the Sheriff to proceed with the process of execution.[34] But the respondent filed a Petition for Prohibition, Issuance of a Temporary Restraining Order (TRO) and/or Writ of Permanent Injunction on March 20, 2000, claiming that the petitioner should merely be reinstated to his previous position of Checker I.[35]

Pending the resolution of the Petition for Prohibition, Labor Arbiter Reyes issued an Order, dated September 21, 2000, which denied the Motion to Quash the Writ of Execution filed by the respondent and ordered the assigned sheriff to proceed with the execution and further ordered the respondent to pay the petitioner backwages. A second Writ of Execution was issued on December 22, 2000 and a Notice of Public Auction Sale

---

[33] Original Records, vol. 1, pp. 40-43; *rollo*, pp. 74-77.

[34] Original Records, Vol. 3, pp. 168-173.

[35] *Id.* at p. 70.

over the levied properties of the respondent company was issued. But the public auction did not take place due to a third party claim over the levied properties.

The respondent appealed the decision of Labor Arbiter Amansec to the NLRC arguing that the controversy between the petitioner and the other officers and members of the union is an intra-union dispute that must be resolved within the union itself. The respondent company argued that all it "has to do is to RESPECT the decision arrived at by the union – that is, to effect the recall of the complainant IN ACCORDANCE WITH THE CBA. Otherwise, respondent ATI runs the risk of being accused of violating the CBA x x x."[36]

On March 30, 2001 the Third Division of the NLRC issued a Resolution[37] which remanded the case to Labor Arbiter Amansec for clarification of his decision. The resolution of the NLRC noted the ambiguities of the decision of Labor Arbiter Amansec. While on the one hand, the body of the arbiter's decision mentioned that "the petitioner continued to work with the respondent company"[38] and thus, "the management's approval of his recall and termination as Shop Steward cannot be adjudged as one constitutive of constructive dismissal";[39] the dispositive part of the decision, on the other hand, rendered the judgment "finding complainant to have been constructively dismissed from employment in February, 1996"[40] and ordered the respondent company "to reinstate complainant with backwages."[41] The NLRC ordered that the case be "remanded to the sala of Labor Arbiter Amansec for clarification of his decision,"[42] and issued a temporary restraining order on Labor Arbiter Reyes from further proceeding with the execution of the case.

---

[36] Original Records, vol. 1, p. 89.

[37] *Rollo,* pp. 94-109.

[38] *Id.* at p. 105.

[39] *Id*.

[40] *Id.* at p. 107.

[41] *Id*.

[42] *Id.* at p. 108.

Pending the respondent's appeal before the Court of Appeals, the petitioner then sought the execution of the reinstatement aspect of the decision of Labor Arbiter Amansec, praying to be reinstated to the position of union Shop Steward. He also filed a Motion for Issuance of a Break Open Order, which was granted on June 26, 2002 by Labor Arbiter Reyes. On the same day, the respondent filed an Appeal with a Prayer for Issuance of a Temporary Restraining Order and/or Writ of Permanent Injunction with the Third Division of the NLRC. The NLRC issued a Resolution[43] restraining Labor Arbiter Reyes, the Sheriff and the petitioner from further implementing the reinstatement aspect of the order.

Despite the NLRC order restraining the execution of the case, Labor Arbiter Reyes directed the garnishment of respondent's bank deposit in the amount of ₱874,756.92, and ordered the release of such amount to petitioner.[44]

On August 23, 2002, the respondent appealed Labor Arbiter Reyes' Order of garnishment and prayed for the issuance of a Temporary Restraining Order and/or a Writ of Preliminary Injunction. The Third Division of the NLRC issued the Temporary Restraining Order on October 23, 2002, and declared the Break Open Order as null and void.

The petitioner filed a Petition before the Court of Appeals, docketed as CA G.R. SP No. 77174, alleging that the NLRC erred in declaring the Break Open Order as null and void, and in restraining Labor Arbiter Reyes from implementing Labor Arbiter Amansec's Order for reinstatement.

While the respondent's appeal of the decision of Labor Arbiter Amansec was pending before the NLRC, the petitioner was retrenched by ATI from his position then as a Vessel Operation Checker. Consequently, the petitioner filed a separate case questioning the validity of his retrenchment. The case was terminated upon the execution of a Quit Claim and Release[45]

[43] *Id.* at pp. 115-129.

[44] *Id.* at p. 162.

[45] *Id.* at p. 342.

on February 26, 2003, which was duly executed by the parties before the Second Division of the NLRC in NLRC CA No. 032809-02. The Quit Claim and Release provides, to wit:

> COMES NOW, the undersigned complainant(s)/petitioner(s) in the above-entitled case(s) before this Office respectfully manifest:
>
> That for and in consideration of the sum of ₱350,000.00 plus 5% attorney's fees or a total amount of ₱367,500.00 to me/us paid by ASIAN TERMINALS, INC. in settlement as of the above-entitled case receipt of which is hereby acknowledged to my/our complete and full satisfaction. I/we hereby release or discharge the said ASIAN TERMINAL[S], INC. and its officer(s) from any claims arising from the above entitled case. It is understood that the settlement of this case is without prejudice to the other labor cases filed by complainant (CA-12858-97, NLRC Third Division).[46]

On March 22, 2005, the Special Third Division of the NLRC issued a Decision[47] resolving the consolidated appeals of the respondent on the issues of whether Labor Arbiter Reyes had correctly computed the awards and, thereafter proceeded with the execution of the dispositive portion of Labor Arbiter Amansec's decision which is pending appeal in the NLRC. The Special Third Division of the NLRC ruled that there is no need to execute the reinstatement aspect of the decision of Labor Arbiter Amansec since it has been rendered moot and academic by the petitioner's re-employment as Checker I prior to the rendition of Labor Arbiter Amansec's decision up to the time of his admitted retrenchment on October 21, 2001.

Thus, the petitioner filed a Petition for *Certiorari* under Rule 65 of the Rules of Court before the Court of Appeals, docketed as CA G.R. SP No. 68283. The petitioner contends that the NLRC erred when it declared that he is not entitled to be reinstated to the position of Shop Steward, despite its order to remand the case for clarification of the arbiter's decision. The petitioner further asserts that the NLRC abused its discretion in issuing a Temporary Restraining Order, enjoining Labor Arbiter Reyes from further proceeding with the execution of the reinstatement order.[48]

[46] *Id*.

[47] *Id.* at pp. 159-175.

[48] *Id.* at p. 311.

The Third Division of the Court of Appeals consolidated the two petitions, namely CA G.R. SP No. 68283 and CA G.R. SP No. 77174, and reversed the assailed Resolutions of the NLRC in a Decision,[49] promulgated on June 27, 2005. It ruled that the reinstatement aspect of the labor arbiter's decision is immediately executory and not even the filing of an appeal or the posting of a bond could forestall the same. However, the confusion remained as to which position the petitioner should be reinstated.

ATI filed a Motion for Reconsideration, praying that the petitions be dismissed for having been rendered moot and academic since the petitioner was already reinstated to the position of Checker I. The Court of Appeals issued an Amended Decision[50] on August 31, 2005, which vacated its earlier decision rendered on June 27, 2005, and ruled that the petitions at bar had been rendered moot and academic. It took note of the reinstatement of the petitioner to the position of Checker I and the March 22, 2005 Decision of the NLRC which dissolved all writs of execution and orders issued by the Labor Arbiter.[51]

The petitioner filed a Motion for Reconsideration before the former First Division of the Court of Appeals, praying that the amended decision, dated August 31, 2005 be vacated and set aside and the original decision dated June 27, 2005 be reinstated. The Court of Appeals reiterated that the factual findings of the NLRC with respect to the dismissal, reinstatement and retrenchment of the petitioner are predicated on substantial evidence and provide sufficient basis for considering the petitions moot and academic. Consequently, the Court of Appeals also held that the NLRC did not act with grave abuse of discretion in restraining the execution aspect of the Labor Arbiter's decision.[52]

Hence, this petition before us.

---

[49] *Id.* at pp. 307-318.

[50] *Id.* at pp. 211-215.

[51] *Id.* at p. 214.

[52] *Id.* at p. 219.

The petitioner argues that he is entitled to claim reinstatement as Shop Steward as well as the payment of his backwages pending the respondent's appeal. He further contends that the Court of Appeals erred in dismissing his consolidated petitions which prayed for the enforcement of his reinstatement as Shop Steward for being moot and academic.[53]

The respondent, on the other hand, maintains that both the NLRC and the Court of Appeals relied on substantial evidence in arriving at their decision that the consolidated petitions are already moot and academic in view of the previous reinstatement of the petitioner to Checker I and his retrenchment and separation from ATI since October 31, 2001.[54]

This case presents two issues: **(1) whether the petitioner should be reinstated to the position of Shop Steward and (2) whether the case has been rendered moot and academic.**

Before going into a discussion of these issues, we must clarify and provide a better understanding of the position of the union Shop Steward. The parties of this case, the NLRC and the Court of Appeals have assumed that the union Shop Steward is a company position, employed by respondent ATI. Thus, much of the discussion of the appellate court and the administrative agency has revolved around the supposed demotion of the petitioner from union Shop Steward to Checker I and whether there was cause for and due process in such demotion.

Union Shop Steward: A position within the union

The premise that the union Shop Steward is a position within the respondent company provides a faulty foundation to an already convoluted case. A cursory look at the responsibilities of a shop steward leads to the conclusion that it is a position within the union, and not within the company. A shop steward is appointed by the union in a shop, department, or plant and serves as representative of the union, charged with negotiating

---

[53] *Id.* at p. 443.

[54] *Id.* at p. 425.

and adjustment of grievances of employees with the supervisor of the employer.[55] He is the representative of the union members in a building or other workplace.[56] Black's Law Dictionary defines a shop steward as a union official elected to represent members in a plant or particular department. His duties include collection of dues, recruitment of new members and initial negotiations for the settlement of grievances.[57]

The position of the shop steward has been acknowledged to be a position within the union; and even in Section 2 of Rule XIX of the Implementing Rules of Book V of the Labor Code, as amended by DOLE Order 40-03,[58] the shop steward is understood to be a union officer who plays an important role in the grievance procedure. The shop steward is responsible for receiving complaints and grievances of the employees and for

---

[55] Webster's Third New International Dictionary, cited in *Santa Rosa Coca-Cola Plant Employees Union v. Coca-Cola Bottlers Phils., Inc.*, G.R. Nos. 164302-03, January 24, 2007, 512 SCRA 437.

[56] *Santa Rosa Coca-Cola Plant Employees Union v. Coca-Cola Bottlers Phils., Inc.*, G.R. Nos. 164302-03, January 24, 2007, 512 SCRA 437.

[57] 6th Edition, 1990.

[58] SECTION 2. Procedure in Handling Grievances. — In the absence of a specific provision in the collective bargaining agreement or existing company practice prescribing for the procedures in handling grievance, the following shall apply:

(a) An employee shall present this grievance or complaint orally or in writing to the shop steward. Upon receipt thereof, the shop steward shall verify the facts and determine whether or not the grievance is valid.

(b) If the grievance is valid, the shop steward shall immediately bring the complaint to the employee's immediate supervisor. The shop steward, the employee and his immediate supervisor shall exert efforts to settle the grievance at their level.

(c) If no settlement is reached, the grievance shall be referred to the grievance committee which shall have ten (10) days to decide the case.

Where the issue involves or arises from the interpretation or implementation of a provision in the collective bargaining agreement, or from any order, memorandum, circular or assignment issued by the appropriate authority in the establishment, and such issue cannot be resolved at the level of the shop steward or the supervisor, the same may be referred immediately to the grievance committee.

bringing these complaints to the immediate supervisor of the employee concerned. If the grievance is not settled through the efforts of the shop steward, it is referred to the grievance committee.

In the case of ***Santa Rosa Coca-Cola Plant Employees Union v. Coca-Cola Bottlers Phils., Inc.***,[59] Section 501(a)[60] and (b)[61] and Section 3(q)[62] of the Landrum Griffin Act of 1959 were used as the bases to conclude that the Shop Steward is an officer of the union. These provisions confirm that the Shop Steward

---

[59] G.R. Nos. 164302-03, January 24, 2007, 512 SCRA 437.

[60] Sec. 501 (a) The officers, agents, shop stewards, and other representatives of a labor organizations occupy positions of trust in relation to such organization and its members as a group. It is, therefore, the duty of each person, taking into account the special problems and functions of a labor organization, to hold its money and property solely for the benefit of the organization and its members and to manage, invest, and expend the same in accordance with its constitution and bylaws and any resolutions of the governing bodies adopted thereunder, to refrain from dealing with such organization as an adverse party in any matter connected with his duties and from holding or acquiring pecuniary or personal interest which conflicts with the interest of such organization, and to account to the organization for any profit received by him in whatever capacity in connection with transactions conducted by him or under his direction on behalf of the organization. A general exculpatory resolution of a governing body purporting to relieve any such person of liability for breach of the duties declared by this section shall be void as against public policy.

[61] Sec. 501 (b) When any officer, agent, shop steward, or representative of any labor organization is alleged to have violated the duties declared in subsection (a) of this section and the labor organization or its governing board or officers refuse or fail to sue or recover damages or secure an accounting or other appropriate relief within a reasonable time after being requested to do so by any member of the labor organization, such member may sue such officer, agent, shop steward, or representative in any district court of the United States or in any State court of competent jurisdiction to recover damages or secure an accounting or other appropriate relief for the benefit of the labor organization.

[62] Sec. 3 (q) "Officer, agent, shop steward, or other representative," when used with respect to a labor organization, includes elected officials and key administrative personnel, whether elected or appointed (such as business agents, heads of departments or major units, and organizers who exercise substantial independent authority), but does not include salaried non-supervisory professional staff, stenographic, and service personnel.

occupies a position of trust within the union. It may be an elective official within the union or key administrative personnel, and it is considered to be within the same class as union officers, agents and representatives. We have ruled in the case of **Santa Rosa Coca-Cola Plant Employees Union** that:

> x x x, a shop steward is appointed by the Union in a shop, department, or plant serves as representative of the Union, charged with negotiating and adjustment of grievances of employees with the supervisor of the employer. He is the representative of the Union members in a building or other workplace. Black's Law Dictionary defines a shop steward as a union official who represents members in a particular department. His duties include the conduct of initial negotiations for settlement of grievances. He is to help other members when they have concerns with the employer or other work-related issues. He is the first person that workers turn to for assistance or information. If someone has a problem at work, the steward will help them sort it out or, if necessary, help them file a complaint. In the performance of his duties, he has to take cognizance of and resolve, in the first instance, the grievances of the members of the Union. He is empowered to decide for himself whether the grievance or complaint of a member of the petitioner Union is valid, and if valid, to resolve the same with the supervisor failing which, the matter would be elevated to the Grievance Committee.
>
> It is quite clear that the jurisdiction of shop stewards and the supervisors includes the determination of the issues arising from the interpretation or even implementation of a provision of the CBA, or from any order or memorandum, circular or assignments issued by the appropriate authority in the establishment. In fine, they are part and parcel of the continuous process of grievance resolution designed to preserve and maintain peace among the employees and their employer. They occupy positions of trust and laden with awesome responsibilities.[63]

In the case at bar, the duties and responsibilities of the Shop Steward stated in the CBA between the union and the respondent company, as well as the manner of the appointment and designation of the Shop Steward show that the shop steward is a union position and not a position within the company.

---

[63] G.R. Nos. 164302-03, January 24, 2007, 512 SCRA 437, 465-466.

Intra-union Dispute

Since the Shop Steward is a union position, the controversy surrounding his recall from his position as Shop Steward becomes a dispute within the union.

An "Internal Union Dispute" or intra-union conflict refers to a conflict within or inside a labor union. It includes all disputes or grievances arising from any violation of or disagreement over any provision of the constitution and by-laws of a union, including any violation of the rights and conditions of union membership provided for in the Code.[64] Article 226 of the Labor Code of the Philippines[65] vests on the Bureau of Labor Relations and the Labor Relations Division jurisdiction to act on all inter-union or intra-union conflicts.

The records show that sometime after the appointment of the petitioner to union Shop Steward, the petitioner, along with other union members, had complaints with the manner in which the union leadership was handling the affairs of the union. At the same time, there were also complaints about the petitioner's habitual absenteeism and his inability to perform his duties as union Shop Steward. When a grievance committee was created to investigate these complaints, the petitioner refused to participate. This led to the recall of petitioner as the union Shop Steward.

The actions of the petitioner bolster the conclusion that his grievances were directed against the union and not the respondent company, making the dispute an intra-union dispute. The first Complaints filed by the petitioner were against the union and

---

[64] Book V, Rule I, Section 1(a), Omnibus Rules Implementing the Labor Code.

[65] ARTICLE 226. Bureau of Labor Relations — The Bureau of Labor Relations and the Labor Relations Division in the regional offices of the Department of Labor shall have original and exclusive authority to act, at their own initiative or upon request of either or both parties, on all inter-union and intra-union conflicts, and all disputes, grievances or problems arising from or affecting labor-management relations in all work places whether agricultural or non-agricultural, except those arising from the implementation or interpretation of collective bargaining agreements which shall be subject of grievance procedure and/or voluntary arbitration.

the Union President for illegal recall of his designation as Shop Steward. A Complaint was then filed before the DOLE Med-Arbiter praying for reinstatement to union Shop Steward and for the award of the salary differential while he was allegedly illegally demoted. But the money claims could not be brought before the union since the salaries of the petitioner were paid by the respondent company; thus, a Complaint for illegal demotion amounting to constructive dismissal was filed before the Labor Arbiter, against the union, union president and this time including respondent company and the president of the company.

Ruling of the Med-Arbiter Prevails: Invalid Recall

The Med-Arbiter, as affirmed by the Secretary of Labor, ruled that there was neither cause nor due process in the recall of the petitioner from the position of union Shop Steward. He found that the claim of loss of trust and confidence due to the petitioner's alleged absenteeism was not substantiated and that the recall was not approved by the Board of Directors of the union, as required by the APCWU Constitution and By-Laws.

The facts and findings of the Med-Arbiter and the Secretary of Labor are generally conclusive on appeal. This Court is not a trier of facts and it is not its function to examine and evaluate the probative value of all evidence presented to the concerned tribunal which formed the basis of its impugned decision, resolution or order. Following this, it is inappropriate to review the factual findings of the Med-Arbiter and the Secretary of Labor regarding the invalidity of the petitioner's recall due to a violation of the APCWU Constitution and By-Laws which requires that the recall must be approved by the union Board of Directors. They are binding on this Court as we are satisfied that they are supported by substantial evidence.

The Labor Arbiter's decision is void for want of jurisdiction

The Labor Arbiter incorrectly assumed jurisdiction over the case due to his confused understanding of the relationship between and among the petitioner, respondent company and the union

and his decision on the merits of the case is void for lack of jurisdiction. His disposition of the case, ordering the respondent to pay indemnity for failure to observe due process in the supposed demotion of the petitioner from union Shop Steward to Checker I, cannot be upheld.

The Labor Arbiter held that the respondent company should not have merely affirmed the recommendation of the union to recall the petitioner and return him to Checker I, his previous position. He reasons that the respondent should have conducted its own investigation before it supposedly demoted petitioner from union Shop Steward to Checker I. The requirements imposed on an employer for the valid demotion of an employee do not apply to the reversion of petitioner from union Shop Steward to Checker I because the decision to recall the petitioner from union Shop Steward to Checker I is for the union, not the respondent company, to make. The respondent cannot and should not conduct its own investigation to determine whether the union had cause to recall the petitioner from union Shop Steward because the dispute is an intra-union dispute.

Petitioner cannot be reinstated to Shop Steward due to his valid retrenchment

Notwithstanding the determination of the Med-Arbiter, as affirmed by the Secretary of Labor, that the petitioner should be reinstated to the position of Shop Steward, which is binding on this Court, the petitioner could not be reinstated to the position of Shop Steward because his eventual separation from respondent ATI made reinstatement unfeasible. Employment with respondent ATI and membership in the union are required in order to occupy the position of Shop Steward. But the petitioner is neither a member of the union nor employed with respondent ATI. He was already retrenched from respondent ATI since October 21, 2001, and his retrenchment was finally settled through the execution of a Quit Claim and Release which was executed before the Second Division of the NLRC in NLRC CA No. 032809-02. The Quit Claim and Release provides that in consideration of the receipt of ₱367,500.00, the petitioner

discharges respondent ATI and its officers from any claims arising from his retrenchment, without prejudice to the present labor case filed by the petitioner.

The present labor case proceeded despite the execution of the Quit Claim and Release. However, the resolution of this petition is inevitably affected by the retrenchment of the petitioner from respondent ATI. Because of the petitioner's retrenchment, which was finally settled through the Quit Claim and Release, any order for the reinstatement of the petitioner to the position of union Shop Steward can no longer be executed by the union since the petitioner had been retrenched by the company. The petitioner cannot also be reinstated to the position of Checker I, since he was already retrenched by the respondent from such position and he released the company from any and all claims with respect to his retrenchment.

It may seem that the outcome of this case provides no relief for the petitioner despite his invalid removal from the position of union Shop Steward, but the reinstatement of the petitioner could not be forced into the present circumstances because the petitioner is no longer employed by the respondent company. It is a fact that we cannot avoid and must consider in resolving this case. He was already compensated for his retrenchment from ATI, and he released respondent ATI from any and all claims or liability with respect to his separation from employment due to retrenchment. To order the respondent company to reinstate the petitioner to his employment in ATI would render the Quit Claim and Release nugatory.

The events which have taken place during the pendency of the case have rendered the present petition moot and academic. So also in the case of ***Honesto B. Villarosa v. Hon. Cresenciano B. Trajano***[66] it was held that the case to determine who won in an election of union officers was rendered moot and academic by the expiration of the term of the private respondents by operation of law. Citing the case of ***Manalad v. Trajano***,[67] this Court ruled that:

[66] G.R. No. 73679, July 23, 1992, 211 SCRA 685.

[67] G.R. Nos. 72772-73, June 28, 1989, 174 SCRA 328.

x x x It is pointless and unrealistic to insist on annulling an election of officers whose terms had already expired. We would have thereby a judgment on a matter which cannot have any practical legal effect upon a controversy, even if existing, and which, in the nature of things, cannot be enforced. We must consequently abide by our consistent ruling that where certain events or circumstances have taken place during the pendency of the case which would render the case moot and academic, the petition should be dismissed.[68]

So also in the case at bar, a judgment of reinstatement of the petitioner to the position of union Shop Steward would have no practical legal effect since it cannot be enforced. Based on the requirements imposed by law and the APCWU-ATI CBA, and in the nature of things, the subsequent separation of the petitioner from employment with respondent ATI has made his reinstatement to union Shop Steward incapable of being enforced.

IN VIEW WHEREOF, the petition is *DISMISSED* for being *MOOT* and *ACADEMIC*. No costs.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 175375. June 23, 2009]

CONRADO O. LASQUITE and TEODORA I. ANDRADE, *petitioners, vs.* **VICTORY HILLS, INC.,** *respondent.*

---

[68] *Honesto B. Villarosa v. Hon. Cresenciano B. Trajano,* G.R. No. 73679, July 23, 1992, 211 SCRA 685, 691.

SYLLABUS

1. REMEDIAL LAW; APPEALS; FINDINGS OF FACT OF THE COURT OF APPEALS ARE CONCLUSIVE AND BINDING ON THE COURT; EXCEPTIONS. — Often cited but rarely heeded is the rule that the Supreme Court is not a trier of facts. In the exercise of its power of review, the Court does not normally undertake a re-examination of the evidence presented by the contending parties during the trial of the case considering that the findings of fact of the Court of Appeals are conclusive and binding on the Court. However, there are several recognized exceptions in which factual issues may be resolved by this Court. Two of these exceptions find application in the present case, to wit: (1) when the findings of fact of the appellate court are contrary to those of the trial court; and (2) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record.

2. CIVIL LAW; LAND REGISTRATION; RULE ON SUCCESSIVE REGISTRATION. — The relocation survey conducted by the DENR on October 25, 1993 positively confirmed that the mother title of respondent's TCT and the OCTs of petitioners cover the same land. We are confronted, therefore, with a case of successive registration, in the event of which we have been constantly guided that: In successive registrations, where more than one certificate is issued in respect of a particular estate or interest in land, the person claiming under the prior certificate is entitled to the estate or interest; and the person is deemed to hold under the prior certificate who is the holder of, or whose claim is derived directly or indirectly from the person who was the holder of the earliest certificate issued in respect thereof. However, we find that the circumstances attendant in this case militate against a forthright application of this rule.

3. REMEDIAL LAW; EVIDENCE; AUTHENTICATION AND PROOF; PUBLIC DOCUMENTS; THE EVIDENTIARY VALUE THEREOF MUST BE SUSTAINED, ABSENT STRONG, COMPETENT AND CONCLUSIVE PROOF OF ITS FALSITY OR NULLITY; CASE AT BAR. — Section 105 of Act No. 2874, the governing law when Homestead Patent No. H-19562 was purportedly issued, speaks of who must sign the patents and certificates granted pursuant to the Act: Sec. 105. **All patents** or **certificates for lands** granted under this

Act shall be prepared in the Bureau of Lands and shall issue in the name of the Government of the Philippine Islands **under the signature of the Governor-General, countersigned by the Secretary of Agriculture and Natural Resources**, but such patents or certificates shall be effective only for the purposes defined in section one hundred and twenty-two of the Land Registration Act; and the actual conveyance of the land shall be effected only as provided in said section. Noteworthy, Section 47 of Act No. 496 or the Land Registration Act provides that a certified true copy of an original certificate of title shall be admissible as evidence in our courts and shall be conclusive as to all matters contained therein except as otherwise provided by the Act. This is complementary to the rule on the admissibility of public documents as evidence under Section 23, Rule 132 of the Rules of Court: xxx Thus, the evidentiary value of public documents must be sustained in the absence of strong, complete and conclusive proof of its falsity or nullity. In the case at bar, the appellate court gave credence to the certified true copy of OCT No. 380 as proof of ownership of respondent's predecessor. Yet, it is readily apparent from a cursory reading of said copy that OCT No. 380 was supposedly signed, not by the Secretary of Agriculture and Natural Resources, as mandated by law, but by the Secretary of Agriculture and Commerce. Hence, it is plain to see that to give OCT No. 380 probative value in court would be to allow variance or an evasion or circumvention of the requirement laid down in Section 105 of Act No. 2874. We are thus warned that any title sourced from the flawed OCT No. 380 could be void. On this basis, we are justified to consider with great care any claims derived therefrom.

4. ID.; ID.; ID.; ID.; RECORDS OF PUBLIC OFFICERS WHICH ARE ADMISSIBLE IN EVIDENCE ARE LIMITED TO THOSE MATTERS WHICH THE PUBLIC OFFICER HAS AUTHORITY TO RECORD; IT IS BEYOND THE POWER OF THE REGISTER OF DEEDS TO REGISTER A PUBLIC LAND BASED ON A NON-EXISTENT PATENT.— What taints OCT No. 380 even more is the fact that the records of the Community Environment and Natural Resources Office (CENRO) are devoid of evidence to prove that Homestead Patent No. H-19562, much less a patent application for Lot No. 3050 with the Bureau of Lands ever existed. The certification from the Bureau of Lands that Lot No. 3050 was surveyed in the

name of Jose Manahan suggests, at best, that he was a survey claimant. Neither do we find the derivative titles of OCT No. 380 free from any taint of irregularity. While TCT No. 46219 in the name of Hieras indicated January 4, 1937 as the original registration date of Lot No. 3050, the TCTs of subsequent transferees designated a different date – May 17, 1944. True, a duly-registered certificate of title is considered a public document and the entries found in it are presumed correct, unless the party who contests its accuracy can produce evidence establishing otherwise. Even then, records of public officers which are admissible in evidence are limited to those matters which the public officer has authority to record. Indisputably, it was beyond the power of the Register of Deeds to register a public land based on an invalid, much worse, a non-existent patent. To sanction an otherwise invalid document in the guise of upholding the stability of our land registration system would run counter to the judicial devotion towards purging the system of illicit titles, in accordance with our base task as the ultimate citadel of justice and legitimacy.

5. CIVIL LAW; LAND REGISTRATION; RECONVEYANCE OF TITLE; PARTY SEEKING SHOULD ESTABLISH BY CLEAR AND CONVINCING EVIDENCE OWNERSHIP OF THE LAND SOUGHT TO BE RECONVEYED. — The established legal principle in actions for annulment or reconveyance of title is that a party seeking it should establish not merely by a preponderance of evidence but by clear and convincing evidence that the land sought to be reconveyed is his. It is rather obvious from the foregoing disquisition that respondent failed to dispense such burden. Indeed, the records are replete with proof that respondent declared the lots comprising Lot No. 3050 for taxation purposes only after it had instituted the present case in court. This is not to say of course that tax receipts are evidence of ownership, since they are not, albeit they are good indicia of possession in the concept of owner, for no one would ordinarily be paying taxes for a property not in his actual or at least constructive possession. Other than paying taxes from 1994-1997, however, respondent has not shown that it exercised dominion over Lot No. 3050. In contrast, petitioner Lasquite has been continuously paying taxes on the land since 1972, and has utilized the land as a farm, planted fruit trees and raised goats thereon. Petitioners have likewise built structures and managed to entrust the property

to the care of certain individuals without any objection from respondent.

6. ID.; ID.; ID.; FORGERY CANNOT BE PRESUMED BUT SHOULD BE SUBSTANTIATED WITH CLEAR AND CONVINCING EVIDENCE. — Respondent avers that petitioner Lasquite forged the Deed of Quitclaim/Assignment of Rights to make it appear that Jose Manahan conveyed Lot No. 3050 to him. It must be stressed, however, that whoever alleges forgery has the burden of proving the same. Forgery cannot be presumed but should be substantiated with clear and convincing evidence.

7. ID.; ID.; ID.; PRESCRIPTIVE PERIOD; REFERENCE POINT; PRESCRIPTIVE PERIOD APPLIES ONLY WHEN THE PLAINTIFF, AS THE REAL OWNER OF THE PROPERTY IS NOT IN POSSESSION THEREOF. — Relevant to the issue of prescription, we have ruled that to determine when the prescriptive period commenced in an action for reconveyance, the plaintiff's possession of the disputed property is material. An action for reconveyance based on an implied trust prescribes in 10 years. The reference point of the 10-year prescriptive period is the date of registration of the deed or the issuance of the title. The prescriptive period applies only if there is an actual need to reconvey the property as when the plaintiff is not in possession of the property. However, if the plaintiff, as the real owner of the property also remains in possession of the property, the prescriptive period to recover title and possession of the property does not run against him. In such a case, an action for reconveyance, if nonetheless filed, would be in the nature of a suit for quieting of title, an action that is imprescriptible. The records reveal that it was only on January 11, 1994 or nearly 13 years after OCT Nos. NP-197 and NP-198 were issued that respondent filed a Motion for Leave to Admit Complaint in Intervention and Complaint in Intervention before the RTC of Rizal. Nevertheless, respondent claimed to be in actual possession *in concepto de dueno* of a sizeable portion of Lot No. 3050. Thus, the action assumed the nature of a suit to quiet title; hence, imprescriptible. However, in our view, respondent Victory Hills has failed to show its entitlement to a reconveyance of the land subject of the action.

APPEARANCES OF COUNSEL

Conrado O. Lasquite for petitioners.
Farcon Gabriel Farcon & Associates for respondent.

D E C I S I O N

QUISUMBING, *J.*:

This appeal seeks to annul the Decision[1] dated November 8, 2006 of the Court of Appeals in CA G.R. CV No. 77599. The Court of Appeals had set aside the Decision[2] dated July 2, 2002 of the Regional Trial Court (RTC) of San Mateo, Rizal, Branch 77 in Civil Case No. 548 which upheld Original Certificate of Title (OCT) Nos. NP-197[3] and NP-198,[4] in the names of petitioners Andrade and Lasquite, respectively.

The antecedent facts are as follows:

On May 4, 1971, Jose Manahan[5] executed a Deed of Quitclaim/ Assignment of Rights[6] over a parcel of land designated as Lot No. 3050 at Barrio Ampid, San Mateo, Rizal in favor of Conrado O. Lasquite. Lasquite applied for a free patent over the lot, and pending approval of the application, sold half of the land to Juanito L. Andrade on January 11, 1981.[7] Upon the grant of the patent application, OCT Nos. NP-197 and NP-198 were issued in the names of Andrade and Lasquite, respectively, on June 18, 1981.

---

[1] *Rollo*, pp. 16-31. Penned by Associate Justice Rosmari D. Carandang, with Associate Justices Renato C. Dacudao and Estela M. Perlas-Bernabe concurring.

[2] CA *rollo*, pp. 84-105. Penned by Judge Francisco C. Rodriguez, Jr.

[3] Exhibit "19", folder of exhibits of defendant in Civil Case No. 548, p. 29.

[4] Exhibit "16", folder of exhibits of defendant in Civil Case No. 548, p. 23.

[5] Referred to as Jose M. Manahan, Jose H. Manahan and Jose S. Manahan in some parts of the records.

[6] Exhibit "1-A", folder of exhibits of defendant in Civil Case No. 548, p. 1.

[7] Exhibits "13" and "13-A", folder of exhibits of defendant in Civil Case No. 548, p. 16.

Thereafter, on August 22, 1983[8] and October 22, 1983,[9] Simeona, Armentina, Herminia, Zenaida, Gloria, Yolanda and Rodolfo, all surnamed Prescilla, filed a protest with the Bureau of Lands to question the grant of free patent in favor of petitioners. They claimed to have been in possession in *concepto de dueno* of Lot No. 3050, planting and cultivating crops thereon since 1940. On March 8, 1989, the Prescillas also instituted a case for reconveyance and damages against petitioners before the RTC of San Mateo, Rizal, Branch 77 which was docketed as Civil Case No. 548-SM. They alleged that Lasquite forged the signature of Jose M. Manahan in the Deed of Quitclaim/Assignment of Rights since the latter has died on April 11, 1968.[10]

It also appears that a second complaint,[11] for annulment of title, reconveyance and damages, was filed by Roberto and Raquel Manahan, Maria Gracia M. Natividad, the heirs of Leocadio Manahan, and the heirs of Joaquin Manahan against petitioners on June 1, 1990. The Manahans asserted title over Lot No. 3050 as successors of Jose S. Manahan whom they claimed to have died on October 12, 1947.[12] The case was docketed as Civil Case No. 680-90-SM and raffled to Branch 76 of the San Mateo, Rizal RTC. Upon learning of Civil Case No. 548-SM initiated by the Prescillas against petitioners, the Manahans filed a Complaint in Intervention[13] on June 23, 1993, and Civil Case No. 680-90-SM was consolidated with Civil Case No. 548-SM.

It also appears that on January 11, 1994, respondent Victory Hills, Inc. (Victory Hills) also intervened in Civil Case No. 548-SM. Victory Hills likewise claimed to be the owner of the subject lot. Victory Hills traced its title to Lot No. 3050 to OCT No.

---

[8] Records (Civil Case No. 548), Vol. 1, p. 13.

[9] *Id.* at 14.

[10] Records (Civil Case No. 548), Vol. 2-B, p. 102.

[11] Records (Civil Case No. 680-90-SM), pp. 2-5.

[12] Exhibit "A," folder of exhibits of Victory Hills, Inc. in Civil Case No. 548, p. 1.

[13] Records (Civil Case No. 548), Vol. 1, pp. 355-361.

380[14] which was allegedly registered on January 4, 1937 to Jose H. Manahan by virtue of Homestead Patent No. H-19562[15] dated December 14, 1936. According to Victory Hills, Jose H. Manahan sold Lot No. 3050 to Rufino Hieras on May 17, 1944 to whom Transfer Certificate of Title (TCT) No. 46219[16] was issued. Hieras then conveyed the lot to spouses Serafin and Veronica Angeles, and Catalina Cayetano who obtained TCT No. 85082[17] in their names. Later, the lot was transferred to Victory Hills on September 6, 1961 under TCT No. 90816.[18]

On November 27, 1991, Victory Hills filed an *Ex-Parte* Motion for Relocation Survey[19] with the Department of Environment and Natural Resources (DENR). Upon grant of the motion, the DENR released a Narration Report of the Relocation Survey[20] on December 9, 1993. The report noted that:

x x x x x x x x x

1. **H-19562** and H-19887 had been accepted by Cad. 375-D, San Mateo Cadastre and **identical to Lot [No.] 3050** and Lot [No.] 258 respectively[;]

2. H-19562 had been issued a free patent and Original Certificate of Title No. 380 in favor [of] Jose Manahan on June 4, 1937. That said title was transferred to Rufin[o] Hieras on May 17, 1944 with TCT [No.] 46219, cancelling O[CT] [No.] 3[8]0. Again TCT [No.] 46219-T-237 was cancelled and TCT [No.]

---

[14] Records (Civil Case No. 548), Vol. 2-B, p. 101.

[15] *Id*.

[16] Exhibits "B," "B-1" and "B-2," folder of exhibits of Victory Hills, Inc. in Civil Case No. 548, pp. 235-236.

[17] Exhibits "C," "C-1" and "C-2," folder of exhibits of Victory Hills, Inc. in Civil Case No. 548, pp. 237-238.

[18] Exhibits "D," "D-1" and "D-2," folder of exhibits of Victory Hills, Inc. in Civil Case No. 548, pp. 239-240.

[19] Exhibit "H," folder of exhibits of Victory Hills, Inc. in Civil Case No. 548, p. 114.

[20] Exhibit "J," folder of exhibits of Victory Hills, Inc. in Civil Case No. 548, pp. 117-118.

[8]5082 was issued to [Spouses] Serafin Angeles and [Veronica] D. Angeles and Catalina Cayetano [on] March 17, 1961;

3. A consolidate[d] subdivision survey of H-19562 and H-19887 had been approved by the LRC designated as plan (LRC) Pcs [-] [1586] surveyed June 1-15, 1961; which was not projected in Cad. 375-D, San Mateo Cadastre;

4. Lot [No.] 3050 which is identical to H-19562 was subdivided and designated as plan Cad-04-002023-D, into two lots. (Emphasis supplied.)[21]

x x x x x x x x x

Notwithstanding the said report, Branch 77 of the Rizal RTC, on July 2, 2002, promulgated a Decision which upheld the title of petitioners to Lot No. 3050. It decreed:

Accordingly, the title of defendants, Conrado Lasquite and Jose Andrade, involving the subject parcel of land under OCT No. NP-198 and OCT No. NP-197 registered on June 18, 1981, are sustained. Likewise, the title issued to plaintiffs Prescilla, under OCT No. ON-333 involving Lot 3052 is sustained.

WHEREFORE, premises considered, judgment is hereby rendered dismissing these cases.

No Costs.

SO ORDERED.[22]

The trial court disregarded OCT No. 380 and ruled that it was spurious as it lacked the signature of then Secretary of Agriculture and Commerce Eulogio Rodriguez. The RTC also ruled that the complaints for reconveyance of the Precillas, the Manahans and Victory Hills, which were all founded on extrinsic fraud, had prescribed since more than four (4) years have elapsed since the land was registered before they filed cases in court.

The Prescillas, the Manahans and Victory Hills interposed an appeal to the Court of Appeals. On November 8, 2006, the appellate court set aside the ruling of the RTC and declared

[21] *Id.* at 117.

[22] CA *rollo*, p. 105.

Victory Hills the absolute owner of Lot No. 3050. The appellate court ruled:

> WHEREFORE, the Decision dated July 2, 2002 rendered by the Regional Trial Court of San Mateo, Rizal, Branch 77 is **ANNULLED** and **SET ASIDE** and a new one entered **DECLARING** VICTORY HILLS, INC. the absolute owner of the parcel of land designated as Lot 3050 subject of the instant case and **ORDERING** the Register of Deeds of Rizal to cancel OCT No. NP-198 and OCT No. NP-197 in the names of defendants-appellees Conrado Lasquite and Juanito Andrade.
>
> SO ORDERED.[23]

Aggrieved, petitioners elevated the case to us. Petitioners contend that the Court of Appeals erred in

I.

…HOLDING THAT RESPONDENT'S OCT NO. 380 AND HOMESTEAD PATENT NO. H-19562 ARE VALIDLY ISSUED;

II.

…HOLDING THAT RESPONDENT VICTORY HILLS, INC. HAS A BETTER RIGHT OF TITLE AND OWNERSHIP OVER THE SUBJECT PROPERTY *VIS-A-VIS* PETITIONERS CONRADO O. LASQUITE AND TEODORA I. ANDRADE;

III.

…GIVING WEIGHT AND CREDENCE TO RESPONDENT'S HOMESTEAD PATENT NO. H-19562 DESPITE THE FACT THAT A COPY OF SAID HOMESTEAD PATENT WAS NEVER PRESENTED DURING THE TRIAL NOR IN THE APPEAL;

IV.

…HOLDING THAT OCT NO. 380 IS AN *EN TOTO* TRANSCRIPTION OF HOMESTEAD PATENT NO. H-19562 NOTWITHSTANDING THE FACT THAT NO EVIDENCE RELATIVE THERETO WAS ADDUCED IN THE LOWER COURT;

---

[23] *Id.* at 264-265.

V.

…NOT RESOLVING THE ISSUE THAT RESPONDENT'S CLAIM HAD ALREADY PRESCRIBED.[24]

Condensed, the twin issues for our determination are: (1) whether respondent Victory Hills, Inc. is entitled to reconveyance of Lot No. 3050; and (2) whether respondent's claim had prescribed.

Petitioners assail the validity of OCT No. 380 as the source of respondent's derivative title. They fault the appellate court for according weight to the certificate of title even if it does not bear the signature of the Secretary of Agriculture and Commerce. They stress that the Bureau of Lands has no record of Patent No. H-19562 which respondent cited as the basis for the issuance of its title to Lot No. 3050 and yet the appellate court still concluded that the transcription of Patent No. H-19562 in OCT No. 380 was conclusive proof of its due execution. Petitioners likewise call for a review of the facts in this case owing to the conflicting findings of the RTC and the Court of Appeals.

On the other hand, respondent relies on OCT No. 380 as evidence of the earlier registration of Lot No. 3050 in the name of its predecessor, Jose H. Manahan. Such recording, respondent asserts, has rendered OCT No. 380 indefeasible one year following its issuance on January 4, 1937 and has effectively segregated Lot No. 3050 from the domain of public lands. Respondent further justifies that the notation "sgd" in OCT No. 380 was sufficient indication that the original copy of Homestead Patent No. H-19562 had been signed by then Secretary of Agriculture and Commerce Eulogio Rodriguez. In any case, respondent invokes the presumption of regularity in the performance of duty by the Register of Deeds in issuing OCT No. 380. It finally argues against the issue of prescription since petitioners raised the same only for the first time on appeal.

Often cited but rarely heeded is the rule that the Supreme Court is not a trier of facts. In the exercise of its power of review, the Court does not normally undertake a re-examination

---

[24] *Rollo*, pp. 127-128.

of the evidence presented by the contending parties during the trial of the case considering that the findings of fact of the Court of Appeals are conclusive and binding on the Court. However, there are several recognized exceptions[25] in which factual issues may be resolved by this Court. Two of these exceptions find application in the present case, to wit: (1) when the findings of fact of the appellate court are contrary to those of the trial court;[26] and (2) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record.

The assailed Decision of the Court of Appeals upheld OCT No. 380 as the origin of TCT No. 90816 in the name of respondent Victory Hills. The appellate court ruled that the homestead patent which was awarded to respondent's predecessor, Jose H. Manahan, in 1936 cannot simply be defeated by the subsequent grant of free patent to petitioners 45 years later. It accepted the transcript of Homestead Patent No. H-19562 in OCT No. 380 as a faithful reproduction of the original. Also, the Court of Appeals recognized the notation "sgd" in OCT No. 380 as customary to signify that the original copy of the patent had been signed by the Secretary of Agriculture and Commerce.

---

[25] *Delos Santos v. Elizalde*, G.R. Nos. 141810 and 141812, February 2, 2007, 514 SCRA 14, 33.

The recognized exceptions to this rule are: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.

[26] *Buenaventura v. Republic*, G.R. No. 166865, March 2, 2007, 517 SCRA 271, 282.

After carefully poring over all the evidence submitted in this case, we find the petition to be impressed with merit.

The relocation survey conducted by the DENR on October 25, 1993 positively confirmed that the mother title of respondent's TCT and the OCTs of petitioners cover the same land. We are confronted, therefore, with a case of successive registration, in the event of which we have been constantly guided that:

> In successive registrations, where more than one certificate is issued in respect of a particular estate or interest in land, the person claiming under the prior certificate is entitled to the estate or interest; and the person is deemed to hold under the prior certificate who is the holder of, or whose claim is derived directly or indirectly from the person who was the holder of the earliest certificate issued in respect thereof.[27]

However, we find that the circumstances attendant in this case militate against a forthright application of this rule.

Section 105 of Act No. 2874,[28] the governing law when Homestead Patent No. H-19562 was purportedly issued, speaks of who must sign the patents and certificates granted pursuant to the Act:

> Sec. 105. **All patents** or **certificates for lands** granted under this Act shall be prepared in the Bureau of Lands and shall issue in the name of the Government of the Philippine Islands **under the signature of the Governor-General, countersigned by the Secretary of Agriculture and Natural Resources**, but such patents or certificates shall be effective only for the purposes defined in section one hundred and twenty-two of the Land Registration Act; and the actual conveyance of the land shall be effected only as provided in said section. (Emphasis supplied.)

---

[27] *Manotok Realty, Inc. v. CLT Realty Development Corporation*, G.R. Nos. 123346 and 134385, December 14, 2007, 540 SCRA 304, 336.

[28] AN ACT TO AMEND AND COMPILE THE LAWS RELATIVE TO LANDS OF THE PUBLIC DOMAIN, AND FOR OTHER PURPOSES, approved on November 29, 1919.

Noteworthy, Section 47[29] of Act No. 496 or the Land Registration Act[30] provides that a certified true copy of an original certificate of title shall be admissible as evidence in our courts and shall be conclusive as to all matters contained therein except as otherwise provided by the Act. This is complementary to the rule on the admissibility of public documents as evidence under Section 23, Rule 132 of the Rules of Court:

> SEC. 23. *Public documents as evidence.* — Documents consisting of entries in public records made in the performance of a duty by a public officer are *prima facie* evidence of the facts therein stated. All other public documents are evidence, even against a third person, of the fact which gave rise to their execution and of the date of the latter.

Thus, the evidentiary value of public documents must be sustained in the absence of strong, complete and conclusive proof of its falsity or nullity.[31]

In the case at bar, the appellate court gave credence to the certified true copy of OCT No. 380 as proof of ownership of respondent's predecessor. Yet, it is readily apparent from a cursory reading of said copy that OCT No. 380 was supposedly signed,[32] not by the Secretary of Agriculture and Natural Resources, as mandated by law, but by the Secretary of Agriculture and Commerce. Hence, it is plain to see that to give OCT No. 380

---

[29] SEC 47. The original certificate in the registration book, any copy thereof duly certified under the signature of the clerk, or of the register of deeds of the province or city where the land is situated, and the seal of the court, and also the owner's duplicate certificate, shall be received as evidence in all the courts of the Philippine Islands and shall be conclusive as to all matters contained therein except as far as otherwise provided in this Act.

[30] AN ACT TO PROVIDE FOR THE ADJUDICATION AND REGISTRATION OF TITLES TO LANDS IN THE PHILIPPINE ISLANDS, approved on November 6, 1902.

[31] *Palileo v. National Irrigation Administration*, G.R. No. 148574, October 11, 2005, 472 SCRA 288, 297.

[32] CA *rollo*, pp. 104-105. Acting Deputy Register of Deeds of Rizal Rolando Golla testified that the original OCT No. 380 on file with the Registry of Deeds of Rizal bore only the notation "sgd" before the name of the Secretary of Agriculture and Commerce (TSN, June 16, 1999, pp.14-16).

probative value in court would be to allow variance or an evasion or circumvention of the requirement laid down in Section 105 of Act No. 2874. We are thus warned that any title sourced from the flawed OCT No. 380 could be void. On this basis, we are justified to consider with great care any claims derived therefrom.

What taints OCT No. 380 even more is the fact that the records of the Community Environment and Natural Resources Office (CENRO) are devoid of evidence to prove that Homestead Patent No. H-19562,[33] much less a patent application[34] for Lot No. 3050 with the Bureau of Lands ever existed. The certification[35] from the Bureau of Lands that Lot No. 3050 was surveyed in the name of Jose Manahan suggests, at best, that he was a survey claimant. Neither do we find the derivative titles of OCT No. 380 free from any taint of irregularity. While TCT No. 46219 in the name of Hieras indicated January 4, 1937 as the original registration date of Lot No. 3050, the TCTs of subsequent transferees designated a different date – May 17, 1944.

True, a duly-registered certificate of title is considered a public document and the entries found in it are presumed correct, unless the party who contests its accuracy can produce evidence establishing otherwise.[36] Even then, records of public officers which are admissible in evidence are limited to those matters which the public officer has authority to record.[37] Indisputably, it was beyond the power of the Register of Deeds to register a public land based on an invalid, much worse, a non-existent patent. To sanction an otherwise invalid document in the guise of upholding the stability of our land registration system would run counter to the judicial

---

[33] Exhibits "FF" and "FF-1", folder of exhibits of Victory Hills, Inc. in Civil Case No. 548, p. 61.

[34] Exhibits "DD" and "DD-1", folder of exhibits of Victory Hills, Inc. in Civil Case No. 548, p. 59.

[35] Exhibit "Q", folder of exhibits of Victory Hills, Inc. in Civil Case No. 548, p. 29.

[36] Cf. *Delfin v. Billones*, G.R. No. 146550, March 17, 2006, 485 SCRA 38, 52-53.

[37] *Crisolo v. Macadaeg, et al.*, 94 Phil. 862, 866 (1954).

devotion towards purging the system of illicit titles, in accordance with our base task as the ultimate citadel of justice and legitimacy.[38]

The established legal principle in actions for annulment or reconveyance of title is that a party seeking it should establish not merely by a preponderance of evidence but by clear and convincing evidence that the land sought to be reconveyed is his.[39] It is rather obvious from the foregoing disquisition that respondent failed to dispense such burden. Indeed, the records are replete with proof that respondent declared the lots comprising Lot No. 3050 for taxation purposes only after it had instituted the present case in court. This is not to say of course that tax receipts are evidence of ownership, since they are not, albeit they are good indicia of possession in the concept of owner, for no one would ordinarily be paying taxes for a property not in his actual or at least constructive possession.[40]

Other than paying taxes from 1994-1997, however, respondent has not shown that it exercised dominion over Lot No. 3050. In contrast, petitioner Lasquite has been continuously paying taxes on the land since 1972,[41] and has utilized the land as a farm, planted fruit trees and raised goats thereon. Petitioners have likewise built structures and managed to entrust the property to the care of certain individuals without any objection from respondent.

Respondent avers that petitioner Lasquite forged the Deed of Quitclaim/Assignment of Rights to make it appear that Jose Manahan conveyed Lot No. 3050 to him. It must be stressed, however, that whoever alleges forgery has the burden of proving the same. Forgery cannot be presumed but should be substantiated with clear and convincing evidence.[42]

---

[38] *Manotok Realty, Inc. v. CLT Realty Development Corporation*, *supra* note 27, at 319.

[39] *Id.* at 344-345.

[40] *Premiere Development Bank v. Court of Appeals*, G.R. Nos. 128122, 128184 and 128229, March 18, 2005, 453 SCRA 630, 651.

[41] Exhibit "10", folder of exhibits of defendant in Civil Case No. 548, p. 13.

[42] *Aznar Brothers Realty Company v. Court of Appeals*, G.R. No. 128102, March 7, 2000, 327 SCRA 359, 374.

Regrettably, Victory Hills was unable to establish that the Jose H. Manahan from whom it derived its title is the same Jose Manahan from whom petitioner Lasquite bought Lot No. 3050. During the trial of this case, several death certificates had been proferred by the parties, *albeit*, inconclusive to establish the identity of Jose Manahan as the common origin of all their titles. Respondent Victory Hills obtained its title from Jose H. Manahan. Meanwhile, the records disclose that the Jose S. Manahan from whom the Manahans derived title was 54 years old and married when he died of infectious hepatitis on October 12, 1947.[43] For their part, the Prescillas traced their title from Jose M. Manahan, who was supposedly 68 years old and single when he succumbed to acute myocardial infarction on April 11, 1968.[44] This was however belied by the List of Register of Deaths in the Municipality of San Mateo Rizal for the year 1968.[45]

Relevant to the issue of prescription, we have ruled that to determine when the prescriptive period commenced in an action for reconveyance, the plaintiff's possession of the disputed property is material. An action for reconveyance based on an implied trust prescribes in 10 years. The reference point of the 10-year prescriptive period is the date of registration of the deed or the issuance of the title. The prescriptive period applies only if there is an actual need to reconvey the property as when the plaintiff is not in possession of the property. However, if the plaintiff, as the real owner of the property also remains in possession of the property, the prescriptive period to recover title and possession of the property does not run against him. In such a case, an action for reconveyance, if nonetheless filed, would be in the nature of a suit for quieting of title, an action that is imprescriptible.[46]

---

[43] Records (Civil Case No. 548), Vol. 2-B, p. 103.

[44] *Id.* at 102.

[45] Exhibits "23", "23-A", "23-B", "23-C" and "23-D", folder of exhibits of defendant in Civil Case No. 548, pp. 33-37.

[46] *Aguirre v. Heirs of Lucas Villanueva*, G.R. No. 169898, June 8, 2007, 524 SCRA 492, 494.

The records reveal that it was only on January 11, 1994 or nearly 13 years after OCT Nos. NP-197 and NP-198 were issued that respondent filed a Motion for Leave to Admit Complaint in Intervention[47] and Complaint in Intervention[48] before the RTC of Rizal. Nevertheless, respondent claimed to be in actual possession *in concepto de dueno* of a sizeable portion of Lot No. 3050. Thus, the action assumed the nature of a suit to quiet title; hence, imprescriptible.

However, in our view, respondent Victory Hills has failed to show its entitlement to a reconveyance of the land subject of the action.

WHEREFORE, the petition is *GRANTED*. The Decision dated November 8, 2006 of the Court of Appeals in CA G.R. CV No. 77599 is hereby *REVERSED* and *SET ASIDE*. The Decision dated July 2, 2002 of the Regional Trial Court of San Mateo, Rizal, Branch 77, is *REINSTATED*. No pronouncement as to costs.

SO ORDERED.

Ynares-Santiago,[*] *Chico-Nazario,*[**] *Leonardo-de Castro,*[***] and *Brion, JJ.,* concur.

---

[47] Records (Civil Case No. 548), Vol. 1, pp. 389-391.

[48] *Id.* at 392-397.

[*] 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. 178520. June 23, 2009]

AMA COMPUTER COLLEGE-EAST RIZAL, AMABLE C. AGUILUZ and ANTHONY JESUS R. VINCE CRUZ, *petitioners, vs.* **ALLAN RAYMOND R. IGNACIO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FINDINGS OF FACT OF AN ADMINISTRATIVE AGENCY ARE ACCORDED GREAT WEIGHT ON APPEAL; EXCEPTIONS. — At the outset, the Court must address petitioners' argument that the Court of Appeals went beyond its jurisdiction when it re-evaluated the findings of fact of the Labor Arbiter, as affirmed by the NLRC. The general rule, no doubt, is that findings of fact of an administrative agency, which has acquired expertise in the particular field of its endeavor, are accorded great weight on appeal. The rule is not absolute and admits of certain well-recognized exceptions, however. Thus, when the findings of fact of the Labor Arbiter and the NLRC are not supported by substantial evidence or their judgment was based on a misapprehension of facts, the appellate court may make an independent evaluation of the facts of the case, which procedure the Court of Appeals adopted in this case. Moreover, where the party's contention appears to be clearly tenable, or where the broader interest of justice and public policy so requires, the court may, in a *certiorari* proceeding, correct the error committed. The Court of Appeals, in view of its expanded jurisdiction over labor cases elevated to it through a petition for *certiorari* such as in this case, may look into the records of the case and re-examine the questioned findings if it considers the same to be necessary to arrive at a just decision. Hence, the Court of Appeals was acting within its jurisdiction when, on *certiorari,* it did not merely adopt the factual findings of the Labor Arbiter and the NLRC and, instead, made its own findings, which were contrary to the former.

2. ID.; ID.; THE SUPREME COURT IS BOUND BY THE FINDINGS OF FACT MADE BY THE COURT OF

APPEALS; EXCEPTION; PRESENT IN CASE AT BAR. — The Court then proceeds to discuss its own jurisdiction in reviewing findings of fact in a petition for review, under Rule 45 of the Revised Rules of Court. In *Medina v. Asistio*, this Court already extensively explained that: It is not the function of this Court to analyze or weigh such evidence all over again. Our jurisdiction is limited to reviewing errors of law that may have been committed by the lower court. It is a well-settled rule in this jurisdiction that only questions of law may be raised in a petition for [review on] *certiorari* under Rule 45 of the Rules of Court, this Court being bound by the findings of fact made by the Court of Appeals. The rule, however, is not without exception. Thus, findings of fact by the Court of Appeals may be passed upon and reviewed by this Court in the following instances, x x x: (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures (2) When the inference made is manifestly mistaken, absurd or impossible (3) Where there is a grave abuse of discretion (4) When the judgment is based on a misapprehension of facts (5) When the findings of fact are conflicting (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee **(7) The findings of the Court of Appeals are contrary to those of the trial court**; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record. The exception, rather than the general rule, applies in the present case. When the findings of fact of the Court of Appeals are contrary to those of the trial court or an administrative body exercising quasi-judicial functions, such as the NLRC, this Court must make its own factual findings.

3. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; THE BURDEN OF PROOF RESTS ON THE EMPLOYER TO SHOW THAT THE DISMISSAL IS FOR JUST CAUSE; QUANTUM OF PROOF REQUIRED. — In termination cases, the burden of proof rests on the employer to show that the dismissal is for just cause. When there is no showing of a clear, valid and legal

cause for the termination of employment, the law considers the matter a case of illegal dismissal and the burden is on the employer to prove that the termination was for a valid or authorized cause. And the quantum of proof which the employer must discharge is substantial evidence. An employee's dismissal due to serious misconduct must be supported by substantial evidence. Substantial evidence is that amount of relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds, equally reasonable, might conceivably opine otherwise.

4. ID.; ID.; ID.; TWIN REQUIREMENTS TO BE VALID. — The minimum standards of due process in all cases of termination of employment are prescribed under Article 277(b) of the Labor Code xxx It is implemented by Rule XXIII of the Implementing Rules of Book V of the Labor Code xxx. The most basic of tenets in employee termination cases is that no worker shall be dismissed from employment without the observance of substantive and procedural due process. Substantive due process means that the ground upon which the dismissal is based is one of the just or authorized causes enumerated in the Labor Code. Procedural due process, on the other hand, requires that an employee be apprised of the charge against him, given reasonable time to answer the same, allowed ample opportunity to be heard and defend himself, and assisted by a representative if the employee so desires. The employee must be furnished two written notices: the first notice apprises the employee of the particular acts or omissions for which his dismissal is sought, and the second is a subsequent notice which informs the employee of the employer's decision to dismiss him. Hence, under the Labor Code, there are twin requirements to justify a valid dismissal from employment: (a) the dismissal must be for any of the causes provided in Article 282 of the Labor Code (substantive aspect) and (b) the employee must be given an opportunity to be heard and to defend himself (procedural aspect).

5. ID.; ID.; ID.; ID.; ESSENCE OF DUE PROCESS REQUIREMENT; THE LAW ABHORS AND PROHIBITS ABSOLUTE ABSENCE OF OPPORTUNITY TO BE HEARD. — We first hew our attention to the issue of whether or not respondent was accorded procedural due process. Respondent claims in his position paper that he received a formal

notice of investigation for negligence due to failure to exercise adequate asset control measures within one's area of responsibility on 31 August 1999 at 9:51 a.m. and the hearing was scheduled and held immediately the next day on 1 September 1999 at 10:00 a.m. Another formal notice of investigation for serious damage of company property and loss of class records/ exams was served on respondent on 3 September 1999 at 7:45 a.m. while the hearing was scheduled and held on the same day 3 September 1999 at 1:00 p.m. On 9 September 1999, respondent was given a notice of termination. The essence of the due process requirement being a mere opportunity to be heard, we agree with the Court of Appeals that although respondent was given a limited time to explain his side and present evidence, he, however, was able to refute the findings of petitioner. Hence, the chance afforded to respondent, although limited, is a clear opportunity to be heard on the issue at hand. What the law abhors and prohibits is the absolute absence of the opportunity to be heard.

6. ID.; ID.; ID.; JUST CAUSES; SERIOUS MISCONDUCT; REQUISITES TO BE A VALID GROUND FOR DISMISSAL. — The Labor Code provides that an employer may terminate the services of an employee for a just cause. Among the just causes in the Labor Code is serious misconduct. Misconduct is improper or wrong conduct. It is the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment. The misconduct to be serious within the meaning of the Labor Code must be of such a grave and aggravated character and not merely trivial or unimportant. Such misconduct, however serious, must nevertheless be in connection with the employee's work to constitute just cause for his separation. In *National Labor Relations Commission v. Salgarino*, the Court stressed that "[i]n order to constitute serious misconduct which will warrant the dismissal of an employee under paragraph (a) of Article 282 of the Labor Code, it is not sufficient that the act or conduct complained of has violated some established rules or policies. It is equally important and required that the act or conduct must have been performed with wrongful intent." After a thorough examination of the records of the case, however, the Court finds that petitioner AMACCI miserably failed to prove by substantial evidence its charges against respondent. There

is no showing at all that respondent's actions were motivated by a perverse and wrongful intent, as required by Article 282(a) of the Labor Code.

7.ID.; ID.; ID.; LOSS OF RECORDS CONSIDERED INSUFFICIENT GROUND TO JUSTIFY DISMISSAL OF RESPONDENT IN CASE AT BAR. — On the loss of school records, the complaint of AMACCI faculty member Ralp Tumulak was that four of his quizzes were lost due to the renovation undertaken in the AMACC-ER premises. The Court of Appeals dismissed this complaint as insufficient to justify the dismissal of respondent. We agree with the Court of Appeals. Under the Employee conduct and Discipline of AMACCI, loss of records is considered a light offense punishable by written reprimand.

8. ID.; ID.; ID.; JUST CAUSES; SERIOUS MISCONDUCT; THE ACT OR CONDUCT COMPLAINED OF MUST HAVE BEEN PERFORMED WITH WRONGFUL INTENT TO CONSTITUTE JUST CAUSE FOR DISMISSAL. — The following instances support the conclusion of this Court that there was no just or authorized cause for respondent's dismissal: xxx. Considering the foregoing, the Court can only agree with the Court of Appeals that, even though respondent may be guilty of negligence for failing to take the necessary precautions to cover or remove the computers from the computer laboratory before the renovation, or to block or guard the wall opening to the computer laboratory, respondent's blunders did not constitute serious misconduct or willful disobedience as to justify the termination of his employment. To reiterate, for serious misconduct or willful disobedience, it is not sufficient that the act or conduct complained of has violated some established rules or policies; the act or conduct must have been performed with wrongful intent. There is absolute lack of proof herein of such wrongful intent on the part of respondent.

9. ID.; ID.; ID.; ID.; GROSS NEGLIGENCE, DEFINED; THE NEGLECT OF DUTIES MUST NOT ONLY BE GROSS BUT HABITUAL AS WELL TO CONSTITUTE A JUST CAUSE FOR TERMINATION OF EMPLOYMENT. — Respondent's actions, at their worse, reveal his negligence, but said negligence can hardly be deemed gross and habitual, as to constitute a just ground for his dismissal under Article 282(b) of the Labor Code. Gross negligence under Article 282 of the Labor Code

connotes want of care in the performance of one's duties, while habitual neglect implies repeated failure to perform one's duties for a period of time, depending upon the circumstances. Gross negligence has been defined as the **want or absence of even slight care or diligence** as to amount to a reckless disregard of the safety of person or property. It evinces a thoughtless disregard of consequences without exerting any effort to avoid them. To constitute a just cause for termination of employment, the neglect of duties must not only be gross but habitual as well. The single or isolated act of negligence does not constitute a just cause for the dismissal of the employee. Respondent, in the Petition at bar, exercised enough diligence in his renovation of the computer laboratory as to pass the inspection of two officials of petitioner AMACCI. Also, other than the incident at the computer laboratory, no other negligent act was attributed to respondent to establish habituality.

10. ID.; ID.; ID.; PENALTIES PRESCRIBED MUST BE COMMENSURATE TO THE OFFENSE INVOLVED AND TO THE DEGREE OF THE INFRACTION. — Moreover, the penalty of dismissal imposed on respondent is disproportionate to his offense. The magnitude of the infraction must be weighed and equated with the penalty prescribed and must be commensurate thereto, in view of the gravity of the penalty of dismissal or termination from the service. What is at stake here is not simply the job itself of the employee but also his regular income therefrom which is the means of livelihood of his family. Time and again, the Court has ruled that while an employer enjoys wide latitude of discretion in the promulgation of policies, rules and regulations on work-related activities of the employees, those directives, however, must always be fair and reasonable, and the corresponding penalties, when prescribed, must be commensurate to the offense involved and to the degree of the infraction.

11.ID.; ID.; ID.; ILLEGAL DISMISSAL; CORPORATE OFFICERS AND DIRECTORS ARE EXEMPT FROM ANY PERSONAL LIABILITY FOR THE EMPLOYEE'S ILLEGAL DISMISSAL WHERE TERMINATION OF EMPLOYMENT WAS NOT DONE WITH MALICE OR BAD FAITH. — Finally, the Court notes that respondent impleaded in his complaint before the Labor Arbiter petitioners Aguiluz and Cruz, in their capacity as AMACCI officials. The Court

of Appeals, after finding that respondent was illegally dismissed, did not make any pronouncement as to the liability of petitioners Aguiluz and Cruz. Thus, it is necessary for this Court to clarify and explicitly declare that no liability for respondent's illegal dismissal should attach to petitioners Aguiluz and Cruz, and respondent's complaint as against them should be dismissed. Unless they have exceeded their authority, corporate officers are, as a general rule, not personally liable for their official acts, because a corporation, by legal fiction, has a personality separate and distinct from its officers, stockholders and members. It is true that as an exception, corporate directors and officers are solidarily held liable with the corporation, where terminations of employment are done with malice or in bad faith; but where there is an absence of evidence that said directors and officers acted with malice or bad faith, as in this case, the Court must exempt them from any personal liability for the employee's illegal dismissal.

APPEARANCES OF COUNSEL

Almazan Veloso Mira & Partners for petitioners.
Christopher A. Batacan for respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeking to set aside the Decision[1] dated 22 December 2006 and the Resolution[2] dated 4 June 2007 of the Court of Appeals in CA-G.R. SP No. 67047. The Court of Appeals, in its assailed Decision, ruled that respondent Allan Raymond R. Ignacio was illegally dismissed by petitioners AMA Computer College, Inc. (AMACCI), Amable C. Aguiluz (Aguiluz) and Anthony Jesus R. Vince Cruz (Cruz), thus, reversing and setting aside the Resolution dated 8 December 2000 of the National Labor Relations

[1] Penned by Associate Justice Regalado E. Maambong with Associate Justices Marina L. Buzon and Japar B. Dimaampao, concurring. *Rollo*, pp. 33-57.

[2] *Rollo*, pp. 59-60.

Commission (NLRC) in NLRC NCR CA No. 024664-2000, which affirmed the Decision dated 19 April 2000 of the Labor Arbiter in NLRC Case No. RAB-IV-10-11643-99-R. The appellate court denied in its assailed Resolution the Motion for Reconsideration of the petitioners.

The factual antecedents of this case are as follows:

Petitioner AMACCI is a corporation organized and existing under and by virtue of Philippine laws, engaged in the business of providing computer education, among other courses.[3] AMA Computer College-East Rizal (AMACC-ER) is one of its branches. Petitioners Aguiluz and Cruz are President and Human Resource Director, respectively, of petitioner AMACCI.

Respondent was first employed on 25 September 1998 at another branch of AMACCI, namely, AMA Computer College-Fairview (AMACC-FV), as Management Trainee (Maintenance Supervisor) with a monthly salary of ₱7,700.00.[4] Three months thereafter, on 29 December 1998, respondent was granted permanent status and his monthly salary was increased to ₱11,000.00.[5]

Upon the recommendation of AMACC-ER School Director/ Chief Operating Officer (COO) Lydia Taganguin (Taganguin) to AMACCI Vice President for Human Resource Patrick Alain Azanza, respondent was transferred to AMACC-ER effective 16 August 1999. The transfer was made because of the pressing deadline brought about by the ISO 9000 Oplan of AMACCI. AMACC-ER

[3] CA *rollo*, p. 23.

[4] Respondent actually began working for AMACC-FV earlier, on 13 April 1998. However, through a Memorandum dated 7 July 1998, AMACCI Vice President for Human Resource Patrick Azanza advised respondent that a complaint for gross dishonesty was filed against the latter, specifically charging him with: (1) non-disclosure of a pending criminal case; (2) favoring a supplier; and (3) falsification of his record. AMACCI claims that respondent's employment was terminated while respondent insists that he resigned from AMACC-FV as evidenced by the clearance dated 13 July 1998 duly signed by the various department heads and school officials of AMACC-FV. On 11 August 1998, respondent wrote AMA Educational System (AMAES) Senior President Karim Bangcola a letter, appealing for another chance to work at AMACC-FV, which was granted.

[5] CA *rollo*, p. 23.

was scheduled to be inspected for Certification by the International Organization for Standardization (ISO)[6] in the first week of September 1999.[7]

On his first day of transfer to AMACC-ER, respondent went to AMACCI Head Office to consult AMACCI Assistant Vice President for Construction, Engineer Noel Nobleza (Nobleza), on the renovation plan for the AMACC-ER school facilities. The renovation of the AMACC-ER school facilities was to be undertaken as part of the ISO 9000 Oplan. Nobleza told respondent that since the renovation was a major one, the latter needed to secure the approval of AMA Educational System (AMAES)[8] Vice President Zenaida Carpio (Carpio). Since Carpio was out of her office, Ignacio went ahead to consult AMACC-ER School Director/COO Taganguin, and then to secure the approval of Mr. Joselito Domingo, owner of the JL Domingo Building in which the AMACC-ER school facilities were located. It was Taganguin who brought the renovation plan to Carpio, who approved the same. At around 5:30 p.m. of the same day, respondent conducted an emergency officers' meeting at AMACC-ER to discuss the approved renovation plan. Present at the said meeting were the two college deans and all the department heads of AMACC-ER.[9]

Respondent started demolishing the concrete partition wall of the computer laboratory on 18 August 1999. In the morning of the following day, the maintenance crew, following respondent's order, brought plywood to cover the unfinished door opening of the computer laboratory. Carpio and AMACCI Assistant Vice President Balon Panay (Panay) came to AMACC-ER to conduct an inspection.

However, on 25 August 1999, the Audit Department of AMACCI filed a complaint against respondent, charging him with "(t)hreatening

---

[6] Developer and publisher of International Standards; http://www.iso.org/iso/home.htm.

[7] CA *rollo*, p. 24.

[8] The network of computer colleges under the name of AMA Computer College; http://www.amaes.edu.ph/history.asp.

[9] *Rollo*, pp. 40-41.

to damage company property, negligence or failure to exercise adequate asset control measures within one's area of responsibility."

Respondent then received on 3 September 1999 a Memorandum[10] dated 2 September 1999 from petitioner Cruz, the AMACCI Human Resource Director, informing the former that a complaint was filed against him for inexcusable gross negligence resulting in serious damage to 35 computers and loss of class records/exams, and instructing him to submit his written explanation and evidence on that same day. Respondent was likewise placed on preventive suspension.[11]

In a Memorandum dated 6 September 1999, the Human Resource Department (HRD) of AMACCI reported:

On September 03, 1999, respondent Mr. Allan Ignacio met with the committee members to air his side on the allegations lodged against him.

I. Statements of:

1.1 Allan Ignacio:

- Before I was assigned at AMACC – East Rizal I was already informed of the problem in the building which needs to be

---

[10] Please be advised that a complaint for alleged inexcusable gross negligence resulting to serious damage of Company property (35 computers) and loss of class records/exams has been filed against you. We are furnishing you a copy of the complaint together with the annexes of said complaint.

You are hereby instructed to report to the office of the undersigned and submit your written explanation on or before September 3, 1999 at exactly 1:00 p.m. You are given the right to present your evidence in that said meeting. You are also given the right to confront the complainant and their witnesses.

Your failure to answer will be considered as a waiver of your aforesaid rights. In such instance, this office will rule on the basis of the evidence already submitted.

Meanwhile, you are hereby placed under preventive suspension.

For your strict compliance.

(SGD)ANTHONY JESUS VINCE CRUZ
Human Resource Director
(Annex E, CA *rollo*.)

[11] CA *rollo*, p. 24.

renovated based on the copy of the building plan provided to us by the owner. Seeing that the renovation plan was signed by the VP for Education and the School Director, I decided to start with the demolition of the partition taking into serious consideration that I was given only a few days to comply with the deadline. I was then confident that I need not coordinate with anybody because on the evening prior to the demolition, Ms. Taganguin, the School Director called for a meeting to inform the concerned department heads about possible changes within the JL Domingo building. Thinking that the message was clear to everybody present during the meeting, I thought that the agenda is clearly implied; that I can already proceed with the demolition without seeking for another round of approval. Hence, I took it upon myself to start the following day because Ms. Taganguin attended the Corplan on that day.

- I believe that I have taken into consideration the precautionary measures needed, hence, I put an asbestos sheet and a plywood to cover the computers inside the room.
- The computer units did not sustain any damage. This can be attested by the certification issued by the IT Supervisor.

1.2. Elsie Tablisma:

- On August 18, 1999 the Maintenance Supervisor Allan Ignacio started to shatter the cemented wall partition of computer laboratory at the J.L. Domingo Building. The IT Department and the property department were not informed of the said demolition. This resulted to the exposure of thirty-five (35) computer units to possible loss and damages.

x x x x x x x x x

1.3. Mr. Darwin Ramos:

- On August 20, 1999 when I, together with Mr. Arnold Necio and Rupert Verdad conducted inventory of computers at the J.L. Building, we found out that part of the concrete wall of the laboratory was already demolished. We also discovered that the computers were not moved away from the falling debris coming from the concrete walls.

1.4. Mr. Arnulfo Necio:

> At 8:30 today, August 20, 1999, we are supposed to conduct inventory of recently delivered computers to get the serial numbers. However, we found out the wall was demolished without our knowledge. There were trumps and maintenance personnel working inside the computer laboratory at that time, creating another hole for air conditioning unit. We noted that some of the computers have debris from the smashed cemented walling.

II. Analysis of Facts Presented:

Based on the statements submitted, the committee hereby states the findings:

1. That Mr. Allan Ignacio without seeking written approval to proceed, has ordered the start of the demolition project on August 18, 1999. Likewise, he did not inform the concerned departments of his move hence, the computer units were not properly secured.
2. Respondent assumed that during the conduct of the meeting the evening before, all concerned employees have already understood what has been implied about the renovation.
3. He did not coordinate his action with the proper channels and did not exercise due diligence before he started the demolition of the computer laboratory.
4. His act could have caused the possible loss/damage of the computer units which were exposed.

x x x x x x x x x

III. Recommendation:

Taking the above findings into serious consideration, it is recommended that respondent Allan Ignacio be duly sanctioned for his offense. He has clearly violated Rule E Section 4 of the company code of conduct. The corresponding sanction for this is DISMISSAL.[12]

---

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

In accordance with the foregoing recommendation of the HRD of AMACCI, respondent was terminated from employment on 9 September 1999.[13]

On 27 October 1999, respondent filed with the NLRC a complaint for illegal dismissal, non-payment of salaries and wages, overtime pay, holiday pay and rest day damages against petitioners.[14] Respondent's complaint was docketed as NLRC Case No. RAB-IV-10-11643-99-R.

Petitioners denied that respondent was illegally dismissed. They contended that on 18 August 1999, barely eight days after assuming the position of Maintenance Supervisor at AMACC-ER, respondent caused the demolition of a wall partition in the computer laboratory without the proper authorization from the departments concerned. The Information Technology (IT) Department was not informed of the demolition of the computer laboratory, causing the exposure of 35 computer units to loss and damages. Worse, after the demolition, respondent left the laboratory open and did not even cover the demolished wall, exposing the laboratory equipment and school records to possible theft. Indeed, school records were lost the next day due to the open wall partition.

---

[13] The termination letter reads:

MR. ALLAN RAYMOND IGNACIO

Maintenance Supervisor

Dear Mr. Ignacio:

Please be informed that after a careful deliberation of the case filed against you, it was decided that you are guilty of Gross Negligence in the performance of your job resulting to the loss of important documents. In view of this, the Top Management has decided to terminate your services as Maintenance Supervisor effective immediately.

You are hereby instructed to report to the undersigned for further instructions. Please bear in mind that as a company policy you are required to accomplish your clearance and turn over all documents and responsibilities to the appropriate officers.

You are barred from entering the company premises unless with clearance from the HRD. (*Id.* at 71.)

[14] CA *rollo*, p. 21.

Petitioners also alleged that respondent was charged with a very serious offense, *i.e.*, damaging company property thru gross negligence, or threatening to damage company property either willfully or thru negligence, covered by letter (e) of No. 4, Rule IV Employee Conduct and Discipline.[15] The corresponding penalty for such an offense is dismissal, as provided for in the Disciplinary Actions of the Employees Manual.[16]

Petitioners further insisted that they complied with the requirements of procedural due process. The twin requirements of notice and hearing, which constitute essential elements of due process in cases of employee dismissal, were complied with. Petitioners gave respondent a first notice of investigation and the opportunity to be heard and to present evidence on his behalf on 3 September 1999 at 1:00 p.m. During the scheduled hearing, respondent was able to explain his position and submit his evidence. On 6 September 1999, the Investigating Committee ruled that respondent was guilty as charged and recommended that he be sanctioned and dismissed. Respondent was given the second notice, dated 9 September 1999, terminating his employment. Thus, both substantive and procedural due process were strictly complied with by petitioners.

In her Decision dated 19 April 2000 in NLRC Case No. RAB-IV-10-11643-99-R, Labor Arbiter Nieves De Castro held that respondent was legally dismissed. The Labor Arbiter found that there was substantive ground to justify respondent's dismissal:

> There is no doubt that [herein petitioners'] evidence is substantial. We are more than convinced that [herein respondent] committed a very serious offense of demolishing without permission from the management the wall partition of the computer laboratory. Worse, after the demolition, [respondent] left the laboratory open which resulted in the loss of class records.
>
> Yet, [respondent] had the temerity to tell that the safekeeping of documents was not part of his duties as Maintenance Supervisor. This, to our mind demonstrates the reprehensible character of the

---

[15] Employees Conduct and Discipline; *id.* at 69.

[16] Employees Conduct and Discipline; *id.* at 67.

[respondent]. He knew fully well that it was his unauthorized demolition of the wall partition and leaving it open thereafter which lead to the loss of school records. Moreover, he did not even bother to explain why he caused the demolition of the wall partition on his own without permission or even the courtesy of notice to the management. We should not loss (sic) sight of the fact that [respondent] is a supervisor and not an ordinary laborer whose lapses may be more easily condoned. His is not a mere lapse but a serious misconduct.

Aside from this serious misconduct, the subsequent act of leaving the laboratory open exposing the computers and documents to loss and damage constitutes gross negligence. True enough, class records were lost the next day due to the open wall partition.

Said negligence is not as simple as [respondent] would like to make it appear. Student's scholastic records is the very meat of an education institution's business. Organized filing and safekeeping thereof makes the school a reputable one.

x x x x x x x x x

However, he committed more serious offenses which could no longer be pardoned by the management.[17]

The Labor Arbiter also ruled that petitioners complied with procedural due process in respondent's dismissal:

Now, on the procedural aspect of termination of employment, time and again, the Supreme Court repeatedly held that a trial type hearing is not a must. When complainant was given the opportunity to submit written explanation, he did not submit. Then, during the scheduled hearings at the company level, he was able to present his side. This is due process, the essence of which is simply the opportunity to be heard. What the law and jurisprudence prohibits is absolute absence of the opportunity to be heard.[18]

At the end, the Labor Arbiter declared:

In fine, there is no illegal dismissal to speak of.

---

[17] *Id.* at 79-80.

[18] *Id.* at 80.

PREMISED CONSIDERED, all the claims for damages resulting from the dismissal, *i.e.*, medical expenses, refund of tuition fees, reimbursement for tools and equipment, moral and exemplary damages must necessarily fail, there being no bad faith or illegality on the part of the management in effecting the dismissal.

WHEREFORE, this complaint is hereby DISMISSED for lack of merit.[19]

Respondent appealed the afore-quoted Decision of the Labor Arbiter to the NLRC. His appeal was docketed as NLRC NCR CA No. 024664-2000. On 8 December 2000, the NLRC issued a Resolution[20] dismissing respondent's appeal as it found no cogent reason to modify and reverse the factual findings of the Labor Arbiter. Respondent's motion for reconsideration was denied by the NLRC in a Resolution[21] dated 23 July 2001.

Refusing to give up, respondent filed with the Court of Appeals, a Petition for *Certiorari*, under Rule 65 of the Revised Rules of Court, docketed as CA-G.R. SP No. 67047. The Court of Appeals rendered its Decision dated 22 December 2006, finding that respondent was illegally dismissed. According to the appellate court, it cannot consider respondent's transgression as serious misconduct when his actuation was not willful and deliberate, there appearing to be no intention on his part to cause damage. And although the Court of Appeals adjudged that respondent was guilty of negligence, it was not gross or habitual as would warrant the dismissal of respondent. The dispositive portion of the 22 December 2006 Decision of the appellate court thus reads —

WHEREFORE, the petition is GRANTED and the Decision of Labor Arbiter Nieves De Castro and the Resolutions of the National Labor Relation Commission dated December 8, 2000 and July 23, 2001 are REVERSED and SET ASIDE and a new judgment is hereby entered:

---

[19] *Id*.

[20] *Id*. at 83.

[21] *Id*. at 85.

Herein [herein petitioner AMACCI] is hereby ordered to pay [herein respondent] separation pay equivalent to one month for every year of service to be reckoned from the end of his thirty-day suspension up to the finality of this decision, in addition to his full back wages allowances and other benefits. No costs.[22]

Petitioners' Motion for Reconsideration was denied by the appellate court in a Resolution dated 4 June 2007.

Petitioners are now before this Court raising the following issues —

STATEMENT OF THE ISSUES

THE HONORABLE COURT OF APPEALS ERRED IN DEPARTING FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL REVIEW.

THE HONORABLE COURT OF APPEALS ERRED IN MAKING ITS OWN FINDINGS OF FACTS CONTRARY TO WHAT THE LABOR ARBITER AND THE NATIONAL LABOR RELATIONS COMMISSION ADMITTED IN THE PROCEEDINGS BEFORE THEIR RESPECTIVE OFFICES.

THE HONORABLE COURT OF APPEALS ERRED IN REFUSING TO ADMIT AS SUBSTANTIAL THE PIECES OF EVIDENCE SUBMITTED BY THE PETITIONERS FOR NOT HAVING BEEN MADE UNDER OATH.

THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THE DISMISSAL OF RESPONDENT AS ILLEGAL AND IN STATING THAT THE GROUND UPON WHICH RESPONDENT WAS DISMISSED CANNOT BE CONSIDERED AS SERIOUS MISCONDUCT.[23]

The Petition is not meritorious.

At the outset, the Court must address petitioners' argument that the Court of Appeals went beyond its jurisdiction when it re-evaluated the findings of fact of the Labor Arbiter, as affirmed by the NLRC.[24]

---

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

[23] *Rollo*, p. 198.

[24] *Muaje-Tuazon v. Wenphil Corporation*, G.R. No. 162447, 27 December 2006, 511 SCRA 521, 528-530.

The general rule, no doubt, is that findings of fact of an administrative agency, which has acquired expertise in the particular field of its endeavor, are accorded great weight on appeal. The rule is not absolute and admits of certain well-recognized exceptions, however. Thus, when the findings of fact of the Labor Arbiter and the NLRC are not supported by substantial evidence or their judgment was based on a misapprehension of facts, the appellate court may make an independent evaluation of the facts of the case, which procedure the Court of Appeals adopted in this case.[25] Moreover, where the party's contention appears to be clearly tenable, or where the broader interest of justice and public policy so requires, the court may, in a *certiorari* proceeding, correct the error committed. The Court of Appeals, in view of its expanded jurisdiction over labor cases elevated to it through a petition for *certiorari* such as in this case, may look into the records of the case and re-examine the questioned findings if it considers the same to be necessary to arrive at a just decision.[26]

Hence, the Court of Appeals was acting within its jurisdiction when, on *certiorari*, it did not merely adopt the factual findings of the Labor Arbiter and the NLRC and, instead, made its own findings, which were contrary to the former.

The Court then proceeds to discuss its own jurisdiction in reviewing findings of fact in a petition for review, under Rule 45 of the Revised Rules of Court. In *Medina v. Asistio*,[27] this Court already extensively explained that:

> It is not the function of this Court to analyze or weigh such evidence all over again. Our jurisdiction is limited to reviewing errors of law that may have been committed by the lower court. (*Nicolas et al., v. CA*, 154 SCRA 635 [1987]; *Tiongco v. de la Merced*, 58 SCRA 89 [1974]).

---

[25] *San Miguel Corporation v. Aballa*, G.R. No. 149011, 28 June 2005, 461 SCRA 392, 415.

[26] *Philippine Long Distance Telephone Company, Inc. v. Imperial*, G.R. No. 149379, 15 June 2006, 490 SCRA 673, 685, citing *Globe Telecom, Inc. v. Florendo-Flores*, 438 Phil. 756, 764-765 (2002).

[27] G.R. No. 75450, 8 November 1990, 191 SCRA 218, 223-224.

It is a well-settled rule in this jurisdiction that only questions of law may be raised in a petition for [review on] *certiorari* under Rule 45 of the Rules of Court, this Court being bound by the findings of fact made by the Court of Appeals. The rule, however, is not without exception. Thus, findings of fact by the Court of Appeals may be passed upon and reviewed by this Court in the following instances, x x x:

(1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures (*Joaquin v. Navarro*, 93 Phil. 257 [1953]); (2) When the inference made is manifestly mistaken, absurd or impossible (*Luna v. Linatok*, 74 Phil. 15 [1942]); (3) Where there is a grave abuse of discretion (*Buyco v. People*, 95 Phil. 453 [1955]); (4) When the judgment is based on a misapprehension of facts (*Cruz v. Sosing*, L-4875, Nov. 27, 1953); (5) When the findings of fact are conflicting (*Casica v. Villaseca*, L-9590 Ap. 30, 1957; unrep.);** (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee (*Evangelista v. Alto Surety and Insurance Co.*, 103 Phil. 401 [1958]); **(7) The findings of the Court of Appeals are contrary to those of the trial court** (*Garcia v. Court of Appeals*, 33 SCRA 622 [1970]; *Sacay v. Sandiganbayan*, 142 SCRA 593 [1986]); (8) When the findings of fact are conclusions without citation of specific evidence on which they are based (*Ibid.*,); (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents (*Ibid.*,); and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record (*Salazar v. Gutierrez*, 33 SCRA 242 [1970]). (Emphasis ours.)

The exception, rather than the general rule, applies in the present case. When the findings of fact of the Court of Appeals are contrary to those of the trial court or an administrative body exercising quasi-judicial functions, such as the NLRC, this Court must make its own factual findings.[28]

In termination cases, the burden of proof rests on the employer to show that the dismissal is for just cause. When there is no showing of a clear, valid and legal cause for the termination of employment, the law considers the matter a case of illegal dismissal and the burden

[28] *Cadiz v. Court of Appeals*, G.R. No. 153784, 25 October 2005, 474 SCRA 232, 241.

is on the employer to prove that the termination was for a valid or authorized cause.[29] And the quantum of proof which the employer must discharge is substantial evidence. An employee's dismissal due to serious misconduct must be supported by substantial evidence. Substantial evidence is that amount of relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds, equally reasonable, might conceivably opine otherwise. [30]

Therefore, the Court reviews the case records herein to determine whether petitioner AMACCI was able to prove by substantial evidence that respondent was legally dismissed.

The minimum standards of due process in all cases of termination of employment are prescribed under Article 277(b) of the Labor Code, to wit:

> Art. 277. Miscellaneous Provisions.
>
> x x x x x x x x x
>
> (b) Subject to the constitutional right of workers to security of tenure and their right to be protected against dismissal except for a just and authorized cause and without prejudice to the requirement of notice under Article 283 of this Code, the employer shall furnish the worker whose employment is sought to be terminated a written notice containing a statement of the cause for termination and shall afford the latter ample opportunity to be heard and to defend himself with the assistance of his representative, if he so desires, in accordance with company rules and regulations promulgated pursuant to guidelines set by the Department of Labor and Employment.[31] (Emphasis supplied.)

It is implemented by Rule XXIII of the Implementing Rules of Book V of the Labor Code, which provides:

---

[29] *Cosep v. National Labor Relations Commission*, 353 Phil. 148, 157-158 (1998).

[30] *Philippine Commercial Industrial Bank v. Cabrera*, G.R. No. 160368, 30 March 2005, 454 SCRA 792, 803.

[31] *Suico v. National Labor Relations Commission*, G.R. No. 146762, 30 January 2007, 513 SCRA 325, 340-341.

Section 2. Standards of due process; requirements of notice. – x x x.

I. For termination of employment based on just causes as defined in Article 282 of the Code:

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

(b) A hearing or conference during which the employee concerned, with the assistance of counsel if the employee so desires, is given opportunity to respond to the charge, present his evidence or rebut the evidence presented against him; and

(c) 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.

The most basic of tenets in employee termination cases is that no worker shall be dismissed from employment without the observance of substantive and procedural due process. Substantive due process means that the ground upon which the dismissal is based is one of the just or authorized causes enumerated in the Labor Code. Procedural due process, on the other hand, requires that an employee be apprised of the charge against him, given reasonable time to answer the same, allowed ample opportunity to be heard and defend himself, and assisted by a representative if the employee so desires.[32] The employee must be furnished two written notices: the first notice apprises the employee of the particular acts or omissions for which his dismissal is sought, and the second is a subsequent notice which informs the employee of the employer's decision to dismiss him.[33]

Hence, under the Labor Code, there are twin requirements to justify a valid dismissal from employment: (a) the dismissal must be for any of the causes provided in Article 282 of the Labor Code (substantive aspect) and (b) the employee must be

[32] *Waterous Drug Corp. v. National Labor Relations Commission*, 345 Phil. 983, 994 (1997).

[33] *Concorde Hotel v. Court of Appeals*, 414 Phil. 897, 908 (2001).

given an opportunity to be heard and to defend himself (procedural aspect).[34]

We first hew our attention to the issue of whether or not respondent was accorded procedural due process. Respondent claims in his position paper[35] that he received a formal notice of investigation for negligence due to failure to exercise adequate asset control measures within one's area of responsibility on 31 August 1999 at 9:51 a.m. and the hearing was scheduled and held immediately the next day on 1 September 1999 at 10:00 a.m. Another formal notice of investigation for serious damage of company property and loss of class records/exams was served on respondent on 3 September 1999 at 7:45 a.m. while the hearing was scheduled and held on the same day 3 September 1999 at 1:00 p.m. On 9 September 1999, respondent was given a notice of termination.

The essence of the due process requirement being a mere opportunity to be heard, we agree with the Court of Appeals that although respondent was given a limited time to explain his side and present evidence, he, however, was able to refute the findings of petitioner. Hence, the chance afforded to respondent, although limited, is a clear opportunity to be heard on the issue at hand.[36] What the law abhors and prohibits is the absolute absence of the opportunity to be heard.[37]

We now turn our attention to the issue of whether or not there was just cause for the termination of respondent from his employment.

The Labor Arbiter and the NLRC are one in finding that respondent was liable for serious misconduct which justifies his dismissal from office. Petitioner AMACCI terminated respondent's employment because of gross negligence resulting to the loss of important documents.[38]

---

[34] *Loadstar Shipping Company, Inc. v. Mesano*, 455 Phil. 936, 942 (2003).

[35] CA *rollo*, p. 24.

[36] *Rollo*, p. 55.

[37] *Casimiro vs. Tandog*, G.R. No. 146137, 8 June 2005, 459 SCRA 624, 631.

[38] *Rollo*, p. 71.

The Labor Code provides that an employer may terminate the services of an employee for a just cause. Among the just causes in the Labor Code is serious misconduct. Misconduct is improper or wrong conduct. It is the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment. The misconduct to be serious within the meaning of the Labor Code must be of such a grave and aggravated character and not merely trivial or unimportant. Such misconduct, however serious, must nevertheless be in connection with the employee's work to constitute just cause for his separation.[39]

In *National Labor Relations Commission v. Salgarino*,[40] the Court stressed that "[i]n order to constitute serious misconduct which will warrant the dismissal of an employee under paragraph (a) of Article 282 of the Labor Code, it is not sufficient that the act or conduct complained of has violated some established rules or policies. It is equally important and required that the act or conduct must have been performed with wrongful intent."

After a thorough examination of the records of the case, however, the Court finds that petitioner AMACCI miserably failed to prove by substantial evidence its charges against respondent. There is no showing at all that respondent's actions were motivated by a perverse and wrongful intent, as required by Article 282(a) of the Labor Code.

On the loss of school records, the complaint of AMACCI faculty member Ralp Tumulak was that four of his quizzes were lost due to the renovation undertaken in the AMACC-ER premises. The Court of Appeals dismissed this complaint as insufficient to justify the dismissal of respondent. We agree with the Court of Appeals. Under the Employee conduct and Discipline of AMACCI, loss of records is considered a light offense punishable by written reprimand.[41]

---

[39] *Philippine Long Distance Co., v. The Late Romeo F. Bolso,* G.R. No. 159701, 17 August 2007, 530 SCRA 550, 559-560.

[40] G.R. No. 164376, 31 July 2006, 497 SCRA 361, 375-376.

[41] Annex C; *rollo,* pp. 62-67.

The next issue that needs to be resolved is whether or not the renovation of AMACC-ER premises was done by respondent without authority, which merits the supreme penalty of dismissal.

The following instances support the conclusion of this Court that there was no just or authorized cause for respondent's dismissal:

1. The renovation undertaken by respondent was authorized under a renovation plan approved and signed on 16 August 1999 by AMAES Vice- President Carpio;

2. The AMACC-ER authorities were well aware of the ongoing renovation, as Carpio — together with an AMACCI official, Assistant Vice- President Panay — conducted an inspection of the school facilities on 19 August 1999, a day after the partition wall in the computer laboratory was demolished. The security guard log book contains the following entry on said date:

"19 August 1999

x x x x x x x x x

0936 Arrival of MA'AM CARPIO & MA'AM BALON J. PANAY, AVP-for (sic) CONDUCT INSPECTION"

Petitioner AMACCI was unable to refute the inspection of the renovation site conducted by Carpio and Panay. The only rational reason for the conduct of such an inspection by said officials was to ensure that the renovations were being done properly and according to the approved plan. If Carpio and Panay had then noticed something amiss, they would have already brought it to the attention of AMACCI and AMACC-ER officials, especially, AMACC-ER School Director/COO Taganguin. There was nothing on record that would show that either Carpio or Panay made any unsavory observation during their inspection. In fact, after the said inspection, respondent was able to continue and complete the renovation of the computer laboratory.

3. On the evening prior to the demolition, Ms. Taganguin, the School Director called for a meeting to inform the concerned department heads about possible changes within the JL Domingo

building, negating petitioners' charge that the renovation initiated by respondent was without authority.

4. Mr. Arnold Necio, Network (IT) Supervisor, issued a certification dated 23 August 1999 stating that the computers in the computer laboratory were randomly tested and found to be in good working condition; and

5. The security guard, on duty from the evening of 18 August 1999 to the early morning of 19 August 1999, wrote the following entry in the logbook on 19 August 1999: "NO DAMAGE NO LOSSES DURING 8 HOURS Tour of Duty."[42]

Considering the foregoing, the Court can only agree with the Court of Appeals that, even though respondent may be guilty of negligence for failing to take the necessary precautions to cover or remove the computers from the computer laboratory before the renovation, or to block or guard the wall opening to the computer laboratory, respondent's blunders did not constitute serious misconduct or willful disobedience as to justify the termination of his employment. To reiterate, for serious misconduct or willful disobedience, it is not sufficient that the act or conduct complained of has violated some established rules or policies; the act or conduct must have been performed with wrongful intent. There is absolute lack of proof herein of such wrongful intent on the part of respondent.

Respondent's actions, at their worse, reveal his negligence, but said negligence can hardly be deemed gross and habitual, as to constitute a just ground for his dismissal under Article 282(b) of the Labor Code.

Gross negligence under Article 282 of the Labor Code connotes want of care in the performance of one's duties, while habitual neglect implies repeated failure to perform one's duties for a period of time, depending upon the circumstances.[43] Gross negligence has been defined as the **want or absence of even**

---

[42] CA *rollo*, pp. 191-192.

[43] *Poseidon Fishing v. National Labor Relations Commission*, G.R. No. 168052, 20 February 2006, 482 SCRA 717, 733.

slight care or diligence as to amount to a reckless disregard of the safety of person or property. It evinces a thoughtless disregard of consequences without exerting any effort to avoid them.[44] To constitute a just cause for termination of employment, the neglect of duties must not only be gross but habitual as well. The single or isolated act of negligence does not constitute a just cause for the dismissal of the employee.[45]

Respondent, in the Petition at bar, exercised enough diligence in his renovation of the computer laboratory as to pass the inspection of two officials of petitioner AMACCI. Also, other than the incident at the computer laboratory, no other negligent act was attributed to respondent to establish habituality.

Moreover, the penalty of dismissal imposed on respondent is disproportionate to his offense. The magnitude of the infraction must be weighed and equated with the penalty prescribed and must be commensurate thereto, in view of the gravity of the penalty of dismissal or termination from the service. What is at stake here is not simply the job itself of the employee but also his regular income therefrom which is the means of livelihood of his family.[46]

Time and again, the Court has ruled that while an employer enjoys wide latitude of discretion in the promulgation of policies, rules and regulations on work-related activities of the employees, those directives, however, must always be fair and reasonable, and the corresponding penalties, when prescribed, must be commensurate to the offense involved and to the degree of the infraction.[47]

Finally, the Court notes that respondent impleaded in his complaint before the Labor Arbiter petitioners Aguiluz and Cruz, in their capacity as AMACCI officials. The Court of Appeals,

---

[44] *Metro Transit Organization, Inc. v. National Labor Relations Commission*, 331 Phil. 633, 641 (1996).

[45] *Premiere Development Bank v. Mantal*, G.R. No. 167716, 23 March 2006, 485 SCRA 234, 239-240.

[46] *St. Michael's Institute v. Santos*, 422 Phil. 723, 736 (2001).

[47] *VH Manufacturing Inc. v. National Labor Relations Commission*, 379 Phil. 444, 451 (2000).

after finding that respondent was illegally dismissed, did not make any pronouncement as to the liability of petitioners Aguiluz and Cruz.

Thus, it is necessary for this Court to clarify and explicitly declare that no liability for respondent's illegal dismissal should attach to petitioners Aguiluz and Cruz, and respondent's complaint as against them should be dismissed. Unless they have exceeded their authority, corporate officers are, as a general rule, not personally liable for their official acts, because a corporation, by legal fiction, has a personality separate and distinct from its officers, stockholders and members. It is true that as an exception, corporate directors and officers are solidarily held liable with the corporation, where terminations of employment are done with malice or in bad faith; but where there is an absence of evidence that said directors and officers acted with malice or bad faith, as in this case, the Court must exempt them from any personal liability for the employee's illegal dismissal.[48]

WHEREFORE, premises considered, the petition is *denied*. The Decision dated 22 December 2006 and Resolution dated 4 June 2007 of the Court of Appeals in CA-G.R. SP No. 67047 are *AFFIRMED*, with the *CLARIFICATION/MODIFICATION* that only petitioner AMA Computer Colleges, Inc. is held liable for the illegal dismissal of respondent Allan Raymond R. Ignacio, and the latter's complaint against petitioners Amable C. Aguiluz and Anthony Jesus R. Vince Cruz is *DISMISSED*. Costs against petitioner AMA Computer Colleges, Inc.

SO ORDERED.

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

---

[48] *Price v. Innodata Phils., Inc.*, G.R. No. 178505, 30 September 2008, 567 SCRA 269, 289-290.

THIRD DIVISION

[G.R. No. 180197. June 23, 2009]

FRANCISCO N. VILLANUEVA, *petitioner, vs.* **VIRGILIO P. BALAGUER and INTERCONTINENTAL BROADCASTING CORPORATION CHANNEL-13,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF; IN CIVIL CASES, THE BURDEN OF PROOF IS GENERALLY ON THE PLAINTIFF, WITH RESPECT TO HIS COMPLAINT. — As early as 1905, this Court has declared that it is the duty of the party seeking to enforce a right to prove that their right actually exists. In varying language, our Rules of Court, in speaking of burden of proof in civil cases, states that each party must prove his own affirmative allegations and that the burden of proof lies on the party who would be defeated if no evidence were given on either side. Thus, in civil cases, the burden of proof is generally on the plaintiff, with respect to his complaint. In proving his claim, petitioner relied on the July 20, 1992 letter, the newspaper articles, and the alleged admission of respondents. Based on the above pieces of evidence, the Court finds that petitioner was unable to discharge his burden of proof. As such, the Court of Appeals properly dismissed the complaint for damages.

2. ID.; ID.; ADMISSIONS AND CONFESSIONS; ADMISSION BY SILENCE; FAILURE TO ANSWER ADVERSE ASSERTIONS, IN THE ABSENCE OF FURTHER CIRCUMSTANCES MAKING AN ANSWER REQUISITE OR NATURAL, HAS NO EFFECT AS AN ADMISSION. — Petitioner argues that by not responding to the above letter which expressly urged them to reply if the statements therein contained are untrue, respondents in effect admitted the matters stated therein, pursuant to the rule on admission by silence in Sec. 32, Rule 130, and the disputable presumption that acquiescence resulted from a belief that the thing acquiesced in was conformable to the law or fact. Petitioner's argument lacks merit. One cannot prove his claim by placing the burden

of proof on the other party. Indeed, "(a) man cannot make evidence for himself by writing a letter containing the statements that he wishes to prove. He does not make the letter evidence by sending it to the party against whom he wishes to prove the facts [stated therein]. He no more can impose a duty to answer a charge than he can impose a duty to pay by sending goods. Therefore a failure to answer such adverse assertions in the absence of further circumstances making an answer requisite or natural has no effect as an admission."

3. ID.; ID.; ID.; ID.; RULE ON ADMISSION BY SILENCE, WHEN MAY BE RELAXED. — Moreover, the rule on admission by silence applies to adverse statements in writing if the party was carrying on a mutual correspondence with the declarant. However, if there was no such mutual correspondence, the rule is relaxed on the theory that while the party would have immediately reacted by a denial if the statements were orally made in his presence, such prompt response can generally not be expected if the party still has to resort to a written reply. In the same manner, we also cannot assume an admission by silence on the part of Balaguer by virtue of his failure to protest or disclaim the attribution to him by the newspapers that he is the source of the articles. As explained above, the rule on admission by silence is relaxed when the statement is not made orally in one's presence or when one still has to resort to a written reply, or when there is no mutual correspondence between the parties.

4. ID.; ID.; ID.; NEWSPAPER ARTICLES PURPORTING TO STATE WHAT THE DEFENDANT SAID ARE INADMISSIBLE AGAINST HIM, SINCE HE CANNOT BE HELD RESPONSIBLE FOR THE WRITINGS OF THIRD PERSONS. — As for the publications themselves, newspaper articles purporting to state what the defendant said are inadmissible against him, since he cannot be held responsible for the writings of third persons. As correctly observed by the Court of Appeals, "while the subject news items indicated that Balaguer was the source of the columnists, proving that he truly made such statements is another matter." Petitioner failed to prove that Balaguer did make such statements. Notably, petitioner did not implead the editorial staff and the publisher of the alleged defamatory articles. Contrary to petitioner's assertion, he should have at least presented the authors of the

news articles as witnesses to prove his case against respondents in the absence of an express admission by the latter that the subject news articles have been caused by them.

5. ID.; ID.; ID.; ADMISSIONS SHOULD BE CLEAR AND UNAMBIGUOUS. — Petitioner also claims that respondents have admitted that they held a press conference and caused the publication of the news articles, based on the following testimony of Balaguer: xxx. Admissions, however, should be clear and unambiguous which can hardly be said of Balaguer's above testimony. If Balaguer intended to admit the allegation that he conducted a press conference and caused the publication of the news articles, he could have done so. Instead, Balaguer specifically denied these allegations in paragraphs 4 and 5 of his Answer.

6. ID.; ID.; ID.; ADMISSION BY CO-PARTNER OR AGENT; ADMISSION OF ONE DEFENDANT IS NOT ADMISSIBLE AGAINST HIS CO-DEFENDANT; ALLEGATION OF MALICE OR BAD FAITH MUST BE SUBSTANTIATED BY EVIDENCE. — Petitioner next argues that IBC-13's Cross-Claim against Balaguer, in that: x x x. is an admission by IBC-13, which is admissible against Balaguer pursuant to Sec. 29, Rule 130 as an admission by a co-partner or an agent. Petitioner is mistaken. IBC-13's cross-claim against Balaguer effectively created an adverse interest between them. Hence, the admission of one defendant is not admissible against his co-defendant. Besides, as already discussed, the alleged acts imputed to Balaguer were never proven to have been committed, much less maliciously, by Balaguer. Malice or bad faith implies a conscious and intentional design to do a wrongful act for a dishonest purpose or moral obliquity. Such must be substantiated by evidence.

APPEARANCES OF COUNSEL

Rico & Associates for petitioner.
Government Corporate Counsel for IBC-13.
Jacinto D. Jimenez for Virgilio Balaquer.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

Assailed is the August 10, 2007 Decision[1] of the Court of Appeals in CA-G.R. CV No. 81657 which reversed the October 29, 2003 Decision and February 2, 2004 Resolution of the Regional Trial Court of Quezon City, Branch 89 finding petitioner Francisco N. Villanueva entitled to damages. Also assailed is the October 16, 2007 Resolution[2] denying the motion for reconsideration.

On March 31, 1992, petitioner Francisco N. Villanueva, then Assistant Manager for Operations of Intercontinental Broadcasting Corporation-Channel 13 (IBC-13) was dismissed from employment on the ground of loss of confidence for purportedly selling forged certificates of performance. Contesting his termination, petitioner filed a complaint for illegal dismissal before the National Labor Relations Commission.

During the pendency of the labor case, news articles about irregularities in IBC-13 were published in the July 18, 1992 issue of the Manila Times and the Philippine Star, and in the July 19, 1992 issue of the Manila Bulletin.

In these news articles, respondent Virgilio P. Balaguer, then President of IBC-13, was quoted to have said that he uncovered various anomalies in IBC-13 during his tenure which led to the dismissal of an operations executive for selling forged certificates of performance.

In the Manila Times, on July 18, 1992:[3]

Anomalies at IBC-13 uncovered

INSIDER pilferage, malversation, overpricing and other irregularities have cost government-owned Intercontinental

---

[1] *Rollo*, pp. 40-50; penned by Associate Justice Normandie B. Pizarro and concurred in by Associate Justices Edgardo P. Cruz and Fernanda Lampas Peralta.

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

[3] *Id*. at 98.

Broadcasting Corporation (IBC) 13 more than ₱108 million in losses for the period 1986-1989.

Gil P. Balaguer, IBC president, uncovered the anomalies after a long and painstaking investigation when he took over the company in 1990.

The investigation uncovered irregularities ranging from selling forged certificates of performance (CP's) to non-remittance of sales collections, illegal and unauthorized airing of movie trailer advertisements (MTA's), illegal leasing of electricity and machines to "friendly clients," millions worth of undocumented transactions to movie suppliers, exorbitant fees against in-house productions, abused overtime charges by certain employees.

The anomalies did not escape Balaguer when he came to IBC-13 backed by hands-on experience in television management work.

IBC has had four presidents since 1986 after the EDSA revolution. Balaguer is the fifth president.

A special investigative committee helped Balaguer uncover the anomalies in IBC. **It led to the dismissal of an operations executive who sold forged certificates of performance**, a former supervisor who pocketed IBC's sales collections, and station managers who did not remit payments on radio advertisements.

Other anomalies committed against the government station include the loose issuance of technical facilities orders (TFO's) which practically leased the network's broadcast facilities to a "friendly client" for free.

Balaguer, sources said, succeeded in staying as president because of his technical expertise in media and communications and his "managerial will" to cleanse the ranks of the firm. (Emphasis supplied)

In the Philippine Star, on July 18, 1992:[4]

IBC president uncovers anomalies at tv network

The government-owned International Broadcasting Corp.-Channel 13 lost more than ₱108 million due to insider pilferage, malversation, overpricing and other irregularities from 1986 to 1989.

---

[4] *Id.* at 101.

IBC president Gil P. Balaguer uncovered the anomalies after "a long and painstaking investigation" when he took over the television station in 1990.

Balaguer, in a statement, said the irregularities uncovered included the sale of forged certificates of performance, non-remittance of sales collections, illegal and unauthorized airing of movie advertisements, illegal lease of equipment to "friendly" clients, exorbitant fees on in-house productions and abused overtime charges by some employees.

Balaguer, the fifth IBC president since 1986, easily detected the anomalies as he has a vast experience in television management work.

A special investigative committee helped Balaguer uncover the anomalies at IBC, **which has resulted in the dismissal of an operations executive who sold forged certificates of performance**, a former supervisor who pocketed sales collections and a station manager who did not remit payments on radio advertisements. (Emphasis supplied)

In the Manila Bulletin, on July 19, 1992:[5]

Sequestered firm's losses bared

The Intercontinental Broadcasting Corp. (IBC) 13, a sequestered firm, lost more than ₱108 million for the period 1986-1989 due to pilferage, malversation, over-pricing, and other irregularities perpetrated by a syndicate, according to Gil P. Balaguer, IBC president, who took over the company in 1990.

He said the irregularities ranged from selling forged certificates of performance to non-remittance of sales collections, illegal and unauthorized airing of movie trailer advertisements, illegal leasing of electricity and machines to "friendly clients," millions worth of undocumented transactions to movie suppliers, exorbitant fees against in-house productions, and abused overtime charges by certain employees.

IBC has had four presidents since 1986, Balaguer being the fifth.

A special probe committee that helped Balaguer said **one dismissed executive sold forged certificates of performance**, a

[5] *Id.* at 95.

former supervisor pocketed IBC sales collections, and some station managers did not remit payments on radio advertisements.

The loose issuance of technical facilities orders practically leased the network's broadcast facilities to a "friendly client" for free.

Balaguer is credited with accelerating the network's rank from number five in 1988 to number two or three under current ratings, despite the efforts of some holdouts who tried to derail his administration. (Emphasis supplied)

In a letter dated July 20, 1992, petitioner urged respondents to confirm or deny if he was the person alluded to in the news article as the operations executive of IBC-13 who was dismissed for selling forged certificates of performance.[6] None of the respondents replied to the letter.

On September 25, 1992, petitioner filed before the Regional Trial Court of Quezon City a complaint for damages against Balaguer,[7] which was later amended by impleading IBC-13 as additional defendant.[8]

Petitioner claimed that respondents caused the publication of the subject news articles which defamed him by falsely and maliciously referring to him as the IBC-13 operations executive who sold forged certificates of performance.[9] He alleged that in causing these false and malicious publications, respondents violated Articles 19, 20, 21, and 26 of the Civil Code.[10]

---

[6] *Id.* at 104.

[7] *Id.* at 54.

[8] *Id.* at 57.

[9] *Id.* at 58.

[10] Art. 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.

Art. 20. Every person who, contrary to law, wilfully or negligently causes damage to another, shall indemnify the latter for the same.

Art. 21. Any person who wilfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage.

Balaguer denied that he had anything to do with the publications.[11] However, he argued that the publications are not actionable because they are true and without malice;[12] are of legitimate public concern and interest because IBC-13 is under sequestration; that petitioner is a newsworthy and public figure;[13] and that they are privileged communication.[14] Balaguer filed a counterclaim against petitioner for alleged malicious filing of the civil case.[15]

IBC-13 also denied participation in the publications. It claimed that assuming press statements were issued during a press conference, the same was done solely by Balaguer without its authority or sanction.[16] IBC-13 also filed a counterclaim against petitioner[17] and a cross-claim against Balaguer.[18]

On August 31, 1993, the Labor Arbiter rendered a Decision[19] finding petitioner's dismissal as illegal, which was affirmed by the National Labor Relations Commission. The Commission, however, declared respondents to be acting in good faith, hence, it deleted the award of moral and exemplary damages. On December 6, 1994, the parties entered into a Compromise Agreement,[20] with IBC-13 proposing a scheme of payment for petitioner's monetary claims, and with IBC-13 and petitioner waiving any and all claims against each other arising out of the labor case.

Art. 26. Every person shall respect the dignity, personality, privacy and peace of mind of his neighbors and other persons. x x x

[11] *Rollo,* p. 67.

[12] *Id*.

[13] *Id.* at 67-68.

[14] *Id.* at 68.

[15] *Id*.

[16] *Id.* at 61.

[17] *Id*. at 62.

[18] *Id*. at 63.

[19] *Id.* at 105-128.

[20] Exhibit "27", Folder of Pre-Trial Brief and Exhibits for Virgilio Balaguer.

On October 29, 2003, the Regional Trial Court[21] of Quezon City held that petitioner is entitled to an award of damages,[22] thus:

> WHEREFORE, premises considered, judgment is rendered in favor of plaintiff Francisco N. Villanueva and against defendants Balaguer and Intercontinental Broadcasting Corporation (IBC-13).
>
> Accordingly, defendants are hereby ordered to pay the plaintiff jointly and severally, as follows:
>
> 1) the sum of Five Hundred Thousand (₱500,000.00) Pesos by way of moral damages;
>
> 2) the sum of One Hundred Thousand (₱100,000.00) Pesos as and by way of exemplary damages;
>
> 3) the sum of Thirty Thousand (₱30,000.00) Pesos by way of nominal damages;
>
> 4) the sum of Ten Thousand (₱10,000.00) Pesos by way of temperate or moderate damages; and
>
> 5) the sum of One Hundred Thousand (₱100,000.00) Pesos as and by way of attorney's fees.
>
> With costs against defendants.
>
> SO ORDERED.[23]

Respondents moved for reconsideration but it was denied.[24] Hence, they appealed to the Court of Appeals which rendered the herein assailed Decision on August 10, 2007, disposing thus:

> WHEREFORE, premises considered, the appeal is hereby GRANTED. The October 29, 2003 Decision and the February 2, 2004 Resolution with Clarification issued by the Regional Trial Court, Br. 89, National Capital Judicial Region, Quezon City, are hereby REVERSED. The Complaint, the Counterclaim, and the Cross-claim in Civil Case No. Q-92-13680 are hereby DISMISSED.

---

[21] Penned by Judge Elsa I. De Guzman.

[22] *Rollo,* pp. 298-337.

[23] *Id.* at 336.

[24] *Id.* at 382-393.

SO ORDERED.[25]

Petitioner's motion for reconsideration was denied. Hence, the instant petition raising the following issues:[26]

a) Does the failure of the addressee to respond to a letter containing statements attributing to him commission of acts constituting actionable wrong, hence, adverse to his interest, and of such nature as would call for his reaction, reply, or comment if untrue, constitute his admission of said statements, consequently, may be used in evidence against him?

b) Is the admission by a principal admissible against its agent? Is the admission by a person jointly interested with a party admissible against the latter?

c) Does the failure of an individual to disown the attribution to him by newspaper publications, as the source of defamatory newspaper reports, when he is free and very able to do so, constitute admission that he, indeed, was the source of the said defamatory news reports?

The petition lacks merit.

As early as 1905, this Court has declared that it is the duty of the party seeking to enforce a right to prove that their right actually exists. In varying language, our Rules of Court, in speaking of burden of proof in civil cases, states that each party must prove his own affirmative allegations and that the burden of proof lies on the party who would be defeated if no evidence were given on either side.[27] Thus, in civil cases, the burden of proof is generally on the plaintiff, with respect to his complaint.[28]

---

[25] *Id.* at 50.

[26] *Id.* at 10.

[27] *Santiago Virginia Tobacco Planters Association, Inc. v. Philippine Virginia Tobacco Administration and Farmers' Virginia Tobacco Redriers, Inc.*, G.R. No. L-26292, February 18, 1970, 31 SCRA 528, 535.

[28] Florenz D. Regalado, *Remedial Law Compendium* - Volume II (Mandaluyong City: National Book Store, 2004), p. 772.

In proving his claim, petitioner relied on the July 20, 1992 letter, the newspaper articles, and the alleged admission of respondents. Based on the above pieces of evidence, the Court finds that petitioner was unable to discharge his burden of proof. As such, the Court of Appeals properly dismissed the complaint for damages.

The July 20, 1992 letter sent by petitioner to respondents reads as follows:[29]

20 July 1992

Mr. Virgilio Balaguer
Intercontinental Broadcasting Corporation
Broadcast City, Capitol Hills
Diliman, Quezon City

Dear Mr. Balaguer:

We write on behalf of our client, Mr. Francisco N. Villanueva.

You have caused to be published in the 18 July 1992 issue of The Philippine Star and 19 July 1992 issue of Manila Bulletin, a news item wherein you stated that you dismissed an Operations Executive because he "sold forged Certificate of Performance." Our immediate impression is, you are referring to our client, Francisco N. Villanueva, because he is the only Operations Executive in IBC, Channel 13 you have illegally and despotically dismissed.

We urge you, therefore, to inform us, within forty-eight (48) hours from your receipt of this letter that the Operations Executive you referred to in your press statement is not our client, Francisco N. Villanueva. We shall construe your failure/refusal to reply as your unequivocal admission that you are, in fact, actually referring to our client, Mr. Francisco N. Villanueva, as the operations executive who "sold forged Certificate of Performance." Accordingly, we shall immediately proceed to take appropriate criminal and civil court actions against you without further notice.

Very truly yours,

(signed)
REX G. RICO

---

[29] *Rollo*, p. 104.

cc: Mr. Francisco N. Villanueva
Board of Administrators, IBC-13

Petitioner argues that by not responding to the above letter which expressly urged them to reply if the statements therein contained are untrue, respondents in effect admitted the matters stated therein, pursuant to the rule on admission by silence in Sec. 32, Rule 130,[30] and the disputable presumption that acquiescence resulted from a belief that the thing acquiesced in was conformable to the law or fact.[31]

Petitioner's argument lacks merit. One cannot prove his claim by placing the burden of proof on the other party. Indeed, "(a) man cannot make evidence for himself by writing a letter containing the statements that he wishes to prove. He does not make the letter evidence by sending it to the party against whom he wishes to prove the facts [stated therein]. He no more can impose a duty to answer a charge than he can impose a duty to pay by sending goods. Therefore a failure to answer such adverse assertions in the absence of further circumstances making an answer requisite or natural has no effect as an admission."[32]

Moreover, the rule on admission by silence applies to adverse statements in writing if the party was carrying on a mutual correspondence with the declarant. However, if there was no such mutual correspondence, the rule is relaxed on the theory that while the party would have immediately reacted by a denial if the statements were orally made in his presence, such prompt response can generally not be expected if the party still has to resort to a written reply.[33]

---

[30] SEC. 32. *Admission by silence*. – An act or declaration made in the presence and within the hearing or observation of a party who does or says nothing when the act or declaration is such as naturally to call for action or comment if not true, and when proper and possible for him to do so, may be given in evidence against him.

[31] Rules of Court, Rule 131, Sec. 3 (x).

[32] *Ravago Equipment Rentals, Inc. v. Court of Appeals*, 337 Phil. 584, 590-591 (1997).

[33] Regalado, *supra* note 28 at 724-725.

In the same manner, we also cannot assume an admission by silence on the part of Balaguer by virtue of his failure to protest or disclaim the attribution to him by the newspapers that he is the source of the articles. As explained above, the rule on admission by silence is relaxed when the statement is not made orally in one's presence or when one still has to resort to a written reply, or when there is no mutual correspondence between the parties.

As for the publications themselves, newspaper articles purporting to state what the defendant said are inadmissible against him, since he cannot be held responsible for the writings of third persons.[34] As correctly observed by the Court of Appeals, "while the subject news items indicated that Balaguer was the source of the columnists, proving that he truly made such statements is another matter."[35] Petitioner failed to prove that Balaguer did make such statements.

Notably, petitioner did not implead the editorial staff and the publisher of the alleged defamatory articles.[36] Contrary to petitioner's assertion, he should have at least presented the authors of the news articles as witnesses to prove his case against respondents in the absence of an express admission by the latter that the subject news articles have been caused by them.

Petitioner also claims that respondents have admitted that they held a press conference and caused the publication of the news articles, based on the following testimony of Balaguer:[37]

ATTY. JIMENEZ:

Okay, Let me ask another question. Now Mr. Balaguer this publication referred to so called anomalies of 1986 to 1989 now how about the termination.

A: 1991.

---

[34] *Carpenter v. Ashley*, 148 Cal 422, 83 P 44 (1906).

[35] *Rollo,* p. 48.

[36] *Manuel v. Pano*, G.R. No. 46079, April 17, 1989, 172 SCRA 225, 238.

[37] *Rollo,* p. 21.

ATTY. JIMENEZ: Yes.

WITNESS:

I think the termination of Mr. Villanueva has nothing to do with that press statement release because the period that covers that report is from specific date 1986 to 1989. (TSN, 07 November 2000, p. 19)

Admissions, however, should be clear and unambiguous[38] which can hardly be said of Balaguer's above testimony. If Balaguer intended to admit the allegation that he conducted a press conference and caused the publication of the news articles, he could have done so. Instead, Balaguer specifically denied these allegations in paragraphs 4 and 5 of his Answer.[39]

Petitioner next argues that IBC-13's Cross-Claim against Balaguer, in that:[40]

11. The acts complained of by the plaintiff were done solely by co-defendant Balaguer.

Balaguer resorted to these things in his attempt to stave off his impending removal from IBC.

is an admission by IBC-13, which is admissible against Balaguer pursuant to Sec. 29, Rule 130[41] as an admission by a co-partner or an agent.

Petitioner is mistaken. IBC-13's cross-claim against Balaguer effectively created an adverse interest between them. Hence, the admission of one defendant is not admissible against his co-

---

[38] *Carandang v. Heirs of Quiring A. De Guzman*, G.R. No. 160347, November 29, 2006, 508 SCRA 469, 495.

[39] *Rollo,* pp. 65-66.

[40] *Id.* at 63.

[41] SEC. 29. *Admission by co-partner or agent.* – The act or declaration of a partner or agent of the party within the scope of his authority and during the existence of the partnership or agency, may be given in evidence against such party after the partnership or agency is shown by evidence other than such act or declaration. The same rule applies to the act or declaration of a joint owner, joint debtor, or other person jointly interested with the party.

defendant. Besides, as already discussed, the alleged acts imputed to Balaguer were never proven to have been committed, much less maliciously, by Balaguer. Malice or bad faith implies a conscious and intentional design to do a wrongful act for a dishonest purpose or moral obliquity. Such must be substantiated by evidence.[42]

In sum, we find that petitioner failed to discharge his burden of proof. No satisfactory evidence was presented to prove by preponderance of evidence that respondents committed the acts imputed against them. As such, there is no more need to discuss whether the assailed statements are defamatory.

WHEREFORE, the petition is *DENIED*. The August 10, 2007 Decision of the Court of Appeals in CA-G.R. CV No. 81657 reversing the October 29, 2003 Decision and February 2, 2004 Resolution of the Regional Trial Court of Quezon City, Branch 89, finding petitioner entitled to damages, as well as the October 16, 2007 Resolution denying the motion for reconsideration, are *AFFIRMED*.

SO ORDERED.

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

---

[42] Desiderio P. Jurado, *Civil Law Reviewer* (Manila: Rex Book Store, Inc., 2006), p. 32.

* Designated as additional member of the Third Division per raffle dated June 17, 2009.

THIRD DIVISION

[G.R. No. 180817. June 23, 2009]

MULTI-TRANS AGENCY PHILS. INC., *petitioner, vs.* **ORIENTAL ASSURANCE CORP.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; MOTION FOR NEW TRIAL; GROUNDS; EXCUSABLE NEGLIGENCE; NEGLIGENCE OF COUNSEL BINDS THE CLIENT; EXCEPTIONS. — One of the grounds for the granting of a new trial under Section 1 of Rule 37 of the 1997 Revised Rules of Civil Procedure is excusable negligence. It is settled that the negligence of counsel binds the client. This is based on the rule that any act performed by a counsel within the scope of his general or implied authority is regarded as an act of his client. Consequently, the mistake or negligence of counsel may result in the rendition of an unfavorable judgment against the client. We have, however, carved out exceptions to this rule; as where the reckless or gross negligence of counsel deprives the client of due process of law; or where the application of the rule will result in outright deprivation of the client's liberty or property; or where the interests of justice so requires and relief ought to be accorded to the client who suffered by reason of the lawyer's gross or palpable mistake or negligence. In order to apply the exceptions rather than the rule, the circumstances obtaining in each case must be looked into. In cases where one of the exceptions is present, the courts must step in and accord relief to a client who suffered thereby.

2. ID.; ID.; ID.; ID.; ID.; GROSS NEGLIGENCE, DEFINED; PETITIONER WAS DEPRIVED OF ITS DAY IN COURT DUE TO THE GROSS NEGLIGENCE OF ITS COUNSEL. — Gross negligence has been defined as the want or absence of or failure to exercise slight care or diligence, or the entire absence of care. It examines a thoughtless disregard of consequences without exerting any effort to avoid them. In the case before us, we find the negligence of petitioner's former counsel to be so gross that it was deprived of its day in court, thus denying it due process. The records show that petitioner

was declared in default for failure of its former counsel to file an answer to the complaint after the motion to dismiss he filed was denied by the trial court. Atty. Austria did not do anything to protect the interests of petitioner. He neither opposed the plaintiff's motion to declare his client in default despite due notice thereof; nor filed any motion to set aside the order declaring his client in default, also after he was apprised of the adverse order. He failed to inform his client of the fact that he failed to file an Answer and of the Court Order declaring it in default and allowing plaintiff to present evidence *ex parte*. He even misrepresented that he already filed a Motion to Lift Order of Default when confronted by his client after the latter learned of said Order of Default. As a result of Atty. Austria's inaction, respondent was allowed to present its evidence. Petitioner failed to adduce any evidence to rebut the allegations contained in the complaint. It was deprived of due process. The gross negligence of petitioner's former counsel, coupled with its deprivation of due process, will ultimately result in its deprivation of property.

3. ID.; ID.; ID.; ID.; ID.; FOR A CLAIM OF COUNSEL'S NEGLIGENCE TO PROSPER, NOTHING SHORT OF CLEAR ABANDONMENT OF THE CLIENT'S CAUSE MUST BE SHOWN. — For a claim of counsel's negligence to prosper, nothing short of clear abandonment of the client's cause must be shown. In this case, the only pleading filed by petitioner's former counsel was a motion to dismiss. After the same had been denied, he did not file anything more until a decision was rendered by the trial court. This is compounded by the fact that he misrepresented to petitioner that he had filed the proper motion to set aside the order of default. These acts of petitioner's counsel amount to gross negligence.

4. ID.; ID.; ID.; ID.; ID.; ID.; A CLIENT MAY REASONABLY EXPECT THAT HIS COUNSEL WILL MAKE GOOD HIS REPRESENTATION AND HAS THE RIGHT TO EXPECT THAT HIS LAWYER WILL PROTECT HIS INTEREST DURING THE TRIAL OF HIS CASE. — Under the circumstances of the case, petitioner cannot be blamed for relying on the assurance of its former counsel. Petitioner cannot be said to have utterly failed to do anything to regain its standing after being declared in default. After being informed that it was declared in default, it confronted Atty. Austria of the same

and was assured by him that a motion to lift the order of default had been filed. This, we know, was not true since petitioner never regained its standing, and a decision was rendered by the trial court in favor of the plaintiff without petitioner having the opportunity to present its evidence. In *Sarraga, Sr. v. Banco Filipino Savings and Mortgage Bank*, we held: A client may reasonably expect that his counsel will make good his representations and has the right to expect that his lawyer will protect his interests during the trial of his case. For the general employment of an attorney to prosecute or defend a case or proceeding ordinarily vests in a plaintiff's attorney the implied authority to take all steps or do all acts necessary or incidental to the regular and orderly prosecution and management of the suit, and in a defendant's attorney, the power to take such steps as he deems necessary to defend the suit and protect the interests of the defendant.

5. ID.; ID.; ID.; ID.; ID.; PRONOUNCEMENT IN APEX CASE (377 PHIL. 482, 495-496 [1999]), APPLICABLE TO CASE AT BAR. — Our pronouncement in *Apex Mining, Inc. v. Court of Appeals* applies to this case: If the incompetence, ignorance or inexperience of counsel is so great and the error committed as a result thereof is so serious that the clients, who otherwise has a good cause, is prejudiced and denied his day in court, the litigation may be reopened to give the client another chance to present his case. Similarly, when an unsuccessful party has been prevented from fully and fairly presenting his case as a result of his lawyer's professional delinquency or infidelity the litigation may be reopened to allow the party to present his side. Where counsel is guilty of gross ignorance, negligence and dereliction of duty, which resulted in the client's being held liable for damages in a damage suit, the client is deprived of his day in court and the judgment may be set aside on such ground. In view of the foregoing circumstances, higher interests of justice and equity demand that petitioners be allowed to present evidence on their defense. Petitioners may not be made to suffer for the lawyer's mistakes and should be afforded another opportunity, at least, to introduce evidence on their behalf. To cling to the general rule in this case is only to condone rather than rectify a serious injustice to a party whose only fault was to repose his faith and entrust his innocence to his previous lawyers. What should guide judicial action is that a party be given the fullest opportunity to establish the merits of his action or defense

rather than for him to lose life, liberty, honor or property on mere technicalities. In cases involving gross or palpable negligence of counsel the courts must step in and accord relief to a client who has suffered thereby. This Court will always be disposed to grant relief to parties aggrieved by perfidy, fraud, reckless inattention and downright incompetence of lawyers, which has the consequence of depriving their clients, of their day in court.

6. ID.; JUDGMENT; DEFAULT ORDER; ISSUANCE THEREOF SHOULD BE AN EXCEPTION RATHER THAN THE RULE TO BE ALLOWED ONLY IN CLEAR CASES OF OBSTINATE REFUSAL BY THE DEFENDANT TO COMPLY WITH THE ORDERS OF THE TRIAL COURT; CASE AT BAR. — In *Amil v. Court of Appeals*, we ruled that trial courts should be liberal in setting aside orders of default and granting motions for new trial if the defendant appears to have a meritorious defense. Parties must be given every opportunity to present their side. The issuance of orders of default should be the exception rather than the rule, to be allowed only in clear cases of obstinate refusal by the defendant to comply with the orders of the trial court. In the case under consideration, petitioner appears to have a defense that should be looked into more closely. Petitioner insists that it is not the agent of the vessel "Tokyo Bay," the vessel that carried the subject shipment. As can be seen from the International Bill of Lading issued by John Goods & Sons (London), and as admitted by petitioner, it is the local agent of John Goods & Sons (London) that is, in turn, the agent of Transtainer Systems (UK) Ltd., Multimodal Transport Operators. Looking at the complaint, respondent alleges that petitioner is the operator/ shipagent of the vessel "Tokyo Bay." Both lower courts ruled that petitioner was liable for being the agent of "Tokyo Bay," the vessel in which the cargo was loaded. There appears to be some inconsistency between the allegation in the complaint and the decisions of the lower courts that was not fully explained. In light of these, it would be in accord with justice and equity to allow petitioner's prayer for new trial, so that it can present its evidence; and for the trial court to determine with certainty where the liability, if any, of petitioner arises – whether as agent of "Tokyo Bay" or as agent of John Goods & Sons (London).

APPEARANCES OF COUNSEL

Melgar Tria and Associates for petitioner.
Melody Anne E. Calo-Villar for respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

Before Us is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, which seeks the reversal and setting aside of the Decision[1] of the Court of Appeals dated 4 December 2006 in CA-G.R. CV No. 67581 affirming with modification the decision[2] and order[3] of the Regional Trial Court (RTC) of Manila, Branch 13, in Civil Case No. 97-84259; and its Resolution[4] dated 10 December 2007 denying petitioner Multi-Trans Agency Phils., Inc.'s (Multi-Trans) Motion for Reconsideration.

The instant case arose from a complaint for sum of money filed by respondent Oriental Assurance Corporation (Oriental) against petitioner and Neptune Orient Lines, Ltd. (Neptune) before the RTC of Manila on 22 July 1997. The case was raffled to Branch 13. The complaint alleged, *inter alia*, that **Multi-Trans was the operator/ship agent of the vessel "Tokyo Bay**" while Neptune was the operator/ship agent of the vessel "M/V Neptune Beryl." Oriental's predecessor-in-interest – Imrex Enterprises – imported from England seventy-two (72) boxes and one (1) pal/box of various colors of Opacolor, contained in one container van which was transported from Southampton to Manila on board the vessel "Tokyo Bay" as evidenced by Bill of Lading No. MA-19943/02. The shipment was transshipped

---

[1] Penned by Associate Justice Celia C. Librea-Leagogo with Associate Justices Rodrigo V. Cosico and Edgardo F. Sundiam, concurring. *Rollo,* pp. 40-69.

[2] Records, pp. 138-140.

[3] *Id.* at 180-180a.

[4] *Rollo,* pp. 71-72.

from Singapore on board the vessel "M/V Neptune Beryl," which arrived and docked at the Manila International Port, Manila, on 29 August 1996. The shipment was insured by respondent against loss and/or damage for ₱1,078,012.16 under Marine Insurance Policy No. OAC-M-96/688.

The container van containing the shipment was unloaded from the carrying vessel and stripped of its contents at the open Container Yard of the Manila North Harbor. Only 72 boxes were found, while the one pal/box of Opacolor CC 22932 Yellow weighing 500 kilos was not delivered by the carrying vessel, or was shortlanded, as evidenced by Good Order Cargo Receipt No. 1792 issued by Neptune. The 72 boxes were withdrawn from the Manila North Harbor and delivered to the consignee's (Imrex Enterprises') warehouse at No. 7 Jose Cruz St., Barrio Ugong, Pasig City.

Respondent alleged that the non-delivery or shortlanding of one box of the shipment was due to the negligence of petitioner and Neptune and/or the captain and crew of the vessels "Tokyo Bay" and/or "MV Neptune Beryl" in loading, stowing, taking care of, handling and unloading the shipment. By being negligent, petitioner and Neptune breached their contract of carriage in failing to deliver one box of the shipment to Imrex Enterprises at the point of destination. Imrex Enterprises filed a claim with respondent for the value of the one box that was shortlanded. Pursuant to the terms and conditions of Marine Insurance Policy No. OAC-M-96/688, respondent paid Imrex Enterprises the amount ₱256,937.03, for which reason, it claims that it is subrogated into the rights of Imrex Enterprises to be indemnified by petitioner and Neptune.

Respondent made demands upon petitioner and Neptune to pay, but they refused to satisfy the former's claim. As a result, the complaint was filed and both petitioner and Neptune were sued, because respondent was uncertain from whom it was entitled to relief. It prayed that either or both petitioner and Neptune be ordered to pay (a) ₱256,937.03 with legal interest from the date of the filing of the complaint; (b) ₱50,000.00 as attorney's fees; and (c) costs of suit.[5]

---

[5] Records, pp. 1-4.

Neptune filed its Answer with Compulsory Counterclaim.[6] It alleged, among other things, that it was a mere commercial agent of "M/V Neptune Beryl;" and that it had no knowledge of the contents, quantity, quality, condition and value of the subject shipment, as it was carried on a "Said to Contain" (or STC) and "Shipper's Load and Count" basis. It claimed that the dorsal portion of Bill of Lading No. MA-19943/02 was not produced. It added that the shipment was discharged from the vessel complete and in good order, and that it exercised the diligence required by law in the handling of and vigilance over the shipment. It also alleged that no demand was made. It invoked the following defenses: the complaint stated no cause of action; the plaintiff and subrogor had no privity of contract with Neptune; plaintiff and Neptune were not the real parties-in-interest; the subject shipment was discharged at the Port of Manila complete and in good order; its responsibility ceased upon the shipment's discharge from the ship's tackle; the damages, losses and spillages, if any, were due to the inherent nature, vice or defect of the goods; or the perils, dangers and accidents of the sea; pre-shipment loss or damage; or the insufficiency of the packing thereof, for which it was not liable; the alleged payment made by plaintiff to the alleged assured/consignee was not legally due and demandable, so there was consequently no legal subrogation in favor of the plaintiff; its liability should not exceed the cost insurance freight value of the loss or damaged shipment or the amount of $500 per package; or in any event, said liability, if any, should not exceed the limitation of liability provided for in the Bill of Lading; no invoice of loss/damage was made by the consignee within the time required by law, the Bill of Lading, and the pertinent charter party; the complaint was barred by prescription and/or laches; plaintiff's claim was excessive and unreasonable; the terms and conditions of the relevant Bill of Lading, Carriage of Goods by Sea Act and existing laws absolved it from any and all liability for the alleged loss/damage; the damage, if any, to the shipment was due to the negligent acts or omissions committed by the consignee or its representatives, or to causes for which defendant is not responsible;

[6] *Id.* at 21-27.

the shipment was loaded on board the vessel subject to the terms and conditions of the relevant Bill of Lading; the subject shipment was carried under "weight, measure, marks and numbers, quality, contents and value unknown," indicating that the carrier did not know the exact quantity, quality and weight of the shipment, as it was not given the opportunity to inspect the same; and the Bill of Lading was issued based on the declaration made by the shipper; and the vessel (M/V Neptune Beryl) acted as a special carrier, and Neptune was a mere commercial agent of "M/V Neptune Beryl."

On the other hand, petitioner, through its counsel Jose Ma. Q. Austria, filed a Motion to Dismiss[7] on the ground that the complaint did not state a cause of action. It argued that the complaint stated that petitioner Multi-Trans was the "operator/ ship agent of the vessel "Tokyo Bay." However, in the Bill of Lading attached to the complaint, **petitioner was named agent of Multimodal Transport Operator and not of the vessel "Tokyo Bay**." Neither can it be the operator of the said vessel, there being no allegation that said vessel was on a bareboat charter to Transtainer Lines, the principal of petitioner. It maintains that the evidence presented by plaintiff defeats its own allegations as to the participation of petitioner in the transaction.

On 8 October 1997, respondent opposed the motion to dismiss.[8] On 23 October 1997, respondent filed its answer to counterclaim.[9]

In an Order dated 25 October 1997, petitioner's motion to dismiss was denied.[10]

In an Order dated 20 February 1998, the trial court directed its personnel to transmit immediately to counsel of petitioner a copy of the Order dated 25 October 1997 it appearing that Multi-Trans was not sent a copy thereof. For this reason, it

---

[7] *Id.* at 30-32.

[8] *Id.* at 33-37.

[9] *Id.* at 45-46.

[10] *Id.* at 47.

declared that petitioner's period to file an answer had not yet started to run.[11]

On 15 January 1999, the trial court archived the case, there being no movement in the case.[12]

17 February 1999, respondent filed a motion to declare defendant Multi-Trans in default for failure to file its answer to the complaint.[13]

In its order[14] dated 26 February 1999, the trial court stated that the copy of the Order dated 25 October 1997 was sent to defendant Multi-Trans and not to its counsel. For this reason, the period to file an Answer had not yet started to run. It directed that a copy of the 25 October 1997 Order be sent to defendant Multi-Trans' counsel. A notice of the transmittal of the Order dated 25 October 1997 to Atty. Austria was shown to the trial court without any return.

Per Order dated 27 March 1999, petitioner Multi-Trans was declared in default, there being a certification from the Post Office of Makati showing that counsel for petitioner received a copy of the Order dated 25 October 1997 denying its motion to dismiss, and that it had not yet filed an Answer.[15]

The trial court scheduled the pre-trial between respondent and Neptune and required them to submit their pre-trial briefs.

On 14 April 1999, respondent reiterated its motion to declare petitioner Multi-Trans in default.[16] On 15 April 1999, the trial court reiterated its earlier Order of 27 March 1999 declaring petitioner Multi-Trans in default.[17]

---

[11] *Id.* at 50.

[12] *Id.* at 53.

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

[14] *Id.* at 60.

[15] *Id.* at 70.

[16] *Id.* at 72-73.

[17] *Id.* at 74.

Respondent Oriental filed its pre-trial brief on 6 May 1999,[18] while Neptune filed its pre-trial brief on 18 May 1999.[19]

In an Order dated 20 May 1999, respondent Oriental was allowed to present its evidence *ex parte* for failure of Neptune and its counsel to appear at pre-trial despite notice.[20]

On 17 June 1999, Oriental presented two witnesses: (1) Erlinda Espiritu and (2) Perfecto Mojica. It formally offered in evidence Exhibits A to O, inclusive,[21] which the trial court admitted.[22]

On 30 August 1999, the trial court rendered its decision finding petitioner and Neptune solidarily liable to respondent. The dispositive portion of the decision reads:

> WHEREFORE, judgment is rendered ordering defendants Multi-Trans Agency Phils., Inc. and Neptune Orient Lines Ltd. jointly and severally to pay the plaintiff Oriental Assurance Corporation the sum of ₱256,937.03 with legal interest of 6 percent per annum from the date of filing of the complaint until payment, plus reasonable attorney's fees of ₱30,000, and costs.[23]

On 10 September 1999, Atty. Jose Ma. Austria, with conformity of petitioner, filed a Notice of Withdrawal of Appearance.[24] The trial court ordered notices be furnished petitioner until a new counsel appeared.[25]

On 27 September 1999, Melgar Tria & Associates entered its appearance for petitioner Multi-Trans.[26] Simultaneously with its entry of appearance, new counsel for petitioner filed a Motion

---

[18] *Id.* at 80-86.

[19] *Id.* at 90-94.

[20] *Id.* at 95.

[21] *Id.* at 108-134.

[22] *Id.* at 135.

[23] *Id.* at 140.

[24] *Id.* at 142-143.

[25] *Id.* at 144.

[26] *Id.* at 145.

for New Trial and to Admit Attached Answer.[27] Petitioner prayed that the judgment of the trial court be set aside and a new trial be granted on the ground of its former counsel's negligence/ incompetence constituting excusable neglect, and that its Answer to the Complaint be admitted. The following are contained in the Affidavit of Merit executed by petitioner's Administration Manager:

4. That I was surprised considering that per last conversation with our lawyer Atty. Jose Ma. Austria, he informed us that we have been declared in default and that they have already filed a Motion to Lift Order of default;

5. That upon verification of the records of the case, I found out that our lawyer Atty. Jose Ma. Austria did not actually file any Motion to Lift Order of Default despite receipt of the Order of the Court declaring us in default;

6. Furthermore, review of the records of the case, disclosed that the only action taken by our counsel was to file in our behalf a Motion to Dismiss but the same was denied by this Honorable Court on October 25, 1997 and received by Atty. Austria on February 25, 1998 as evidenced by the Certification coming from the Post Office of Makati City;

x x x x x x x x x

9. As can be clearly seen, from the time he received the order of this Court dated October 25, 1997 denying its Motion to Dismiss, up to the time he received plaintiff's motion to declare defendant in default until the time he received the Order of this Court declaring us in default, our lawyer has not done nothing (sic) either by filing an answer or a motion to lift the order of default (which he led us to believe that he indeed filed the same) which is clearly a breach of trust that we have reposed in him;

10. By the negligence of our counsel, we were denied the opportunity to present evidence and participate in the trial, and thus deprived us the chance to contest the suit that has been filed against us by the plaintiff;

11. That we have a good and meritorious defense in that our company is just a mere freight forwarding firm. Likewise our principal

[27] *Id.* at 146-162.

in London, John Goods & Sons (London) Ltd. is also a freight forwarder. While Transtainer Systems (UK) Ltd., Multimodal Operators (wherein John Goods & Sons Ltd. is the agent) is a non-operating vessel cargo consolidator.

12. As can be shown, neither one of us is the owner/operator of the vessel "Tokyo Bay" wherein the subject cargo was loaded and shipped nor have we any participation in the filing up, packing, storing of the subject cargo in the container nor in the loading and shipping of the same in the vessel; x x x.[28]

On 28 September 1999, Neptune filed a Motion for Reconsideration of the decision of the trial court.[29]

Respondent filed its opposition to the motions for new trial and for reconsideration.[30]

In its Order dated 29 November 1999, the trial court denied the motion for new trial. It declared:

In seeking new trial, defendant Multi-Trans Agency assails its former counsel Atty. Jose Ma. Austria for not taking any action at all from the time that he received the denial of his motion to dismiss until the decision was rendered. It cites rulings to the effect that negligence or incompetence of counsel is a well-recognized ground for new trial. While this may be true in a number of cases, the factual backdrop therein will reveal that the parties aggrieved by the inaction of their counsels had not contributed to the situation in which they found themselves. A party must truly be a victim of its counsel's misconduct for it to claim new trial. This is not the case here. Atty. Austria may have ignored the orders and other papers sent to him, but the records will show that defendant was also furnished copies of the same papers. It cannot pretend to be ignorant of what was going on. In particular, it had received copy of the Order of March 27, 1999 declaring it in default, but from the time it received this in April until the decision on August 30, 1999 – a period of four months – it did nothing to regain its standing. Defendant was already alerted to the fact that its counsel was remiss in his duties. A normally prudent and careful person would have taken pains to rectify the situation when there was still time to do so. In not making a response

[28] *Id.* at 153-154.

[29] *Id.* at 163-168.

[30] *Id.* at 172-179.

until it was too late, defendant can no longer claim any relief. It is as irresponsible as its lawyer and unworthy to invoke the higher right of equity to rescue it from the consequences of its inaction. As provided in Section 1, Rule 37 of the Rules of Court, a party may move to set aside the judgment and ask for new trial if it can show that its negligence was, at the least, excusable. The facts show otherwise.

The plaintiff has also presented enough evidence to establish the liability of defendant for the loss of a part of the cargo. As stated in the decision, the bill of lading clearly points to the defendant as the shipagent of the vessel in which the cargo was loaded. The loss of the cargo is deducible from the quantity loaded at the point of shipment and the quantity discharged at the point of delivery.[31]

The motion for reconsideration filed by Neptune was denied by the trial court in its Order dated 1 December 1999.[32]

Petitioner filed a notice of appeal informing the trial court that it was appealing from the decision it had rendered and the Order denying the motion for new trial.[33] Neptune also filed a notice of appeal.[34] With notices of appeal having been filed, the trial court forwarded the records of the case to the Court of Appeals.[35]

On 4 December 2006, the Court of Appeals promulgated its decision denying the petitioner's appeal, while granting that of Orientals. It affirmed with modification the trial court's decision dated 30 August 1999 and Order dated 29 November 1999 ruling that it was only petitioner that was liable to respondent.

Petitioner filed a Motion for Reconsideration.[36] Respondent filed a Partial Motion for Reconsideration, praying that the Court of Appeals' decision be reversed and set aside, and that Neptune

---

[31] *Id.* at 180-180a.

[32] *Id.* at 181-182.

[33] *Id.* at 188.

[34] *Id.* at 190.

[35] *Id.* at 191.

[36] CA *rollo*, pp. 153-161.

be held solidarily liable with petitioner.[37] On 10 December 2007, the Court of Appeals denied both motions.[38]

Petitioner Multi-Trans Agency Phils. Inc. is now before us *via* a petition for review, praying that the decision and Order of the Court of Appeals be set aside, and that its Motion for New Trial and to Admit Answer be granted.[39] Respondent Oriental Assurance Corporation filed its Comment on the petition filed by Multi-Trans.[40]

Both petitioner and respondent filed their respective memoranda.[41]

Petitioner makes the following assignment of errors:

FIRST

THE HONORABLE COURT OF APPEALS ERRED IN DISREGARDING THE SIGNIFICANT AND UNCONTROVERTED ACTS OF PETITIONER'S FORMER COUNSEL AMOUNTING TO A "BETRAYAL" OF HIS CLIENT'S INTEREST AND WHICH ARE SUFFICIENT REASONS FOR A NEW TRIAL.

SECOND

THE HONORABLE COURT OF APPEALS ERRED WHEN IT AFFIRMED THE AWARD OF DAMAGES DESPITE LACK/ INSUFFICIENT EVIDENCE AND THE FACT THAT PETITIONER IS NOT THE AGENT OF THE CARRIER.[42]

Petitioner argues that the Court of Appeals erred in holding that its former counsel's failure to file an answer and to act after receipt of the declaration of default merely constituted

---

[37] *Id.* at 165-173.

[38] *Id.* at 215-216.

[39] *Rollo*, pp. 10-38.

[40] *Id.* at 87-99.

[41] *Id.* at 106-141; 154-173.

[42] *Id.* at 21.

"simple negligence" binding the petitioner and not entitling it to a new trial. In support of its position, petitioner enumerates the significant and uncontroverted acts of its counsel amounting to a "betrayal" of its interests. These are:

1. He failed to file its Answer to the Complaint despite receipt of the Court's Order denying his motion to dismiss.

2. He failed to inform his client of the fact of his failure to file its Answer and of the Court Order declaring them in default and allowing plaintiff to present evidence *ex-parte*.

3. He failed to file the Motion to Lift Order of Default to regain his client's standing in Court.

4. He misrepresented that he already filed the Motion to Lift Order of Default when confronted by client when it learned of said Order of default.

5. He never bothered to verify what transpired at the *ex-parte* hearing and was not able to file the necessary pleadings to lift order considering that the case was submitted for decision without petitioner's evidence.

6. He miserably failed to inform client of the adverse decision despite receipt and practically did nothing to protect its client's interest.[43]

The foregoing acts, petitioner maintains, amply show that its former counsel misrepresented the true status of the case. On account of these acts which amount to incompetence or negligence, it has been unduly deprived of its rights to be heard and to present its defense and thus has been deprived of its day in court, violating its right to due process of law through no fault of its own. It explains that while it is settled that negligence of counsel binds the client, this rule is not without exception. In cases where reckless or gross negligence of counsel, like in this case, deprives the client of due process of law, or when the application would result in outright deprivation of the client's liberty or property, or where the interest of justice so requires, relief is accorded to the client who suffered by reason of the

[43] *Id.* at 23-24.

lawyer's gross or palpable mistake or negligence. Citing *Tan v. Court of Appeals*,[44] petitioner pleads that because it is similarly situated with the petitioner therein, the ruling in said case — granting the motion for new trial after counsel failed to file an answer and the client was declared in default — should be applied to the case at bar.

Petitioner further disputes the Court of Appeals' ruling that there is no compelling reason to relax the rules in its favor, because it is not entirely blameless and should have taken a more active role in the proceedings of the case against it. It contends that it is not correct to state that it did not do anything despite being alerted that it was already declared in default.

After going over the records of this case, we find the petition meritorious.

One of the grounds for the granting of a new trial under Section 1 of Rule 37 of the 1997 Revised Rules of Civil Procedure is excusable negligence.[45] It is settled that the negligence of counsel binds the client. This is based on the rule that any act performed by a counsel within the scope of his general or implied authority is regarded as an act of his client.[46] Consequently, the mistake or negligence of counsel may result in the rendition of an unfavorable judgment against the client.[47] We have, however, carved out exceptions to this rule; as where the reckless or gross negligence of counsel deprives the client of due process of law; or where the application of the rule will result in outright

---

[44] 341 Phil. 570, 582 (1997).

[45] Section 1. *Grounds of and period for filing motion for new trial or reconsideration*. – Within the period for taking an appeal, the aggrieved party may move the trial court to set aside the judgment or final order and grant a new trial for one or more of the following causes materially affecting the substantial rights of said party:

(a) Fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which such aggrieved party has probably been impaired in his rights; x x x.

[46] *Salonga v. Court of Appeals*, 336 Phil. 514, 526 (1997).

[47] *Victory Liner, Inc. v. Gammad*, G.R. No. 159636, 25 November 2004, 444 SCRA 355, 361.

deprivation of the client's liberty or property; or where the interests of justice so requires and relief ought to be accorded to the client who suffered by reason of the lawyer's gross or palpable mistake or negligence.[48] In order to apply the exceptions rather than the rule, the circumstances obtaining in each case must be looked into. In cases where one of the exceptions is present, the courts must step in and accord relief to a client who suffered thereby.[49]

Gross negligence has been defined as the want or absence of or failure to exercise slight care or diligence, or the entire absence of care. It examines a thoughtless disregard of consequences without exerting any effort to avoid them.[50]

In the case before us, we find the negligence of petitioner's former counsel to be so gross that it was deprived of its day in court, thus denying it due process. The records show that petitioner was declared in default for failure of its former counsel to file an answer to the complaint after the motion to dismiss he filed was denied by the trial court. Atty. Austria did not do anything to protect the interests of petitioner. He neither opposed the plaintiff's motion to declare his client in default despite due notice thereof; nor filed any motion to set aside the order declaring his client in default, also after he was apprised of the adverse order. He failed to inform his client of the fact that he failed to file an Answer and of the Court Order declaring it in default and allowing plaintiff to present evidence *ex parte*. He even misrepresented that he already filed a Motion to Lift Order of Default when confronted by his client after the latter learned of said Order of Default. As a result of Atty. Austria's inaction, respondent was allowed to present its evidence. Petitioner failed to adduce any evidence to rebut the allegations contained in the complaint. It was deprived of due process. The gross negligence of petitioner's former counsel, coupled with its deprivation of due process, will ultimately result in its deprivation of property.

---

[48] *Gacutana-Fraile v. Domingo*, 401 Phil. 604, 615 (2000).

[49] *Heirs of Antonio Pael v. Court of Appeals*, 382 Phil. 222, 244-245 (2000).

[50] *National Bookstore, Inc. v. Court of Appeals*, 428 Phil. 235, 245 (2002).

For a claim of counsel's negligence to prosper, nothing short of clear abandonment of the client's cause must be shown.[51] In this case, the only pleading filed by petitioner's former counsel was a motion to dismiss. After the same had been denied, he did not file anything more until a decision was rendered by the trial court. This is compounded by the fact that he misrepresented to petitioner that he had filed the proper motion to set aside the order of default. These acts of petitioner's counsel amount to gross negligence.

The Court of Appeals said that petitioner was not entirely blameless, because it failed to take a more active role in the proceedings. Quoting the trial court, it declared that "Defendant was already alerted to the fact that its counsel was remiss in his duties. A normally prudent and careful person would have taken pains to rectify the situation when there was still time to do so. In not making a response until it was too late, defendant can no longer claim any relief. It is as irresponsible as its lawyer and unworthy to invoke the higher right of equity to rescue it from the consequences of its inaction."

Under the circumstances of the case, petitioner cannot be blamed for relying on the assurance of its former counsel. Petitioner cannot be said to have utterly failed to do anything to regain its standing after being declared in default. After being informed that it was declared in default, it confronted Atty. Austria of the same and was assured by him that a motion to lift the order of default had been filed. This, we know, was not true since petitioner never regained its standing, and a decision was rendered by the trial court in favor of the plaintiff without petitioner having the opportunity to present its evidence.

In *Sarraga, Sr. v. Banco Filipino Savings and Mortgage Bank*,[52] we held:

A client may reasonably expect that his counsel will make good his representations and has the right to expect that his lawyer will

---

[51] *Que v. Court of Appeals*, G.R. No. 150739, 18 August 2005, 467 SCRA 358, 369.

[52] 442 Phil. 55, 65 (2002).

protect his interests during the trial of his case. For the general employment of an attorney to prosecute or defend a case or proceeding ordinarily vests in a plaintiff's attorney the implied authority to take all steps or do all acts necessary or incidental to the regular and orderly prosecution and management of the suit, and in a defendant's attorney, the power to take such steps as he deems necessary to defend the suit and protect the interests of the defendant.

In *Amil v. Court of Appeals*,[53] we ruled that trial courts should be liberal in setting aside orders of default and granting motions for new trial if the defendant appears to have a meritorious defense. Parties must be given every opportunity to present their side. The issuance of orders of default should be the exception rather than the rule, to be allowed only in clear cases of obstinate refusal by the defendant to comply with the orders of the trial court.

In the case under consideration, petitioner appears to have a defense that should be looked into more closely. Petitioner insists that it is not the agent of the vessel "Tokyo Bay," the vessel that carried the subject shipment. As can be seen from the International Bill of Lading[54] issued by John Goods & Sons (London), and as admitted by petitioner, it is the local agent of John Goods & Sons (London) that is, in turn, the agent of Transtainer Systems (UK) Ltd., Multimodal Transport Operators. Looking at the complaint,[55] respondent alleges that petitioner is the operator/shipagent of the vessel "Tokyo Bay." Both lower courts ruled that petitioner was liable for being the agent of "Tokyo Bay," the vessel in which the cargo was loaded. There appears to be some inconsistency between the allegation in the complaint and the decisions of the lower courts that was not fully explained. In light of these, it would be in accord with justice and equity to allow petitioner's prayer for new trial, so that it can present its evidence; and for the trial court to determine with certainty where the liability, if any, of petitioner arises —

---

[53] 374 Phil. 659, 666 (1999).

[54] Exh. K.

[55] Records, p. 1.

whether as agent of "Tokyo Bay" or as agent of John Goods & Sons (London).

Our pronouncement in *Apex Mining, Inc. v. Court of Appeals*[56] applies to this case:

> If the incompetence, ignorance or inexperience of counsel is so great and the error committed as a result thereof is so serious that the clients, who otherwise has a good cause, is prejudiced and denied his day in court, the litigation may be reopened to give the client another chance to present his case. Similarly, when an unsuccessful party has been prevented from fully and fairly presenting his case as a result of his lawyer's professional delinquency or infidelity the litigation may be reopened to allow the party to present his side. Where counsel is guilty of gross ignorance, negligence and dereliction of duty, which resulted in the client's being held liable for damages in a damage suit, the client is deprived of his day in court and the judgment may be set aside on such ground.
>
> In view of the foregoing circumstances, higher interests of justice and equity demand that petitioners be allowed to present evidence on their defense. Petitioners may not be made to suffer for the lawyer's mistakes and should be afforded another opportunity, at least, to introduce evidence on their behalf. To cling to the general rule in this case is only to condone rather than rectify a serious injustice to a party whose only fault was to repose his faith and entrust his innocence to his previous lawyers.
>
> What should guide judicial action is that a party be given the fullest opportunity to establish the merits of his action or defense rather than for him to lose life, liberty, honor or property on mere technicalities. In cases involving gross or palpable negligence of counsel the courts must step in and accord relief to a client who has suffered thereby. This Court will always be disposed to grant relief to parties aggrieved by perfidy, fraud, reckless inattention and downright incompetence of lawyers, which has the consequence of depriving their clients, of their day in court.

WHEREFORE, premises considered, the petition is *GRANTED*. The Decision of the Court of Appeals dated 4 December 2006 in CA-G.R. CV No. 67581 is *SET ASIDE*.

---

[56] 377 Phil. 482, 495-496 (1999).

The case is hereby *REMANDED* to the Regional Trial Court of Manila, Branch 13, for a new trial. It is *DIRECTED* to admit the Answer of petitioner and to receive the latter's evidence, and rebuttal and sur-rebuttal evidence if warranted, and to dispose of the case with reasonable dispatch.

The former counsel for petitioner, Jose Ma. Q. Austria, is hereby required to show cause within ten (10) days from notice why he should not be held administratively liable for his acts and omissions as aforementioned in this decision.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 184598. June 23, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JULIO MANALILI,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; GUIDING PRINCIPLES IN THE PROSECUTION OF RAPE CASES. — In determining 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.

2. ID.; ID.; CREDIBILITY OF WITNESSES; ACCUSED CAN BE CONVICTED ON THE BASIS OF THE RAPE VICTIM'S TESTIMONY WHERE THE SAME MEETS THE TEST OF CREDIBILITY. — Since the crime of rape is essentially one committed in relative isolation or even secrecy, hence, it is usually only the victim who can testify with regard to the fact of the forced *coitus.* In the prosecution of 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. In this case, upon evaluating the victim's testimony, the RTC found her credible xxx. This Court itself has assiduously scrutinized the transcripts of stenographic notes of this case and, like the RTC, finds the victim's testimony on the incidents forthright and straightforward, indicative of an honest and realistic account of the tragedy that befell her.

3. ID.; ID.; DEFENSES OF ALIBI AND DENIAL; INHERENTLY WEAK DEFENSES AND MUST BE REJECTED WHEN THE ACCUSED'S IDENTITY IS SATISFACTORILY ESTABLISHED BY THE EYEWITNESSES TO THE OFFENSE, ESPECIALLY WHEN THE SAME HAVE NO ILL MOTIVE TO TESTIFY FALSELY. — In contrast to damning evidence adduced by the prosecution, Julio gave nothing but alibi and denial. Unfortunately for Julio, his defense is much too flaccid to stay firm against the weighty evidence for the prosecution. Julio gave only self-serving testimonies, corroborated only by the testimonies of his wife and friends. As we have held, "[a]libi becomes less plausible when it is corroborated by relatives and friends who may then not be impartial witnesses." In the same vein, denial, if unsubstantiated by clear and convincing evidence, is a negative and self-serving evidence, which deserves no weight in law and cannot be given greater evidentiary value over the testimonies of credible witnesses who testify on affirmative matters. Alibi and denial are an inherently weak defense and must be rejected when the accused's identity is satisfactorily and categorically established by the eyewitnesses to the offense, especially when such eyewitnesses have no ill motive to testify falsely. In the case at bar, the defense failed to show that AAA was motivated by ill will.

4. ID.; ID.; ALIBI; REQUISITES TO PROSPER; NOT FULFILLED IN CASE AT BAR. — Furthermore, Julio's defense of alibi and denial cannot be believed, as he himself admitted his proximity to the scenes of the crime when the offense occurred. For the defense of alibi to prosper, the following must be established: (a) the presence of the accused-appellant in another place at the time of the commission of the offense; and (b) physical impossibility for him to be at the scene of the crime. Julio testified that, at the time of the first rape incident, he was in the house where AAA was abused. During the second rape, Julio was in Cabanatuan City, a city near where the occurrence took place. In the third and fourth rape incidents, Julio was just in the place where the crime happened. These requisites were not fulfilled in this case. Thus, his defense of alibi cannot prosper.

5. ID.; ID.; CREDIBILITY OF WITNESSES; THE ABSENCE OF EVIDENCE AS TO IMPROPER MOTIVES ACTUATING THE PROSECUTION WITNESS STRONGLY TENDS TO SUSTAIN THE CONCLUSION THAT NO SUCH IMPROPER MOTIVES EXISTED, AND THAT HER TESTIMONY IS WORTHY OF FULL FAITH AND CREDIT. — Besides, Julio conceded that AAA had no motive to testify falsely against him. Thus, in accusing Julio, AAA was purely impelled by her legitimate desire to see that justice would be 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.

6. ID.; ID.; ID.; NO STANDARD FORM OF BEHAVIORAL RESPONSE WHEN ONE IS CONFRONTED WITH A STRANGE OR STARTLING OR FRIGHTFUL EXPERIENCE. — Appellant tries to discredit the victim's credibility, citing her failure to escape or shout during the rape incidents. It should be borne in mind, in this connection, that the victim was extremely young when she was defiled by Julio. As a child, she considered her uncle Julio as a family member and protector. Being abused by a family member must have been a startling occurrence for her. Behavioral psychology teaches that people react to similar situations dissimilarly. Their reactions to harrowing incidents may not be uniform.

The constant threats of the offender to the victim and the physical proximity of the two could render the victim's attempts to escape or efforts to shout a dubious, if not a futile, proposition. She was too disturbed and too young to totally comprehend the consequences of the dastardly acts inflicted on her by Julio. 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 react 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 threats made by Julio. 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 Julio 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. Also, getting away from Julio was a task extremely difficult for a young child since it would mean she had to leave her family, without any relative to turn to in an hour of need, penniless and uninformed in the ways of the world. AAA could not have survived a week if she left her home just to be far from her predator.

7. ID.; ID.; ID.; DELAY IN REVEALING THE COMMISSION OF RAPE IS NOT AN INDICATION OF A FABRICATED CHARGE.— As regards the initial delay of the victim in reporting the rape incidents, suffice it to state that the delay in revealing the commission of rape is not an indication of a fabricated charge. It is not uncommon for a young girl to conceal for some time the assault on her virtue. Her hesitation may be

due to her youth, the moral ascendancy of the ravisher, and the latter's threats against her. In the case at bar, the victim's fear of her uncle, who had moral ascendancy over her, was explicit. Such reaction was typical of a 5-year-old girl and only strengthened her credibility. Thus, her reluctance that caused the delay should not be taken against her. Neither can it be used to diminish her credibility or undermine the charge of rape.

8. ID.; ID.; ID.; TESTIMONIES OF RAPE VICTIMS WHO ARE OF TENDER AGE ARE CREDIBLE. — This Court has held that testimonies of rape victims who are young and immature deserve full credence, considering that no young woman, especially of tender age, would concoct a story of defloration, allow an examination of her private parts, and thereafter pervert herself by being subjected 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 for an innocent girl, who is very naïve to the ways of this world, to fabricate a charge so humiliating not only to herself but to her family. Moreover, it is doctrinally settled that testimonies of rape victims who are of tender age are credible. The revelation of an innocent child whose chastity was abused deserves full credit, as the willingness of the complainant to face police investigation and to undergo the trouble and humiliation of a public trial is eloquent testimony of the truth of her complaint.

9. ID.; ID.; ID.; FINDINGS OF THE TRIAL COURT WITH RESPECT THERETO, ACCORDED GREAT RESPECT. — 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. In rape cases, the evaluation of the credibility of witnesses is addressed to the sound discretion of the trial judge whose conclusion thereon deserves much weight and respect, because the judge has the direct opportunity to observe them on the stand and ascertain whether they are telling the truth or not. This deference to the trial court's appreciation of the facts and of the credibility of witnesses is

consistent with the principle that when the testimony of a witness meets the test of credibility, that alone is sufficient to convict the accused. This is especially true when the factual findings of the trial court are affirmed by the appellate court.

10. CRIMINAL LAW; QUALIFYING CIRCUMSTANCES OF MINORITY AND RELATIONSHIP; MUST BE BOTH ALLEGED AND PROVED TO WARRANT THE IMPOSITION OF THE DEATH PENALTY. — The applicable law on the first rape committed on 23 February 1997 in Criminal Case 1425-P is Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659, which took effect on 31 December 1993. On the other hand, the remaining three rape charges are governed by Articles 266-A and 266-B of the Revised Penal Code, as amended by Republic Act No. 8353, which took effect on 22 October 1997. Republic Act No. 7659 and Republic Act No. 8353 are similar in the sense that both laws impose the death penalty 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. As a special qualifying circumstance raising the penalty for rape to death, the minority of the victim and her relationship to the offender must be alleged in the criminal complaint or information and proved conclusively and indubitably as the crime itself. These two circumstances must concur. Although the four informations alleged the presence of the victim's minority, the jurisprudentially required evidence to prove such circumstances is utterly lacking. While the relationship of the victim to the accused-appellant was alleged in the four informations and was admitted by the defense, such would not merit the imposition of the supreme penalty of death, since minority was not established. Minority and relationship must both be attendant.

11. ID.; QUALIFYING CIRCUMSTANCE OF MINORITY; HOW PROVED; SUBSTITUTIONARY EVIDENCE, WHEN ADMISSIBLE; CASE AT BAR. — To prove a rape victim's minority, the prosecution must adduce in evidence her birth certificate, for it is the best evidence to prove her age at the time of the commission of the crime. Substitutionary evidence, absent proof of loss or destruction of the original birth certificate or the unavailability thereof without fault of the

prosecution, will not suffice. Although there is a rule stating that the death penalty can still be imposed if the circumstances of the victim's minority and her relationship to the perpetrator were alleged in the Information and their existence duly admitted by the defense on stipulation of facts during pre-trial, this precept finds no application here. Except for the bare testimonies of the prosecution witnesses and the Baptismal Certificate, no birth certificate exists in the records to prove that the victim was five years old at the time of her first molestation and was twelve (12) years old during her last defilement. The prosecution did not present any proof that her birth certificate was lost or destroyed or was unavailable without the prosecution's fault. Thus, substitutionary evidence – the Baptismal Certificate – was inadmissible. Besides, Julio objected to the admissibility of the Baptismal Certificate on the ground that the prosecution failed to prove that the Birth Certificate was lost or destroyed. Hence, the prosecution simply failed to prove the special circumstance of minority.

12. ID.; SIMPLE RAPE; IMPOSABLE PENALTY; CIVIL LIABILITIES OF ACCUSED-APPELLANT.— Consequently, due to the failure of the prosecution to prove the existence of the qualifying circumstance of minority, Julio can only be held liable for simple rape and meted the penalty of *reclusion perpetua*. For this reason also, the award of ₱50,000.00 only as civil indemnity for each count of simple rape is warranted. The award of ₱50,000.00 as moral damages is also proper, as it is awarded without need of proof of mental anguish or moral suffering. However, the award of exemplary damages is in order, considering the presence of one ordinary aggravating circumstance of 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 a deterrent to serious wrongdoings, and as a vindication of undue sufferings and wanton invasion of the rights of the injured or a punishment for those guilty of outrageous conduct.

APPEARANCES OF COUNSEL

The Solicitor General for 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 13 November 2007, which affirmed with modification the Decision[2] of the Regional Trial Court (RTC) of Palayan City, Nueva Ecija, Branch 40, finding accused-appellant Julio Manalili (Julio) guilty on four counts of Rape, in relation to Republic Act No. 7610, otherwise known as the "Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act, as amended."

On 19 June 2003, Julio was charged before the RTC with four (4) counts of Rape, in relation to Republic Act No. 7610, committed on four separate occasions within the span of five years. The four separate Amended Informations read:

Criminal Case No. 1425-P

That on or about February 27, 1997, at Barangay XXX, XXX City, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being the uncle and a relative by consanguinity within the third civil degree of one AAA, did then and there, willfully, unlawfully and feloniously have carnal knowledge of said AAA[3], his 6[4]-year old niece, through force, threat and intimidation, to her damage and prejudice.

---

[1] Penned by Associate Justice Agustin S. Dizon with Associate Justices Amelita G. Tolentino and Lucenito N. Tagle, concurring; *rollo*, pp. 2-16.

[2] Penned by Judge Erlinda Pestano Buted. Records, pp. 212-232.

[3] 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.

[4] AAA must have been 5 years old since she was born on 8 May 1991 per her Baptismal Certificate.

Criminal Case No. 1426-P

That on or about July 24, 2000, at Barangay XXX, XXX City, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being the uncle and a relative by consanguinity within the third civil degree of one AAA, did then and there, willfully, unlawfully and feloniously have carnal knowledge of said AAA, his 9-year old niece, through force, threat and intimidation, to her damage and prejudice.

Criminal Case No. 1427-P

That on or about September 21, 2001, at Barangay XXX, XXX City, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being the uncle and a relative by consanguinity within the third civil degree of one AAA, did then and there, willfully, unlawfully and feloniously have carnal knowledge of said AAA, his 10-year old niece, through force, threat and intimidation, to her great damage and prejudice.

Criminal Case No. 1428-P

That on or about December 28, 2002, at Barangay XXX, XXX City, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being the uncle and a relative by consanguinity within the third civil degree of one AAA, did then and there, willfully, unlawfully and feloniously have carnal knowledge of said AAA, his 11-year old niece, through force, threat and intimidation, to her damage and prejudice.[5]

When arraigned in these four cases on 11 November 2004, Julio pleaded not guilty[6] to each of the charges. Thereafter, joint trial on the merits ensued.[7]

At the trial, the prosecution presented two witnesses: the victim herself, AAA, who testified on matters that occurred prior, during and after she was allegedly sexually abused by Julio on or about 23 February 1997, 24 July 2000, 21 September 2001 and 28 December 2002; and Dr. Cynthia Daniel (Dr. Daniel), the physician

---

[5] Rollo, pp. 4-6.

[6] *Id.* at 36.

[7] *Id.*

in charge of the Child Protection Unit, Paulino J. Garcia Memorial Medical Center, who interviewed and examined the victim.

The evidence of the prosecution shows that AAA was born on 8 May 1991, per AAA's Baptismal Certificate issued on 14 March 2003.[8] On the night of 23 February 1997, AAA was sleeping at the house of her grandmother in Barangay XXX, XXX City, Nueva Ecija. Although AAA's house was adjacent to her grandmother's, AAA slept there since it was the wedding day of her aunt. Without warning, Julio, the younger brother of AAA's mother, entered the room, started taking off AAA's short pants, and threatened her not to tell the incident to her mother or else he would kill both of them.[9] After removing her short pants, Julio removed her panties and spread her thighs. Julio inserted his penis into AAA's organ. Although Julio's organ penetrated AAA's vagina only for a little while, such was enough for the latter to feel the pain of the incursion.[10] When AAA put on her panties, the blood from her bleeding vagina stained her intimate apparel.

The second act of rape was committed at midnight of 24 July 2000. While AAA and her two brothers were sleeping at her grandmother's house in Barangay XXX, XXX City, Julio carried her to a barn located beside the house.[11] Julio put her down on the barn's floor and pulled her skirt up and her panties down to her knees. He then ordered AAA to spread her legs. Julio inserted half of the length of his penis into hers. Julio warned AAA not to shout or else he would kill her.[12]

At about noontime of 21 September 2001, Julio sexually abused AAA for the third time. Again, Julio, who was wearing short pants and a t-shirt, forcibly dragged AAA to the same barn and once inside, he stripped off AAA's clothing including her

---

[8] Exhibit "B", the Baptismal Certificate of the victim; *id.* at 14.

[9] TSN, 25 May 2005, p. 4.

[10] *Id.* at 6.

[11] *Id*.

[12] *Id.* at 7.

underwear. As soon as AAA was naked, Julio maneuvered his penis until it touched AAA's vagina.[13] After Julio had left, AAA hurriedly put her clothes on and ran to her mother's house.

A little over a year had passed, on 28 December 2002, Julio, for the fourth time, molested the victim. AAA was in her grandmother's house and was about to leave when Julio beckoned the former on the pretext that he would send her on an errand. Instead of doing so, however, Julio pulled AAA down to her grandmother's bed. AAA resisted and ran to her mother's house. Julio was able to follow AAA and there took off her short pants and panties, mashed her breasts and kissed her. Thereafter, Julio drove his penis into AAA's sexual organ.[14] Once Julio was done, he threatened to kill her, her mother and grandmother if she would tell them what had just happened.[15]

Having reached the point where she could no longer tolerate what had befallen her, AAA finally disclosed the bestial acts of Julio to a close relative, Tita BBB. Tita BBB in turn made known the incidents to AAA's mother who thought of seeing a lawyer. In order to keep Julio from molesting her again, AAA left her home and related the incidents to another relative, Tita CCC, who reported the matter to the *barangay* officials and the local police.[16]

On 13 March 2003, Tita CCC, together with the *barangay* captain, accompanied AAA to Dr. Daniel's clinic.[17] Dr. Daniel examined the child and issued a medical report showing that AAA sustained hymenal attenuation (absence of hymen) indicating that the victim had been raped.[18] In her medical report the following were the findings:

---

[13] *Id.* at 8.

[14] *Id.* at 10.

[15] *Id.* at 11.

[16] *Id.* at 12.

[17] TSN, 13 April 2005, p. 13.

[18] *Id.* at 12.

Injuries …

Hymen	Attenuated absent hymenal tissues at interior portion 5 o'clock position

Impressions

Medical evaluation which includes the medical history (History of disclosure, medical examination and laboratory examination), shows suggestive of abuse or sexual contact.[19]

The defense, on the other hand, interposed the defense of denial and alibi.

The defense presented three witnesses, namely: (1) Julio, who denied that he raped the victim and that he was somewhere else when the victim was raped during the four different occasions; (2) Michael Odchigue, Julio's high school classmate, who said that he was with Julio on 23 February 1997; (3) Evelyn Manalili, wife of Julio, who corroborated Julio's testimony that he was working in Ceslyn, Cabanatuan City on 24 July 2000. She also said that she saw AAA and Julio talking, but she did not notice any strange behavior on the part of AAA; (4) Ricardo Malamig, Julio's neighbor, who corroborated Julio's declaration that he was painting in another neighbor's house on 28 December 2002.

The defense's version is that on 23 February 1997, Julio was in his house (house of AAA's grandmother) together with his high school classmates, Michael Odchigue and Ranilo Salvador, from 8:00 o'clock in the morning until night.

On 24 July 2000, Julio was at Ceslyn Restaurant in Cabanatuan City where he worked. All throughout the day he never went home to Manacnac, Palayan City.

On 21 September 2001, Julio was in Barangay XXX, XXX City. From 7:00 a.m to 11:00 a.m., he was in the farm. He took his lunch break at his house where his wife and his 3-month-old baby stayed. He resumed his work in the farm and remained there up to 6:00 p.m. Thereafter, he went home and

---

[19] Exhibit "A". Records, p. 13.

took care of his 3-month-old child. Later, he took a rest and slept.

On 28 December 2002, Julio was in Barangay XXX, XXX City, painting the house of a neighbor with Ricardo Malamig from 8:00 a.m. to 5:00 p.m. After finishing his work for the day, he went home to his wife and his baby.

On 8 December 2005, the RTC rendered a decision totally ignoring Julio's denials and alibis. The supreme penalty of death on each of the four counts of rape was meted out to Julio. In convicting Julio of the four charges, the RTC gave full credence to the testimony of the minor victim which was corroborated by the medical report. The decretal portion of the RTC decision reads:

> WHEREFORE, accused JULIO MANALILI is found GUILTY beyond reasonable doubt of four (4) counts of consummated RAPE in relation to Republic Act 7610 and is hereby sentenced to suffer Death Penalty on all four (4) counts; to pay AAA the amount of ₱75,000.00 each case as civil indemnity, ₱50,000.00 each case as moral damages and ₱30,000.00 each as exemplary damages.[20]

On automatic review, the conviction of Julio on four counts of rape was affirmed by the Court of Appeals but the penalty of death on four counts was modified to *reclusion perpetua* on the ground that the imposition of the death penalty was prohibited by law. The dispositive part of the 13 November 2007 Decision of the Court of Appeals provides:

> WHEREFORE, from all the foregoing, We hold that the judgment of conviction rendered by the trial court must be as it is hereby AFFIRMED with the modification that penalty of Death imposed by the trial court is modified to *Reclusion Perpetua* for each count of rape, without eligibility for parole, as death penalty is statutorily proscribed.[21]

Hence, the instant recourse.

---

[20] *Id.* at 232.

[21] *Rollo*, p. 16.

Julio expresses a strong objection over the victim's silence which was not indicative of a sexually abused person. The victim's unexplained delay in reporting the incidents (6 years had elapsed before AAA reported the first alleged rape), to Julio's mind, compromised her credibility as a witness. Julio adds that AAA's justification for not reporting the rape incidents is not sound enough. Julio insists that AAA's reason for not reporting the incidents, namely, the threat that he would kill the victim and her mother if the victim would tell the same to anybody, cannot be taken into belief since the victim had all the opportunities to do so. Julio also points out that the victim did not shout for help or try to escape when she was abused. This and AAA's inexplicable delay in reporting the alleged crime, according to Julio, seriously impaired the findings of his guilt beyond reasonable doubt.

In determining 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.[22]

Since the crime of rape is essentially one committed in relative isolation or even secrecy, hence, it is usually only the victim who can testify with regard to the fact of the forced *coitus*.[23] In the prosecution of rape, therefore, the credibility of the victim is almost always the single and most important issue to deal with.[24] 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.[25]

---

[22] *People v. Orquina*, 439 Phil. 359, 365-366 (2002).

[23] *People v. Baylen*, 431 Phil. 106, 118 (2002).

[24] *People v. Quijada*, 378 Phil. 1040, 1047 (1999).

[25] *People v. Babera*, 388 Phil. 44, 53-54 (2000).

In this case, upon evaluating the victim's testimony, the RTC found her credible, thus:

> The categorical, straightforward and spontaneous testimonies of AAA concerning the bestiality committed upon her by her by her (sic) very own uncle is full of credence.[26]

This Court itself has assiduously scrutinized the transcripts of stenographic notes of this case and, like the RTC, finds the victim's testimony on the incidents forthright and straightforward, indicative of an honest and realistic account of the tragedy that befell her. She narrated the first incident in this manner:

Q: On that day, February 23, 1997, do you remember anything out of ordinary that happened?

A: There is, sir.

Q: What was that?

A: When I was raped by my uncle, sir.

Q: And what is the name of your uncle?

A: Julio Manalili, sir.

x x x x x x x x x

Q: Would you tell us how the rape was committed by your uncle Julio Manalili.

A: x x x Tito Julio went to the room where I was sleeping, sir.

x x x x x x x x x

Q: What happened after your uncle Julio Manalili went to the room where you were then sleeping?

A: He took off my short and told me that I should not tell the matter to my mother for he will kill us, sir.

Q: After he took off your short what happened next?

A: He also took off my panty and then inserted his organ, sir.

Q: How did he manage to insert his organ inside yours?

---

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

A: He spread my legs and then he inserted his organ, sir.

x x x x x x x x x

Q: How did you know that it was really inserted?

A: Because I notice some blood in my panty, Your Honor.

Q: How about any pain?

A: There is, Your Honor.[27]

The victim recounted the second and third bestial encounters with the insensate marauder in this fashion:

Fiscal: After that what happened next?

A: After that, on July 24 at midnight when I already was sleeping my uncle carried me to the barn ("*kamalig*"), sir.

Q: Where were you then sleeping, Madam Witness?

A: In the house of my grand-mother together with my two (2) brothers, sir.

Q: Any way Madam Witness, let us make this clear, who brought you to the barn?

A: Julio Manalili, sir.

Q: Your uncle?

A: Yes, sir.

Q: Please tell us where is this barn located?

A: Beside the house of my grand-mother, sir.

Q: The same house of your grand-mother at Manacnac?

A: Yes, sir.

Q: And after Julio Manalili carried you to the barn what happened next?

A: He lay (sic) me down on the flooring of the barn and then he pull (sic) my skirt up and pull (sic) down my panty up to my knee and he ordered me to spread my legs sir, that was the time that he was able to insert half of the length of his organ, sir.

---

[27] TSN, 25 May 2005, pp. 3-6.

Q: And after he inserted half of his organ, what happened next?

A: He threatened to kill me if I will shout and tell it to anybody, sir.

Q: After that incident what happened?

A: He left me and then my grand-mother asked me why I was there in the barn, sir.

Q: What did you tell you grand-mother?

A: None, I just told her that I slept there, sir.

Q: After you told your grand-mother that you just slept in the barn what happened next?

A: On the third time on September 31, 2001 at noon he pulled me and forced me to go to the barn, sir.

Q: After he pulled you to the barn what happened, Madam Witness?

A: He took off all my cloths including my panty, sir.

Q: What kind of clothing were you then wearing, Madam Witness?

A: T-shirt and short, sir.

Q: What about your uncle what was he wearing then?

A: Short and t-shirt, sir.

Q: And after he removed your clothing what happened?

A: He made his organ touched my organ, sir.

Q: What particular portion of your organ was touched by his organ?

A: Vagina, sir.

x x x x x x x x x

FISCAL: What specific part of your vagina was touched by his organ?

x x x x x x x x x

A: The front portion, sir.

Q: When you said front portion which specific part?

The lower of upper part?

A: The upper part, sir.

Q: For how long did your uncle do that?

A: Just a short time, sir.

Q: And after that what happened?

A: He left, sir.

x x x x x x x x x

FISCAL: And after he left what did you do?

A: I wear (sic) my cloths and then ran towards our house, sir.

Q: You mean the house owned by your mother?

A: Yes, sir.[28]

As to the fourth rape, the victim testified:

Q: And after that incident anything else that happened, Madam Witness?

A: Yes the fourth, sir.

Q: What do you mean the fourth?

A: He again raped me and that was on December 28, 2002, sir.

Q: How was the rape committed?

A: That was after the celebration of Christmas, I was about to go home my uncle called me, sir.

Q: And after your uncle called you what happened?

A: He told me that he will just send me for an errand but he pulled me and put me into a bed, sir.

Q: Where is that bed located?

A: The bed of my grand-mother, sir.

Q: You mean in your grand-mother's house?

---

[28] *Id.* at 6-9.

A: Yes, sir.

Q: And after he pulled you to the bed what happened?

A: When he lay (sic) me down to the bed, I ran towards my mother's house and it was there when the fourth incident happened, sir.

Q: When you said the incident happened in your mother's house, what specific incident do you referred to, Madam Witness?

A: When he again raped me, sir.

Q: And how did he rape you?

A: He took off my short and panty and then mashed my breast and then kissed me and he inserted his organ in my organ, sir.[29]

From the foregoing, the prosecution adequately established in graphic details the travails AAA experienced at the hands of her uncle. The 23 February 1997 molestation happened when AAA was soundly asleep. Suddenly Julio, like a predator ready to devour its prey, jumped upon the victim and satisfied his brutish lust on a very feeble child. Emboldened by his unpunished evil deed, Julio again ravished his niece on three different dates, *i.e.*, at midnight of 24 July 2000, at noon of 21 September 2001 and on 28 December 2002. In all these deflorations, the victim experienced overpowering fear brought about by the threats given by Julio. Medical findings revealed that the victim's hymenal tissues at the 5 o'clock position are absent, consistent with her claim that she was molested.

In contrast to damning evidence adduced by the prosecution, Julio gave nothing but alibi and denial. Unfortunately for Julio, his defense is much too flaccid to stay firm against the weighty evidence for the prosecution. Julio gave only self-serving testimonies, corroborated only by the testimonies of his wife and friends. As we have held, "[a]libi becomes less plausible when it is corroborated by relatives and friends who may then not be impartial witnesses."[30] In the same vein, denial, if

---

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

[30] *Araneta v. People*, G.R. No. 174205, 27 June 2008, 556 SCRA 323, 334.

unsubstantiated by clear and convincing evidence, is a negative and self-serving evidence, which deserves no weight in law and cannot be given greater evidentiary value over the testimonies of credible witnesses who testify on affirmative matters.[31] Alibi and denial are an inherently weak defense and must be rejected when the accused's identity is satisfactorily and categorically established by the eyewitnesses to the offense, especially when such eyewitnesses have no ill motive to testify falsely.[32] In the case at bar, the defense failed to show that AAA was motivated by ill will.

Furthermore, Julio's defense of alibi and denial cannot be believed, as he himself admitted his proximity to the scenes of the crime when the offense occurred. For the defense of alibi to prosper, the following must be established: (a) the presence of the accused-appellant in another place at the time of the commission of the offense; and (b) physical impossibility for him to be at the scene of the crime.[33] Julio testified that, at the time of the first rape incident, he was in the house where AAA was abused. During the second rape, Julio was in Cabanatuan City, a city near where the occurrence took place. In the third and fourth rape incidents, Julio was just in the place where the crime happened. These requisites were not fulfilled in this case. Thus, his defense of alibi cannot prosper.

Besides, Julio conceded that AAA had no motive to testify falsely against him. Thus, in accusing Julio, AAA was purely impelled by her legitimate desire to see that justice would be 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.

Appellant tries to discredit the victim's credibility, citing her failure to escape or shout during the rape incidents. It should

---

[31] *People v. Morales*, 311 Phil. 279, 288-289 (1995).

[32] *People v. Baccay*, 348 Phil. 322, 327-328 (1998).

[33] *People v. Penillos*, G.R. No. 65673, 30 January 1992, 205 SCRA 546, 560.

be borne in mind, in this connection, that the victim was extremely young when she was defiled by Julio. As a child, she considered her uncle Julio as a family member and protector. Being abused by a family member must have been a startling occurrence for her. Behavioral psychology teaches that people react to similar situations dissimilarly.[34] Their reactions to harrowing incidents may not be uniform.[35] The constant threats of the offender to the victim and the physical proximity of the two could render the victim's attempts to escape or efforts to shout a dubious, if not a futile, proposition. She was too disturbed and too young to totally comprehend the consequences of the dastardly acts inflicted on her by Julio. Rape victims, especially child victims, should not be expected to act the way mature individuals would when placed in such a situation.[36] 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.[37] The range of emotions shown by rape victims is yet to be captured even by calculus.[38] 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.[39] 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 react 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.[40] It would be insensitive to expect the victim to act with equanimity and to have the courage and the intelligence to disregard the threats made by Julio. When a rape victim is paralyzed with

[34] *People v. Buenviaje*, 408 Phil. 342, 352 (2001).

[35] *Id*.

[36] *People v. Remoto*, 314 Phil. 432, 450 (1995).

[37] *Id*.

[38] *Id*.

[39] *People v. Malones*, 469 Phil. 301, 326-327 (2004).

[40] *Id*.

fear, she cannot be expected to think and act coherently. This is especially true in this case, since AAA was repeatedly threatened by Julio 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. Also, getting away from Julio was a task extremely difficult for a young child since it would mean she had to leave her family, without any relative to turn to in an hour of need, penniless and uninformed in the ways of the world. AAA could not have survived a week if she left her home just to be far from her predator.

As regards the initial delay of the victim in reporting the rape incidents, suffice it to state that the delay in revealing the commission of rape is not an indication of a fabricated charge.[41] It is not uncommon for a young girl to conceal for some time the assault on her virtue.[42] Her hesitation may be due to her youth, the moral ascendancy of the ravisher, and the latter's threats against her. In the case at bar, the victim's fear of her uncle, who had moral ascendancy over her, was explicit. Such reaction was typical of a 5-year-old girl and only strengthened her credibility. Thus, her reluctance that caused the delay should not be taken against her. Neither can it be used to diminish her credibility or undermine the charge of rape.[43]

This Court has held that testimonies of rape victims who are young and immature deserve full credence, considering that no young woman, especially of tender age, would concoct a story of defloration, allow an examination of her private parts, and thereafter pervert herself by being subjected to a public trial, if she was not motivated solely by the desire to obtain justice for the wrong committed against her.[44] It is highly improbable for an innocent girl, who is very naïve to the ways of this world,

---

[41] *People v. Balmoria*, 398 Phil. 669, 675 (2000).

[42] *Id*.

[43] *People v. Arsayo*, G.R. No. 166546, 26 September 2006, 503 SCRA 275, 289.

[44] *People v. Palaña*, 429 Phil. 293, 303 (2002).

to fabricate a charge so humiliating not only to herself but to her family. Moreover, it is doctrinally settled that testimonies of rape victims who are of tender age are credible.[45] The revelation of an innocent child whose chastity was abused deserves full credit, as the willingness of the complainant to face police investigation and to undergo the trouble and humiliation of a public trial is eloquent testimony of the truth of her complaint. [46]

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.[47] In rape cases, the evaluation of the credibility of witnesses is addressed to the sound discretion of the trial judge whose conclusion thereon deserves much weight and respect, because the judge has the direct opportunity to observe them on the stand and ascertain whether they are telling the truth or not.[48] This deference to the trial court's appreciation of the facts and of the credibility of witnesses is consistent with the principle that when the testimony of a witness meets the test of credibility, that alone is sufficient to convict the accused.[49] This is especially true when the factual findings of the trial court are affirmed by the appellate court.[50]

The RTC imposed upon Julio the supreme penalty of death on each of the four counts of rape since the crimes were attended by the qualifying circumstances of age and relationship. The Court of Appeals, however, agreed with the RTC that the crimes

---

[45] *People v. Hinto*, 405 Phil. 683, 693-694 (2001).

[46] *Id*.

[47] *People v. Dagpin*, 400 Phil. 728, 739 (2000); *People v. Velazquez*, 399 Phil. 506, 515 (2000).

[48] *People v. Digma*, 398 Phil. 1008, 1023-1024 (2000).

[49] *People v. Cula*, 385 Phil. 742, 752 (2000).

[50] *People v. Gallego*, 453 Phil. 825, 849 (2003).

were qualified, but reduced the penalty to *reclusion perpetua* for each count on the ground that the death penalty has been repealed by virtue of Republic Act No. 9346, entitled An Act Prohibiting the Imposition of Death Penalty in the Philippines, which took effect on 30 June 2006.

Both the RTC and the Court of Appeals erred in appreciating the qualifying circumstance of minority.

The applicable law on the first rape committed on 23 February 1997 in Criminal Case 1425-P is Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659, which took effect on 31 December 1993. On the other hand, the remaining three rape charges are governed by Articles 266-A and 266-B of the Revised Penal Code, as amended by Republic Act No. 8353, which took effect on 22 October 1997.

Republic Act No. 7659 and Republic Act No. 8353 are similar in the sense that both laws impose the death penalty 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.

As a special qualifying circumstance raising the penalty for rape to death, the minority of the victim and her relationship to the offender must be alleged in the criminal complaint or information and proved conclusively and indubitably as the crime itself.[51] These two circumstances must concur. Although the four informations alleged the presence of the victim's minority, the jurisprudentially required evidence to prove such circumstances is utterly lacking.

To prove a rape victim's minority, the prosecution must adduce in evidence her birth certificate, for it is the best evidence to prove her age at the time of the commission of the crime.[52] Substitutionary evidence, absent proof of loss or destruction of the original birth certificate or the unavailability thereof without

[51] *People v. Balbarona*, G.R. No. 146854, 28 April 2004, 428 SCRA 127, 144.

[52] *Id*.

fault of the prosecution, will not suffice.[53] Although there is a rule[54] stating that the death penalty can still be imposed if the circumstances of the victim's minority and her relationship to the perpetrator were alleged in the Information and their existence duly admitted by the defense on stipulation of facts during pre-trial, this precept finds no application here.

Except for the bare testimonies of the prosecution witnesses and the Baptismal Certificate, no birth certificate exists in the records to prove that the victim was five years old at the time of her first molestation and was twelve (12) years old during her last defilement. The prosecution did not present any proof that her birth certificate was lost or destroyed or was unavailable without the prosecution's fault. Thus, substitutionary evidence – the Baptismal Certificate – was inadmissible. Besides, Julio objected to the admissibility of the Baptismal Certificate on the ground that the prosecution failed to prove that the Birth Certificate was lost or destroyed.[55] Hence, the prosecution simply failed to prove the special circumstance of minority.

While the relationship of the victim to the accused-appellant was alleged in the four informations and was admitted by the defense, such would not merit the imposition of the supreme penalty of death, since minority was not established. Minority and relationship must both be attendant.

Consequently, due to the failure of the prosecution to prove the existence of the qualifying circumstance of minority, Julio can only be held liable for simple rape and meted the penalty of *reclusion perpetua*. For this reason also, the award of ₱50,000.00 only as civil indemnity for each count of simple rape is warranted. The award of ₱50,000.00 as moral damages is also proper, as it is awarded without need of proof of mental anguish or moral suffering. However, the award of exemplary damages is in order, considering the presence of one ordinary aggravating circumstance of relationship. When a crime is

[53] *Id*.

[54] *People vs. Alarcon*, G.R. No. 174199, 7 March 2007, 517 SCRA 778, 790.

[55] Records, p. 101.

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.[56] 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 the injured or a punishment for those guilty of outrageous conduct.[57]

WHEREFORE, the Court finds Julio Manalili *GUILTY* beyond reasonable doubt of four (4) counts of simple rape and sentences him to suffer the penalty of *RECLUSION PERPETUA* for each count. Julio Manalili is ordered to pay the victim ₱50,000.00 for each count as civil indemnity, ₱50,000.00 for each count as moral damages, and ₱30,000.00 for each count as exemplary damages.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 177404. June 25, 2009]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **KUMASSIE PLANTATION COMPANY INCORPORATED,** *respondent.*

[G.R. No. 178097. June 25, 2009]

KUMASSIE PLANTATION COMPANY INCORPORATED, *petitioner, vs.* **LAND BANK OF THE PHILIPPINES and**

---

[56] *People v. Bohol,* G.R. No. 178198, 10 December 2008.

[57] *Id.*

THE SECRETARY OF THE DEPARTMENT OF AGRARIAN REFORM, *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM LAW OF 1988; EXPROPRIATION; JUST COMPENSATION; DETERMINATION OF JUST COMPENSATION, PROCEDURE; FACTORS TO CONSIDER. — The procedure for the determination of compensation cases under Republic Act No. 6657, as devised by this Court, commences with the valuation by the LBP of the lands taken by the State from private owners under the land reform program. Based on the valuation of the land by the LBP, the DAR makes an offer to the landowner through a written notice. In case the landowner rejects the offer, a summary administrative proceeding is held and, afterwards, depending on the value of the land, the Provincial Agrarian Reform Adjudicator (PARAD), the Regional Agrarian Reform Adjudicator (RARAD), or the DARAB, fixes the price to be paid for the said land. If the landowner still does not agree with the price so fixed, he may bring the matter to the RTC, acting as Special Agrarian Court. In the process of determining the just compensation due to landowners, it is a necessity that the RTC takes into account several factors enumerated in Section 17 of Republic Act No. 6657, as amended, to wit: Sec. 17. *Determination of Just Compensation*. – In determining just compensation, the cost of acquisition of the land, **the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, and the assessment made by government assessors** shall be considered. The **social and economic benefits** contributed by the farmers and the farmworkers and by the Government to the property as well as the **non-payment of taxes or loans** secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation.

2. ID.; ID.; ID.; ID.; FACTORS SPECIFICALLY IDENTIFIED BY LAW AND IMPLEMENTING RULES MUST BE ADHERED TO IN FIXING THE VALUATION. — While the determination of just compensation is essentially a judicial function which is vested in the RTC acting as Special Agrarian

Court, we, nonetheless, disregarded the determination of just compensation made by the RTC in *Land Bank of the Philippines v. Banal*, *Land Bank of the Philippines v. Celada*, and in *Land Bank of the Philippines v. Lim*, when, as in this case, the judge gravely abused his discretion by not taking into full consideration the factors specifically identified by law and implementing rules. In several cases, we have reminded the special agrarian courts to resolve just determination cases judiciously and with utmost observance of Section 17 of Republic Act No. 6657 and the administrative orders issued by the DAR to implement said statutory provision. In *Land Bank of the Philippines v. Banal*, we emphasized that the factors laid down in Section 17 of Republic Act No. 6657 and the formula stated in DAO No. 6, Series of 1992, as amended, must be adhered to by the RTC in fixing the valuation of lands subjected to agrarian reform.
x x x

3. ID.; ID.; ID.; ID.; ID.; THE SPECIAL AGRARIAN COURT CANNOT IGNORE, WITHOUT VIOLATING REPUBLIC ACT NO. 6657, THE FORMULA PROVIDED BY THE DEPARTMENT OF AGRARIAN REFORM (DAR) FOR THE DETERMINATION OF JUST COMPENSATION. — Again, in *Land Bank of the Philippines v. Celada*, we stressed that the special agrarian court cannot ignore, without violating Republic Act No. 6657, the formula provided by the DAR for the determination of just compensation. We rejected the valuation fixed by the RTC because it failed to follow the DAR formula: While [Special Agrarian Court] is required to consider the acquisition cost of the land, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declaration and the assessments made by the government assessors to determine just compensation, it is equally true that these factors have been translated into a basic formula by the DAR pursuant to its rule-making power under Section 49 of R.A. No. 6657. As the government agency principally tasked to implement the agrarian reform program, it is the DAR's duty to issue rules and regulations to carry out the object of the law. [DAO] No. 5, s. of 1998 precisely "filled in the details" of Section 17, RA No. 6657 by providing a basic formula by which the factors mentioned therein may be taken into account. **The [Special Agrarian Court] was at no liberty to disregard the formula which was devised to implement the said provision.** It is elementary that rules and regulations

issued by administrative bodies to interpret the law which they are entrusted to enforce, have the force of law, and are entitled to great respect. Administrative issuances partake of the nature of a statute and have in their favor a presumption of legality. As such, courts cannot ignore administrative issuances especially when, as in this case, its validity was not put in issue. Unless an administrative order is declared invalid, courts have no option but to apply the same. Instead, we sustained the valuation made by the LBP, which was patterned after the applicable administrative order issued by the DAR x x x.

4. ID.; ID.; ID.; ID.; SECTION 17 OF REPUBLIC ACT NO. 6657 AND DAR ADMINISTRATIVE ORDER NO.6, SERIES OF 1992 ARE MANDATORY AND ARE NOT MERE GUIDES THAT THE REGIONAL TRIAL COURT MAY DISREGARD. — The Court *En Banc* in *Land Bank of the Philippines v. Lim* was confronted with the question of whether the RTC can resort to any other means of determining just compensation aside from Section 17 of Republic Act No. 6657 and DAO No. 6, Series of 1992, as amended. The Court resolved the issue in the negative and pronounced that Section 17 of Republic Act No. 6657 and DAO No. 6, Series of 1992, as amended, are mandatory and are not mere guides that the RTC may disregard xxx. In the instant case, the RTC did not pay particular attention to Section 17 of Republic Act No. 6657 and DAO No. 6, Series of 1992, as amended. It merely cited the location of the subject land, nature of the trees planted thereon, and Morales' appraisal report, as bases for fixing the value of the subject land at ₱100,000.00 per hectare; which are not among the factors mentioned in Section 17 of Republic Act No. 6657. Also, the RTC did not apply the formula stated under DAO No. 6, Series of 1992, as amended, in fixing the value of the subject land. This undoubtedly constitutes an obvious departure from the settled doctrine previously discussed herein regarding the mandatory nature of Section 17 of Republic Act No. 6657 and DAO No. 6, Series of 1992, as amended.

5. ID.; ID.; ID.; ID.; VALUATION OF THE SUBJECT LAND BY THE LAND BANK OF THE PHILIPPINES IS SUFFICIENT AND IN COMPLIANCE WITH THE REQUIREMENTS OF THE LAW AND ADMINISTRATIVE RULES AND REGULATIONS. — Further, Morales, in his appraisal report, used the market data approach (a method which based the value

of the subject land on sales and listings of similar properties situated within the area), and the income approach (a procedure which based the value of the subject land on the potential net benefit that may be derived from its ownership) in determining the value of the subject land. Morales did not explicitly state or even impliedly use Section 17 of Republic Act No. 6657 and DAO No. 6, Series of 1992, as amended, in his appraisal report for the subject land. Neither was there any foundation for concluding that the market data approach and income approach conformed to statutory and regulatory requirements. More importantly, Morales himself admitted during the trial that he did not consider Republic Act No. 6657 and DAO No. 6, Series of 1992, as amended, in his appraisal report for the subject land, despite being aware of the said law and rules for a long time. This being the case, the valuation of the subject land, as contained in the appraisal report adopted by the RTC, cannot be deemed to be in compliance with the requirements under Section 17 of Republic Act No. 6657 and DAO No. 6, Series of 1992, as amended. In contrast, LBP arrived at its valuation of the subject land by considering the factors identified under Section 17 of Republic Act No. 6657, and by computing the same in accordance with the formula in DAO No. 6, Series of 1992, as amended. xxx We find the foregoing exhaustive explanation and thorough computations of LBP to be sufficient and in accordance with Section 17 of Republic Act No. 6657 and DAO No. 6, Series of 1992, as amended. Hence, the Court affirms the valuation by LBP of ₱41,792.94 per hectare, or a total of ₱19,140,965.91, for the subject land.

6. ID.; ID.; ID.; ID.; INTEREST IN THE FORM OF DAMAGES CANNOT BE APPLIED WHERE THERE WAS PROMPT AND VALID PAYMENT OF JUST COMPENSATION. — In expropriation cases, interest is due the landowner if there was delay in payment. The imposition of interest was in the nature of damages for the delay in payment, which in effect makes the obligation on the part of the government one of forbearance. It follows that the interest in the form of damages cannot be applied where there was prompt and valid payment of just compensation. In *Apo Fruits Corporation v. Court of Appeals*, we stressed that interest on just compensation is imposed only in case of delay in the payment thereof, which must be sufficiently established. There is nothing in the records to show that LBP was delayed in the payment of just

compensation to KPCI. In fact, contrary to the claim of KPCI, it was paid just compensation by LBP with dispatch.

7. ID.; ID.; ID.; ID.; THE LAND BANK OF THE PHILIPPINES IS AN INDISPENSABLE PARTY IN CASES INVOLVING JUST COMPENSATION FOR LANDS TAKEN UNDER THE AGRARIAN REFORM PROGRAM, WITH A RIGHT TO APPEAL DECISIONS THAT ARE UNFAVORABLE TO IT. — The mere fact that LBP appealed the decisions of the RTC and the Court of Appeals does not mean that it deliberately delayed the payment of just compensation to KPCI. LBP is an agency created primarily to provide financial support in all phases of agrarian reform pursuant to Section 74 of Republic Act No. 3844 and Section 64 of Republic Act No. 6657. It is vested with the primary responsibility and authority in the valuation and compensation of covered landholdings to carry out the full implementation of the Agrarian Reform Program. It may agree with the DAR and the landowner as to the amount of just compensation to be paid to the latter and may also disagree with them and bring the matter to court for judicial determination. This makes the LBP an indispensable party in cases involving just compensation for lands taken under the Agrarian Reform Program, with a right to appeal decisions in such cases that are unfavorable to it. Having only exercised its right to appeal in this case, LBP cannot be penalized by making it pay for interest.

APPEARANCES OF COUNSEL

LBP Legal Services Group for petitioner.

Amihan Gacad Alo & Associates for Kumassie Plantation Company, Inc.

Delfin B. Samson for DAR.

D E C I S I O N

CHICO-NAZARIO, *J.*:

Before Us are two consolidated Petitions for Review on *Certiorari* under Rule 45 of the Rules of Court,[1] docketed as

[1] *Rollo* (G.R. No. 177404), pp. 33-55 and (G.R. No. 178097) pp. 29-49.

G.R. No. 177404 and **G.R. No. 178097**, assailing the Decision,[2] dated 24 November 2005, and Resolution,[3] dated 30 March 2007, of the Court of Appeals in CA-G.R. CV No. 65923.

The undisputed facts are as follows:

Kumassie Plantation Company Incorporated (KPCI) is the registered owner of 802.2906 hectares of agricultural land situated in Basiawan, Santa Maria, Davao del Sur, and covered by Transfer Certificate of Title (TCT) No. 646.[4] In 1982, KPCI and Philippine Cocoa Corporation (PCC) entered into a contract of lease whereby the former agreed to lease the said land together with the improvements thereon to the latter for a period of 25 years beginning 15 May 1982.[5] Subsequently, PCC executed a deed of assignment transferring all its rights as lessee under the said contract of lease to Philippine Cocoa Estates Corporation (PCEC) effective 31 December 1983.[6]

On 18 February 1992, a portion of the aforementioned land, measuring 457.9952 hectares, planted with coconuts and cocoa (subject land), was compulsorily acquired by the Department of Agrarian Reform (DAR), Region XI, Davao City, for distribution to farmer-beneficiaries pursuant to Republic Act No. 6657, otherwise known as the Comprehensive Agrarian Reform Law of 1988.[7] The DAR then requested the Land Bank of the Philippines (LBP) to determine the value of the subject land.[8] LBP pegged the value of the subject land at ₱19,140,965.00

---

[2] Penned by Associate Justice Normandie B. Pizarro with Associate Justices Edgardo A. Camello and Ricardo R. Rosario, concurring; CA *rollo*, pp. 81-90.

[3] *Id.* at 241-243.

[4] Records, pp. 12-14.

[5] *Id.* at 246-254.

[6] *Id.* at 255-259.

[7] *Id.* at 20.

[8] *Id.* at 22; Executive Order No. 405, dated 14 June 1990, vests the Land Bank of the Philippines the primary responsibility to determine the land valuation and compensation for all private lands covered by Republic Act No. 6657. See *Philippine Veterans Bank v. Court of Appeals*, 379 Phil. 141, 145 (2000).

or equivalent to ₱41,792.94 per hectare.[9] DAR offered to KPCI said amount as compensation for the subject land,[10] but it was rejected by KPCI for being "unreasonably low."[11] Despite the rejection by KPCI of the valuation of the subject land by LBP, the amount of ₱19,140,965.00 was deposited by LBP, upon the instructions of DAR, in the name and for the account of KPCI.[12] KPCI withdrew from LBP the entire amount in cash and bonds.[13]

DAR then advised the Department of Agrarian Reform Adjudication Board (DARAB), on 27 July 1994, to conduct a summary administrative proceeding for the determination of the just compensation due KPCI for the subject land.[14] The proceeding was docketed as DARAB Case No. JC-R-XI-DAV-OR-0017-CO. LBP and KPCI later submitted their respective position papers with the DARAB.[15]

DAR next directed the Register of Deeds of Digos, Davao del Sur, on 26 September 1994, to cancel TCT No. 646 covering the subject land in the name of KPCI and to issue a new TCT in the name of the Republic of the Philippines.[16] After the issuance of a new TCT in the name of the Republic of the Philippines, and again upon the request of the DAR, the Register of Deeds of Digos, Davao del Sur, issued Certificates of Land Ownership Award (CLOAs) to qualified farmer-beneficiaries.[17]

On 20 January 1997, KPCI filed with the Davao City Regional Trial Court (RTC), Branch 15 (acting as a Special Agrarian

---

[9] Records, p. 15.

[10] *Id*. at 20.

[11] *Id.* at 21.

[12] *Id*. at 22.

[13] *Id*. at 6.

[14] Pursuant to Section 16(d) of Republic Act No. 6657.

[15] CA *rollo*, p. 188; *rollo* (G.R. No. 177404), pp. 107-113.

[16] Records, p. 22.

[17] *Id.* at 23.

Court), a Complaint against LBP and the DAR for determination and payment of just compensation, docketed as Civil Case No. 25,045-97.[18] KPCI implored the RTC to render judgment fixing the just compensation for the subject land at ₱160,000.00 per hectare, or equivalent to a total amount of ₱73,279,232.00, less the amount of ₱19,140,965.00 which KPCI had previously withdrawn from LBP.[19]

Subsequently, LBP and the DAR filed with the RTC their respective Answers contending that the Complaint was prematurely filed as KPCI failed to exhaust administrative remedies; that KPCI was already paid just compensation for the subject land, determined to be ₱41,792.94 per hectare, for a total amount of ₱19,140,965.91; and that KPCI admitted in the Complaint having received such amount from LBP. LBP asserted that it correctly calculated the value of the subject land to be ₱19,140,965.91, applying the formula prescribed in DAR Administrative Order (DAO) No. 6, Series of 1992, as amended by DAO No. 11, Series of 1994. At the end of their respective Answers, both LBP and DAR sought the dismissal of the Complaint of KPCI.[20]

The RTC thereafter directed the parties to submit the names of their respective nominees for commissioners in Civil Case No. 25,045-97.[21] KPCI nominated Oliver A. Morales (Morales), President of Cuervo Appraisers Incorporated,[22] while LBP submitted the name of a certain Engineer Romeo Cabanial.[23] For its part, the DAR endorsed Tomasa L. Miranda (Miranda), a DAR employee.[24] The RTC appointed Morales and Miranda as commissioners. The two subsequently took their oaths of office as court-appointed commissioners.[25]

---

[18] *Id.* at 1-11.

[19] *Id*.

[20] *Id.* at 77-83 and 95-97.

[21] *Id.* at 73.

[22] *Id.* at 75.

[23] *Id.* at 81.

[24] *Id.* at 83.

[25] *Id.* at 92-93.

Meanwhile, the DARAB issued, on 19 May 1997, a Resolution in JC-R-XI-DAV-OR-0017-CO, affirming the valuation of the subject land by the LBP.[26] The DARAB found the LBP valuation of the subject land to be "accurate and just," as it was in harmony with the pertinent provisions of Republic Act No. 6657 and DAO No. 6, Series of 1992, as amended.[27]

After trial in Civil Case No. 25,045-97, the RTC rendered its Decision on 18 February 1999, fixing the fair and reasonable value of the subject land at ₱100,000.00 per hectare. In arriving at said valuation, the RTC considered the location of the subject land, the nature of the trees planted thereon, and the reasons stated in Morales' appraisal report. The RTC then ordered LBP and DAR to pay KPCI an amount equivalent to ₱100,000.00 per hectare as just compensation for the subject land, plus legal interest computed from 23 March 1994 until fully paid.[28]

LBP filed with the RTC a Motion for Reconsideration of the foregoing Decision;[29] while DAR filed a Notice of Appeal, manifesting that it would appeal said RTC Decision to the Court of Appeals.[30]

On 23 July 1999, the RTC issued an Order denying the Motion for Reconsideration of LBP.[31] Aggrieved, LBP filed its appeal with the Court of Appeals, docketed as CA-G.R CV No. 65923.[32] LBP filed, on 27 September 2000, its Appellant's Brief in CA-

---

[26] *Id.* at 217-222.

[27] *Id*.

[28] *Id.* at 346-355; The RTC failed to state the total amount payable to KPCI as just compensation, but considering its valuation of the subject land at ₱100,000.00 per hectare, and the total area of the subject land which is 457.9552 hectares, then total just compensation would amount to ₱45,795,200.00. The RTC likewise failed to mention subtracting from the total just compensation awarded the ₱19,149.965.91 already received by KPCI.

[29] *Id.* at 356-360.

[30] *Id.* at 363.

[31] *Id.* at 375.

[32] CA *rollo*, pp. 16-33.

G.R CV No. 65923.[33] DAR joined the appeal of LBP by filing, on 18 January 2001, in CA-G.R CV No. 65923, a Manifestation adopting *in toto* the Appellant's Brief of LBP.[34]

On 24 November 2005, the Court of Appeals promulgated its Decision in CA-G.R CV No. 65923, affirming with modification the appealed RTC Decision. The appellate court sustained the finding of the RTC that the fair and reasonable value of the subject land was ₱100,000.00 per hectare. Nevertheless, it ruled that the imposition of legal interest should be deleted, as there was no delay on the part of LBP in depositing the amount of ₱19,140,965.91 in the account of KPCI, which amount was admittedly withdrawn by KPCI. The *fallo* of the Decision of the Court of Appeals reads:

> WHEREFORE, premises considered, the Decision of the Regional Trial Court (RTC), 11th Judicial Region, Br. 15, Davao City is **AFFIRMED with MODIFICATION**. As modified, as none should be awarded, the award of interest is deleted. No costs.[35]

LBP and KPCI each filed its own Motion for Reconsideration of the 24 November 2005 Decision of the Court of Appeals,[36] but both Motions were denied by the appellate court in its Resolution dated 30 March 2007.

Hence, LBP and KPCI separately sought recourse from this Court by virtue of the Petitions for Review presently before us, docketed as **G.R. No. 177404** and **G.R. No. 178097,** respectively. The two Petitions were consolidated since they arose from the same set of facts.[37]

The procedure for the determination of compensation cases under Republic Act No. 6657, as devised by this Court,[38]

[33] *Id*.

[34] *Id.* at 73-74.

[35] *Id.* at 90.

[36] CA *rollo*, pp. 118-139.

[37] *Rollo* (G.R. No. 178097), p. 159.

[38] *Land Bank of the Philippines v. Banal*, G.R. No. 143276, 20 July 2004, 434 SCRA 543, 550-551.

commences with the valuation by the LBP of the lands taken by the State from private owners under the land reform program. Based on the valuation of the land by the LBP, the DAR makes an offer to the landowner through a written notice. In case the landowner rejects the offer, a summary administrative proceeding is held and, afterwards, depending on the value of the land, the Provincial Agrarian Reform Adjudicator (PARAD), the Regional Agrarian Reform Adjudicator (RARAD), or the DARAB, fixes the price to be paid for the said land. If the landowner still does not agree with the price so fixed, he may bring the matter to the RTC, acting as Special Agrarian Court.

In the process of determining the just compensation due to landowners, it is a necessity that the RTC takes into account several factors enumerated in Section 17 of Republic Act No. 6657, as amended, to wit:

> Sec. 17. *Determination of Just Compensation*. – In determining just compensation, the cost of acquisition of the land, **the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, and the assessment made by government assessors** shall be considered. The **social and economic benefits** contributed by the farmers and the farmworkers and by the Government to the property as well as the **non-payment of taxes or loans** secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation.

Being the government agency primarily charged with the implementation of the agrarian reform program, DAR issued DAO No. 6, Series of 1992, as amended, filling out the details necessary for the implementation of Section 17 of Republic Act No. 6657. DAR translated the factors specified in Section 17 of Republic Act No. 6657, into a basic formula, presented as follows in DAO No. 6, Series of 1992, as amended:

LV = (CNI x 0.6) + (CS x 0.3) + (MV x 0.1)

Where: LV = Land Value

CNI = Capitalized Net Income

CS = Comparable Sales

MV = Market Value per Tax Declaration

The above formula shall be used if all the three factors are present, relevant, and applicable.

A.1 When the CS factor is not present and CNI and MV are applicable, the formula shall be:

LV = (CNI x 0.9) + (MV x 0.1)

A.2 When the CNI factor is not present, and CS and MV are applicable, the formula shall be:

LV = (CS x 0.9) + (MV x 0.1)

A.3 When both the CS and CNI are not present and only MV is applicable, the formula shall be:

LV = MV x 2

In its Petition docketed as **G.R. No. 177404**, LBP maintains that the RTC and the Court of Appeals erred in their valuation of the subject land at ₱100,000.00 per hectare because both courts did not consider the factors enumerated in Section 17 of Republic Act No. 6657 and the formula for valuation of lands under DAO No. 6, Series of 1992, as amended.[39]

While the determination of just compensation is essentially a judicial function which is vested in the RTC acting as Special Agrarian Court, we, nonetheless, disregarded the determination of just compensation made by the RTC in *Land Bank of the Philippines v. Banal*,[40] *Land Bank of the Philippines v. Celada*,[41] and in *Land Bank of the Philippines v. Lim*,[42] when, as in this case, the judge gravely abused his discretion by not taking into full consideration the factors specifically identified by law and implementing rules.

In several cases, we have reminded the special agrarian courts to resolve just determination cases judiciously and with utmost

---

[39] *Rollo*, (G.R. No. 177404), pp. 42-53.

[40] *Supra* note 38.

[41] G.R. No. 164876, 23 January 2006, 479 SCRA 495.

[42] G.R. No. 171941, 2 August 2007, 529 SCRA 129.

observance of Section 17 of Republic Act No. 6657 and the administrative orders issued by the DAR to implement said statutory provision.

In *Land Bank of the Philippines v. Banal*,[43] we emphasized that the factors laid down in Section 17 of Republic Act No. 6657 and the formula stated in DAO No. 6, Series of 1992, as amended, must be adhered to by the RTC in fixing the valuation of lands subjected to agrarian reform, thus:

> In determining just compensation, the **RTC is required** to consider several factors enumerated in Section 17 of R.A. 6657, as amended, thus:
>
> x x x x x x x x x
>
> These factors have been translated into a basic formula in [**DAO 6-92**], as amended by [DAO 11-94], issued pursuant to the DAR's rule-making power to carry out the object and purposes of R.A. 6657, as amended.
>
> x x x x x x x x x
>
> While the determination of just compensation involves the exercise of judicial discretion, however, such discretion must be discharged within the bounds of the law. Here, the RTC wantonly disregarded R.A. 6657, as amended, and its implementing rules and regulations. ([DAO 6-92], as amended by [DAO 11-94]).
>
> x x x x x x x x x
>
> WHEREFORE, x x x. The trial judge is directed **to observe strictly the procedures specified above** in determining the proper valuation of the subject property. (Emphasis ours.)

Again, in *Land Bank of the Philippines v. Celada*,[44] we stressed that the special agrarian court cannot ignore, without violating Republic Act No. 6657, the formula provided by the DAR for the determination of just compensation. We rejected the valuation fixed by the RTC because it failed to follow the DAR formula:

---

[43] *Supra* note 38 at 549-554.

[44] *Supra* note 41 at 506-507.

While [Special Agrarian Court] is required to consider the acquisition cost of the land, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declaration and the assessments made by the government assessors to determine just compensation, it is equally true that these factors have been translated into a basic formula by the DAR pursuant to its rule-making power under Section 49 of R.A. No. 6657. As the government agency principally tasked to implement the agrarian reform program, it is the DAR's duty to issue rules and regulations to carry out the object of the law. [DAO] No. 5, s. of 1998 precisely "filled in the details" of Section 17, RA No. 6657 by providing a basic formula by which the factors mentioned therein may be taken into account. **The [Special Agrarian Court] was at no liberty to disregard the formula which was devised to implement the said provision.**

It is elementary that rules and regulations issued by administrative bodies to interpret the law which they are entrusted to enforce, have the force of law, and are entitled to great respect. Administrative issuances partake of the nature of a statute and have in their favor a presumption of legality. As such, courts cannot ignore administrative issuances especially when, as in this case, its validity was not put in issue. Unless an administrative order is declared invalid, courts have no option but to apply the same. (Emphasis ours.)

Instead, we sustained the valuation made by the LBP, which was patterned after the applicable administrative order issued by the DAR, *viz*:

[LBP] arrived at its valuation by using available factors culled from the Department of Agriculture and Philippine Coconut Authority, and by computing the same in accordance with the formula provided, thus –

COMPUTATION (Applicable Formula): LV = 0.90 CNI + 0.10 MV				
Comparable Land Transactions	(₱ x x x	x	____)	= ₱ x-x-x
Capitalized Net Income:	Cassava	16,666.67 x 0.90	=	15,000.00
	Corn/Coco	26,571.70	=	23,914.53
Market Value	Cassava	8,963.78 x 0.10	=	896.38
per Tax Declaration:	Corn/Coco	10,053.93	=	1,005.39

Computed Value per

Hectare: Cassava 15,896.38; Corn/Coco – 24,919.92

x x x x x x x x x

Value per hectare used: Cassava 15,896.38 x 6.0000 has. = 95,378.28

Corn/Coco 24,919.92 x 8.1939 has. = 204,191.33

Payment due to LO : ₱299,569.61

The above computation was explained by Antero M. Gablines, Chief of the Claims, Processing, Valuation and Payment Division of the Agrarian Operations Center of the Land Bank, to wit:

ATTY. CABANGBANG: (On direct):

x x x x x x x x x

q. **What are the items needed for the Land Bank to compute?**

a. In accordance with Administrative Order No. 5, series of 1998, the value of the land should be computed using the capitalized net income plus the market value. We need the gross production of the land and its output and the net income of the property.

q. You said "gross production." How would you fix the gross production of the property?

a. In that Administrative Order No. 5, if the owner of the land is cooperative, he is required to submit the net income. Without submitting all his sworn statements, we will get the data from the DA (Agriculture) or from the coconut authorities.

x x x x x x x x x

q. In this recommended amount which you approved, how did you arrive at this figure?

a. We used the data from the Philippine (Coconut) Authority and the Agriculture and the data stated that Cassava production was only 10,000 kilos per hectare; corn, 2,000 kilos; and coconuts, 15.38 kilos per hectare. The data stated that in the first cropping of 1986, the price of cassava was ₱1.00 per kilo; corn was sold at ₱7.75 per kilo; and the Philippine

Coconut Authority stated that during that time, the selling price of coconuts was ₱8.23 per kilo.

q. After these Production data and selling price, there is here a "cost of operation," what is this?

a. It is the expenses of the land owner or farmer. From day one of the cultivation until production. Without the land owner's submission of the sworn statement of the income, production and the cost, x x x Administrative Order No. 5 states that x x x we will use 20% as the net income, meaning 80% of the production in peso. This is the cost of valuation.

q. 80 % for what crops?

a. All crops except for coconuts where the cost of expenses is only 20%.

q. Summing all these data, what is the value per hectare of the cassava?

a. The cassava is ₱15,896.38.

q. How about the corn x x x intercropped with coconuts?

a. ₱24,919.92.

Under the circumstances, **we find the explanation and computation of [LBP] to be sufficient and in accordance with applicable laws**. [LBP's] valuation must thus be upheld.[45] (Emphases ours.)

In *Apo Fruits Corporation v. Court of Appeals*,[46] we once more gave paramount importance to the criteria inscribed in Section 17 of Republic Act No. 6657 and the pertinent DAOs. In sustaining therein the valuation of the special agrarian court, we ratiocinated:

[T]he **Court affirmed the due consideration given by the RTC of the factors specified in Section 17, Republic Act No. 6657**. Again, the proper valuation of the subject premises was reached with clear regard for the acquisition cost of the land, current market value of the properties, its nature, actual use and income, *inter alia* —

[45] *Id.* at 510-512.

[46] G.R. No. 164195, 30 April 2008, 553 SCRA 237, 247.

factors that are material and relevant in determining just compensation. **These are the very same factors laid down in a formula by DAR A.O. No. 5. Due regard was thus given by the RTC to Republic Act No. 6657, DAR A.O. No. 5** and prevailing jurisprudence when it arrived at the value of just compensation due to AFC and HPI in this case.

The Court *En Banc* in *Land Bank of the Philippines v. Lim*[47] was confronted with the question of whether the RTC can resort to any other means of determining just compensation aside from Section 17 of Republic Act No. 6657 and DAO No. 6, Series of 1992, as amended. The Court resolved the issue in the negative and pronounced that Section 17 of Republic Act No. 6657 and DAO No. 6, Series of 1992, as amended, are mandatory and are not mere guides that the RTC may disregard. Citing *Banal* and *Celada*, we held in *Lim* that:

> In *Land Bank of the Philippines v. Spouses Banal* [434 SCRA 543], **this Court underscored the mandatory nature of Section 17 of RA 6657 and DAR AO 6-92, as amended by DAR AO 11-94**, x x x.
>
> x x x x x x x x x
>
> And in *LBP v. Celada* [479 SCRA 495], **this Court set aside the valuation fixed by the RTC of Tagbilaran, which was based solely on the valuation of neighboring properties, because it did not apply the DAR valuation formula**. x x x.
>
> x x x x x x x x x
>
> Consequently, as the amount of ₱2,232,868 adopted by the RTC in its December 21, 2001 Order was **not based on any of the mandatory formulas prescribed in DAR AO 6-92, as amended by DAR AO 11-94**, the Court of Appeals **erred when it affirmed the valuation** adopted by the RTC. (Emphases ours.)

In the instant case, the RTC did not pay particular attention to Section 17 of Republic Act No. 6657 and DAO No. 6, Series of 1992, as amended. It merely cited the location of the subject land, nature of the trees planted thereon, and Morales' appraisal report, as bases for fixing the value of the subject land at

[47] *Supra* note 42 at 134-136.

₱100,000.00 per hectare; which are not among the factors mentioned in Section 17 of Republic Act No. 6657. Also, the RTC did not apply the formula stated under DAO No. 6, Series of 1992, as amended, in fixing the value of the subject land. This undoubtedly constitutes an obvious departure from the settled doctrine previously discussed herein regarding the mandatory nature of Section 17 of Republic Act No. 6657 and DAO No. 6, Series of 1992, as amended.

Further, Morales, in his appraisal report, used the market data approach (a method which based the value of the subject land on sales and listings of similar properties situated within the area), and the income approach (a procedure which based the value of the subject land on the potential net benefit that may be derived from its ownership) in determining the value of the subject land.[48] Morales did not explicitly state or even impliedly use Section 17 of Republic Act No. 6657 and DAO No. 6, Series of 1992, as amended, in his appraisal report for the subject land. Neither was there any foundation for concluding that the market data approach and income approach conformed to statutory and regulatory requirements. More importantly, Morales himself admitted during the trial that he did not consider Republic Act No. 6657 and DAO No. 6, Series of 1992, as amended, in his appraisal report for the subject land, despite being aware of the said law and rules for a long time.[49] This being the case, the valuation of the subject land, as contained in the appraisal report adopted by the RTC, cannot be deemed to be in compliance with the requirements under Section 17 of Republic Act No. 6657 and DAO No. 6, Series of 1992, as amended.

In contrast, LBP arrived at its valuation of the subject land by considering the factors identified under Section 17 of Republic Act No. 6657, and by computing the same in accordance with the formula in DAO No. 6, Series of 1992, as amended. The meticulous calculations of LBP are reproduced below:

---

[48] Records pp. 99-146.

[49] TSN, 18 September 1997, pp. 37-38.

FORMULA USED IN THE VALUATION OF THE SUBJECT PROPERTY

The records show that Acquisition Cost (CA), Market Value based on Mortgage (MVM) and Comparable Sales (CS) are not applicable. Hence, pursuant to paragraph A.2 of **DAR Adm. Order No. 6, Series of 1992**, the applicable formula in arriving at the land Value is: LV = (CNI x 0.9) + (MV [x] 0.1).

Considering that the subject property is covered by an existing lease contract, the Lease Rental Income was also considered in the computation of the Capitalized Net Income (CNI) by following the formula prescribed under paragraph B.7 of Dar Adm. Order No. 6, Series of 1992, thus:

$$CNI = \frac{LRI}{.12}$$

DISCUSSION OF THE FORMULAE

The pertinent provisions of **DAR Adm. Order No. 6, Series of 1992**, reads:

B. Capitalized Net Income (CNI) – This shall refer to the difference between the gross sales (AGP x SP) and total cost of operations (CO) capitalized at 12%.

Expressed in equation form:

$$CNI = \frac{(AGP \times SP) - CO}{.12}$$

Where: CNI = Capitalized Net Income

AGP = One year's Average Gross Production immediately preceding the date of offer in case of VOS or date of notice of coverage in case of CA.

SP = Selling price shall refer to average prices for the immediately preceding calendar year from the date of receipt of the claimfolder by LBP from DAR for processing secured from the Department of Agriculture (DA) other appropriate regulatory bodies or in their absence, from Bureau of Agricultural Statistics. If possible, SP data shall be gathered from the *barangay*

or municipality where the property is located. In the absence thereof, SP may be secured within the province or region.

CO = Cost of Operations

Whenever the cost of operations could not be obtained or not be obtained or verified, and assumed net income rate (NIR) of 20% shall be used. Landholdings planted to coconut which are productive at the time of offer/coverage shall continue to use the 70% NIR x x x

12 = Capitalized Rate

B.1 Industry data on production, cost of operation, and selling price shall be obtained from government/private entities. Such entities shall include, but not limited to the Department of Agriculture (DA), the Sugar Regulatory Authority (SRA), the Philippine Coconut Authority (PCA) and other private persons/entities knowledgeable to the concerned industry.

B.2 The landowner shall submit a statement of net income derived from the land subject of acquisition. This shall include among others, total production and cost of operations on a per crop basis, selling price/s (farm gate) and such other data as may be required.

x x x x x x x x x

In case of failure by the landowner to submit the statement x x x or the data stated therein cannot be verified/validated from the farmers, LBP may adopt any available industry data or in the absence thereof may conduct an industry study on the specific crop which will be used in determining the production, cost and net income of the subject landholding.

x x x x x x x x x

B.7 For landholdings planted to permanent crops which are covered by existing lease contract, the following formula shall be used in the computation of the CNI:

$$\text{CNI/Ha.} = \frac{\text{LRI}}{.12}$$

Where: LRI = Lease Rental Income per Hectare/Year as stipulated under the contract.

x x x x x x x x x

c. In case the lease rental is a variable amount (e.g., progressively increasing during the term of the lease), LRI is computed as follows:

$$\text{LRI} = \frac{\text{Sum of Annual lease Rental per Hectare over the remaining Term of the Lease Contract}}{\text{Remaining Term of Lease, Years}}$$

x x x x x x x x x

D. Market Value per Tax Declaration (MV) shall refer to the market value per Tax Declaration (TD) issued before August 29, 1987 (effectivity of EO 229). The most recent set of values indicated in the latest schedule of unit value (SMV) grossed-up for inflation rate from the date of effectivity up to the date of receipt of claimfolder by LBP from DAR for processing.

CAPITALIZED NET INCOME

Re: AGP

LANDBANK adopted as AGP the average production indicated in the Contract of Lease which is 44 metric tons of copra per month (net) or 528 metric tons a year. Converted into kilos, the AGP per hectare is 658.12 kilos.

Re: Selling Price

As Selling Price, LANDBANK used the 1992 Philippine Coconut Authority Data which is ₱6.87 per kilo as the same is the average price for the immediately preceding calendar year from the date of receipt by LANDBANK of the claimfolder from DAR for processing in 1993 pursuant to paragraph 5, Item B of **DAR Adm. Order No. 6, Series of 1992**, above quoted.

Re: Capitalization Rate

A 12% capitalization rate was used in accordance with paragraph 8, Item B of DAR Adm. Order No. 6, Series of 1992.

Using the foregoing as input, the CNI for copra is ₱37,677.37 per hectare (658.12 kilos x ₱6.87 per kilo / .12).

Cocoa was not included in the computation of the CNI because there is no production data available. Further, the same was introduced by the lessee.

Re: LRI

Pursuant to Item B, paragraph B.7, sub-paragraph c of **DAR Adm. Order No. 6, Series of 1992**, LANDBANK computed the total lease rentals for the remaining period of the lease contract (1994 to 2007 or 14 years). Thus, LRI = (690 x 4) + (₱680 x 5) + (₱1,120 x 5) divided by 14 or ₱904.29 per hectare. Following the formula: 12% over LRI (₱904.29), the CNI per hectare (Lease Contract) is ₱7,535.75.

MARKET VALUE PER TAX DECLARATION

In the computation of the market Value per Tax Declaration (MV), the unit market values of both the land and the coconut trees were determined based on the 1991 Schedule of Market Values for agricultural properties in Sta. Maria, Davao del Sur. Per the said Schedule of Market Values, the subject property is classified as third class cocoland and has a unit market value of ₱6,240.00 per hectare while the cocotrees have a unit market value of ₱62.40 per tree.

The unit market values of both the land and the cocotrees were multiplied with the location adjustment factor of 98% and the results were in turn multiplied with the Consumer Price Index (1.1254). Thus, the total market value as adjusted for the land is ₱6,882.05 per hectare and ₱4,129.23 for the cocotrees or a total of ₱11,011.28 per hectare.

In summation:

CNI (copra)	-	₱37,677.37 per ha.
CNI (Lease contract)	-	₱ 7,535.75 per ha.
Total CNI	-	₱ 45,213.12per ha.
MV (Land)	-	₱ 6,882.05 per ha.
MV (cocotree)	-	₱ 4,129.23 per ha.
Total MV	-	₱ 11,011.28 per ha.

Following the formula: LV = CNI x 0.9 (₱45,213.12 x 0.9) ₱40,691.81 + MV 0.1 (11,011.28 x 0.1) ₱1,101.13 x 457.9952 hectares, **the total value of the area subject to acquisition is ₱19,140,965.91.**[50] (Emphases supplied).

---

[50] *Rollo* (G.R. No. 177404), pp. 108-113; CA *rollo*, pp. 332-335.

We find the foregoing exhaustive explanation and thorough computations of LBP to be sufficient and in accordance with Section 17 of Republic Act No. 6657 and DAO No. 6, Series of 1992, as amended. Hence, the Court affirms the valuation by LBP of ₱41,792.94 per hectare, or a total of ₱19,140,965.91, for the subject land.

Since we have already resolved the issue in **G.R No. 177404**, we shall now discuss and determine the matters brought up in **G.R. No. 178097**.

In its Petition docketed as **G.R. No. 178097**, KPCI argues that the imposition of legal interest as damages is warranted because LBP has delayed in paying just compensation for the subject land. KPCI alleges that the act of LBP in appealing the decisions of the RTC and the Court of Appeals reveals the intent of the LBP to delay the payment of just compensation to KPCI.[51]

Given our finding that it is the valuation of the subject land by the LBP that is correct and in compliance with the requirements of the law and administrative rules and regulations, then the issue of interest, raised by KPCI in its Petition, has actually become irrelevant. The amount of ₱19,140,965.91, representing the valuation of LBP for the entire subject land, was deposited for the account of and in the name of KPCI, which the latter had admittedly already withdrawn. The just compensation for the subject land is, thus, already fully paid.

Even if we were still to address the issue of interest, we shall decide against KPCI.

In expropriation cases, interest is due the landowner if there was delay in payment. The imposition of interest was in the nature of damages for the delay in payment, which in effect makes the obligation on the part of the government one of forbearance. It follows that the interest in the form of damages cannot be applied where there was prompt and valid payment of just compensation.[52] In *Apo Fruits Corporation v. Court of*

[51] *Rollo* (G.R. No. 178097), pp. 42-44.

[52] *Apo Fruits Corporation v. Court of Appeals*, G.R. No. 164195,

Appeals,[53] we stressed that interest on just compensation is imposed only in case of delay in the payment thereof, which must be sufficiently established.

There is nothing in the records to show that LBP was delayed in the payment of just compensation to KPCI. In fact, contrary to the claim of KPCI, it was paid just compensation by LBP with dispatch.

The mere fact that LBP appealed the decisions of the RTC and the Court of Appeals does not mean that it deliberately delayed the payment of just compensation to KPCI. LBP is an agency created primarily to provide financial support in all phases of agrarian reform pursuant to Section 74 of Republic Act No. 3844 and Section 64 of Republic Act No. 6657. It is vested with the primary responsibility and authority in the valuation and compensation of covered landholdings to carry out the full implementation of the Agrarian Reform Program. It may agree with the DAR and the landowner as to the amount of just compensation to be paid to the latter and may also disagree with them and bring the matter to court for judicial determination.[54] This makes the LBP an indispensable party in cases involving just compensation for lands taken under the Agrarian Reform Program, with a right to appeal decisions in such cases that are unfavorable to it. Having only exercised its right to appeal in this case, LBP cannot be penalized by making it pay for interest.

WHEREFORE, in view of the foregoing:

1) The Petition of Land Bank of the Philippines in G.R. No. 177404 is *GRANTED*. The Decision, dated 24 November 2005, and Resolution, dated 30 March 2007, of the Court of Appeals in CA-G.R. CV No. 65923, are *REVERSED* and *SET ASIDE*. The valuation of the subject land at ₱41,792.94 per hectare,

19 December 2007, 541 SCRA 117, 141; *Land Bank of the Philippines v. Wycoco*, 464 Phil. 83, 100 (2004), citing *Reyes v. National Housing Authority*, 443 Phil. 603, 616 (2003) and *Republic v. Court of Appeals*, 433 Phil. 106, 122-123 (2002).

[53] *Id.* at 142.

[54] *Heirs of Roque F. Tabuena v. Land Bank of the Philippines*, G.R. No. 180557, 26 September 2008, 566 SCRA 557, 566.

for a total of ₱19,140,965.91, by the Land Bank of the Philippines is *APPROVED*, and such amount is *DECLARED PAID IN FULL*; and

2) The Petition of Kumassie Plantation Company Incorporated is *DENIED*. No costs.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 178337. June 25, 2009]

CARMEN RITUALO *y* RAMOS, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; ILLEGAL RECRUITMENT; ESSENTIAL ELEMENTS; PRESENT IN CASE AT BAR. — Illegal recruitment is committed when two essential elements concur: (1) that the offender has no valid license or authority required by law to enable him to lawfully engage in the recruitment and placement of workers, and (2) that the offender undertakes any activity within the meaning of "recruitment and placement" defined under Article 13(b), or any prohibited practices enumerated under Article 34 of the Labor Code. In this case, the first element is, indeed, present. The prosecution established, through Belen Blones of the Licensing Branch of the POEA, who identified and confirmed the two Certifications issued by the POEA Licensing Branch, that "per available records of [its] Office, CARMEN RITUALO, in her personal capacity is not licensed by this Administration to recruit workers for

overseas employment." As to the second element, it must be shown that the accused gave the private complainant the distinct impression that he/she had the power or ability to send the private complainant abroad for work, such that the latter was convinced to part with his/her money in order to be employed. Thus, to be engaged in illegal recruitment, it is plain that there must at least be a promise or an offer of employment from the person posing as a recruiter whether locally or abroad. In the case at bar, the second element is similarly present. As testified to by Biacora, petitioner Ritualo professed to have the ability to send him overseas to be employed as a farm worker in Australia with a monthly salary of US$700.00. To further wet Biacora's appetite, petitioner Ritualo even showed him purported travel documents of other people about to depart, whose overseas employment she supposedly facilitated. That petitioner Ritualo personally assisted Biacora in the completion of the alleged requirements, *i.e.*, securing a Letter of Request and Guarantee from the Representative of his Congressional District in Batangas to ensure the approval of Biacora's application for an Australian Visa, even accompanying Biacora to the Australian Embassy, all clearly point to her efforts to convince Biacora that she (petitioner Ritualo) had, indeed, the ability and influence to make Biacora's dream of overseas employment come true.

2. ID.; ID.; REPUBLIC ACT NO. 8042, OTHERWISE KNOWN AS THE MIGRANT WORKERS ACT OF 1995; SECTION 6 THEREOF; DOES NOT REQUIRE THAT THE ILLEGAL RECRUITMENT BE DONE FOR PROFIT. — Petitioner Ritualo next tried to impress upon this Court that she received nary a centavo from the subject illegal transaction; therefore, she should not be held liable. We reject this outright. In the first place, it has been abundantly shown that she really received the monies from Biacora. Secondly, even without consideration for her services, she still engaged in recruitment activities, since it was satisfactorily shown that she promised overseas employment to Biacora. And, more importantly, Sec. 6 of Republic Act No. 8042 does not require that the illegal recruitment be done for profit.

3. REMEDIAL LAW; EVIDENCE; SUPPRESSED EVIDENCE; THE ADVERSE PRESUMPTION OF SUPPRESSION OF EVIDENCE DOES NOT APPLY WHERE THE EVIDENCE

SUPPRESSED IS MERELY CORROBORATIVE OR CUMULATIVE IN NATURE.— The prosecution is entitled to conduct its own case and to decide what witnesses to call to support its charges. The defense posture that the non-presentation of the wife of Biacora constitutes suppression of evidence favorable to petitioner Ritualo is fallacious. In fact, the same line of reasoning can be used against petitioner Ritualo. If the defense felt that the testimony of Biacora's wife would support her defense, what she could and should have done was to call her (Biacora's wife) to the stand as her own witness. One of the constitutional rights of the accused is "to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf." And, in the same vein, since petitioner Ritualo is setting the cloak of liability on Seraspe's shoulder, she (petitioner Ritualo) could and should have had the former subpoenaed as well. As held by this Court, the adverse presumption of suppression of evidence does not, moreover, apply where the evidence suppressed is merely corroborative or cumulative in nature. If presented, Biacora's wife would merely corroborate Biacora's account which, by itself, already detailed what occurred on the day of the parties' first meeting at the house of petitioner Ritualo. Hence, the prosecution committed no fatal error in dispensing with the testimony of Biacora's wife.

4. ID.; ID.; CREDIBILITY OF WITNESSES; IT WOULD BE AGAINST HUMAN NATURE AND EXPERIENCE FOR STRANGERS TO CONSPIRE AND ACCUSED ANOTHER STRANGER OF A MOST SERIOUS CRIME JUST TO MOLLIFY THEIR HURT FEELINGS. — Finally, Biacora, the private complainant in this case, did not harbor any ill motive to testify falsely against petitioner Ritualo. The latter failed to show any animosity or ill feeling on the part of Biacora that could have motivated him to falsely accuse her of the crimes charged. It would be against human nature and experience for strangers to conspire and accuse another stranger of a most serious crime just to mollify their hurt feelings.

5. CRIMINAL LAW; SIMPLE ILLEGAL RECRUITMENT; PETITIONER FOUND GUILTY THEREOF; IMPOSABLE PENALTY. — The totality of the evidence in the case at bar, when scrutinized and taken together, leads to no other conclusion than that petitioner Ritualo engaged in recruiting and promising

overseas employment to Felix Biacora under the above-quoted Sec. 6 of Republic Act No. 8042 *vis-à-vis* Article 13(b) of the Labor Code. Hence, she cannot now feign ignorance of the consequences of her unlawful acts. As to the sentence imposed upon petitioner Ritualo for the crime of simple illegal recruitment, this Court clarifies that the penalty imposed by the Court of Appeals – a sentence of 12 years imprisonment and a fine of ₱500,000.00 - is partly incorrect, as petitioner Ritualo is a non-licensee. Under Sec. 7(a) of Republic Act No. 8042, simple illegal recruitment is punishable by imprisonment of not less than six (6) years and one (1) day but not more than twelve (12) years and a fine of not less than Two Hundred Thousand Pesos (₱200,000.00) nor more than Five Hundred Thousand Pesos (₱500,000.00). Applying the provisions of Section 1 of the Indeterminate Sentence law, however, the correct penalty that should have been imposed upon petitioner Ritualo is imprisonment for the period of eight (8) years and one (1) day, as minimum, to twelve (12) years, as maximum. The imposition of a fine of ₱500,000.00 is also in order.

6. ID.; ESTAFA; ARTICLE 315 (2) (A) OF THE REVISED PENAL CODE; A PERSON WHO COMMITS ILLEGAL RECRUITMENT MAY BE CHARGED AND CONVICTED SEPARATELY OF ILLEGAL RECRUITMENT AND ESTAFA. — With respect to the criminal charge of estafa, this Court likewise affirms the conviction of petitioner Ritualo for said crime. The same evidence proving petitioner Ritualo's criminal liability for illegal recruitment also established her liability for estafa. It is settled that a person may be charged and convicted separately of illegal recruitment under Republic Act No. 8042 in relation to the Labor Code, and estafa under Art. 315, paragraph 2(a) of the Revised Penal Code. As this Court held in *People v. Yabut*: In this jurisdiction, it is settled that a person who commits illegal recruitment may be charged and convicted separately of illegal recruitment under the Labor Code and estafa under par. 2(a) of Art. 315 of the Revised Penal Code. The offense of illegal recruitment is *malum prohibitum* where the criminal intent of the accused is not necessary for conviction, while estafa is *malum in se* where the criminal intent of the accused is crucial for conviction. Conviction for offenses under the Labor Code does not bar

conviction for offenses punishable by other laws. Conversely, conviction for estafa under par. 2(a) of Art. 315 of the Revised Penal Code does not bar a conviction for illegal recruitment under the Labor Code. It follows that one's acquittal of the crime of estafa will not necessarily result in his acquittal of the crime of illegal recruitment in large scale, and vice versa.

7. ID.; ID.; ID.; ELEMENTS; ESTABLISHED IN CASE AT BAR. — The prosecution has proven beyond reasonable doubt that petitioner Ritualo was similarly guilty of estafa under Art. 315 (2)(a) of the Revised Penal Code committed — 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. Both elements of the crime were established in this case, namely, (a) petitioner Ritualo defrauded complainant by abuse of confidence or by means of deceit; and (b) complainant Biacora suffered damage or prejudice capable of pecuniary estimation as a result. Biacora parted with his money upon the prodding and enticement of petitioner Ritualo on the false pretense that she had the capacity to deploy him for employment in Australia. In the end, Biacora was neither able to leave for work overseas nor did he get his money back, thus causing him damage and prejudice. Hence, the conviction of petitioner Ritualo of the crime of estafa should be upheld.

8. ID.; ID.; ID.; PETITIONER FOUND GUILTY THEREOF; IMPOSABLE PENALTY. — While this Court affirms the conviction of the petitioner Ritualo for estafa, we find, however, that both the trial court and the appellate court erroneously computed the penalty of the crime. The amount of which the private complainant, Biacora, was defrauded was Eighty Thousand Pesos (₱80,000.00) and not merely Sixty-Six Thousand Pesos (₱66,000.00). Under the Revised Penal Code, an accused found guilty of estafa shall be sentenced to: Art. 315. *Swindling (estafa)*. — xxx Computing the penalty for the crime of Estafa based on the above-quoted provision, the proper penalty to be imposed upon petitioner Ritualo is the maximum term of *prision correccional* maximum to *prision mayor* minimum as mandated by Article 315 of the Revised Penal Code. But considering

that the amount defrauded exceeded Twenty-Two Thousand Pesos (₱22,000.00), per the same provision, the prescribed penalty is not only imposed in its maximum period, but there is imposed an incremental penalty of one (1) year imprisonment for every Ten Thousand Pesos (₱10,000.00) in excess of the cap of Twenty-Two Thousand Pesos (₱22,000.00). As this Court held in *People v. Gabres*, "[t]he fact that the amounts involved in the instant case exceed ₱22,000.00 should not be considered in the initial determination of the indeterminate penalty; instead, the matter should be so taken as analogous to modifying circumstances in the imposition of the maximum term of the full indeterminate sentence." And with respect to the computation of the minimum term of the indeterminate sentence, in this case, given that the penalty prescribed by law for the estafa charge against petitioner Ritualo is *prision correccional* maximum to *prision mayor* minimum, the penalty next lower would then be *prision correccional* minimum to medium per Art. 64 in relation to Art. 65, both of the Revised Penal Code. Preceding from the above discussion, thus, the prison term to be imposed upon petitioner Ritualo *vis-à-vis* the crime of Estafa is as follows: the minimum term should be anywhere within six (6) months and one (1) day to four (4) years and two (2) months of *prision correccional*; while the maximum term of the indeterminate sentence should be within the range of six (6) years, eight (8) months and twenty-one (21) days to eight (8) years of *prision mayor* considering that the amount involved exceeds ₱22,000.00, plus an added five (5) years, as there are five (5) increments of ₱10,000.00 over the cap of ₱22,000.00.

9. ID.; ID.; CIVIL LIABILITIES OF ACCUSED-PETITIONER. — Lastly, regarding the award of indemnity due from petitioner Ritualo, both the RTC and Court of Appeals ordered her to pay Biacora the amount of Sixty-Six Thousand Pesos (₱66,000.00), instead of the original amount defrauded, which is Eighty Thousand Pesos (₱80,000.00), in view of petitioner Ritualo's payment of Fourteen Thousand Pesos (₱14,000.00). A thorough scrutiny of the record of the case, however, yields the finding that as of the date of revival of the case before the RTC, or on 13 October 2003, only the amount of Twenty-One Thousand Pesos (₱21,000.00) remains unpaid. The Motion to Revive Case dated 2 October 2003 filed by the prosecution

attached the letter-request of private complainant Biacora, elucidating thus: xxx With the foregoing submission of Biacora, out of the amount of Eighty Thousand Pesos (₱80,000.00), only Twenty-One Thousand Pesos (₱21,000.00) remains unpaid. Accordingly, the civil liability of petitioner Ritualo is now merely Twenty-One Thousand Pesos (₱21,000.00).

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
The Solicitor General for respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

For review is the *Decision*[1] of the Court of Appeals promulgated on 23 April 2007 in CA-G.R. CR. No. 29393 entitled, "*People of the Philippines v. Carmen Ritualo y Ramos*," affirming with modification, the *Decision*[2] dated 1 December 2004 of the Regional Trial Court (RTC), Branch 199, Las Piñas City, in Criminal Cases No. 01-0076 and No. 01-0077.

In this Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court, petitioner Carmen Ritualo *y* Ramos (petitioner Ritualo) prays for the reversal of the appellate court's decision affirming with modification the decision of the trial court finding her "guilty beyond reasonable doubt of [committing] the crimes of x x x Simple Illegal Recruitment [defined and punished] under Section 7 of Republic Act No. 8042, otherwise known as the 'Migrant Workers Act of 1995,'"[3] and "Estafa."[4]

---

[1] Penned by Court of Appeals Associate Justice Renato C. Dacudao with Associate Justices Noel G. Tijam and Sesinando E. Villon, concurring; *rollo*, pp. 95-115.

[2] Penned by Hon. Joselito J. Vibandor, Presiding Judge, RTC Branch 199, Las Piñas City; *id.* at 58-70.

[3] Records, p. 269.

[4] *Id.*

This case originated from two Informations, both dated 2 January 2001, which charged Ritualo with the crimes of Illegal Recruitment defined and penalized by Republic Act No. 8042; and Estafa under Art. 315, par. 2(a) of the Revised Penal Code, respectively. The accusatory portion of the first Information reads as follows:

> That on or about the 1st day of May, 2000, in the City of Las Piñas, Philippines, and within the jurisdiction of this Honorable Court, the above named accused, falsely representing herself to have the capacity and power to contract, enlist and recruit workers for employment abroad, did then and there willfully, unlawfully, and feloniously collect for a fee, recruit and promise employment/job placement abroad to Felix Biacora without first securing the required license or authority from the Department of Labor and Employment.[5]

The one for Estafa states, *viz*:

> That during the periods (sic) from May 1, 2000 to June 1, 2000, in the City of Las Piñas, Philippines, and within the jurisdiction of this Honorable Court, the above named accused, with intent of gain, by means of false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud, did then and there willfully, unlawfully and feloniously defraud the *Complainant Felix Biacora amounting to ₱80,000.00* committed in the following manner to wit: *that the Accused represented to the Complainant that she was authorized or licensed by the Department of Labor and Employment to recruit workers for overseas employment and that she could send Complainant to work abroad (Australia) as farm worker as soon as possible, knowing very well that such representation is false and was intended only to get money from the Complainant and the Complainant after relying from the said representations made by the accused, handed to the accused the said amount and the accused, once in possession of the money, misappropriated, misapplied and converted the same for her personal use and benefit, and not withstanding repeated demands failed and refused to pay the said amount of ₱80,000.00 to the damage and prejudice of the Complainant in the aforementioned amount of ₱80,000.00.*[6]

---

[5] *Id.* at 1.

[6] *Id.* at 3.

The foregoing were docketed as Criminal Cases No. 01-0076 and No. 0077 and raffled to Branch 275 of the Regional Trial Court (RTC) of Las Piñas City.

Upon arraignment on 24 May 2001, petitioner Ritualo, duly assisted by counsel *de oficio,* pleaded "*Not Guilty*" to the crimes charged.[7]

On 26 May 2003, during the joint trial of the cases, petitioner Ritualo orally manifested in open court that earnest efforts were being undertaken to settle the civil aspect thereof. Thus, with the conformity of the accused, herein petitioner Ritualo, coupled with the latter's express waiver apropos the attachment of double jeopardy, the RTC ordered[8] the provisional dismissal of the two cases.

On 13 October 2003, however, the RTC ordered[9] the revival of the cases upon the motion of the prosecution, on the ground that Ritualo reneged on her undertaking as embodied in a handwritten note entitled, "*Kasunduan*" *viz*:

May 26, 2003

Kasunduan

Ako si Carmen Ritualo, *ay sa araw na ito* May 26, 2003, *nagbabayad kay* Felix Biacora *ng halagang Sampung–libong Piso* (₱10,000.00) *at ang natirang* Twenty-One Thousand Pesos *ay babayaran ko sa loob ng Tatlong Buwan magmula ngayon.*

(Sgd.)
Carmen Ritualo
Akusado

Sumang-ayon:

(Sgd.)
Felix Biacora
Complainant[10]

---

[7] *Id.* at 83.

[8] *Id.* at 130.

[9] *Id.* at 134.

[10] *Id.* at 170.

In the ensuing trial, the prosecution presented two witnesses, namely, Felix Biacora, the victim;[11] and Belen Blones, employee of the Licensing Branch of the Philippines Overseas Employment Agency (POEA). Taken altogether, the evidence of the prosecution established the following facts:

In 1993, Felix Biacora went to Saudi Arabia for overseas employment that was facilitated by one Cynthia Libutan (Libutan) who worked for a recruitment agency.[12] Several years after his return to the country, Biacora accidentally met Libutan in Baclaran Church sometime in 2000. After they exchanged pleasantries, the former signified to the latter his desire to seek another overseas employment. Libutan then gave Biacora the name, address and contact number of her friend, one Carmen Ritualo, the petitioner herein, who was able to help Libutan's sister find work in Australia. Biacora thereafter called petitioner Ritualo to set up a meeting.

On 1 May 2000, accompanied by his wife, Biacora went to the house of petitioner Ritualo and inquired from her whether she could help him secure overseas employment in Australia. Petitioner Ritualo answered in the affirmative, and to be convincing, brought out travel documents of several people she was able to "help," who were then supposedly scheduled to leave for abroad pretty soon.[13] Biacora was then assured that:

> [He could] leave for Australia [in a month's time] if [he] will give [petitioner Ritualo] a total amount of ₱160,000.00, and [his] salary would be US$700.00 per month as a farm worker.[14]

On the above-quoted representation on the same date, Biacora paid petitioner Ritualo the amount of ₱40,000.00 as downpayment, with the balance to be completed before he left for Australia. Upon receipt of the money, petitioner Ritualo issued Biacora a

---

[11] TSN, 10 March 2003; TSN, 5 May 2003.

[12] *Id.* at 4-5.

[13] Records, p. 8.

[14] *Id.*

Cash Voucher[15] as evidence of said payment. To complete their transaction, Biacora left her a copy of his Bio-data.[16]

On 4 May 2000, Biacora again gave petitioner Ritualo ₱20,000.00 as additional payment, making the total amount received by the latter ₱60,000.00. Again, petitioner Ritualo issued a *Cash Voucher*.[17]

Subsequently, Biacora was informed by petitioner Ritualo that all he needed in securing an employment in Australia was his Passport and an endorsement from the Representative of his district. Accompanied by petitioner Ritualo and one Anita Seraspe, the assistant[18] of the former, Biacora went to the *Batasan Pambansa* to secure the necessary endorsement. Thereafter, all three went to the Australian Embassy to apply for Biacora's working visa.

On 1 June 2000, Biacora went to see petitioner Ritualo to follow up the date of his departure. Petitioner Ritualo asked from Biacora another ₱20,000.00 and told the latter to be patient. As with the other amounts given, proof of payment[19] was similarly issued to acknowledge receipt thereof.

Several dates were set for Biacora's departure, but none pushed through. To top it all, his Australian Visa application was denied by the Australian Embassy. Consequently, on 9 September 2000, Biacora demanded from petitioner Ritualo the return of the ₱80,000.00. The latter promised to pay back the money on the 13th of September 2000. None came.

Thereafter, Biacora filed the subject criminal complaints against petitioner Ritualo.

---

[15] *Id.* at 164.

[16] TSN, 10 March 2003; TSN, 5 May 2003.

[17] Records, p. 164.

[18] TSN, 5 May 2003, p. 20.

[19] Denominated as "Receipt"; records, p. 165.

In two Certifications dated 23 October 2000[20] and 5 November 2003,[21] respectively, both identified by Belen Blones of the Licensing Division of the POEA, it was confirmed that "per available records of [its] Office, CARMEN RITUALO, in her personal capacity is not licensed by this Administration to recruit workers for overseas employment"[22]; and that "[a]ny recruitment activity undertaken by [her] is deemed illegal."[23]

To rebut the foregoing evidence presented by the prosecution, the defense presented a diametrically opposed version of the facts of the present case through the sole testimony of Ritualo.

In her testimony, Ritualo narrated that it was Libutan and Biacora who asked her to introduce them to a certain Anita Seraspe, the person responsible for sending petitioner Ritualo's own sister to Australia;[24] that she had no agreement with Biacora respecting the latter's employment in Australia; that any talk of money was made among Libutan, Biacora and Seraspe only; that she received a total of ₱80,000.00 from Biacora, but that the same was merely entrusted to her because Libutan and Biacora had just met Seraspe,[25] and that she turned over all the payments to Seraspe who acknowledged receipt of the same by writing on pieces of paper said acceptance; that she accompanied Biacora to Batasan Pambansa at his request; that she did not earn any money out of her referral and introduction of Libutan and Biacora to Seraspe; that even if she did not earn any money out of the subject transaction, she returned ₱10,000.00 and ₱31,000.00, or a total of ₱41,000.00, to Biacora out of fear that the latter would file charges against her; that she tried to find Seraspe, but the latter could not be found at her last known address; and that she gave

---

[20] Certification issued by Hermogenes C. Mateo, Director II, Licensing Branch, POEA; Exhibit "E"; records, p. 168.

[21] Felicitas Q. Bay, Director II, Licensing Branch, POEA; Exhibit "F-1"; records, p. 169.

[22] *Id.* at 168.

[23] *Id.* at 169.

[24] TSN, 16 February 2004, pp. 55-56.

[25] *Id.* at 56.

Biacora an additional ₱6,000.000 to obviate any more scandal befalling her family.[26]

On 1 December 2004, after trial, the RTC found the evidence presented by the prosecution to be more credible and logical than that presented by the defense and thus, convicted Ritualo for the crimes of Simple Illegal Recruitment and Estafa, defined and penalized under the Migrant Workers and Overseas Filipino Act of 1995 and the Revised Penal Code, respectively. The dispositive portion of the trial court's judgment stated:

> WHEREFORE, in view of the foregoing, the Court finds accused CARMEN RITUALO *y* RAMOS, GUILTY beyond reasonable doubt of the crimes of:
>
> 1. Simple Illegal Recruitment (Criminal Case Number 01-0076) under Section 7 of Republic Act No. 8042 otherwise known as the 'Migrant Workers Act of 1995,' and sentences her to suffer an Indeterminate penalty of imprisonment of Six (6) years and ONE (1) day, as minimum, to EIGHT (8) years, as maximum, and to pay a fine of ₱200,000.00.
>
> 2. In Criminal Case Number 01-0077 for Estafa, herein accused is hereby sentenced to suffer an indeterminate penalty of prison term of six (6) months and One (1) day of *Prission* (sic) *Correctional* (sic), as minimum, to seven (7) years, eleven (11) months and eleven (11) days of *Prision Mayor*, as maximum and is ORDERED to indemnify Felix Biacora actual damages in the amount of ₱66,000.00 which is minus the amount of ₱14,000.00 which the private complainant admitted to have been refunded to him.
>
> Cost *de oficio*.[27]

Ritualo's Motion for Reconsideration of the trial court's decision was subsequently denied in an Order[28] dated 21 January 2005.

---

[26] TSN, 14 April 2004, pp. 85-86.

[27] *Rollo*, p. 70.

[28] Records, p. 289.

In an Order[29] dated 1 March 2005, the RTC granted and approved the Notice of Appeal[30] filed by Ritualo.

The Court of Appeals, in its Decision promulgated on 23 April 2007, affirmed the judgment of the RTC insofar as the conviction of Ritualo was concerned. As reasoned by the Court of Appeals, "[a]s against the positive and categorical testimony of the [Biacora], [Ritualo's] denials cannot prevail."[31] Particularly, the appellate court held that Ritualo's "acts of promising and assuring employment overseas to [Biacora] [fell] squarely within the ambit of recruitment and placement as defined by [The Migrant Workers Act or Republic Act No. 8042]."[32] With respect to the charge of Estafa under the Revised Penal Code, the appellate court likewise found that all the elements of said crime existed in the case at bar, *i.e.*, "[Ritualo] misrepresented herself to the [Biacora] as the person who could send him to Australia for employment, and by reason of misrepresentations, false assurances and deceit, [Biacora] was induced to part with his money in payment of placement fees, thereby causing him damage and prejudice."[33]

The penalties imposed on Ritualo by the trial court, however, were modified by the Court of Appeals on the ground that the latter erred in imposing in the Illegal Recruitment case, an indeterminate sentence ranging from six (6) years and one (1) day, as minimum, to eight (8) years, as maximum, and to pay a fine of ₱200,000.00,"[34] in view of the penalty prescribed under Sec. 7 of Republic Act No. 8042; and, in the Estafa case, another indeterminate sentence ranging from six (6) months and one (1) day of *prision correccional*, as minimum, to seven (7) years, eleven (11) months and eleven (11) days of *prision mayor*, as maximum, contrary to the wordings of Art. 315 of the Revised Penal Code.

---

[29] *Id.* at 304.

[30] *Id.* at 300-301.

[31] *Rollo*, p. 111.

[32] *Id.* at 112.

[33] *Id.* at 113.

[34] *Id.* at 112.

The *fallo* of the Court of Appeals decision is restated:

UPON THE VIEW WE TAKE OF THESE CASES, THUS, the appealed decision finding the accused-appellant Carmen Ritualo *y* Ramos guilty beyond reasonable doubt of Simple Illegal Recruitment and Estafa is AFFIRMED, with the following MODIFICATIONS –

1. In Criminal Case No. 01-0076 (Simple Illegal Recruitment), the accused-appellant is sentenced to suffer the penalty of imprisonment of twelve (12) years and to pay a fine of ₱500,000.00.

2. In Criminal Case No. 01-0077 (Estafa), the accused-appellant is sentenced to an indeterminate prison term of four (4) years and two (2) months of *prision correctional* (sic), as minimum, to twelve (12) years of *prision mayor*, as maximum, and to indemnify the private complainant Felix Biacora the sum of ₱66,000.00 with the interest thereon at the legal rate from September 21, 2000 until the same is fully paid.

Costs shall also be taxed against the accused-appellant.[35]

Hence, Ritualo filed the instant petition for review.

In this petition, Ritualo prayed for the reversal of the decision of the RTC, as affirmed with modification by the Court of Appeals, on the basis of the following assignment of errors:

I.

WHETHER THE HONORABLE COURT OF APPEALS ERRED IN AFFIRMING WITH MODIFICATION THE DECISION OF THE REGIONAL TRIAL COURT DESPITE THE FACT THAT THE EVIDENCE ON RECORD COULD NOT SUPPORT A CONVICTION; and

II.

ASSUMING *ARGUENDO* THAT THE PETITIONER IS CULPABLE, THE HONORABLE COURT OF APPEALS ERRED IN MODIFYING THE DECISION OF THE

[35] *Id.* at 114.

REGIONAL TRIAL COURT AS REGARDS THE TERM OF SENTENCE IN THE ILLEGAL RECRUITMENT CASE.[36]

Essentially, she argues that there "was no proof beyond reasonable doubt that x x x [she] gave Biacora a distinct impression that she had the power or ability to send him abroad for work such that the latter was convinced to part with his money."[37] Petitioner Ritualo maintains that Biacora transacted with Seraspe and not with her. Assuming for the sake of argument that she and Biacora had any agreement with each other, petitioner Ritualo insisted that it was merely to facilitate the latter's application for an Australian Visa. Particularly, she pointed out that the prosecution failed to present other witnesses who could have corroborated the claim of Biacora that she (Ritualo) promised him employment abroad. Anent the penalty imposed by the courts, petitioner disputed the appellate court's reasoning and claimed that the same was improper in view of the ruling of this Court in *People v. Gallardo*,[38] in which therein respondent was also convicted of Simple Illegal Recruitment.

The Office of the Solicitor General, for the *People of the Philippines*, on the other hand, asserted that the findings of the Court of Appeals were supported by the records of the case, *i.e.*, "Biacora was consistent in his testimony that it was petitioner who illegally recruited him for work as a farmhand in Australia." Thus, "[a]s against the positive and categorical testimony of the private complainant (Biacora), petitioner's denial cannot prevail."

We find no merit in the petition.

Having weighed the evidence for the contending parties, there is no cogent reason to reverse the findings and conclusion of the RTC as affirmed by the Court of Appeals.

The crime of Simple Illegal Recruitment is defined and penalized under Sec. 6 of Republic Act. No. 8042, which reads:

---

[36] *Id.* at 24-25.

[37] *Id.* at 27.

[38] 436 Phil. 698 (2002).

SEC. 6. *Definition.* — For purposes of this Act, illegal recruitment shall mean any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, or procuring workers and includes referring, contract services, promising or advertising for employment abroad, whether for profit or not, when undertaken by a non-licensee or non-holder of authority contemplated under Article 13(f) of Presidential Decree No. 442, as amended, otherwise known as the Labor Code of the Philippines: *Provided*, That any such non-licensee or non-holder who, in any manner, offers or promises for a fee employment abroad to two or more persons shall be deemed so engaged. It shall likewise include the following acts, whether committed by any person, whether a non-licensee, non-holder, licensee or holder of authority:

(a) To charge or accept directly or indirectly any amount greater than that specified in the schedule of allowable fees prescribed by the Secretary of Labor and Employment, or to make a worker pay any amount greater than that actually received by him as a loan or advance;

(b) To furnish or publish any false notice or information or document in relation to recruitment or employment;

(c) To give any false notice, testimony, information or document or commit any act of misrepresentation for the purpose of securing a license or authority under the Labor Code;

(d) To induce or attempt to induce a worker already employed to quit his employment in order to offer him another unless the transfer is designed to liberate a worker from oppressive terms and conditions of employment;

(e) To influence or attempt to influence any person or entity not to employ any worker who has not applied for employment through his agency;

(f) To engage in the recruitment or placement of workers in jobs harmful to public health or morality or to the dignity of the Republic of the Philippines;

(g) To obstruct or attempt to obstruct inspection by the Secretary of Labor and Employment or by his duly authorized representative;

(h) To fail to submit reports on the status of employment, placement vacancies, remittance of foreign exchange earnings, separation from jobs, departures and such other matters or information as may be required by the Secretary of Labor and Employment;

(i) To substitute or alter to the prejudice of the worker, employment contracts approved and verified by the Department of Labor and Employment from the time of actual signing thereof by the parties up to and including the period of the expiration of the same without the approval of the Department of Labor and Employment;

(j) For an officer or agent of a recruitment or placement agency to become an officer or member of the Board of any corporation engaged in travel agency or to be engaged directly or indirectly in the management of a travel agency;

(k) To withhold or deny travel documents from applicant workers before departure for monetary or financial considerations other than those authorized under the Labor Code and its implementing rules and regulations;

(l) Failure to actually deploy without valid reason as determined by the Department of Labor and Employment; and

(m) Failure to reimburse expenses incurred by the worker in connection with his documentation and processing for purposes of deployment, in cases where the deployment does not actually take place without the worker's fault. Illegal recruitment when committed by a syndicate or in large scale shall be considered an offense involving economic sabotage.

Illegal recruitment is deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring or confederating with one another. It is deemed committed in large scale if committed against three (3) or more persons individually or as a group.

The persons criminally liable for the above offenses are the principals, accomplices and accessories. In case of juridical persons, the officers having control, management or direction of their business shall be liable.

Art. 315, par. 2(a) of the Revised Penal Code, on the other hand, enumerates one of the modes of committing estafa, thus:

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.

Illegal recruitment is committed when two essential elements concur:

(1) that the offender has no valid license or authority required by law to enable him to lawfully engage in the recruitment and placement of workers, and

(2) that the offender undertakes any activity within the meaning of "recruitment and placement" defined under Article 13(b), or any prohibited practices enumerated under Article 34 of the Labor Code.[39]

Article 13(b) of the Labor Code defines recruitment and placement as:

Any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, or procuring workers, and *includes referrals*, contract services, *promising* or advertising for employment, locally or abroad, whether for profit or not: Provided, that any person or entity which, in any manner, offers or promises for a fee employment to two or more persons shall be deemed engaged in recruitment and placement. (Emphasis supplied.)

In this case, the first element is, indeed, present. The prosecution established, through Belen Blones of the Licensing Branch of the POEA, who identified and confirmed the two Certifications issued by the POEA Licensing Branch, that "per available records of [its] Office, CARMEN RITUALO, in her personal capacity is not licensed by this Administration to recruit workers for overseas employment."[40]

As to the second element, it must be shown that the accused gave the private complainant the distinct impression that he/she had the power or ability to send the private complainant abroad for work, such that the latter was convinced to part

---

[39] *People v. Navarra, Sr.,* 404 Phil. 693, 701 (2001).

[40] Records, pp. 168-169.

with his/her money in order to be employed.[41] Thus, to be engaged in illegal recruitment, it is plain that there must at least be a promise or an offer of employment from the person posing as a recruiter whether locally or abroad.[42] In the case at bar, the second element is similarly present. As testified to by Biacora, petitioner Ritualo professed to have the ability to send him overseas to be employed as a farm worker in Australia with a monthly salary of US$700.00.[43] To further wet Biacora's appetite, petitioner Ritualo even showed him purported travel documents of other people about to depart, whose overseas employment she supposedly facilitated. That petitioner Ritualo personally assisted Biacora in the completion of the alleged requirements, *i.e.*, securing a Letter of Request and Guarantee from the Representative of his Congressional District in Batangas to ensure the approval of Biacora's application for an Australian Visa, even accompanying Biacora to the Australian Embassy, all clearly point to her efforts to convince Biacora that she (petitioner Ritualo) had, indeed, the ability and influence to make Biacora's dream of overseas employment come true.

The claim of petitioner Ritualo that it was Anita Seraspe who was really the recruiter and the one who profited from the subject illegal transaction holds no water. Petitioner Ritualo's act of receiving payment from Biacora and issuing personal receipts therefor; of personally assisting Biacora to complete the "necessary" documents; of failing to present evidence to corroborate her testimony despite several opportunities given her by the trial court; of petitioner Ritualo having been positively identified as the person who transacted with Biacora and promised the latter an overseas employment and who personally received money from Biacora, all unhesitatingly point to petitioner Ritualo as the culprit.

The following oral and documentary evidence are worth reproducing:

---

[41] *People v. Angeles*, 430 Phil. 333, 346 (2002).

[42] *Id*.

[43] Complaint-affidavit which was admitted in evidence and its contents confirmed on the witness stand by Biacora.

COURT:

Q: How many times did you receive money from private complainant?

WITNESS:

Three (3) times, Your Honor.

Q: The first time?

A: My first time is Php40,000.00, Your Honor.

Q: The second time?

A: Php20,000.00, Your Honor.

Q: Third time?

A: Php20,000.00, Your Honor.

Q: When you received these amounts of money, who issued the private complainant a receipt?

A: I was the one, Your Honor.[44]

The first *Cash Voucher* issued by petitioner Ritualo declares:

CASH VOUCHER

5-1-2000

Payment for document Australia fourty (sic) thousand (sic) pesos (sic) only (₱40,000.00)

RECEIVED from Felix Evangelista Biacora the amount of PESOS fourty thousand pesos (₱40,000.00) in full payment of amount described above.

By: (*Sgd.*) Carmen Ritualo[45]

The second, on 4 May 2000, states:

---

[44] TSN, 16 February 2004, pp. 18-19.

[45] Exhibit "B-1"; records, p. 164.

CASH VOUCHER

5-4-2000

Payment for document Australia twenty (sic) thousand (sic) pesos (sic) only (₱20,000.00)

RECEIVED from Felix Biacora the amount of PESOS twenty thousand (₱20,000.00) in full payment of amount described above.

By: (*Sgd*.) Carmen Ritualo[46]

And the third receipt reads:

RECEIPT

No. _____ Date: 6-1-2000

RECEIVED from Felix Biacora the sum of Pesos Twenty thousand (₱20,000.00) as payment for for Visa.

Partial _____ Cash _____

Balance _____ Check No. _____

(*Sgd*.) Carmen Ritualo
Authorized Signature[47]

Petitioner Ritualo next tried to impress upon this Court that she received nary a centavo from the subject illegal transaction; therefore, she should not be held liable.

We reject this outright. In the first place, it has been abundantly shown that she really received the monies from Biacora. Secondly, even without consideration for her services, she still engaged in recruitment activities, since it was satisfactorily shown that she promised overseas employment to Biacora. And, more importantly,

---

[46] Exhibit "B-3"; *id.* at 164.

[47] Exhibit "C"; *id.* at 165.

Sec. 6 of Republic Act No. 8042 does not require that the illegal recruitment be done for profit.

Petitioner Ritualo boldly but vainly tried to inject reasonable doubt by complaining that the RTC and the Court of Appeals affirmed her conviction despite failure of the prosecution to present other vital witness, *i.e.*, Biacora's wife, who accompanied her husband to the house of petitioner Ritualo and, hence, witnessed what happened on the first meeting between the latter and Biacora. Non-presentation of said witness, according to petitioner Ritualo, raises the presumption that her testimony, if presented, would be adverse to the prosecution.

The prosecution is entitled to conduct its own case and to decide what witnesses to call to support its charges.[48] The defense posture that the non-presentation of the wife of Biacora constitutes suppression of evidence favorable to petitioner Ritualo is fallacious. In fact, the same line of reasoning can be used against petitioner Ritualo. If the defense felt that the testimony of Biacora's wife would support her defense, what she could and should have done was to call her (Biacora's wife) to the stand as her own witness. One of the constitutional rights of the accused is "to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf." And, in the same vein, since petitioner Ritualo is setting the cloak of liability on Seraspe's shoulder, she (petitioner Ritualo) could and should have had the former subpoenaed as well.

As held by this Court, the adverse presumption of suppression of evidence does not, moreover, apply where the evidence suppressed is merely corroborative or cumulative in nature.[49] If presented, Biacora's wife would merely corroborate Biacora's account which, by itself, already detailed what occurred on the day of the parties' first meeting at the house of petitioner Ritualo. Hence, the prosecution committed no fatal error in dispensing with the testimony of Biacora's wife.

---

[48] *People v. Armentano*, G. R. No. 90803, 3 July 1992, 211 SCRA 82, 87.

[49] *Tarapen v. People*, G.R. No. 173824, 28 August 2008, 563 SCRA 577, 593, citing *People v. De Jesus*, G.R. No. 93852, January 24, 1992, 205 SCRA 383, 391.

Finally, Biacora, the private complainant in this case, did not harbor any ill motive to testify falsely against petitioner Ritualo. The latter failed to show any animosity or ill feeling on the part of Biacora that could have motivated him to falsely accuse her of the crimes charged. It would be against human nature and experience for strangers to conspire and accuse another stranger of a most serious crime just to mollify their hurt feelings[50]

The totality of the evidence in the case at bar, when scrutinized and taken together, leads to no other conclusion than that petitioner Ritualo engaged in recruiting and promising overseas employment to Felix Biacora under the above-quoted Sec. 6 of Republic Act No. 8042 *vis-à-vis* Article 13(b) of the Labor Code. Hence, she cannot now feign ignorance of the consequences of her unlawful acts.

As to the sentence imposed upon petitioner Ritualo for the crime of simple illegal recruitment, this Court clarifies that the penalty imposed by the Court of Appeals – a sentence of 12 years imprisonment and a fine of ₱500,000.00 - is partly incorrect, as petitioner Ritualo is a non-licensee.[51] Under Sec. 7(a) of Republic Act No. 8042, simple illegal recruitment is punishable by imprisonment of not less than six (6) years and one (1) day but not more than twelve (12) years and a fine of not less than Two Hundred Thousand Pesos (₱200,000.00) nor more than Five Hundred Thousand Pesos (₱500,000.00). Applying the provisions of Section 1 of the Indeterminate Sentence law, however, the correct penalty that should have been imposed upon petitioner

---

[50] *People v. Reichl,* 428 Phil. 643, 664 (2002).[51] Sec. 7, Republic Act. No. 8042.

SEC. 7. Penalties. –

(a) Any persons found guilty of illegal recruitment shall suffer the penalty of imprisonment of not less than six (6) years and one (1) day but not more than twelve (12) years and a fine or not less that Two hundred thousand pesos (₱200,000.00) nor more than Five hundred thousand pesos (₱500,000.00);

(b) The penalty of life imprisonment and a fine of not less than Five hundred thousand pesos (₱500,000.00) nor more than One million pesos (₱1,000,000.00) shall be imposed if illegal recruitment constitutes economic sabotage as defined herein.

Ritualo is imprisonment for the period of eight (8) years and one (1) day, as minimum, to twelve (12) years, as maximum.[52] The imposition of a fine of ₱500,000.00 is also in order.

With respect to the criminal charge of estafa, this Court likewise affirms the conviction of petitioner Ritualo for said crime. The same evidence proving petitioner Ritualo's criminal liability for illegal recruitment also established her liability for estafa. It is settled that a person may be charged and convicted separately of illegal recruitment under Republic Act No. 8042 in relation to the Labor Code, and estafa under Art. 315, paragraph 2(a) of the Revised Penal Code. As this Court held in *People v. Yabut*[53]:

> In this jurisdiction, it is settled that a person who commits illegal recruitment may be charged and convicted separately of illegal recruitment under the Labor Code and estafa under par. 2(a) of Art. 315 of the Revised Penal Code. The offense of illegal recruitment is *malum prohibitum* where the criminal intent of the accused is not necessary for conviction, while estafa is *malum in se* where the criminal intent of the accused is crucial for conviction. Conviction for offenses under the Labor Code does not bar conviction for offenses punishable by other laws. Conversely, conviction for estafa under par. 2(a) of Art. 315 of the Revised Penal Code does not bar a conviction for illegal recruitment under the Labor Code. It follows that one's acquittal of the crime of estafa will not necessarily result in his acquittal of the crime of illegal recruitment in large scale, and vice versa.

The prosecution has proven beyond reasonable doubt that petitioner Ritualo was similarly guilty of estafa under Art. 315 (2)(a) of the Revised Penal Code committed —

> 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.

---

[52] *People v. Hu*, G.R. No. 182232, 6 October 2008, 567 SCRA 696, 713-714.

[53] 374 Phil. 575, 586 (1999).

Both elements of the crime were established in this case, namely, (a) petitioner Ritualo defrauded complainant by abuse of confidence or by means of deceit; and (b) complainant Biacora suffered damage or prejudice capable of pecuniary estimation as a result.[54] Biacora parted with his money upon the prodding and enticement of petitioner Ritualo on the false pretense that she had the capacity to deploy him for employment in Australia. In the end, Biacora was neither able to leave for work overseas nor did he get his money back, thus causing him damage and prejudice. Hence, the conviction of petitioner Ritualo of the crime of estafa should be upheld.

While this Court affirms the conviction of the petitioner Ritualo for estafa, we find, however, that both the trial court and the appellate court erroneously computed the penalty of the crime. The amount of which the private complainant, Biacora, was defrauded was Eighty Thousand Pesos (₱80,000.00) and not merely Sixty-Six Thousand Pesos (₱66,000.00).

Under the Revised Penal Code, an accused found guilty of estafa shall be sentenced to:

Art. 315. *Swindling (estafa)*. — Any person who shall defraud another by any of the means mentioned herein below shall be punished by:

1st. The penalty of prision correccional in its maximum period to *prision mayor* in its minimum period, if the amount of the fraud is over 12,000 pesos but does not exceed 22,000 pesos, and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos; but the total penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed under the provisions of this Code, the penalty shall be termed *prision mayor* or *reclusion temporal*, as the case may be.

2nd. The penalty of *prision correccional* in its minimum and medium periods, if the amount of the fraud is over 6,000 pesos but does not exceed 12,000 pesos;

---

[54] *People v. Temporada,* G.R. No. 173473, 17 December 2008.

3rd. The penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period if such amount is over 200 pesos but does not exceed 6,000 pesos; and

4th. By *arresto mayor* in its maximum period, if such amount does not exceed 200 pesos, x x x.

Computing the penalty for the crime of Estafa based on the above-quoted provision, the proper penalty to be imposed upon petitioner Ritualo is the maximum term of *prision correccional* maximum to *prision mayor* minimum as mandated by Article 315 of the Revised Penal Code. But considering that the amount defrauded exceeded Twenty-Two Thousand Pesos (₱22,000.00), per the same provision, the prescribed penalty is not only imposed in its maximum period, but there is imposed an incremental penalty of one (1) year imprisonment for every Ten Thousand Pesos (₱10,000.00) in excess of the cap of Twenty-Two Thousand Pesos (₱22,000.00).[55] As this Court held in *People v. Gabres*,[56] "[t]he fact that the amounts involved in the instant case exceed ₱22,000.00 should not be considered in the initial determination of the indeterminate penalty; instead, the matter should be so taken as analogous to modifying circumstances in the imposition of the maximum term of the full indeterminate sentence."[57] And with respect to the computation of the minimum term of the indeterminate sentence, in this case, given that the penalty prescribed by law for the estafa charge against petitioner Ritualo is *prision correccional* maximum to *prision mayor* minimum, the penalty next lower would then be *prision correccional* minimum to medium per Art. 64 in relation to Art. 65, both of the Revised Penal Code.

Preceding from the above discussion, thus, the prison term to be imposed upon petitioner Ritualo *vis-à-vis* the crime of Estafa is as follows: the minimum term should be anywhere within six (6) months and one (1) day to four (4) years and two

---

[55] Provided that the total penalty that may be imposed shall not exceed 20 years.

[56] 335 Phil. 242 (1997).

[57] *Id.* at 257.

(2) months of *prision correccional*; while the maximum term of the indeterminate sentence should be within the range of six (6) years, eight (8) months and twenty-one (21) days to eight (8) years of *prision mayor* considering that the amount involved exceeds ₱22,000.00, plus an added five (5) years, as there are five (5) increments of ₱10,000.00 over the cap of ₱22,000.00.[58]

Lastly, regarding the award of indemnity due from petitioner Ritualo, both the RTC and Court of Appeals ordered her to pay Biacora the amount of Sixty-Six Thousand Pesos (₱66,000.00), instead of the original amount defrauded, which is Eighty Thousand Pesos (₱80,000.00), in view of petitioner Ritualo's payment of Fourteen Thousand Pesos (₱14,000.00). A thorough scrutiny of the record of the case, however, yields the finding that as of the date of revival of the case before the RTC, or on 13 October 2003, only the amount of Twenty-One Thousand Pesos (₱21,000.00) remains unpaid. The Motion to Revive Case dated 2 October 2003 filed by the prosecution attached the letter-request of private complainant Biacora, elucidating thus:

> I, MR. FELIX BIACORA, complainant against MRS. CARMEN RITUALO with Case No. 01-0076-77. This case is temporary (sic) dismissed on May 26, 2003 in Branch 1999 (sic).
>
> On May 26, 2003 MRS. CARMEN RITUALO made written promise that she will pay the balance amounting ₱21,000.00 Twenty Thousand Pesos after 3 months but she failed.
>
> Due that (sic) her promise did not materialized (sic), I personally request the Hon. Court to REVIVE this case.
>
> Respectfully yours,
> (*Sgd.*) MR. FELIX BIACORA

---

[58] The additional five (5) years is in view of the five (5) increments of Ten Thousand Pesos (₱10,000.00) representing the difference of the amount defrauded by petitioner Ritualo, which is Eighty Thousand Pesos (₱80,000.00), or Fifty Eight Thousand Pesos (₱58,000.00) more than the cap of Twenty-Two Thousand Pesos (₱22,000.00) provided by law.

With the foregoing submission of Biacora, out of the amount of Eighty Thousand Pesos (₱80,000.00), only Twenty-One Thousand Pesos (₱21,000.00) remains unpaid. Accordingly, the civil liability of petitioner Ritualo is now merely Twenty-One Thousand Pesos (₱21,000.00).

WHEREFORE, in view of the foregoing, the Decision of the Court of Appeals in CA-G.R. CR No. 29393 promulgated on 23 April 2007 is *AFFIRMED* with the following *MODIFICATIONS:*

(1) In Criminal Case No. 01-0076, petitioner Carmen Ritualo is found *GUILTY* beyond reasonable doubt of the crime of Simple Illegal Recruitment, and is sentenced to suffer an indeterminate prison term of eight (8) years and one (1) day as minimum, to twelve (12) years, as maximum, and to pay a fine of ₱500,000.00; and

(2) In Criminal Case No. 01-0077, petitioner Carmen Ritualo is also found *GUILTY* beyond reasonable doubt of the crime of Estafa and sentenced to suffer an indeterminate prison term of four (4) years and two (2) months of *prision correccional*, as minimum, to eleven (11) years and eight (8) months and twenty-one (21) days of *prision mayor*, as maximum.

Petitioner Carmen R. Ritualo is similarly *ORDERED* to indemnify Felix E. Biacora the amount of ₱21,000.00. Costs *de oficio.*

SO ORDERED.

Ynares-Santiago (Chairperson), Velasco, Jr., Peralta, and *Bersamin*[*]*, JJ.*

---

* Associate Justice Lucas P. Bersamin was designated to sit as additional member replacing Associate Justice Antonio Eduardo B. Nachura per Raffle dated 22 June 2009.

EN BANC

[A.M. No. RTJ-07-2063. June 26, 2009]
(Formerly OCA I.P.I. No. 07-2588-RTJ)

REPUBLIC OF THE PHILIPPINES, *complainant, vs.* **JUDGE RAMON S. CAGUIOA, Presiding Judge of the Regional Trial Court of Olongapo City, Branch 74,** *respondent.*

[A.M. No. RTJ-07-2064. June 26, 2009]
(Formerly OCA I.P.I. No. 07-2608-RTJ)

COMMISSIONER OF CUSTOMS, *complainant, vs.* **JUDGE RAMON S. CAGUIOA, Presiding Judge of the Regional Trial Court of Olongapo City, Branch 74,** *respondent.*

[A.M. No. RTJ-07-2066 June 26, 2009]
(Formerly OCA I.P.I. No. 07-2628-RTJ)

CHARLES T. BURNS, JR., *complainant, vs.* **JUDGE RAMON S. CAGUIOA, Presiding Judge of the Regional Trial Court of Olongapo City, Branch 74, and CHRISTOPHER T. PEREZ, Sheriff IV, Regional Trial Court of Olongapo City, Branch 74,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; CANNOT BE ISSUED TO RESTRAIN COLLECTION OF TAXES. — In A.M. No. RTJ-07-2063, respondent judge issued a Writ of Preliminary Injunction, enjoining the collection of taxes. Taxes are the lifeblood of the government, and it is of public interest that the collection of which should not be restrained. Further, the applicants for the Writ showed no clear and unmistakable right that was material and substantial as would warrant the issuance of the Writ. Neither were the applicants able to demonstrate the urgency and necessity of the Writ. The burden that the applicants' businesses would sustain because of the imposition of the sin tax on their tobacco and alcohol products cannot

possibly be greater than the heavy government revenue losses that would result from the non-collection of taxes. In addition, the improper issuance of the Writ of Preliminary Injunction was aggravated by the inadequate injunctive bond. As Justice Dicdican pointed out, respondent judge approved the one million-peso bond for the 13 original petitioners and 5 intervenors. The purpose of an injunctive bond is to protect the opposing party (the government, in the instant case) against loss or damage by reason of the injunction in case the court finally decides that the applicants (importers/traders inside the Subic Bay Freeport Zone) are not entitled to it.

2. POLITICAL LAW; CONSTITUTIONAL LAW; RIGHT TO DUE PROCESS; VIOLATED WHEN JUDGE ACTED ON MOTIONS FOR INTERVENTION WITHOUT PROOF OF SERVICE ON ALL PARTIES; CASE AT BAR. — To make matters worse, respondent judge failed to observe the constitutionally-guaranteed right of the Republic to due process. Records show that the Office of the Solicitor General was not served copies of the motions for intervention. Thus, respondent judge should not have acted upon such motions without the necessary proof of service on all parties, much less, proceeded with their hearing *ex parte*, to the prejudice of the Republic and other respondents. The investigating justice stressed that respondent judge disregarded the right of the Republic to due process, not only once, but five times in all the motions for intervention filed by the intervenors-corporations.

3.REMEDIAL LAW; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; ISSUANCE THEREOF UNWARRANTED WHERE THE APPLICANT FAILED TO SATISFY THE LEGAL REQUISITES FOR ITS ISSUANCE. — In A.M. No. RTJ-07-2064, respondent judge again issued a Writ of Preliminary Injunction that did not satisfy the legal requisites for its issuance, and which was enforced outside his territorial jurisdiction. The applicant, in this case, questions his reassignment as District Collector of the Port of Subic to the Port of Cagayan de Oro. We uphold the ruling of the Court of Appeals that the applicant failed to establish that he has a clear and unmistakable right that was violated so as to warrant the issuance of a preliminary injunction. He could not claim a vested right to his position in the Port of Subic. A public office is not a private property.

4. ID.; ID.; ID.; CANNOT BE ISSUED TO ENJOIN ACTS BEING PERFORMED OR ABOUT TO BE PERFORMED OUTSIDE THE TERRITORIAL JURISDICTION OF THE ISSUING COURT; RULING IN GAYACAO CASE, 121 PHIL. 729 (1965) NOT APPLICABLE TO CASE AT BAR. — Further, the Writ of Preliminary Injunction was issued to enjoin acts performed outside the territorial jurisdiction of respondent judge. It was directed against government officials whose offices in Manila are outside the territorial jurisdiction of the Regional Trial Court of Olongapo City. Respondent judge argues that the instant case is an exception to the general rule that a trial court has no jurisdiction to issue a writ of preliminary injunction to enjoin acts being performed or about to be performed outside its territorial jurisdiction. x x x Respondent judge cited **Gayacao** to support his issuance of the Writ of Preliminary Injunction against government officers holding office in Manila which was outside his territorial jurisdiction, to enjoin them from implementing CPO No. B-309-2006 "inside the Subic Bay Freeport Zone," which is within the jurisdiction of respondent judge's court. However, ***Gayacao*** is not applicable to his case. Gayacao applies only when the sole issue before the court is whether the decision of respondent public officer was legally correct or not. In A.M. No. RTJ-07-2064, the applicant for the Writ was not merely inquiring into the legality of CPO No. B-309-2006, but was also seeking to enjoin its enforcement outside the jurisdiction of Branch 74 of the RTC in Olongapo City. In the petition for *mandamus* in *Gayacao,* the prayer of petitioner that the land authorities be ordered to reinstate her original application is purely corollary to the main relief sought for a reversal of the questioned administrative decision would necessarily lead to the same result.

5. JUDICIAL ETHICS; JUDGES; GROSS IGNORANCE OF THE LAW; LACK OF CONVERSANCE WITH SIMPLE AND ELEMENTARY LAWS, A CASE OF. — The requisites for the issuance of a writ of preliminary injunction are basic and elementary, and should have been known by respondent judge. More importantly, as the Investigating Justice points out, respondent judge should have been more cautious in issuing writs of preliminary injunction. These writs are strong arms of equity which must be issued with great deliberation. The Affidavit of Solicitor Larangan, which enumerates cases wherein

respondent judge issued injunctive writs which were subsequently nullified by a higher court, shows his propensity for issuing improvident writs of injunction. Further, the rules on jurisdiction and venue are also basic, and judges should know them by heart. All told, in A.M. Nos. RTJ-07-2063 and RTJ-07-2064, we find respondent judge guilty of gross ignorance of the law and conduct prejudicial to the best interest of the service. However, on the charge of manifest partiality, we reiterate our ruling in G.R. No. 168584 that evidence of respondent judge's alleged partiality was insufficient. Ignorance of the law is the mainspring of injustice. Judges are called upon to exhibit more than just a cursory acquaintance with statutes and procedural rules. Basic rules should be at the palm of their hands. Their inexcusable failure to observe basic laws and rules will render them administratively liable. Where the law involved is simple and elementary, lack of conversance with it constitutes gross ignorance of the law.

6. ID.; ID.; ID.; JUDGE FOUND LIABLE THEREFOR FOR SEVERAL COUNTS; PENALTY OF DISMISSAL WARRANTED IN CASE AT BAR. — Under A.M. No. 01-8-10-SC, or the Amendment to Rule 140 of the Rules of Court Re Discipline of Justices and Judges, gross ignorance of the law is a serious charge, punishable by a fine of more than ₱20,000.00, but not exceeding ₱40,000.00, suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months, or dismissal from the service. In the instant administrative cases, the offense of gross ignorance of the law, which respondent is charged with and found guilty of, are for several counts; and the prejudice he caused to the service is significantly great. He has also once been found guilty of the same offense. We, thus, do not hesitate to impose upon respondent judge the penalty of dismissal.

7. REMEDIAL LAW; JUDGMENT; WRIT OF EXECUTION; CANNOT BE ISSUED WITHOUT BASIS; DOCTRINE IN UNSON (112 PHIL. 752 [1961] AND EVITE (111 PHIL. 564 [1961] INAPPLICABLE TO CASE AT BAR. — In A.M. No. RTJ-07-2066, respondent judge issued a Writ of Execution without basis. The Writ ordered respondent sheriff to place private respondents in possession of the disputed property, even when no adjudication of even possessory rights over the

subject property was made. Respondent judge cannot hide behind the doctrine in ***Unson v. Lacson*** and ***Perez v. Evite***, where we held that "a judgment is not confined to what appears upon the face of the decision, but also those necessarily included therein or necessary thereto." The instant case of Burns has a different factual milieu. Respondent judge did not adjudicate any rights of the parties and resolved no other matter except the dismissal of the case on the ground of "prescription." Thus, the order to place private respondents in possession of the disputed property is not necessarily included in or necessary to the judgment of dismissal of the case on the ground of "prescription."

8.JUDICIAL ETHICS; JUDGES; ACTS OF A JUDGE IN HIS JUDICIAL CAPACITY ARE NOT SUBJECT TO DISCIPLINARY ACTION; PROPER REMEDY; CASE AT BAR. — On respondent judge's argument that these cases should be dismissed because the acts complained of are judicial in nature, and the cases involve the same issues raised by the complainants before this Court and the Court of Appeals, we agree that as a matter of policy, the acts of a judge in his judicial capacity are not subject to disciplinary action. In the absence of fraud, malice or dishonesty in rendering the assailed decision or order, the remedy of the aggrieved party is to elevate the assailed decision or order to the higher court for review and correction.

9. ID.; ID.; ID.; INQUIRY INTO A JUDGE'S CIVIL, CRIMINAL AND/OR ADMINISTRATIVE LIABILITY, WHEN MADE; CASE AT BAR.—An inquiry into a judge's civil, criminal and/or administrative liability may be made after the available remedies have been exhausted and decided with finality. This is the situation we have before us. The appellate tribunals have spoken with finality. Hence, respondent judge's administrative liability is ripe for adjudication.

10. ID.; ID.; GRAVE MISCONDUCT; WHEN PRESENT; CASE AT BAR.— In this instance, we follow the conclusion of the investigating justice that respondent judge is guilty only of Simple Misconduct in ordering, without basis, the issuance of the Writ of Execution in Civil Case No. 77-0-97, without basis. For grave misconduct to exist, the judicial act complained of should be corrupt or inspired by the intention to violate the

law, or a persistent disregard of well-known rules. This is not clearly evident in this case.

11. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; SHERIFFS; DUTY THEREOF IN THE EXECUTION OF A WRIT IS PURELY MINISTERIAL. — As to respondent sheriff Christopher T. Perez, we find no reason to hold him administratively liable. He cannot be faulted for implementing the Writ of Execution pursuant to the Order of respondent judge dated January 13, 2006. He is obliged to implement the Writ of the court strictly to the letter. It is well-settled that the sheriff's duty in the execution of a writ issued by a court is purely ministerial. When a writ is placed in the hands of a sheriff, it is his duty, in the absence of any instructions to the contrary, to proceed with reasonable celerity and promptness to execute it according to its mandate.

APPEARANCES OF COUNSEL

Caguio & Gatmaitan for Judge Ramon S. Caguioa.

D E C I S I O N

***PER CURIAM*:**

Judges are not common men and women, whose errors men and women forgive and time forgets. Judges sit as the embodiment of the people's sense of justice, their last recourse where all other institutions have failed. — **Dela Cruz v. Pascua, A.M. No. RTJ-99-1461, June 26, 2001, 359 SCRA 569.**

Before us are three administrative cases against Judge Ramon S. Caguioa, Presiding Judge of Branch 74, Regional Trial Court (RTC) of Olongapo City.

I.

A.M. No. RTJ-07-2063

On November 29, 2006, the Republic of the Philippines, represented by the Office of the Solicitor General (OSG), charged Judge Ramon S. Caguioa with gross ignorance of the law, manifest

partiality and conduct prejudicial to the best interest of the service. The complaint concerned Civil Case No. 102-0-05 entitled "*Indigo Distribution Corp. Inc., et al. vs. The Hon. Secretary of Finance, et al.*" for Declaratory Relief with Prayer for Temporary Restraining Order (TRO) and Preliminary Mandatory Injunction, pending before the *sala* of respondent judge.

Complainant Republic is the respondent in said civil case. Petitioners therein, Indigo Distribution Corp. Inc., *et al.* (Indigo, *et al.*), sought to nullify the implementation of Section 6 of Republic Act (R.A.) No. 9334 as unconstitutional.[1] Section 6 provides:

SEC. 6. Section 131 of the National Internal Revenue Code of 1997, as amended, is hereby amended to read as follows:

"SEC. 131. *Payment of Excise Taxes on Imported Articles.* –

"(A) *Persons Liable.* - Excise taxes on imported articles shall be paid by the owner or importer to the Customs Officers, conformably with the regulations of the Department of Finance and before the release of such articles from the customs house, or by the person who is found in possession of articles which are exempt from excise taxes other than those legally entitled to exemption.

"In the case of tax-free articles brought or imported into the Philippines by persons, entities, or agencies exempt from tax which are subsequently sold, transferred or exchanged in the Philippines to non-exempt persons or entities, the purchasers or recipients shall be considered the importers thereof, and shall be liable for the duty and internal revenue tax due on such importation.

"The provision of any special or general law to the contrary notwithstanding, the importation of cigars and cigarettes, distilled spirits, fermented liquors and wines into the Philippines, *even if destined for tax and duty-free shops, shall be subject to all applicable taxes, duties, charges, including excise taxes due thereon. This shall apply to cigars and cigarettes, distilled spirits, fermented liquors and wines brought directly into the duly chartered*

[1] Act Increasing the Excise Tax Rates Imposed on Alcohol and Tobacco Products, Amending for the Purpose Sections 131, 141, 142, 143, 144 and 288 of the Internal Revenue Code of 1997, as amended.

or legislated freeports of the Subic Special Economic and Freeport Zone, created under Republic Act No. 7227; the Cagayan Special Economic Zone and Freeport, created under Republic Act No. 7922; and the Zamboanga City Special Economic Zone, created under Republic Act No. 7903, and such other freeports as may hereafter be established or created by law: *Provided, further,* That importations of cigars and cigarettes, distilled spirits, fermented liquors and wines made directly by a government-owned and operated duty-free shop, like the Duty-Free Philippines (DFP), shall be exempted from all applicable duties only: *Provided, still further,* That such articles directly imported by a government-owned and operated duty-free shop, like the Duty-Free Philippines, shall be labeled 'duty-free' and 'not for resale': *Provided, finally,* That the removal and transfer of tax and duty-free goods, products, machinery, equipment and other similar articles other than cigars and cigarettes, distilled spirits, fermented liquors and wines, from one freeport to another freeport, shall not be deemed an introduction into the Philippine customs territory." [Emphasis supplied.]

x x x x x x x x x

Indigo, *et al.*, petitioners in Civil Case No. 102-0-05, are importers and traders licensed to operate inside the Subic Bay Freeport Zone. By virtue of R.A. No. 7227,[2] enacted in 1992, they were granted Certificates of Registration and Tax Exemptions by the Subic Bay Metropolitan Authority (SBMA). With the enactment of the abovequoted provision of R.A. No. 9334 in 2005, however, they are now subject to sin taxes or excise taxes on tobacco and alcohol products.

On February 7, 2005, SBMA issued a Memorandum directing the departments concerned to require importers in the Subic Bay Freeport Zone to pay the corresponding duties and taxes on their importations of cigars, cigarettes, liquors and wines before they are cleared and released from the freeport.

Unwilling to pay said duties and taxes, petitioners brought before the RTC of Olongapo City a special civil action, Civil

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

Case No. 102-0-05 for declaratory relief to have certain provisions of R.A. No. 9334 declared as unconstitutional. Alleging great and irreparable loss and injury, they prayed for the issuance of a writ of preliminary injunction and/or Temporary Restraining Order (TRO) and preliminary mandatory injunction to enjoin the directives issued by the Republic, as represented by the Secretary of Finance, Commissioner of the Bureau of Internal Revenue, Commissioner of Customs, Collector of Customs of the Port of Subic, and the Administrator of the SBMA.

In an Order dated May 4, 2005, respondent judge granted the application for the issuance of a writ of preliminary injunction. He enjoined the public respondents from implementing the pertinent provisions of R.A. No. 9344. He also approved the injunction bond amounting to one million pesos for all petitioners. On May 11, 2005, he issued a writ of preliminary injunction. Respondent judge found that: (1) the tax exemptions under R.A. No. 7227 granted to petitioners therein, Indigo, *et al.*, coupled with their Certificates of Registration and Tax Exemption from the SBMA, vested in them a clear and unmistakable right or right *in esse* that would be violated should R.A. No. 9334 be implemented; and the invasion of such right was substantial and material, as they would be compelled to pay more than what they should by way of taxes to the national government; (2) the *prima facie* presumption of validity of R.A. No. 9334 had been overcome by petitioners; respondent judge held that as a partial amendment of the National Internal Revenue Code (NIRC) of 1997, as amended, R.A. No. 9334 is a general law that could not prevail over a special statute like R.A. No. 7227; (3) the repealing provision of R.A. No. 9334 does not expressly mention the repeal of R.A. No. 7227; hence, its repeal could only be an implied repeal, which is not favored; and since R.A. No. 9334 imposes new tax burdens, whatever doubts arising therefrom should be resolved against the taxing authority and in favor of the taxpayer; (4) R.A. No. 9334 violates the terms and conditions of petitioners' subsisting contracts with SBMA, which are embodied in their Certificates of Registration and Exemptions in contravention of the constitutional guarantee against

the impairment of contractual obligations; (5) greater damage would be inflicted on petitioners if the writ of injunction would not be issued as compared with the injury that the government and the general public would suffer from its issuance; and that the damage that petitioners are bound to suffer once the assailed statute is implemented – including the loss of confidence of their foreign principals, loss of business opportunity and unrealized income, and the danger of the closing down of their businesses due to uncertainty of continued viability – could not be measured accurately by any standard; and (6) with regard to the rule that injunction is improper to restrain the collection of taxes, respondent judge held that what was sought to be enjoined was not *per se* the collection of taxes, but the implementation of a statute that had been found preliminarily to be unconstitutional.

The Republic filed a petition for *certiorari* and prohibition before this Court to annul said Order and the Writ of Preliminary Injunction that was issued pursuant to such Order. The petition, docketed as G.R. No. 168584, also sought to enjoin, restrain and inhibit respondent judge from enforcing the impugned issuances and from further proceeding with the trial of Civil Case No. 102-0-05.

During the pendency of the petition, respondent judge granted various *ex parte* motions for intervention of different corporations claiming to be similarly situated with petitioner Indigo, and allowed them to ride on the one million peso injunctive bond previously posted by Indigo.

Complainant Republic alleged that it was denied due process because it did not receive a copy of the motions for intervention, which were favorably acted upon by respondent judge. It was only on August 11, 2005, December 1, 2005, and July 19, 2006 when complainant learned of respondent's issuances in favor of the movants. These Orders of respondent judge granted the separate motions of Metatrans International Trading Corp. and Hundred Young Subic International, Inc., Siam Corporations, Transglobe Subic Corp. and Diageo Freeport Philippines, Inc., that they be allowed to intervene in Civil Case No. 102-0-05.

Respondent judge immediately implemented said orders despite the subsequent motions for reconsideration filed by complainant on September 7, 2005, December 16, 2005, and August 14, 2006. It took respondent judge almost 10 months to act on 1 out of the 3 motions filed by the government. On July 17, 2006, complainant received the Order dated July 5, 2006 issued by respondent judge denying its Motion for Reconsideration dated September 7, 2005.

On September 15, 2006, complainant likewise sought to nullify the August 11, 2005, December 1, 2005, and July 19, 2006 Orders of respondent judge before this Court. The petition, docketed as G.R. No. 174385, has not been resolved to date.

On July 31, 2007, this Court, upon the recommendation of the Office of the Court Administrator, considering the two other administrative cases filed against respondent, resolved to preventively suspend respondent judge without pay, pending the resolution of said administrative cases.

On October 9, 2007, we resolved to refer the consolidated administrative cases to an Associate Justice of the Court of Appeals for investigation, report and recommendation.

On October 15, 2007, this Court declared the May 4, 2005 Order of respondent judge and the Writ of Preliminary Injunction, subject of G.R. No. 168584, null and void, to wit:

> WHEREFORE, the Petition is **PARTLY GRANTED**. The writ of *certiorari* to nullify and set aside the Order of May 4, 2005 as well as the Writ of Preliminary Injunction issued by respondent Judge Caguioa on May 11, 2005 is **GRANTED**. The assailed Order and Writ of Preliminary Injunction are hereby declared **NULL AND VOID** and accordingly **SET ASIDE**. The writ of prohibition prayed for is, however, **DENIED**.

We held that respondent judge gravely abused his discretion in ordering the issuance of the Writ of Preliminary Injunction. For a writ of preliminary injunction to issue, the applicant must establish that (1) there is a clear and unmistakable right to be protected; (2) the invasion of the right sought to be protected

is material and substantial; and (3) there is an urgent and paramount necessity for the writ to prevent serious damage. We ruled that petitioners failed to show a clear legal right that ought to be protected by the court. The rights granted under the Certificates of Registration and Tax Exemption of petitioners are not absolute and unconditional as to constitute rights *in esse*. These certificates granting petitioners a "permit to operate" their respective businesses are in the nature of licenses, which can be revoked at any time. There is no vested right in a tax exemption, more so when the latest expression of legislative intent renders its continuance doubtful. Being a mere statutory privilege, a tax exemption may be modified or withdrawn at will by the granting authority.

Further, the feared injurious effects of the imposition of duties, charges and taxes on imported tobacco and alcohol products on petitioners' businesses cannot possibly outweigh the dire consequences that the non-collection of taxes would wreak on the government. With regard to the injunction bond, we also found respondent judge to have overstepped his discretion when he arbitrarily fixed the injunction bond of petitioners at only ₱1 million. Considering the number of petitioner enterprises and the volume of their businesses, the injunction bond is undoubtedly not sufficient to answer for the damages that the government was bound to suffer as a consequence of the suspension of the implementation of the assailed provisions of R.A. No. 9334. Section 4(b), Rule 58 of the Rules of Court, provides that a bond is executed in favor of the party enjoined to answer for *all* damages that it may sustain by reason of the injunction.

Nonetheless, we found lacking the requisite proof of respondent judge's alleged partiality; thus, we found no ground to prohibit him from proceeding with the case for declaratory relief.

On December 11, 2007, this Court granted the request of respondent judge that he be allowed to draw his income as a judge during the pendency of the administrative cases against him.

II.

A.M. No. RTJ-07-2064

On December 21, 2006, the Commissioner of Customs (Commissioner) charged Judge Ramon S. Caguioa with gross ignorance of the law, manifest partiality and conduct prejudicial to the best interest of the service. The complaint concerned Civil Case No. 153-0-2006 entitled "*Andres D. Salvacion Jr. vs. Gracia Z. Caringal, et al.*," a Petition for *Mandamus*, with Prayer for the Issuance of a Temporary Restraining Order (TRO) and Writ of Preliminary Injunction, which is pending before the *sala* of respondent judge.

Petitioner Salvacion in Civil Case No. 153-0-2006 was formerly the District Collector of the Port of Subic. On March 20, 2006, complainant Commissioner issued Customs Personnel Order (CPO) No. B-149-2006, reassigning Salvacion, among others, to the Office of the Commissioner; and designating, in his place as Acting District Collector of the Port of Subic, respondent Caringal.

On March 31, 2006, complainant issued CPO No. B-169-2006, reassigning 20 customs personnel to different ports and offices. In said CPO, Caringal was designated as Acting District Collector of the Port of Cebu, and named to take her place at the Port of Subic was Marietta Zamoranos.

However, on April 4, 2006, Department of Finance Secretary Margarito Teves issued a memorandum holding in abeyance the implementation of CPO Nos. B-149-2006 and B-169-2006. The following day, Deputy Customs Commissioner Alexander Arevalo, who was then Officer-in-Charge of the Bureau of Customs, issued another memorandum directing customs personnel, who were affected by CPO Nos. B-149-2006 and B-169-2006, to report back to their respective port assignments prior to the issuance of said CPOs.

Allegedly because of the failure of Caringal to vacate the Office of the District Collector of the Port of Subic, Salvacion filed against her said petition for *mandamus*.

On May 22, 2006 and June 14, 2006, respondent judge issued a TRO and Writ of Preliminary Injunction, respectively, enjoining

Caringal from acting as District Collector of Customs in the Port of Subic during the pendency of the case.

On June 21, 2006, upon motion of Salvacion, respondent Judge issued another Order, joining complainant Commissioner and the Secretary of Finance (Secretary) as party-respondents, being necessary parties, and directed them to observe and respect the TRO and Writ of Preliminary Injunction.

Subsequently, complainant Commissioner issued CPO No. B-309-2006, approved by the Secretary, reassigning, among others, Salvacion to the port of Cagayan de Oro and designating Marietta Zamoranos as Acting District Collector of Subic.

Dissatisfied with his transfer, Salvacion filed on July 7, 2006 another motion for the issuance of a TRO and writ of preliminary injunction to enjoin complainant Commissioner and the Secretary from implementing CPO No. B-309-2006. He also prayed that Zamoranos be restrained from assuming the post of Acting District Collector of the Port of Subic. On July 10, 2006, however, Zamoranos assumed her duties and responsibilities as Acting District Collector of Subic.

On July 11, 2006, Salvacion moved to amend and/or supplement his Petition for *Mandamus* to: (1) cover the issuance of CPO No. B-309-2006 as a supervening event; (2) make complainant Commissioner and the Secretary not just necessary but indispensable parties; and (3) include, as respondents, Zamoranos and the Acting Deputy Customs Commissioner for Administration who is tasked to implement CPO No. B-309-2006. He prayed that Caringal and/or Zamoranos be enjoined from acting as the District Collector of Customs of the Port of Subic, and complainant Commissioner and the Secretary from implementing CPO No. B-309-2006.

On the other hand, complainant Commissioner, the Secretary, the Acting Deputy Customs Commissioner for Administration, and Zamoranos moved to dismiss the petition on the following grounds: (1) the venue was improperly laid; (2) petition had become moot and academic with the assumption of office of Zamoranos; (3) the petition was premature for failure to exhaust

administrative remedies; and (4) the matter of CPO No. B-309-2006 should not have been included in Civil Case No. 153-0-2006, since it was issued after Salvacion filed his petition.

In an Order dated August 9, 2006, respondent judge granted the issuance of a writ of preliminary injunction in favor of Salvacion. He enjoined the officers concerned from further implementing and enforcing CPO No. B-309-2006. He also enjoined Zamoranos from further exercising the duties and functions of the District Collector of Customs in the Port of Subic, and reinstalled Salvacion as the duly designated District Collector of Customs in the Port of Subic during the pendency of the case.

Complainant Commissioner, the Secretary, Acting Deputy Customs Commissioner for Administration, and Acting District Collector of Customs of the Port of Subic Marietta Zamoranos filed with the Court of Appeals a Petition for *Certiorari*, assailing the August 9, 2006 Order of respondent judge. The petition was docketed as CA-G.R. SP No. 95750.

In a Decision dated November 16, 2006, the Court of Appeals: (1) set aside the Order dated August 9, 2006; (2) lifted the Writ of Preliminary Injunction issued pursuant thereto; and (3) ordered the dismissal of Civil Case No. 153-0-2006.

Complainant Commissioner alleges that respondent judge exhibited gross ignorance of the law, manifest partiality and conduct prejudicial to the best interest of the service, committed as follows:

First, as ruled by the Court of Appeals, respondent judge should have dismissed the case for improper venue, which ground had been timely raised by complainant, the Secretary and the Acting Deputy Customs Commissioner for Administration. Section 4, Rule 65 of the Rules of Court, provides that a petition for *mandamus*, which relates to the acts of officers like complainant, *et al.*, must be filed in the Regional Trial Court exercising jurisdiction over the territorial area covering said officers. Complainant, *et al.* all hold office in Manila. Accordingly, the petition for *mandamus* should have been filed with the Regional

Trial Court of Manila, which has territorial jurisdiction over the administrative officials whose actions are in question.

Further, respondent judge had no authority to issue a writ of preliminary injunction enjoining acts performed outside his territorial jurisdiction. Respondent judge should have known that the injunctive writs he issued were enforceable only within his territorial jurisdiction, or any part, of the Third Judicial Region. In Civil Case No. 153-0-2006, the writ of injunction, which respondent judge issued, was directed against complainant, the Secretary and the Acting Deputy Customs Commissioner for Administration whose offices in Manila are outside the territorial jurisdiction of the Regional Trial Court of Olongapo City.

Second, respondent judge should have dismissed the amended/supplemental petition for *mandamus* on the ground of Salvacion's failure to exhaust his administrative remedies. Alleging that his transfer was unjustified, Salvacion's remedy was to appeal to the Civil Service Commission (CSC). It is fundamental that disciplinary cases and cases involving personnel actions affecting employees in the civil service — such as promotion, transfer, detail, reassignment, demotion, *etc*. — are within the exclusive jurisdiction of the CSC. Failure to observe the rule on exhaustion of administrative remedies rendered Salvacion's petition premature and, hence, dismissible.

Lastly, the Court of Appeals held that Salvacion failed to establish that he had a clear and unmistakable right that was violated so as to warrant the issuance of preliminary injunction. Salvacion could not claim a vested right to his position in the Port of Subic. There is no such thing as a vested interest in an office, or even an absolute right to hold it. Also, the appellate court held that the questioned injunction tend to do more than maintain the status quo. It, in effect, disposed of the main case without trial. In issuing the writ of preliminary injunction, respondent judge virtually accepted Salvacion's contention that his reassignment was invalid, which amounted to a prejudgment of the case.

On March 7, 2007, Solicitor Thomas M. Laragan of the Office of the Solicitor General submitted an affidavit to this Court to show the proclivity of respondent judge to issue writs of preliminary injunction in the absence of requirements mandated by the rules, even if the acts complained of were performed outside his territorial jurisdiction, and even if the venue of the case was improperly laid.[3] Solicitor Laragan is a member of the Office of the Solicitor General-Bureau of Customs (OSG-BOC) Legal Task Force, which handles exclusively the legal cases of the BOC and its officials. He was assigned certain cases which were raffled to, and heard by, respondent judge. He enumerated the following cases:

(1) Civil Case No. 02-0-2002, "Flores v. Villanueva," involved CPO No. B-407-2001 issued by former Commissioner of Customs Titus B. Villanueva ordering the reassignment of two BOC employees then stationed at the Port of Subic. The concerned employees filed a petition for prohibition, with prayer for a TRO and/or writ of preliminary injunction, impugning their reassignment. The OSG, representing the BOC, moved to dismiss the petition for improper venue and the lack of authority of respondent judge to interfere with the act of the Commissioner of Customs, an act that was performed outside of its territorial jurisdiction. Respondent judge issued a writ of preliminary injunction.

The Court of Appeals, in CA-G.R. SP No. 69386, set aside the writ of preliminary injunction issued by respondent judge, and ordered the dismissal of Civil Case No. 02-0-2002 because of improper venue.

(2) Civil Case No. 275-0-2003, "*Asia International Auctioneers, Inc., et al. v. Secretary Isidro Camacho, et al.*" stemmed from the issuance by then Bureau of Internal Revenue (BIR) Commissioner Guillermo Parayno, Jr. of two revenue memorandum circulars, which provided for the guidelines of the imposition of value-added tax (VAT) on sales through public auction and/or negotiated sales of imported motor vehicles.

[3] A.M. No. RTJ-07-2064, *rollo*, pp. 219-227.

Petitioners who are investors at the Subic Bay Freeport and given authority to import motor vehicles and conduct auction sales of these vehicles, assailed the legality of the circulars and contended that only Congress may impose and fix the amount of taxes. They sought the issuance of a TRO and/or writ of preliminary injunction.

The OSG, representing the BIR, moved to dismiss the case. It argued that respondent judge had no authority to review the assailed circulars because the jurisdiction to review rulings, opinions or interpretations of the BIR Commissioner or the Secretary of Finance is vested by law with the Court of Tax Appeals (CTA).

Respondent judge granted petitioners' application for a writ of preliminary injunction.

The Court of Appeals, in CA-G.R. SP No. 79329, found that respondent judge gravely abused his discretion in issuing the Writ. Accordingly, it set aside the Writ of Preliminary Injunction issued by respondent judge, and ordered the dismissal of Civil Case No. 275-0-2003.

3) In Civil Case No. 63-0-04, "*Subic Metromovers Group, Inc., et al. v. Executive Secretary, et al.,*" petitioners assailed a provision of Executive Order (E.O.) No. 156, which prohibits the importation into the country, inclusive of the Freeport, of all types of used motor vehicles. During the pendency of the case, they prayed for the issuance of a TRO and/or writ of preliminary injunction.

The OSG opposed the prayer because: (a) petitioners failed to satisfy the mandatory legal requirements for the issuance of an injunctive writ; (b) respondent judge had no authority to enjoin the acts of government officials that were performed outside its judicial territory; and (c) the issuance of a writ was contrary to the proclamation of this Court discouraging trial court judges from issuing injunctive writs on the ground of an alleged nullity of a law, ordinance or executive issuance.

Respondent judge issued a writ of preliminary injunction enjoining the implementation of E.O. No. 156.

The Court of Appeals, in CA-G.R. SP No. 83283, found that respondent judge gravely abused his discretion in issuing the Writ. Accordingly, it reversed and set aside the Writ of Preliminary Injunction issued by respondent judge.

(4) In Civil Case No. 279-0-2005, "*Unitrans Subic Ventures Corp., et al. v. Executive Secretary, et al.*," petitioners assailed a provision of E.O. No. 418, which imposed an additional specific duty of ₱500,000.00 for every imported used motor vehicle. They prayed for the issuance of a TRO and/or writ of preliminary injunction.

The OSG opposed the prayer, arguing, among others, that petitioners failed to establish a clear legal right to an injunctive writ, and that a preliminary injunction should not be issued on the basis solely of an alleged nullity of a law, ordinance or executive issuance.

Respondent judge issued an order, granting petitioners' prayer for an injunctive writ.

The OSG sought to nullify the Writ before the Court of Appeals. The petition for *certiorari*, docketed as CA-G.R. SP No. 93298, has not been resolved to date.

III.

A.M. No. RTJ-07-2066

On June 1, 2006, complainant Charles T. Burns, Jr. charged Judge Ramon S. Caguioa and Sheriff IV Christopher T. Perez, both of Branch 74 of the Regional Trial Court of Olongapo City, with Grave Misconduct. The administrative complaint concerned Civil Case No. 77-0-97, entitled "*Mary Agnes Burns v. Spouses Juan C. Beltran, et al.*" for recovery of ownership and possession over several parcels of land, the complaint was filed and tried in the *sala* of respondent judge.

Complainant Charles T. Burns, Jr. is the son of plaintiff Mary Agnes who substituted the latter in said civil case. Complainant alleged that he and several others are the occupants of one of the properties in litigation, a parcel of land located in Asinan Proper, Subic, Zambales. In the course of the proceedings,

Pacific Rare Metals, Inc. was allowed to intervene, because it alleged that it was the true and lawful owner of the property by virtue of Certificates of Title issued in its name.

The defendants and intervenor filed a Motion to Dismiss, which was initially denied on July 18, 2001 by then Acting Presiding Judge Philbert Itturalde. Upon a Motion for Reconsideration, respondent judge reconsidered the July 18, 2001 Order and, on December 3, 2002, dismissed the case on the principal ground of prescription. He thus ruled:

> Plaintiff therefore, in filing this case in 1997, was late by roughly four (4) years.
>
> With the resolution of the principal issue of prescription, the court does not find it necessary anymore to discuss the other grounds for dismissal raised by the movants.
>
> WHEREFORE, foregoing considered, the motion for reconsideration filed on September 28, 2001 is GRANTED. The order of the court dated July 18, 2001 is RECONSIDERED and SET ASIDE. This case is DISMISSED.
>
> SO ORDERED.

Plaintiff filed a Motion for Reconsideration but this was denied in an Order dated June 14, 2004. She then filed a Notice of Appeal, but this was not given due course in the Order of April 7, 2005, for having been filed out of time.

The defendants and intervenor then urgently moved for the issuance of a writ of execution to place them in physical possession of the property. On January 13, 2006, respondent judge granted the motion and accordingly issued a writ of execution. The Order, in part, provides:

> x x x x x x x x x

> Anent the issue of execution, the court concurs with the position of the defendants-intervenors. Undoubtedly, the issue of ownership has been put to rest by the court in its April 7, 2005 order, notwithstanding the fact that the basic ground that this case was dismissed was because of prescription. Plaintiff cannot deny that she sued in the first place to recover ownership, including possession

as an attribute of ownership, as clearly alleged in her complaint. Furthermore, plaintiff failed to prove to the satisfaction of the court that the preliminary injunction issued by Branch 72, RTC Olongapo City dated November 4, 1996 involves the same property that is the subject matter of this litigation. Without such evidence, the principle that a court can not reverse the Order of a co-equal court, finds no ample application.

Foregoing considered, the Urgent Motion for the Isuance of a Writ of Execution is hereby GRANTED. Let a writ issue.

SO ORDERED.

The Writ of Execution, issued on January 23, 2006, ordered the respondent sheriff, as follows:

NOW THEREFORE, you are hereby ordered to place defendants title holders Juan Beltran and PRMII Subic Corp. in possession of the property covered by their Original Certificate of Title No. 6932 in the name of Juan Beltran and now by Transfer Certificate of Title No. T-47486 in the name of defendant PRMII Subic Corp.; to cause plaintiffs, their privies, successors and assigns and all persons claiming rights from them as well as all other occupants of the subject property to peaceably vacate, remove their improvements and deliver possession thereof to the defendants particularly title holders Juan Beltran and PRMII Subic Corp. and make return of your proceedings with this writ of execution within a period prescribed by law.

x x x x x x x x x

On February 1, 2006, plaintiffs were served with the Notice to Vacate. On June 5, 2006, a Notice of Removal of Improvements was served. Consequently, the houses of complainants and the other occupants of the disputed land were demolished.

Plaintiff Mary Agnes Burns sought to nullify before the Court of Appeals the Orders of respondent judge dated: (1) April 7, 2005, denying due course to plaintiff's Notice of Appeal; and (2) January 13, 2006, denying plaintiff's Motion for Reconsideration, and granting the Motion for Execution filed by defendants and intervenor. The petition was docketed as CA-GR SP No. 93025.

On November 10, 2006, the Court of Appeals nullified the Orders dated April 7, 2005 and January 13, 2006, including the

Writ of Execution dated January 23, 2006, and the Notice to Vacate dated February 1, 2006. Respondent judge was likewise directed to give due course to and approve plaintiff's Notice of Appeal dated July 12, 2004.

The Court of Appeals ruled that the trial court actually dismissed the case, not on the ground of prescription, but because plaintiff Mary Agnes has no personality to file the action for recovery of ownership and possession of the land. Plaintiff was a mere homestead applicant, not an owner of the subject property, who recognized the State ownership of the land and its character as public land. Only the State can bring such action, as in fact it did in the consolidated cases for nullification of patents and titles issued to various defendants covering the subject parcels of land. The suits for reversion filed by the Solicitor General are still pending in another branch of the Regional Trial Court of Olongapo City. This fact was disclosed by plaintiff in her complaint, where she stated that she had intervened in the reversion suits filed by the State over the subject land, for which she sought a declaration of ownership in this case.

Next, the appellate court ruled that the Writ of Execution dated January 23, 2006, issued pursuant to the Order dated January 13, 2006 of respondent judge, could not be sustained. A writ of execution must substantially conform to the dispositive portion of the promulgated decision. The writ cannot vary or go beyond the terms of the judgment. If it does, it becomes null and void. In the instant case, the December 3, 2002 Order of dismissal did not adjudicate any rights of the parties and resolved no other matter except the dismissal of the case on the ground of "prescription." It does not justify at all the subsequent execution placing the private respondents in possession, where no adjudication of even possessory rights over the disputed property was made.

Further, the Court of Appeals held that another compelling reason why execution was highly improper was the fact that respondent judge had been apprised of the pendency of the reversion suits filed by the Republic involving the same parcels of land. The ruling of respondent judge — that the disposition

of the case under the order of dismissal on the ground of prescription also adjudicated the issue of ownership between the parties — constituted grave abuse of discretion, considering, more so, that whatever final judgment may be rendered in the reversion suits would amount to *res judicata* in the present proceeding.

On March 23, 2007, the parties to the civil case below, including complainants in the instant administrative case, filed before respondent judge a "Manifestation of Withdrawal of Claim" and a "Joint Manifestation and Motion to Approve Compromise Agreement with Motion to Dismiss." Finding the provisions of the compromise agreement to be not contrary to law, public policy and morals, respondent judge on March 28, 2007 granted the motion and proceeded to dismiss the case.

IV.

SUMMARY OF ARGUMENTS OF RESPONDENTS

In all three administrative cases against him, respondent judge argues that the mistakes he committed in issuing the questioned orders should be considered as mere errors of judgment that do not warrant administrative disciplinary action,[4] because his acts were never proven to be, and were in fact never, motivated by bad faith, ill will, fraud and corrupt motives.[5] Respondent judge explains that the rule which proscribes the imposition of administrative liability on judges for committing mistakes or errors which have not been shown to be "motivated by fraud, dishonesty, corruption or any other evil motive" is a rule grounded on public policy, not only that judges cannot be expected to be infallible, but that the judiciary would be paralyzed if its members are penalized for each and every single error they, in good faith, commit.[6] Further, he reasons that all his acts were based on law and jurisprudence.

---

[4] A.M. No. RTJ-07-2066, *rollo*, p. 2.

[5] A.M. No. RTJ-07-2066, *rollo*, p. 349.

[6] A.M. No. RTJ-07-2063, *rollo*, p. 731; A.M. No. RTJ-07-2064, *rollo*, p. 641.

In moving for the dismissal of the administrative complaints, respondent judge argues that the acts complained of are judicial in nature; and that the cases involve the same issues raised by the complainants before this Court[7] and the Court of Appeals.[8] He also cites the ruling of this Court in G.R. No. 168584, where we held that respondent judge therein erred in issuing the injunction order, but that the evidence of his alleged partiality was insufficient to prohibit him from proceeding with the case.

Respondent Sheriff Christopher T. Perez, on the other hand, alleged that he received the Writ of Execution on January 23, 2006, ordering him to implement it and cause plaintiff and all other occupants to peacefully vacate the property and remove their improvements. On February 2, 2006, he served on plaintiff and other occupants of the property that Writ of Execution and Notice to Vacate. The latter failed to comply with the Writ and pleaded for an extension. On June 5, 2006, respondent sheriff served the Notice of Removal of Improvements. Consequently, he demolished the houses of complainants and the other occupants of the disputed land.

Respondent sheriff claimed that he acted in accordance with the Writ of Execution issued by the court and within the bounds of his duty as a sheriff. He did not gravely abuse his power or commit any misconduct.

V.

FINDINGS of the INVESTIGATING JUSTICE

On August 8, 2008, Associate Justice Isaias Dicdican of the Court of Appeals submitted his Report and Recommendation.

For A.M. No. RTJ-07-2063, the Investigating Justice found respondent judge guilty of Gross Ignorance of the Law and Conduct Prejudicial to the Best Interest of the Service. However, on the charge of Manifest Partiality, he concurred with the Decision of this Court, dated October 15, 2007, in G.R. No.

---

[7] G.R. Nos. 168584 and 174385.

[8] CA-G.R. SP Nos. 95750 and 93025.

168584, which denied the Writ of Prohibition sought to be issued against respondent judge. We ruled that evidence of respondent judge's alleged partiality was insufficient.

Justice Dicdican reached the same conclusion in A.M. No. RTJ-07-2064. He found respondent judge guilty of Gross Ignorance of the Law and Conduct Prejudicial to the Best Interest of the Service, but found that the charge of Manifest Partiality had not been duly substantiated by complainant.

For A.M. No. RTJ-07-2066, Justice Dicdican found respondent judge guilty only of Simple Misconduct.

Finally, Justice Dicdican recommends that respondent judge be meted the penalty of suspension from the service for one year, with a stern warning that the commission of similar or other offenses in the future shall be dealt with more drastically.

VI.

RULING of the COURT

We adopt the findings of the Investigating Justice.

In A.M. No. RTJ-07-2063, respondent judge issued a Writ of Preliminary Injunction, enjoining the collection of taxes. Taxes are the lifeblood of the government, and it is of public interest that the collection of which should not be restrained.[9] Further, the applicants for the Writ showed no clear and unmistakable right that was material and substantial as would warrant the issuance of the Writ. Neither were the applicants able to demonstrate the urgency and necessity of the Writ. The burden that the applicants' businesses would sustain because of the imposition of the sin tax on their tobacco and alcohol products cannot possibly be greater than the heavy government revenue losses that would result from the non-collection of taxes. In addition, the improper issuance of the Writ of Preliminary Injunction was aggravated by the inadequate injunctive bond.

---

[9] Sec. 218, NIRC. Injunction not Available to Restrain Collection of Tax. – No court shall have the authority to grant an injunction to restrain the collection of any national internal revenue tax, fee, or charge imposed by this Code.

As Justice Dicdican pointed out, respondent judge approved the one million-peso bond for the 13 original petitioners and 5 intervenors. The purpose of an injunctive bond is to protect the opposing party (the government, in the instant case) against loss or damage by reason of the injunction in case the court finally decides that the applicants (importers/traders inside the Subic Bay Freeport Zone) are not entitled to it.[10]

To make matters worse, respondent judge failed to observe the constitutionally-guaranteed right of the Republic to due process. Records show that the Office of the Solicitor General was not served copies of the motions for intervention. Thus, respondent judge should not have acted upon such motions without the necessary proof of service on all parties,[11] much less, proceeded with their hearing *ex parte*, to the prejudice of the Republic and other respondents. The investigating justice stressed that respondent judge disregarded the right of the Republic to due process, not only once, but five times in all the motions for intervention filed by the intervenors-corporations.

In A.M. No. RTJ-07-2064, respondent judge again issued a Writ of Preliminary Injunction that did not satisfy the legal requisites for its issuance, and which was enforced outside his territorial jurisdiction. The applicant, in this case, questions his reassignment as District Collector of the Port of Subic to the Port of Cagayan de Oro. We uphold the ruling of the Court of Appeals that the applicant failed to establish that he has a clear and unmistakable right that was violated so as to warrant the issuance of a preliminary injunction. He could not claim a vested right to his position in the Port of Subic. A public office is not a private property.

---

[10] *Republic v. Caguioa*, G.R. No. 168584, October 15, 2007, 536 SCRA 193, *citing Paramount Insurance Corporation v. Court of Appeals*, 369 Phil. 641, 653 (1999) and *Valencia v. Court of Appeals*, 331 Phil. 590, 607 (1996).

[11] Rules of Court: Rule 15, Sec. 6. *Proof of service necessary*. – No written motion set for hearing shall be acted upon by the court without proof of service thereof.

Further, the Writ of Preliminary Injunction was issued to enjoin acts performed outside the territorial jurisdiction of respondent judge. It was directed against government officials whose offices in Manila are outside the territorial jurisdiction of the Regional Trial Court of Olongapo City. Respondent judge argues that the instant case is an exception to the general rule that a trial court has no jurisdiction to issue a writ of preliminary injunction to enjoin acts being performed or about to be performed outside its territorial jurisdiction. He cites ***Gayacao v. Executive Secretary***,[12] where we held that "the theory of non-jurisdiction is inapplicable." In **Gayacao**, a petition for *mandamus* was filed in the City of Basilan against the Executive Secretary, the Secretary of Agriculture and Natural Resources, and the Director of Lands, all of whom hold office in Manila. The petition questioned the validity of administrative orders and decisions issued by respondents. In ruling against respondents, we held that, where the sole point in issue is whether the decision of respondent public officers was legally correct or not, "we see no cogent reason why this power of judicial review should be confined to the courts of first instance of the locality where the offices of respondents are maintained, to the exclusion of the courts of first instance in those localities where the plaintiffs reside, and where the questioned decisions are being enforced."

Respondent judge cited **Gayacao** to support his issuance of the Writ of Preliminary Injunction against government officers holding office in Manila which was outside his territorial jurisdiction, to enjoin them from implementing CPO No. B-309-2006 "inside the Subic Bay Freeport Zone," which is within the jurisdiction of respondent judge's court.

However, **Gayacao** is not applicable to his case. Gayacao applies only when the sole issue before the court is whether the decision of respondent public officer was legally correct or not. In A.M. No. RTJ-07-2064, the applicant for the Writ was not merely inquiring into the legality of CPO No. B-309-2006, but was also seeking to enjoin its enforcement outside the jurisdiction

---

[12] 121 Phil. 729 (1965).

of Branch 74 of the RTC in Olongapo City. In the petition for *mandamus* in **Gayacao**, the prayer of petitioner that the land authorities be ordered to reinstate her original application is purely corollary to the main relief sought for a reversal of the questioned administrative decision would necessarily lead to the same result.

The requisites for the issuance of a writ of preliminary injunction are basic and elementary, and should have been known by respondent judge. More importantly, as the Investigating Justice points out, respondent judge should have been more cautious in issuing writs of preliminary injunction. These writs are strong arms of equity which must be issued with great deliberation. The Affidavit of Solicitor Larangan, which enumerates cases wherein respondent judge issued injunctive writs which were subsequently nullified by a higher court, shows his propensity for issuing improvident writs of injunction.

Further, the rules on jurisdiction and venue are also basic, and judges should know them by heart.

All told, in A.M. Nos. RTJ-07-2063 and RTJ-07-2064, we find respondent judge guilty of gross ignorance of the law and conduct prejudicial to the best interest of the service. However, on the charge of manifest partiality, we reiterate our ruling in G.R. No. 168584 that evidence of respondent judge's alleged partiality was insufficient.

Ignorance of the law is the mainspring of injustice. Judges are called upon to exhibit more than just a cursory acquaintance with statutes and procedural rules. Basic rules should be at the palm of their hands. Their inexcusable failure to observe basic laws and rules will render them administratively liable. Where the law involved is simple and elementary, lack of conversance with it constitutes gross ignorance of the law. "Verily, for transgressing the elementary jurisdictional limits of his court, respondent should be administratively liable for gross ignorance of the law."[13]

---

[13] *Enriquez v. Camanade*, A.M. No. RTJ-05-1966, March 21, 2006, 485 SCRA 98.

"When the inefficiency springs from a failure to consider so basic and elemental a rule, a law or a principle in the discharge of his functions, a judge is either too incompetent and undeserving of the position and title he holds or he is too vicious that the oversight or omission was deliberately done in bad faith and in grave abuse of judicial authority."[14]

Under A.M. No. 01-8-10-SC, or the Amendment to Rule 140 of the Rules of Court Re Discipline of Justices and Judges, gross ignorance of the law is a serious charge, punishable by a fine of more than ₱20,000.00, but not exceeding ₱40,000.00, suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months, or dismissal from the service. In the instant administrative cases, the offense of gross ignorance of the law, which respondent is charged with and found guilty of, are for several counts; and the prejudice he caused to the service is significantly great. He has also once been found guilty of the same offense. We, thus, do not hesitate to impose upon respondent judge the penalty of dismissal.

In A.M. No. RTJ-07-2066, respondent judge issued a Writ of Execution without basis. The Writ ordered respondent sheriff to place private respondents in possession of the disputed property, even when no adjudication of even possessory rights over the subject property was made.

Respondent judge cannot hide behind the doctrine in ***Unson v. Lacson***[15] and ***Perez v. Evite***,[16] where we held that "a judgment is not confined to what appears upon the face of the decision, but also those necessarily included therein or necessary thereto." In **Unson**, we ruled in favor of petitioner Unson and voided the contract of Lease between Mayor Lacson of Manila and Genato Commercial Corporation. After the decision had become final, petitioner Unson asked the court to issue a writ of execution

---

[14] *Macalintal v. Teh*, A.M. No. RTJ-97-1375, October 16, 1997, 280 SCRA 623.

[15] 112 Phil. 752 (1961).

[16] 111 Phil. 564 (1961).

to direct respondent Genato to remove any construction it had made on the land leased from the City. Respondent Genato objected because there was nothing in the Decision that ordered it to remove any building on the leased property. The trial court issued execution as prayed for, which this Court sustained. Our decision in the **Unson** case did not contain any order for demolition, because the only issue concerned the validity of the lease. The parties practically conceded that if the lease was valid, Genato's construction stayed; but if the contract was void, the building had no reason to continue.

In **Perez**, the defendants were declared the owners of a parcel of land. The Writ of Execution ordered the sheriff "to deliver the ownership of the portion of the land in litigation to the defendant Vicente Evite." The sheriff placed the defendants in possession. Plaintiffs moved to quash the Writ on the ground that, because the decision sought to be executed merely declared the defendants owners of the property and did not order its delivery to said parties, the Writ putting them in possession thereof was at variance with the decision and, consequently, null and void. On appeal, the Writ was upheld here. We ruled that a situation in which the actual possessor had some rights which must be respected and defined, or a valid right over the property enforceable even against the owner, is absent. In **Perez**, there is no such right that may be appreciated in favor of the possessor. The trial court declared in its Decision that "the plaintiffs have not given any reason why they are retaining the possession of the property."

The instant case of Burns has a different factual milieu. Respondent judge did not adjudicate any rights of the parties and resolved no other matter except the dismissal of the case on the ground of "prescription." Thus, the order to place private respondents in possession of the disputed property is not necessarily included in or necessary to the judgment of dismissal of the case on the ground of "prescription."

As the Court of Appeals held, another compelling reason why execution was highly improper was the fact that respondent judge has been apprised of the pendency of the reversion suits

filed by the Republic, involving the same parcels of land, in another branch of the RTC of Olongapo City, which even issued a writ of preliminary injunction to enjoin the defendants therein from committing acts of ownership over the property. At first, respondent judge reasoned that plaintiff Burns failed to prove to the satisfaction of the court that the preliminary injunction issued by Branch 72, RTC Olongapo City, and dated November 4, 1996 involves the same property that is the subject matter of this litigation. However, as the appellate court stressed, respondent judge overlooked the fact that the lot covered by the Certificate of Title in the name of private respondent Beltran, whom he ordered to be placed in possession of the disputed property, was but purchased from Blas Flores, whose title formed part of Lot No. 5010 being claimed by plaintiff Mary Agnes Burns. Next, in his letter to the Chief Justice dated August 2, 2007, respondent judge admitted that he had knowledge of the reversion suit filed by the Republic, pending before another branch of the RTC and involving the same parcels of land. He argued that he made the judicial call to grant the motion for execution in Civil Case No. 77-0-97, because to suspend its resolution pending the final outcome of the reversion suit carried no foreseeable time frame. Between ruling on a motion for the issuance of a writ of execution and waiting indefinitely for the outcome of the reversion suit, respondent judge decided that "it was more fair to grant the writ of execution of a final and executory judgment that is my ministerial duty."

On respondent judge's argument that these cases should be dismissed because the acts complained of are judicial in nature, and the cases involve the same issues raised by the complainants before this Court and the Court of Appeals, we agree that as a matter of policy, the acts of a judge in his judicial capacity are not subject to disciplinary action.[17] In the absence of fraud, malice or dishonesty in rendering the assailed decision or order, the remedy of the aggrieved party is to elevate the assailed

---

[17] *Castaños v. Escaño, Jr.*, A.M. No. RTJ-93-955, December 12, 1995, 251 SCRA 174.

decision or order to the higher court for review and correction.[18] However, an inquiry into a judge's civil, criminal and/or administrative liability may be made after the available remedies have been exhausted and decided with finality.[19] This is the situation we have before us. The appellate tribunals have spoken with finality. Hence, respondent judge's administrative liability is ripe for adjudication.

In this instance, we follow the conclusion of the investigating justice that respondent judge is guilty only of Simple Misconduct in ordering, without basis, the issuance of the Writ of Execution in Civil Case No. 77-0-97, without basis. For grave misconduct to exist, the judicial act complained of should be corrupt or inspired by the intention to violate the law, or a persistent disregard of well-known rules. This is not clearly evident in this case.

In A.M. No. RTJ-05-1919 dated June 27, 2005, ***Nestor F. Dantes v. Judge Ramon S. Caguioa***, respondent was fined five thousand pesos for gross ignorance of the law. In this case, respondent judge denied the request of complainant Dantes to be allowed to post a bond for his provisional liberty. We ruled that the denial violated complainant's right to due process– his right to avail of the remedies of *certiorari* or prohibition pending resolution of which the execution of the judgment should have been suspended.

As to respondent sheriff Christopher T. Perez, we find no reason to hold him administratively liable. He cannot be faulted for implementing the Writ of Execution pursuant to the Order of respondent judge dated January 13, 2006. He is obliged to implement the Writ of the court strictly to the letter. It is well-settled that the sheriff's duty in the execution of a writ issued by a court is purely ministerial. When a writ is placed in the hands of a sheriff, it is his duty, in the absence of any

---

[18] *Pitney v. Abrogar*, A.M. No. RTJ-03-1748, November 11, 2003, 415 SCRA 377.

[19] *Estrada, Jr. v. Himalaloan*, A.M. No. MTJ-05-1617, November 18, 2005, 475 SCRA 353.

instructions to the contrary, to proceed with reasonable celerity and promptness to execute it according to its mandate.[20]

IN VIEW WHEREOF, in A.M. No. RTJ-07-2066, respondent Ramon S. Caguioa, Presiding Judge of the Regional Trial Court of Olongapo City, Branch 74 is found *GUILTY* of simple misconduct, and is hereby ordered *SUSPENDED* from office without pay, for a period of *THREE MONTHS.*

In A.M. Nos. RTJ-07-2063 and RTJ-07-2064, respondent Ramon S. Caguioa, Presiding Judge of the Regional Trial Court of Olongapo City, Branch 74 is found *GUILTY* of gross ignorance of the law and conduct prejudicial to the best interest of the service, and is hereby ordered *DISMISSED FROM THE SERVICE* with forfeiture of retirement benefits, except leave credits.

The complaint against respondent Sheriff Christopher T. Perez is *DISMISSED* for lack of merit.

This Decision is final and immediately executory.

SO ORDERED.

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

Corona, Velasco, Jr., and *Nachura, JJ.*, no part.

Carpio Morales, J., on leave.

---

[20] *Equatorial Realty Development, Inc. v. Sps. Frogozo*, G.R. No. 128563, March 25, 2004, 426 SCRA 271; *Sison v. Florendo*, A.M. OCA IPI No. 04-1901-P, February 28, 2005.

SECOND DIVISION

[G.R. No. 155504. June 26, 2009]

PROFESSIONAL VIDEO, INC., *petitioner, vs.* **TECHNICAL EDUCATION AND SKILLS DEVELOPMENT AUTHORITY,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; GOVERNMENT AGENCY; TECHNICAL EDUCATION AND SKILLS DEVELOPMENT AUTHORITY (TESDA); AN INSTRUMENTALITY OF THE GOVERNMENT UNDERTAKING GOVERNMENTAL FUNCTIONS; PRINCIPLE OF IMMUNITY FROM SUIT APPLICABLE THERETO. — Within TESDA's structure, as provided by R.A. No. 7769, is a Skills Standards and Certification Office expressly tasked, among others, to develop and establish a national system of skills standardization, testing and certification in the country; and to conduct research and development on various occupational areas in order to recommend policies, rules and regulations for effective and efficient skills standardization, testing and certification system in the country. The law likewise mandates that "[T]here shall be national occupational skills standards to be established by TESDA-accredited industry committees. The TESDA shall develop and implement a certification and accreditation program in which private groups and trade associations are accredited to conduct approved trade tests, and the local government units to promote such trade testing activities in their respective areas in accordance with the guidelines to be set by the TESDA. The Secretary of Labor and Employment shall determine the occupational trades for mandatory certification. *All certificates relating to the national trade skills testing and certification system shall be issued by the TESDA through its Secretariat.*" All these measures are undertaken pursuant to the constitutional command that "[T]he State affirms labor as a primary social economic force," and shall "protect the rights of workers and promote their welfare"; that "[T]he State shall protect and promote the right of all citizens to quality education at all levels, and shall take appropriate steps to make such education

accessible to all"; in order "to afford protection to labor" and "promote full employment and equality of employment opportunities for all." Under these terms, both constitutional and statutory, we do not believe that the role and status of TESDA can seriously be contested: it is an unincorporated instrumentality of the government, directly attached to the DOLE through the participation of the Secretary of Labor as its Chairman, for the performance of governmental functions – *i.e.*, the handling of formal and non-formal education and training, and skills development. As an unincorporated instrumentality operating under a specific charter, it is equipped with both express and implied powers, and all State immunities fully apply to it.

2. ID.; CONSTITUTIONAL LAW; STATE; STATE IMMUNITY PRINCIPLE; BASIS OF THE PRINCIPLE. — The rule that a state may not be sued without its consent is embodied in Section 3, Article XVI of the 1987 Constitution and has been an established principle that antedates this Constitution. It is as well a universally recognized principle of international law that exempts a state and its organs from the jurisdiction of another state. The principle is based on the very essence of sovereignty, and on the practical ground that there can be no legal right as against the authority that makes the law on which the right depends. It also rests on reasons of public policy — that public service would be hindered, and the public endangered, if the sovereign authority could be subjected to law suits at the instance of every citizen and, consequently, controlled in the uses and dispositions of the means required for the proper administration of the government.

3. ID.; ID.; ID.; ID.; THE PERFORMANCE OF GOVERNMENTAL FUNCTION CANNOT BE HINDERED OR DELAYED BY SUITS, NOR CAN THESE SUITS CONTROL THE USE AND DISPOSITION OF THE MEANS FOR THE PERFORMANCE OF GOVERNMENTAL FUNCTIONS. — The proscribed suit that the state immunity principle covers takes on various forms, namely: a suit against the Republic by name; a suit against an unincorporated government agency; a suit against a government agency covered by a charter with respect to the agency's performance of governmental functions; and a suit that on its face is against a government officer, but where the ultimate liability will fall

on the government. In the present case, the writ of attachment was issued against a government agency covered by its own charter. As discussed above, TESDA performs governmental functions, and the issuance of certifications is a task within its function of developing and establishing a system of skills standardization, testing, and certification in the country. From the perspective of this function, the core reason for the existence of state immunity applies – *i.e.*, the public policy reason that the performance of governmental function cannot be hindered or delayed by suits, nor can these suits control the use and disposition of the means for the performance of governmental functions. In *Providence Washington Insurance Co. v. Republic of the Philippines*, we said: [A] continued adherence to the doctrine of non-suability is not to be deplored for as against the inconvenience that may be caused private parties, the loss of governmental efficiency and the obstacle to the performance of its multifarious functions are far greater if such a fundamental principle were abandoned and the availability of judicial remedy were not thus restricted. With the well known propensity on the part of our people to go to court, at the least provocation, the loss of time and energy required to defend against law suits, in the absence of such a basic principle that constitutes such an effective obstacle, could very well be imagined.

4. ID.; ID.; ID.; ID.; NO WAIVER THEREOF WHERE THE NON-GOVERNMENTAL FUNCTION IS UNDERTAKEN AS AN INCIDENT TO THE GOVERNMENTAL FUNCTION. — We agree with TESDA. As the appellate court found, the PVC cards purchased by TESDA from PROVI are meant to properly identify the trainees who passed TESDA's National Skills Certification Program – the program that immediately serves TESDA's mandated function of developing and establishing a national system of skills standardization, testing, and certification in the country. Aside from the express mention of this DOLE Administrative Order No. 157, S. 1992, as supplemented by Department Order Nos. 3 thru 3-F, S. 1994 and Department Order No. 13, S. 1994. Admittedly, the certification and classification of trainees may be undertaken in ways other than the issuance of identification cards, as the RTC stated in its assailed Order. How the mandated certification is to be done, however, lies within the discretion of TESDA as an incident of its mandated function, and is a properly delegated authority that this Court cannot inquire into, unless

its exercise is attended by grave abuse of discretion. That TESDA sells the PVC cards to its trainees for a fee does not characterize the transaction as industrial or business; the sale, expressly authorized by the TESDA Act, cannot be considered separately from TESDA's general governmental functions, as they are undertaken in the discharge of these functions. Along this line of reasoning, we held in *Mobil Philippines v. Customs Arrastre Services*: Now, the fact that a non-corporate government entity performs a function proprietary in nature does not necessarily result in its being suable. If said non-governmental function is undertaken as an incident to its governmental function, there is no waiver thereby of the sovereign immunity from suit extended to such government entity.

5. ID.; ID.; ID.; ID.; PUBLIC FUNDS CANNOT BE THE OBJECT OF GARNISHMENT PROCEEDING EVEN IF THE CONSENT TO BE SUED HAS BEEN PREVIOUSLY GRANTED AND THE STATE LIABILITY ADJUDGED. — Even assuming that TESDA entered into a proprietary contract with PROVI and thereby gave its implied consent to be sued, TESDA's funds are still public in nature and, thus, cannot be the valid subject of a writ of garnishment or attachment. Under Section 33 of the TESDA Act, the TESDA budget for the implementation of the Act shall be included in the annual General Appropriation Act; hence, TESDA funds, being sourced from the Treasury, are moneys belonging to the government, or any of its departments, in the hands of public officials. We specifically spoke of the limits in dealing with this fund in *Republic v. Villasor* when we said: This fundamental postulate underlying the 1935 Constitution is now made explicit in the revised charter. It is therein expressly provided, 'The State may not be sued without its consent.' A corollary, both dictated by logic and sound sense, from such a basic concept, is that **public funds cannot be the object of garnishment proceedings even if the consent to be sued had been previously granted and the state liability adjudged.** Thus in the recent case of *Commissioner of Public Highways vs. San Diego*, such a well-settled doctrine was restated in the opinion of Justice Teehankee: The universal rule that where the State gives its consent to be sued by private parties either by general or special law, it may limit claimant's action 'only up to the completion of proceedings anterior to the stage of execution' and that the power of the Courts ends when the

judgment is rendered, since government funds and properties may not be seized under writs of execution or garnishment to satisfy such judgments, is based on obvious considerations of public policy. **Disbursements of public funds must be covered by the corresponding appropriation as required by law. The functions and public services rendered by the State cannot be allowed to be paralyzed or disrupted by the diversion of public funds from their legitimate and specific objects, as appropriated by law.**

6. ID.; ID.; ID.; ID.; ID.; TESDA'S FUNDS ARE EXEMPT FROM ATTACHMENT OR GARNISHMENT. — As pointed out by TESDA in its Memorandum, the garnished funds constitute TESDA's lifeblood – in government parlance, its MOOE – whose withholding *via* a writ of attachment, even on a temporary basis, would paralyze TESDA's functions and services. As well, these funds also include TESDA's Personal Services funds from which salaries of TESDA personnel are sourced. Again and for obvious reasons, the release of these funds cannot be delayed.

7. REMEDIAL LAW; PROVISIONAL REMEDIES; ATTACHMENT; WRIT OF PRELIMINARY ATTACHMENT; GROUNDS; ISSUANCE OF THE WRIT CONSTRUED STRICTLY IN FAVOR OF THE DEFENDANT. — Even without the benefit of any immunity from suit, the attachment of TESDA funds should not have been granted, as PROVI failed to prove that TESDA "fraudulently misapplied or converted funds allocated under the Certificate as to Availability of Funds." Section 1, Rule 57 of the Rules of Court sets forth the grounds for issuance of a writ of preliminary attachment, as follows: SECTION 1. *Grounds upon which attachment may issue*. – A plaintiff or any proper party may, at the commencement of the action or at any time thereafter, have the property of the adverse party attached as security for the satisfaction of any judgment that may be recovered in the following cases: xxx **(b) In an action for money or property embezzled or fraudulently misapplied or converted to his use by a public officer, or an officer of a corporation, or an attorney, factor, broker, agent or clerk, in the course of his employment as such, or by any other person in a fiduciary capacity, or for a willful violation of duty;** xxx **(d) In an action against a party who has been guilty of fraud in contracting the debt or incurring the obligation upon which the action is**

brought, or in concealing or disposing of the property for the taking, detention or conversion of which the action is brought; xxx Jurisprudence teaches us that the rule on the issuance of a writ of attachment must be construed strictly in favor of the defendant. Attachment, a harsh remedy, must be issued only on concrete and specific grounds and not on general averments merely quoting the words of the pertinent rules. Thus, the applicant's affidavit must contain statements clearly showing that the ground relied upon for the attachment exists.

8. ID.; ID.; ID.; ID.; ID.; FAILURE OF THE RESPONDENT TO PAY THE PETITIONER THE AMOUNT STATED ON THE CERTIFICATE OF AVAILABILITY OF FUNDS CANNOT BE CONSTRUED AS AN ACT OF FRAUDULENT MISAPPLICATION OR EMBEZZLEMENT. — Section 1(b), Rule 57 of the Rules of Court, that PROVI relied upon, applies only where money or property has been embezzled or converted by a public officer, an officer of a corporation, or some other person who took advantage of his fiduciary position or who willfully violated his duty. PROVI, in this case, never entrusted any money or property to TESDA. While the Contract Agreement is supported by a Certificate as to Availability of Funds (*Certificate*) issued by the Chief of TESDA's Accounting Division, this Certificate does not automatically confer ownership over the funds to PROVI. Absent any actual disbursement, these funds form part of TESDA's public funds, and TESDA's failure to pay PROVI the amount stated in the Certificate cannot be construed as an act of fraudulent misapplication or embezzlement. In this regard, Section 86 of Presidential Decree No. 1445 (The Accounting Code) provides: Section 86. *Certificate showing appropriation to meet contract.* x x x – The certification signed by the proper accounting official and the auditor who verified it, shall be attached to and become an integral part of the proposed contract, and **the sum so certified shall not thereafter be available for expenditure for any other purpose until the obligation of the government agency concerned under the contract is fully extinguished**. By law, therefore, the amount stated in the Certification should be intact and remains devoted to its purpose since its original appropriation. PROVI can rebut the presumption that necessarily arises from the cited provision only by evidence to the contrary. No such evidence has been adduced.

9. ID.; ID.; ID.; ID.; ID.; A WRIT OF ATTACHMENT CAN ONLY BE GRANTED ON CONCRETE AND SPECIFIC GROUNDS AND NOT ON GENERAL AVERMENTS MERELY QUOTING THE WORDS OF THE RULES. — *Section 1 (d), Rule 57 of the Rules of Court* applies where a party is guilty of fraud in contracting a debt or incurring an obligation, or in concealing or disposing of the property for the taking, detention or conversion of which the action is brought. In *Wee v. Tankiansee,* we held that for a writ of attachment to issue under this Rule, the applicant must sufficiently show the factual circumstances of the alleged fraud because fraudulent intent cannot be inferred from the debtor's mere non-payment of the debt or failure to comply with his obligation. The affidavit, being the foundation of the writ, must contain particulars showing how the imputed fraud was committed for the court to decide whether or not to issue the writ. To reiterate, a writ of attachment can only be granted on concrete and specific grounds and not on general averments merely quoting the words of the rules. The affidavit filed by PROVI through Elmer Ramiro, its President and Chief Executive Officer, only contained a general allegation that TESDA had fraudulent misapplied or converted the amount of ₱10,975,000.00 that was allotted to it. Clearly, we cannot infer any finding of fraud from PROVI's vague assertion, and the CA correctly ruled that the lower court acted with grave abuse of discretion in granting the writ of attachment despite want of any valid ground for its issuance.

APPEARANCES OF COUNSEL

R.G. Roxas & Associates for petitioner.
The Solicitor General for respondent.

D E C I S I O N

BRION, *J.*:

We resolve the petition filed by Professional Video, Inc. (*PROVI*)[1] to annul and set aside the Decision[2] of the Court of

[1] Petition for review on *certiorari* under Rule 45 of the Rules of Court; *rollo*, pp. 8-21.

[2] Dated July 23, 2002, penned by Associate Justice Eliezer R. De Los

Appeals (*CA*) in CA-G.R. SP No. 67599, and its subsequent Order denying PROVI's motion for reconsideration.[3] The assailed CA decision nullified:

a. the Order[4] dated July 16, 2001 of the Regional Trial Court (*RTC*), Pasig City, in Civil Case No. 68527, directing the attachment/garnishment of the properties of respondent Technical Education and Skills Development Authority (*TESDA*) amounting to Thirty Five Million Pesos (₱35,000,000.00); and

b. the RTC's August 24, 2001 Order[5] denying respondent TESDA's motion to discharge/quash writ of attachment.

THE FACTUAL BACKGROUND

PROVI is an entity engaged in the sale of high technology equipment, information technology products and broadcast devices, including the supply of plastic card printing and security facilities.

TESDA is an instrumentality of the government established under Republic Act (*R.A.*) No. 7796 (the TESDA Act of 1994) and attached to the Department of Labor and Employment (*DOLE*) to "develop and establish a national system of skills standardization, testing, and certification in the country."[6] To fulfill this mandate, it sought to issue security-printed certification and/or identification polyvinyl (*PVC*) cards to trainees who have passed the certification process.

TESDA's Pre-Qualification Bids Award Committee (*PBAC*) conducted two (2) public biddings on June 25, 1999 and July 22, 1999 for the printing and encoding of PVC cards. A failure

---

Santos, with Acting Presiding Justice Cancio C. Garcia (retired member of this Court) and Associate Justice Marina L. Buzon (retired), concurring; *id.*, pp. 22-31.

[3] Dated September 27, 2002; *id.*, pp. 32-33.

[4] Penned by Judge Mariano M. Singzon, Jr.; *id.*, pp. 86-87.

[5] *Id.*, pp. 88-89.

[6] R.A. No. 7796, Section 14(b)(1).

of bidding resulted in both instances since only two (2) bidders – PROVI and Sirex Phils. Corp. – submitted proposals.

Due to the failed bidding, the PBAC recommended that TESDA enter into a negotiated contract with PROVI. On December 29, 1999, TESDA and PROVI signed and executed their "Contract Agreement Project: PVC ID Card Issuance" (*the Contract Agreement*) for the provision of goods and services in the printing and encoding of PVC cards.[7] Under this Contract Agreement, PROVI was to provide TESDA with the system and equipment compliant with the specifications defined in the Technical Proposal. In return, TESDA would pay PROVI the amount of Thirty-Nine Million Four Hundred and Seventy-Five Thousand Pesos (₱39,475,000) within fifteen (15) days after TESDA's acceptance of the contracted goods and services.

On August 24, 2000, TESDA and PROVI executed an "Addendum to the Contract Agreement Project: PVC ID Card Issuance" (*Addendum*),[8] whose terms bound PROVI to deliver one hundred percent (100%) of the enumerated supplies to TESDA consisting of five hundred thousand (500,000) pieces of security foil; five (5) pieces of security die with TESDA seal; five hundred thousand (500,000) pieces of pre-printed and customized identification cards; one hundred thousand (100,000) pieces of scannable answer sheets; and five hundred thousand (500,000) customized TESDA holographic laminate. In addition, PROVI would install and maintain the following equipment: one (1) unit of Micropoise, two (2) units of card printer, three (3) units of flatbed scanner, one (1) unit of OMR scanner, one (1) unit of Server, and seven (7) units of personal computer.

TESDA in turn undertook to pay PROVI thirty percent (30%) of the total cost of the supplies within thirty (30) days after receipt and acceptance of the contracted supplies, with the balance payable within thirty (30) days after the initial payment.

According to PROVI, it delivered the following items to TESDA on the dates indicated:

[7] *Rollo*, pp. 45-47.

[8] *Id.*, pp. 51-54.

Date	Particulars	Amount
26 April 2000	48,500 pre-printed cards	₱ 2,764,500.00
07 June 2000	330,000 pre-printed cards	18,810,000.00
07 August 2000	121,500 pre-printed cards	6,925,500.00
26 April 2000	100,000 scannable answer sheets	600,000.00
06 June 2000	5 Micro-Poise customized die	375,000.00
13 June 2000	35 boxes @ 15,000 imp/box	10,000,000.00
	Custom hologram Foil	
	Total	₱39,475,000.00

PROVI further alleged that out of TESDA's liability of ₱39,475,000.00, TESDA paid PROVI only ₱3,739,500.00, leaving an outstanding balance of ₱35,735,500.00, as evidenced by PROVI's Statement of Account.[9] Despite the two demand letters dated March 8 and April 27, 2001 that PROVI sent TESDA,[10] the outstanding balance remained unpaid.

On July 11, 2001, PROVI filed with the RTC a complaint for sum of money with damages against TESDA. PROVI additionally prayed for the issuance of a writ of preliminary attachment/garnishment against TESDA. The case was docketed as Civil Case No. 68527. In an Order dated July 16, 2001, the RTC granted PROVI's prayer and issued a writ of preliminary attachment against the properties of TESDA not exempt from execution in the amount of ₱35,000,000.00.[11]

TESDA responded on July 24, 2001 by filing a Motion to Discharge/Quash the Writ of Attachment, arguing mainly that public funds cannot be the subject of garnishment.[12] The RTC denied TESDA's motion, and subsequently ordered the manager

---

[9] *Id.*, p. 55.

[10] *Id.*, pp. 56-57.

[11] *Id.*, pp. 86-87.

[12] *Id.*, pp. 95-108

of the Land Bank of the Philippines to produce TESDA's bank statement for the garnishment of the covered amount.[13]

Faced with these rulings, TESDA filed a Petition for *Certiorari* with the CA to question the RTC orders, imputing grave abuse of discretion amounting to lack or excess of jurisdiction on the trial court for issuing a writ of preliminary attachment against TESDA's public funds.[14]

The CA set aside the RTC's orders after finding that: (a) TESDA's funds are public in nature and, therefore, exempt from garnishment; and (b) TESDA's purchase of the PVC cards was a necessary incident of its governmental function; consequently, it ruled that there was no legal basis for the issuance of a writ of preliminary attachment/garnishment.[15] The CA subsequently denied PROVI's motion for reconsideration;[16] hence, the present petition.

THE PETITION

The petition submits to this Court the single issue of whether or not the writ of attachment against TESDA and its funds, to cover PROVI's claim against TESDA, is valid. The issue involves a pure question of law and requires us to determine whether the CA was correct in ruling that the RTC gravely abused its discretion in issuing a writ of attachment against TESDA.

PROVI argues that the CA should have dismissed TESDA's petition for *certiorari* as the RTC did not commit any grave abuse of discretion when it issued the Orders dated July 16, 2001 and August 24, 2001. According to PROVI, the RTC correctly found that when TESDA entered into a purely commercial contract with PROVI, TESDA went to the level of an ordinary private citizen and could no longer use the defense of state immunity from suit. PROVI further contends that it

---

[13] Order dated September 10, 2001; *id.*, p. 120.

[14] Filed on November 15, 2001; *id.*, pp. 60-85.

[15] Dated July 23, 2002; *id.*, pp. 23-31.

[16] In a Resolution dated September 27, 2002; *id.*, p. 33.

has alleged sufficient ultimate facts in the affidavit it submitted to support its application for a writ of preliminary attachment. Lastly, PROVI maintains that sufficient basis existed for the RTC's grant of the writ of preliminary attachment, since TESDA fraudulently misapplied or embezzled the money earmarked for the payment of the contracted supplies and services, as evidenced by the Certification as to Availability of Funds.

TESDA claims that it entered the Contract Agreement and Addendum in the performance of its governmental function to develop and establish a national system of skills standardization, testing, and certification; in the performance of this governmental function, TESDA is immune from suit. Even assuming that it had impliedly consented to be sued by entering into a contract with PROVI, TESDA posits that the RTC still did not have the power to garnish or attach its funds since these are public funds. Lastly, TESDA points out that PROVI failed to comply with the elements for the valid issuance of a writ of preliminary attachment, as set forth in Section 1, Rule 57 of the 1997 Rules of Civil Procedure.

THE COURT'S RULING

We find, as the CA did, that the RTC's questioned order involved a gross misreading of the law and jurisprudence amounting to action in excess of its jurisdiction. Hence, we resolve to DENY PROVI's petition for lack of merit.

TESDA is an instrumentality of the government undertaking governmental functions.

R.A. No. 7796 created the *Technical Education and Skills Development Authority* or *TESDA* under the declared "policy of the State to provide relevant, accessible, high quality and efficient technical education and skills development in support of the development of high quality Filipino middle-level manpower responsive to and in accordance with Philippine development goals and priorities."[17] TESDA replaced and absorbed the National

[17] *Supra* note 6, Section 2.

Manpower and Youth Council, the Bureau of Technical and Vocational Education and the personnel and functions pertaining to technical-vocational education in the regional offices of the Department of Education, Culture and Sports and the apprenticeship program of the Bureau of Local Employment of the DOLE.[18] Thus, TESDA is an unincorporated instrumentality of the government operating under its own charter.

Among others, TESDA is empowered to: approve trade skills standards and trade tests as established and conducted by private industries; establish and administer a system of accreditation of both public and private institutions; establish, develop and support the institutions' trainors' training and/or programs; exact reasonable fees and charges for such tests and trainings conducted, and retain such earnings for its own use, subject to guidelines promulgated by the Authority; and perform such other duties and functions necessary to carry out the provisions of the Act, consistent with the purposes of the creation of TESDA.[19]

Within TESDA's structure, as provided by R.A. No. 7769, is a Skills Standards and Certification Office expressly tasked, among others, to develop and establish a national system of skills standardization, testing and certification in the country; and to conduct research and development on various occupational areas in order to recommend policies, rules and regulations for effective and efficient skills standardization, testing and certification system in the country.[20] The law likewise mandates that "[T]here shall be national occupational skills standards to be established by TESDA-accredited industry committees. The TESDA shall develop and implement a certification and accreditation program in which private groups and trade associations are accredited to conduct approved trade tests, and the local government units to promote such trade testing activities in their respective areas in accordance with the guidelines to be set by the TESDA. The Secretary of Labor and Employment shall determine the occupational trades for mandatory certification. *All certificates*

[18] *Id.,* Section 5.

[19] *Id.,* Section 8.

[20] *Id.,* Section 14(b).

relating to the national trade skills testing and certification system shall be issued by the TESDA through its Secretariat."[21]

All these measures are undertaken pursuant to the constitutional command that "[T]he State affirms labor as a primary social economic force," and shall "protect the rights of workers and promote their welfare";[22] that "[T]he State shall protect and promote the right of all citizens to quality education at all levels, and shall take appropriate steps to make such education accessible to all";[23] in order "to afford protection to labor" and "promote full employment and equality of employment opportunities for all."[24]

Under these terms, both constitutional and statutory, we do not believe that the role and status of TESDA can seriously be contested: it is an unincorporated instrumentality of the government, directly attached to the DOLE through the participation of the Secretary of Labor as its Chairman, for the performance of governmental functions – *i.e.*, the handling of formal and non-formal education and training, and skills development. As an unincorporated instrumentality operating under a specific charter, it is equipped with both express and implied powers,[25] and all State immunities fully apply to it.[26]

TESDA, as an agency of the State, cannot be sued without its consent.

The rule that a state may not be sued without its consent is embodied in Section 3, Article XVI of the 1987 Constitution

---

[21] *Id.*, Section 22.

[22] CONSTITUTION, Article II, Section 18.

[23] *Id.*, Article XIV, Section 1.

[24] *Id.*, Article XIII, Section 3.

[25] See *Laguna Lake Development Authority v. Court of Appeals*, G.R. No. 110120, March 16, 1994, 231 SCRA 292; *Republic v. Court of Appeals*, G.R. No. 90482, August 5, 1991, 200 SCRA 226.

[26] See *Farolan, Jr. v. Court of Tax Appeals*, G.R. No. 42204, January 21, 1993, 217 SCRA 298; Pacific *Products, Inc. v. Ong*, G.R. No. 33777, January 30, 1990, 181 SCRA 536.

and has been an established principle that antedates this Constitution.[27] It is as well a universally recognized principle of international law that exempts a state and its organs from the jurisdiction of another state.[28] The principle is based on the very essence of sovereignty, and on the practical ground that there can be no legal right as against the authority that makes the law on which the right depends.[29] It also rests on reasons of public policy — that public service would be hindered, and the public endangered, if the sovereign authority could be subjected to law suits at the instance of every citizen and, consequently, controlled in the uses and dispositions of the means required for the proper administration of the government.[30]

The proscribed suit that the state immunity principle covers takes on various forms, namely: a suit against the Republic by name; a suit against an unincorporated government agency; a suit against a government agency covered by a charter with respect to the agency's performance of governmental functions; and a suit that on its face is against a government officer, but where the ultimate liability will fall on the government. In the present case, the writ of attachment was issued against a government agency covered by its own charter. As discussed above, TESDA performs governmental functions, and the issuance of certifications is a task within its function of developing and establishing a system of skills standardization, testing, and certification in the country. From the perspective of this function, the core reason for the existence of state immunity applies – *i.e.*, the public policy reason that the performance of governmental function cannot be hindered or delayed by suits, nor can these suits control the use and disposition of the means for the performance of governmental functions. In *Providence*

---

[27] *Metran v. Paredes*, 79 Phil. 819 (1948).

[28] *JUSMAG Philippines v. NLRC*, G.R. No. 108813, December 15, 1994, 239 SCRA 224.

[29] *Republic v. Sandoval*, G.R. No. 84645, March 19, 1993, 220 SCRA 124, citing *Kawanakoa v. Polyblank*, 205 U.S. 349-353, 51 L. Ed. 834 (1907).

[30] *Ibid.*, citing *The Siren v. United States*, 7 Wall. 152, 19 L. Ed. 129 (1869).

Washington Insurance Co. v. Republic of the Philippines,[31] we said:

> [A] continued adherence to the doctrine of non-suability is not to be deplored for as against the inconvenience that may be caused private parties, the loss of governmental efficiency and the obstacle to the performance of its multifarious functions are far greater if such a fundamental principle were abandoned and the availability of judicial remedy were not thus restricted. With the well known propensity on the part of our people to go to court, at the least provocation, the loss of time and energy required to defend against law suits, in the absence of such a basic principle that constitutes such an effective obstacle, could very well be imagined.

PROVI argues that TESDA can be sued because it has effectively waived its immunity when it entered into a contract with PROVI for a commercial purpose. According to PROVI, since the purpose of its contract with TESDA is to provide identification PVC cards with security seal which TESDA will thereafter sell to TESDA trainees, TESDA thereby engages in commercial transactions not incidental to its governmental functions.

TESDA's response to this position is to point out that it is not engaged in business, and there is nothing in the records to show that its purchase of the PVC cards from PROVI is for a business purpose. While TESDA admits that it will charge the trainees with a fee for the PVC cards, it claims that this fee is only to recover their costs and is not intended for profit.

We agree with TESDA. As the appellate court found, the PVC cards purchased by TESDA from PROVI are meant to properly identify the trainees who passed TESDA's National Skills Certification Program – the program that immediately serves TESDA's mandated function of developing and establishing a national system of skills standardization, testing, and certification in the country.[32] Aside from the express mention of this function in R.A. No. 7796, the details of this function are provided under

---

[31] G.R. No. L-26386, September 30, 1969, 29 SCRA 598.

[32] R.A. No. 7796, Section 14(b)(1).

DOLE Administrative Order No. 157, S. 1992, as supplemented by Department Order Nos. 3 thru 3-F, S. 1994 and Department Order No. 13, S. 1994.[33]

Admittedly, the certification and classification of trainees may be undertaken in ways other than the issuance of identification cards, as the RTC stated in its assailed Order.[34] How the mandated certification is to be done, however, lies within the discretion of TESDA as an incident of its mandated function, and is a properly delegated authority that this Court cannot inquire into, unless its exercise is attended by grave abuse of discretion.

That TESDA sells the PVC cards to its trainees for a fee does not characterize the transaction as industrial or business; the sale, expressly authorized by the TESDA Act,[35] cannot be considered separately from TESDA's general governmental functions, as they are undertaken in the discharge of these functions. Along this line of reasoning, we held in *Mobil Philippines v. Customs Arrastre Services*:[36]

> Now, the fact that a non-corporate government entity performs a function proprietary in nature does not necessarily result in its being suable. If said non-governmental function is undertaken as an incident to its governmental function, there is no waiver thereby of the sovereign immunity from suit extended to such government entity.

TESDA's funds are public in character, hence exempt from attachment or garnishment.

Even assuming that TESDA entered into a proprietary contract with PROVI and thereby gave its implied consent to be sued, TESDA's funds are still public in nature and, thus, cannot be the valid subject of a writ of garnishment or attachment. Under

---

[33] Whereas Clause of Contract Agreement Project: PVC ID Card Issuance; *rollo*, pp. 45-47.

[34] *Supra* note 4.

[35] See: Section 8 (5) to (10), R.A. No. 7796.

[36] G.R. No. L-23139, December 17, 1966, 18 SCRA 1120.

Section 33 of the TESDA Act, the TESDA budget for the implementation of the Act shall be included in the annual General Appropriation Act; hence, TESDA funds, being sourced from the Treasury, are moneys belonging to the government, or any of its departments, in the hands of public officials.[37] We specifically spoke of the limits in dealing with this fund in *Republic v. Villasor*[38] when we said:

> This fundamental postulate underlying the 1935 Constitution is now made explicit in the revised charter. It is therein expressly provided, 'The State may not be sued without its consent.' A corollary, both dictated by logic and sound sense, from such a basic concept, is that **public funds cannot be the object of garnishment proceedings even if the consent to be sued had been previously granted and the state liability adjudged.** Thus in the recent case of *Commissioner of Public Highways vs. San Diego*, such a well-settled doctrine was restated in the opinion of Justice Teehankee:
>
> > The universal rule that where the State gives its consent to be sued by private parties either by general or special law, it may limit claimant's action 'only up to the completion of proceedings anterior to the stage of execution' and that the power of the Courts ends when the judgment is rendered, since government funds and properties may not be seized under writs of execution or garnishment to satisfy such judgments, is based on obvious considerations of public policy. **Disbursements of public funds must be covered by the corresponding appropriation as required by law. The functions and public services rendered by the State cannot be allowed to be paralyzed or disrupted by the diversion of public funds from their legitimate and specific objects, as appropriated by law.** [Emphasis supplied.]

We reiterated this doctrine in *Traders Royal Bank v. Intermediate Appellate Court,*[39] where we said:

---

[37] Black's *Law Dictionary,* 6th Ed., p. 1229.

[38] G.R. No. L-30671, November 28, 1973, 54 SCRA 84.

[39] G.R. No. 68514, December 17, 1990, 192 SCRA 305.

The NMPC's implied consent to be sued notwithstanding, the trial court did not have the power to garnish NMPC deposits to answer for any eventual judgment against it. **Being public funds, the deposits are not within the reach of any garnishment or attachment proceedings.** [Emphasis supplied.]

As pointed out by TESDA in its Memorandum,[40] the garnished funds constitute TESDA's lifeblood – in government parlance, its MOOE[41] – whose withholding *via* a writ of attachment, even on a temporary basis, would paralyze TESDA's functions and services. As well, these funds also include TESDA's Personal Services funds from which salaries of TESDA personnel are sourced. Again and for obvious reasons, the release of these funds cannot be delayed.

PROVI has not shown that it is entitled to the writ of attachment.

Even without the benefit of any immunity from suit, the attachment of TESDA funds should not have been granted, as PROVI failed to prove that TESDA "fraudulently misapplied or converted funds allocated under the Certificate as to Availability of Funds." Section 1, Rule 57 of the Rules of Court sets forth the grounds for issuance of a writ of preliminary attachment, as follows:

SECTION 1. *Grounds upon which attachment may issue*. – A plaintiff or any proper party may, at the commencement of the action or at any time thereafter, have the property of the adverse party attached as security for the satisfaction of any judgment that may be recovered in the following cases: x x x

(a) In an action for recovery of a specified amount of money or damages, other than moral and exemplary, on a cause of action arising from law, contract, quasi-contract, delict or quasi-delict against a party who is about to depart from the Philippines with intent to defraud his creditors;

---

[40] *Rollo*, pp. 188-202.

[41] Maintenance and Other Operating Expenses.

(b) In an action for money or property embezzled or fraudulently misapplied or converted to his use by a public officer, or an officer of a corporation, or an attorney, factor, broker, agent or clerk, in the course of his employment as such, or by any other person in a fiduciary capacity, or for a willful violation of duty;

(c) In an action to recover the possession of property unjustly or fraudulently taken, detained or converted, when the property or any part thereof, has been concealed, removed or disposed of to prevent its being found or taken by the applicant or an authorized person;

(d) In an action against a party who has been guilty of fraud in contracting the debt or incurring the obligation upon which the action is brought, or in concealing or disposing of the property for the taking, detention or conversion of which the action is brought;

(e) In an action against a party who has removed or disposed of his property, or is about to do so, with intent to defraud his creditors;

(f) In an action against a party who does not reside and is not found in the Philippines, or on whom summons may be served by publication. [Emphasis supplied.]

Jurisprudence teaches us that the rule on the issuance of a writ of attachment must be construed strictly in favor of the defendant. Attachment, a harsh remedy, must be issued only on concrete and specific grounds and not on general averments merely quoting the words of the pertinent rules.[42] Thus, the applicant's affidavit must contain statements clearly showing that the ground relied upon for the attachment exists.

Section 1(b), Rule 57 of the Rules of Court, that PROVI relied upon, applies only where money or property has been embezzled or converted by a public officer, an officer of a corporation, or some other person who took advantage of his fiduciary position or who willfully violated his duty.

PROVI, in this case, never entrusted any money or property to TESDA. While the Contract Agreement is supported by a Certificate as to Availability of Funds (*Certificate*) issued by

[42] *Dy v. Enage*, G.R. No. L-3535, March 17, 1976, 670 SCRA 96.

the Chief of TESDA's Accounting Division, this Certificate does not automatically confer ownership over the funds to PROVI. Absent any actual disbursement, these funds form part of TESDA's public funds, and TESDA's failure to pay PROVI the amount stated in the Certificate cannot be construed as an act of fraudulent misapplication or embezzlement. In this regard, Section 86 of Presidential Decree No. 1445 (The Accounting Code) provides:

> Section 86. *Certificate showing appropriation to meet contract.* – Except in a case of a contract for personal service, for supplies for current consumption or to be carried in stock not exceeding the estimated consumption for three months, or banking transactions of government-owned or controlled banks, no contract involving the expenditure of public funds by any government agency shall be entered into or authorized unless the proper accounting official or the agency concerned shall have certified to the officer entering into the obligation that funds have been duly appropriated for the purpose and that the amount necessary to cover the proposed contract for the current fiscal year is available for expenditure on account thereof, subject to verification by the auditor concerned. The certification signed by the proper accounting official and the auditor who verified it, shall be attached to and become an integral part of the proposed contract, and **the sum so certified shall not thereafter be available for expenditure for any other purpose until the obligation of the government agency concerned under the contract is fully extinguished**. [Emphasis supplied.]

By law, therefore, the amount stated in the Certification should be intact and remains devoted to its purpose since its original appropriation. PROVI can rebut the presumption that necessarily arises from the cited provision only by evidence to the contrary. No such evidence has been adduced.

Section 1 (d), Rule 57 of the Rules of Court applies where a party is guilty of fraud in contracting a debt or incurring an obligation, or in concealing or disposing of the property for the taking, detention or conversion of which the action is brought. In *Wee v. Tankiansee*,[43] we held that for a writ of attachment to issue under this Rule, the applicant must sufficiently show

[43] G.R. No. 171124, February 13, 2008, 545 SCRA 263.

the factual circumstances of the alleged fraud because fraudulent intent cannot be inferred from the debtor's mere non-payment of the debt or failure to comply with his obligation. The affidavit, being the foundation of the writ, must contain particulars showing how the imputed fraud was committed for the court to decide whether or not to issue the writ. To reiterate, a writ of attachment can only be granted on concrete and specific grounds and not on general averments merely quoting the words of the rules.[44]

The affidavit filed by PROVI through Elmer Ramiro, its President and Chief Executive Officer, only contained a general allegation that TESDA had fraudulent misapplied or converted the amount of ₱10,975,000.00 that was allotted to it. Clearly, we cannot infer any finding of fraud from PROVI's vague assertion, and the CA correctly ruled that the lower court acted with grave abuse of discretion in granting the writ of attachment despite want of any valid ground for its issuance.

For all these reasons, we support the appellate court's conclusion that no valid ground exists to support the grant of the writ of attachment against TESDA. The CA's annulment and setting aside of the Orders of the RTC were therefore fully in order.

WHEREFORE, premises considered, we hereby *DENY* the petition filed by petitioner Professional Video, Inc., and AFFIRM the Court of Appeals' Decision dated July 23, 2002, and Resolution of September 27, 2002, in CA-G.R. SP No. 67599. Costs against the petitioner.

SO ORDERED.

Quisumbing (Chairperson), Ynares-Santiago, Chico-Nazario,*** and *Leonardo-de Castro,*** JJ.*, concur.

---

[44] *D.P. Lub Oil Marketing Center, Inc. v. Nicolas*, G.R. No. 76113, November 16, 1990, 191 SCRA 423.

* Designated additional member of the Second Division per Special Order No. 645 dated May 19, 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 .

SECOND DIVISION

[G.R. No. 158703. June 26, 2009]

TECHNOLOGICAL INSTITUTE OF THE PHILIPPINES TEACHERS and EMPLOYEES ORGANIZATION (TIPTEO) and its member MAGDALENA T. SALON, *petitioners, vs.* **THE HON. COURT OF APPEALS and TECHNOLOGICAL INSTITUTE OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; PROPER REMEDY TO ASSAIL THE DECISIONS OF THE VOLUNTARY ARBITRATOR; THE PETITION MUST CONTAIN A STATEMENT OF MATERIAL DATES; RATIONALE FOR THE REQUIREMENT; CASE AT BAR. — We clarify in this regard that the review the TIP filed with the appellate court was not a special civil action for *certiorari* under Rule 65 of the Rules of Court; it was an appeal to the CA through a petition for review under Rule 43. This is consistent with our ruling in *Luzon Development Bank v. Association of Luzon Development Bank Employees* that decisions of voluntary arbitrators or panel of voluntary arbitrators should be appealable to the CA. The CA correctly treated the petition of TIP as an appeal filed under Rule 43 which, parenthetically, also requires a statement of material dates in the petition. The rationale for the requirement is to enable the appellate court to determine whether the petition was filed within the period fixed in the rules. The CA reviewed the material dates contained in the petition and concluded that the petition "*was filed within the fifteen (15)-day period from receipt of the voluntary arbitrator's denial of its motion for reconsideration x x x*." Proceeding from this premise and in the exercise of the discretion granted it by the Rules in considering technical deficiencies, the CA concluded that the petition "*could be given due course.*" We respect the CA's exercise of its discretion as it was exercised within the limits allowed by the Rules; the material data on the filing of the petition are reflected in the petition. The CA was therefore properly guided in considering whether the petition had been

timely filed. Consequently, we declare that the CA committed no reversible error when it gave due course to the petition.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; DISMISSAL OF THE PETITIONER FOR UNAUTHORIZED SELLING OF EXAMINATION PAPERS, IN VIOLATION OF SCHOOL POLICIES, PROPER IN CASE AT BAR. — Salon never denied that she had charged her students the cost of their examination papers without the approval of the proper school authorities pursuant to Memorandums Nos. P-22 and P-66. The rationale behind the school policy of closely regulating the cost and sale of examination papers is to free the students from avoidable financial burdens, and to prevent the abuse of the use of printed examination papers by the teachers, as expressly stated in Memorandum No. P-22. It is of no moment that Salon kept within the price range set by the school for the cost per page of the examination paper. Her transgressions spring from her failure to secure prior approval of her use of photocopied exam papers, and of the attendant cost. These transgressions link up directly with the students' allegations that they had to return and could not write on the exam papers they paid for – a possible indicator of the intent to abuse. Salon's guilt is not erased or mitigated by her excuse that she had no choice but to secure reimbursement from the students for the cost of the examination papers that the school should provide but does not. The school does not deny that the teachers have to be reimbursed, but at the same time it imposes measures to avoid abuses. Unless there is a showing of patent unreasonableness (and we find none in this case), these measures have to be complied with. In saying this, we do not thereby indicate our approval of the school practice of not providing test papers as part of services to students covered by their matriculation fees. Tests are the traditional and the accepted mode of measuring students' performance and should be part and parcel of the basic services that a school should offer. Charging their costs to students at the time of the examination renders the students' capacity to take the examinations dependent on their finances at examination time. However, these are policy questions outside the scope of our present inquiry, as the substantive reasonableness of the school's policies and issuances is not a question directly before us, nor are these issuances patently unreasonable. Thus,

they do not enter the picture at all in the determination of Salon's guilt and penalty.

3. ID.; ID.; ID.; GRADE TAMPERING CONSTITUTES SERIOUS MISCONDUCT WHICH WARRANTS THE PENALTY OF DISMISSAL. — Salon admitted that she changed the grade of Manalo from one of "*failure*" (5.0) to "*dropped*" (6.0) at the behest of a colleague, the mother of Manalo, to save the son from being harmed by his father for his failing grade. Salon thought she was doing the family of Manalo a favor, but her act produced the opposite result because the father himself lodged a complaint against her for grade tampering; as suspected all along, the father was not satisfied with a grade of 6.0 for his son. As in the case of unauthorized selling of examination papers, Salon's guilt is not erased or mitigated by the fact that she meant well, or that she tried to rectify her indiscretion after realizing that she violated the grading system of the school. Two differences exist between the examination paper selling violation and the present one. *First*, her examination paper violation is largely a transgression *against* a school regulation. The present one *goes beyond* a school violation; it is a violation against the Manual of Regulation for Private Schools whose Section 79 provides: Sec. 79. Basis for Grading. The final grade or rating given to a pupil or student in a subject should be based on his scholastic record. Any addition or diminution to the grade x x x shall not be allowed. *Second*, the present violation involves elements of falsification and dishonesty. Knowing fully what Manalo deserved, Salon gave him a grade of 6.0 instead of a failing grade. In the process, she changed – in short, falsified – her own records by changing the submitted record and the supporting documents. Viewed in any light, this is Serious Misconduct under Article 282(a) of the Labor Code, and a just cause for termination of employment.

4. ID.; ID.; ID.; STATUTORY DUE PROCESS REQUIREMENT; COMPLIED WITH IN CASE AT BAR. — Salon was given the opportunity to show cause why she should not be dismissed. *First*, in a Memorandum dated October 30, 2003 issued by Ms. Royer, Assistant Faculty Coordinator of the HSSD, Salon was asked to explain why no disciplinary action should be taken against her for "*selling photocopied examination papers*." She was also furnished a copy of the complaint of the father of Manalo regarding her "*tampering*" the grade of Manalo.

Salon submitted her explanations to the two documents consisting of (a) her letter dated October 31, 2004 addressed to Ms. Royer, where she admitted photocopying the examination papers and charging her students ₱0.50 a page; and (b) her letter dated November 14, 2000 addressed to TIP President Dr. Teresita U. Quirino, where she admitted changing the grade of Manalo. *Second*. An investigation was conducted by a committee created by the TIP, which submitted a report/ recommendation dated November 20, 2000, confirming the unauthorized selling of examination papers and the tampering of the grade of Manalo. The committee recommended Salon's dismissal. *Third.* In a memorandum dated December 4, 2000, Dr. Quirino advised Salon that her position as Faculty Member is terminated effective 30 days from receipt of the memorandum. This was her notice of termination – the 2nd notice that statutory due process requires in a dismissal situation. Thus, not only was Salon notified in writing about the charges against her, she was given a reasonable opportunity to explain her side; she was also called to an investigation where, again, she had the opportunity to explain why she should not be dismissed. She was only dismissed after the conclusion of the investigation and after she had been given a second notice in writing that she was being terminated as a faculty member of the school. In short, she has nothing to complain about in terms of the process she underwent that led to her dismissal.

5. ID.; ID.; ID.; PENALTY OF DISMISSAL WARRANTED FOR VIOLATION OF SCHOOL POLICIES, AND FOR SERIOUS MISCONDUCT, FOR GRADE TAMPERING AND VIOLATION OF THE GRADING RULES UNDER THE MANUAL OF REGULATIONS FOR PRIVATE SCHOOLS. — In the same breath that she justifies her actions, Salon entreats this Court to impose on her a penalty less harsh than dismissal if she will be held accountable for her misdeeds. She points out in this regard that it was the first time that she was charged of an offense, and that she had been with the school for more than ten (10) years already, and there was no bad faith or malicious intention on her part. We do not find these entreaties sufficiently compelling or convincing as Salon is no ordinary employee. She is a teacher from whom a lot is expected; she is expected to be an exemplar of uprightness, integrity and decency, not only in the school, but also in the larger community. She is a role model for her students; in fact, as she claims, she stands

in *loco parenti* to them. She is looked up to and is accorded genuine respect by almost everyone as a person tasked with the heavy responsibility of molding and guiding the young into what they should be – productive and law-abiding citizens. What Salon committed is a corrupt act, no less, that we cannot allow to pass without giving a wrong signal to all who look up to teachers, and to this Court, as the models who should lead the way and set the example in fostering a culture of uprightness among the young and in the larger community. From the personal perspective, Salon demonstrated, through her infractions, that she is not fit to continue undertaking the serious task and the heavy responsibility of a teacher. She failed in a teacher's most basic task – in honestly rating the performance of students. Her failings lost her the trust and confidence of her employer, and even of her students. Under the circumstances, our conclusion can only be for Salon's dismissal for two counts of valid causes – *i.e.*, for serious violation of TIP's Memorandum No. P-66, for unauthorized selling of examination papers, and for serious misconduct, for falsifying Manalo's grade and violating the grading rules under the Manual of Regulations for Private Schools.

6. ID.; ID.; ID.; SEPARATION PAY; CAN ONLY BE AWARDED WHERE THE CAUSE FOR DISMISSAL IS NOT SERIOUS MISCONDUCT OR A CAUSE REFLECTING ON THE EMPLOYEE'S MORAL CHARACTER. — The affirmation of the penalties the CA imposed brings into focus the appellate court's award of separation pay in consideration of her more than 10 years of service with TIP. Given the finding of guilt and the penalty imposed, no basis exists to support and justify this award. No court, not even this Court, can make an award that is not based on law. Neither can this award be justified even if viewed as a discretionary financial assistance, since this kind of award can be imposed only where the cause for dismissal is not serious misconduct or a cause reflecting on the employee's moral character. The dismissal we affirm is precisely for serious misconduct. The causes cited reflect as well on Salon's moral character. Hence, we delete any award of separation pay/financial assistance that the appellate court decreed.

APPEARANCES OF COUNSEL

H.O. Victoria and Associates Law Offices for petitioners.
Maritonie Renee D. Resurreccion for private respondent.

D E C I S I O N

BRION, *J.*:

Before this Court is the petition for review on *certiorari*[1] challenging the Amended Decision dated May 22, 2003 of the Court of Appeals (*CA*) in the case *Technological Institute of the Philippines v. Technological Institute of the Philippines Teachers and Employees Organization*, CA G.R. SP No. 66896.[2]

THE FACTUAL BACKGROUND

The facts of the case, set out in the original CA decision promulgated on November 20, 2002,[3] are summarized below.

Petitioner Magdalena T. Salon (*Salon*) was a College Instructor 3 of the Humanities and Social Science Department (*HSSD*) of respondent Technological Institute of the Philippines (*TIP*) and a member of the Technological Institute of the Philippines Teachers and Employees Organization (*TIPTEO*). She commenced employment with the TIP on June 13, 1989.

On October 24, 2000, the TIP received complaints from students claiming that Salon was collecting *₱1.50 per page* for the test paper used in the subject she was teaching at the time. She reportedly asked her students not to write on the test papers; these test papers were not returned to the students after the test. An allegation was made, too, that Salon committed an anomaly in the grading of her students.

---

[1] Filed pursuant to Rule 45 of the Rules of Court; *rollo*, pp. 3-48.

[2] CA G.R. SP No. 66896; penned by Associate Justice Eloy R. Bello, Jr.,with Associate Justice Cancio C. Garcia (retired member of this Court) and Associate Justice Sergio L. Pestaño, concurring; *id.*, pp. 49-52.

[3] *Id.*, pp. 69-75, Annex "H", Petition.

Acting on the written complaints, the TIP – through Ms. Josephine Royer (*Ms. Royer*), the school's Assistant Faculty Coordinator – sent Salon a memorandum dated October 30, 2000 asking her to explain within 72 hours why she should not be disciplined on the basis of the complaints.[4]

Salon answered the charges on October 31, 2000.[5] She explained that she collected only ₱0.50 for each page of the test papers, which sum she spent in photocopying the papers; the amount collected was within the limits the school had set. She admitted that she asked her students not to write on the test papers because there was no space on these papers where they could write their answers; it would be preferable to use the test booklets also provided to the students.

On the alleged grade manipulation, Salon explained that the incident involved the son of a fellow faculty member who actually failed her subject. Her fellow faculty member and mother of the student, upon learning of her son's failing grade, tried to persuade Salon to give her son a passing grade for fear that the father, if he learned of the failing mark, would harm his son. Salon claimed that she did not accede to the request; she gave the student a grade of 6.0 or *"dropped"* instead of giving him a grade of 5.0 or *"failed."*

The TIP created a three-man committee to conduct a formal investigation of the charges.[6] The committee called a hearing on November 16, 2000 and issued the following findings:[7]

> Recommendation:
>
> 1. Evidences (sic) show that Ms. M.T. Salon has changed the grade of Mr. Joseph Florante Manalo. She disregarded the TIP grading system when she gave a grade of 6.0 (officially dropped) inspite of the class performance records. She admitted that the grade is 5.0 (failed) but made it 6.0

[4] *Id.*, p. 134.

[5] *Id.*, pp. 135-136.

[6] *Id.*, p. 139.

[7] *Id.*, p. 143.

(officially dropped) which according to her is 'lesser degree of failure' because Mr. Joseph Florante Manalo, is the son of a co-faculty, Mrs. Elma Manalo in HSSD. She also changed the entry in the class record. The class record was already submitted to TIP so that this is already a TIP document.

2. With regards to the printed test questionnaires, Mrs. M.T. Salon has violated Memorandum No. P-66 SY 1992-1993 by not getting the approval of the department officer. It is unauthorized selling which the General Disciplinary Sanctions (Memorandum No. P-2 s. 1999-2000) classifies as a GRAVE offense.

3. The committee recommends the application of the corresponding sanction as contained in the General Disciplinary Sanctions (Memo No. P-3 s. 1999-2000) which is dismissal.

4. The recommendation shall take effect only after the approval of the President.

On December 4, 2000, the office of TIP President Dr. Teresita U. Quirino notified Salon of the termination of her service as member of the faculty of HSSD effective thirty (30) days from receipt of the notice.[8] The dismissal was based on the investigation committee's recommendations.

Salon sought assistance from TIPTEO which then requested the TIP that a joint grievance investigation be conducted to take up her dismissal. The TIP denied the request arguing that Salon's dismissal was not proper for the grievance machinery because the ground for dismissal was a violation of the school's rules and regulations.

Faced with this denial, TIPTEO opted to file a complaint for illegal dismissal with the National Conciliation and Mediation Board (*NCMB*) in the National Capital Region. At the NCMB, the parties agreed to submit the dispute to Voluntary Arbitrator Alfonso C. Atienza for voluntary arbitration.

---

[8] *Id.,* p. 144.

On July 14, 2001, the voluntary arbitrator rendered an award in Salon's favor.[9] The arbitrator ruled that Salon was dismissed without a valid cause and without due process. He found that the school was unable to prove by substantial evidence that Salon committed the acts charged. At the most, the arbitrator concluded that the TIP only proved that there was no permission, written or verbal, before Salon prepared and sold the test papers to her students. On the due process issue, the arbitrator found that Salon was not afforded an opportunity for a real investigation because she was denied the right to counsel; neither was she afforded the right to a hearing under the grievance procedure of the CBA and under the Labor Code.

The voluntary arbitrator ordered the TIP to reinstate Salon as College Instructor 3 with full backwages, but suspended her for one month "*for not getting a written permission from responsible officials of the school in charging students with the cost of examination papers*."

The TIP sought the reconsideration of the award, but the voluntary arbitrator denied the motion on September 16, 2001. The TIP thereupon elevated the case to the CA through a petition for review. In a decision promulgated on November 20, 2002, the appellate court affirmed the voluntary arbitration award resulting in the dismissal of the petition.[10] The appellate court agreed with the voluntary arbitrator that nothing in the TIP rules warrants the dismissal of a faculty member for selling examination papers without the school's written permission. It was not convinced that the infraction committed by Salon is a grave offense referred to in Memorandum No. P-25 s. 2000-2001 that the TIP cited as justification for the dismissal of Salon.[11] The relevant portion of this memorandum reads:

1. In line with the school's thrust to provide quality education and service to its students, a photocopy center is created with the major task of servicing students on their handout requirements.

[9] *Id.*, pp. 60-68.

[10] *Supra* note 3.

[11] *Rollo*, pp. 53-57.

x x x x x x x x x

4. Please discuss these to your respective faculty members on one of your department meetings.

x x x x x x x x x

4.1 Explain to them the objectives for the creation of said photocopy center. Emphasize to them that they are not authorized to sell instructional materials, and to do so is a grave offense. Explain further that this is one of the reasons why the center is being formed.

x x x x x x x x x

4.2 Make clear to them that services of the photocopy center shall be limited to required handouts and instructional materials assigned by faculty members and will not include other photocopy needs of the student.

The CA ruled that examination papers do not fall within the term "*instructional materials*" that the memorandum covers; the memorandum only covers handouts and instructional materials needed by students and assigned by their teachers. The CA explained that from their nature and use, handouts and instructional materials are entirely different from examination papers; instructional materials are used to present and convey lessons to the students; whereas, examination papers measure the students' degree of comprehension of their lessons.

On a related matter, the CA held that if Salon committed an infraction, it should be limited to the fact that she did not ask the Faculty Coordinator and the Department Head to determine the cost of the papers which she disseminated among her students, as required under paragraph 4 of Memorandum No. P-22 s. 1988-1989.[12] Additionally, the CA held that Salon could be cited for tampering with the grade of her student Joseph Florante Manalo (*Manalo*) – a violation of the TIP grading policy.

Undeterred, the TIP moved for the reconsideration of the CA decision. The CA granted the motion and handed down the now

[12] *Id.*, p. 58.

assailed amended decision on May 22, 2003.[13] It examined the facts for the second time and concluded that it erred in excluding examination papers from the ambit of the term "*instructional materials*." It reasoned out that "examination papers play as much, maybe even more importance in the determination of a student's aptitude than any kind of instructional material x x x to exclude examination papers from the perimeters of the term 'instructional materials' would amount to an incongruity." The CA also faulted Salon for changing the grade of Manalo from 5.0 (failed) to 6.0 (officially dropped) after the grades had been submitted.

For the reason that the infractions committed by Salon "*were unrefuted and proven*," the CA found basis for the TIP's decision to dismiss her for the commission of a grave offense. This notwithstanding, the appellate court deemed it "*in accord with justice and equity to award her separation pay*," in consideration of Salon's more than ten (10) years of service to TIP and because she had not previously been involved in any similar act or one that warrants a heavier penalty.

Accordingly, the CA annulled its decision dated November 20, 2002[14] as well as that of the Voluntary Arbitrator dated July 14, 2001.[15] It declared that Salon was dismissed for a valid cause, but awarded her separation pay at one month's basic salary for every year of service. From this decision, Salon and TIPTEO (now represented by the present counsel upon the demise of Mr. Antonio Diaz who had assisted her [Salon] from the beginning) now come before this Court to challenge the amended CA decision.

THE PETITION

The petition submits that the CA erred:

1. In ruling that Salon was dismissed for a valid cause.
2. In not finding that Salon was denied procedural due process.

---

[13] *Supra* note 2.

[14] *Supra* note 3.

[15] *Supra* note 9.

3. In not dismissing the petition outright despite its failure to attach a certified statement of material dates in violation of Section 3, Rule 46 in relation to Rule 65 of the Rules of Court, and Revised Circular No. 1-88.

On the first ground, Salon and her union bewail the CA's shifting appreciation of the nature of test/examination papers, from "*non-instructional*" material to "*instructional*" material relying on the same policy document of the school, Memorandum No. P-25 s. 2000-2001.[16] They contend that the appellate court's change of mind was not supported by any authority. Citing the dictionary definition[17] of "*instructional*" and "*test*," they argue that "*instructional material*" and "*test papers*" are two different things; "*test*" is "*a series of questions, problems, etc., intended to measure the extent of knowledge, aptitudes, intelligence, and other mental traits*"; "*instructional*" is an adjective which means "*pertaining or relating to instruction; educational; containing information*."

Further, petitioners posit that it is incorrect to conclude that Salon is guilty of selling photocopied test questionnaires to her students; she was not selling but merely securing reimbursement for the personal expenses she incurred in the preparation of the test papers. Salon cited as authority Memorandum No. P-22 s. 1988-1989,[18] which expressly set guidelines for the cost of stenciled examination papers, ₱0.40 for newsprint, and ₱0.60 for whitewove paper.

Charging the students for the examination papers could have been avoided according to Salon had TIP performed its obligation of providing test and examination papers to the students; faculty members, who are not allowed to use school computers and typewriters in the preparation of the materials, had to type and photocopy the examination papers at their own expense and for which they had to seek reimbursement.

---

[16] *Supra* note 11.

[17] The New International Webster Comprehensive Dictionary of the English Language, Encyclopedic Edition (1998), p. 1298

[18] *Supra* note 12.

On the violation of the school's grading system, Salon submits that she did it for a noble intention; she changed the grade of Manalo – the son of a fellow faculty member – from a failing mark of 5.0 to a grade of 6.0 (dropped) to lessen the impact of the student's mother's guilt and to keep the student from being punished by his father, as she explained in her letter dated November 14, 2000 to TIP President Dr. Teresita Quirino.[19]

Salon claims that when she realized that she violated the TIP's grading system, she consciously tried to rectify her error; on October 20, 2000, during the submission and re-checking of her grading sheets, she asked the permission of Ms. Royer to use the Arlegui computer room to correct the grade of Manalo, but Ms. Royer directed her to defer the correction until the date set by the Registrar's Office for the final audit of grades; the scheduled date, however, was overtaken by her dismissal from her teaching post. She submits that there was no malice in what she did or an intent to violate the school's grading system; at the very least, she committed an error in judgment that does not warrant the harsh penalty of dismissal; her dismissal would violate the constitutional guaranty of security of tenure.

On the due process issue, Salon points out that the investigation of the charges against her was a "hoax"; no genuine investigation took place as she stated in her affidavit dated June 27, 2001;[20] the investigation was merely a gripe session where the complaining students hurled a barrage of malicious allegations against her; she was not afforded an opportunity to defend herself and to be represented by counsel of her own choice or a representative from the union. Salon further submits that the TIP failed to comply with the two-notice requirement before she was terminated from employment – (1) a first notice apprising her of the particular acts or omission for which she was being dismissed, and (2) a second notice informing her of the school's decision to dismiss her. She contends that the first notice issued by the TIP merely directed her to submit her explanation regarding the "*selling of*

---

[19] *Rollo*, pp. 76-77.

[20] *Id.*, pp. 78-79.

photocopied examination," and did not inform her that this was a ground for dismissal.

In her third assignment of error, Salon faults the CA for not dismissing the TIP's petition outright for its failure to attach a certified statement of material dates in violation of Section 3, Rule 46 in relation with Rule 65 of the Rules of Court and Revised Circular No. 1-88. She submits that a perusal of the TIP's petition for review, dated October 1, 2001,[21] reveals that there was no verified statement of material dates accompanying the petition – a defect which cannot be cured by the incorporation of material dates in the body of the petition.

Petitioners pray that the CA's amended petition be set aside; that Salon's dismissal be declared illegal; and that she be reinstated with full backwages.

THE CASE FOR TIP

The TIP's Comment dated September 5, 2003[22] and Memorandum dated March 25, 2002[23] commonly justify Salon's dismissal on grounds of: (1) tampering or falsifying the grade of a student, which is a serious misconduct and an act of dishonesty and, (2) selling of test papers without the approval of the school, which is a grave offense under the Manual of Regulations for Private Schools and TIP's general disciplinary sanctions.[24]

On the first infraction, the TIP laments that the Voluntary Arbitrator ignored Salon's involvement in the incident on the excuse that the complaint was not notarized. The TIP brushes aside the technical deficiency and focuses on the substance of the offense charged – that Salon admitted that she changed the grade of her student Manalo from a failing grade of 5.0 to a mark of 6.0, which means that the student did not fail, but

---

[21] *Id.*, pp. 80-92.

[22] *Id.*, pp. 108-131.

[23] *Id.*, pp. 252-277.

[24] *Id.*, p. 118; TIP's Comment, p. 11.

"*officially dropped*" the subject; the act constituted tampering, a violation not only of the school's explicit rules and regulations, but also of the Manual of Regulations for Private Schools; the alteration of the grade of her student constituted serious misconduct in relation with the performance of Salon's duties that rendered her unfit to continue working for the school; it was also an act of dishonesty, a clear disregard of her duty to serve as an example to her students and to others. While Salon claimed that she did it with the noble intention of giving the student a lesser degree of failure, it was a clear falsification of student records, which is a valid ground for termination of employment under the Manual.

Regarding the charge of selling test questionnaires without approval, TIP again relies on the results of the investigation undertaken by a committee created for the purpose. The committee found Salon to have violated Memorandum No. P-66 s. 1992-1993,[25] which provides among others:

> 1.0 All faculty members are reminded that
>
> x x x x x x x x x
>
> 1.3 Faculty members who intend to use mimeographed or photocopied test questionnaires should first refer these to their respective department officers. If approved, they should not sell these more than the cost of the prevailing price of photocopies which are between 0.25 to .035 centavos per page.
>
> x x x x x x x x x
>
> 2.0 Any faculty member violating the school's policies will be subject to disciplinary action, either suspension or dismissal depending on the gravity of the offense.

TIP contends that Salon did not ask for the approval of the school on her selling and costing of the test questionnaires, an offense classified as grave under the general disciplinary sanctions of the school, or Memorandum No. P-3 s. 1999-2000, the penalty for which is dismissal. It further contends that in an attempt to

---

[25] *Id.*, pp. 123-124, pp. 16-17, last par.

justify her acts, Salon cited Memorandum No. P-22, s. 1988-1989 regulating the selling of mimeographed examinations, which it argues cannot prevail over a subsequent issuance, Memorandum No. P-66 s. 1992-1993 and Memorandum No. P-25 s. 2000-2001, which set guidelines for the use of the photocopy center, not acts of teachers. It explains that under the two memoranda, the selling of test papers without authorization from school authorities is a prohibited act.

Also, the school takes exception to Salon's reliance on Memorandum No. P-25 s. 2000-2001[26] on the use of the photocopy center, especially on her claim that the test questionnaire is not an instructional material and, therefore, can be sold to students. It faults the voluntary arbitrator for his shortsighted appreciation of the case; the recommendation of the investigating committee clearly reflected that the rule violated was Memorandum No. P-66 s. 1992-1993.[27] This notwithstanding, the TIP argues that Memorandum No. P-25 s. 2000-2001 and Memorandum No. P-22 s. 1988-1989 must be viewed in relation with the prohibition under Section 94 of the Manual of Regulations for Private Schools against any form of collections from students.[28] It thus posits that the question of whether "*test questionnaires*" are instructional materials becomes irrelevant since the prohibited act is the selling or collecting of contributions without the approval of the school. It is quick to add, however, that the CA is correct in classifying examination papers as "*instructional materials*."

On the issue of due process, the TIP claims that it duly notified Salon of the charges against her consisting of (1) her having collected money from her students for test papers without the approval of the school, and (2) the complaint of the father of the tampering of the grade of his son (Manalo). The school asked Salon to submit her written answer to the charges against her. She was also given the opportunity to explain her side at

---

[26] *Supra* note 11.

[27] *Supra* note 25.

[28] *Rollo*, p. 119; TIP's Comment, p. 12, last par.

the investigation hearing. Thereafter, she was given the required notice of termination.

On Salon's third assignment of error, the TIP submits that the petition for review it filed with the CA complied with the requirement on statement of material dates under the Rules of Court.[29] It disputes Salon's argument that it is not sufficient to state the material dates in the body of the petition and that a separate verified statement must be attached. It maintains that a perusal of the specific applicable rule shows that the statement of material dates in a petition for review under Rule 43 need not be in a separate attachment under oath.[30]

The TIP then points out that the petition filed with the CA states that the school received the decision of the voluntary arbitrator dated July 14, 2001 on August 10, 2001; on August 16, 2001, it moved for reconsideration of the voluntary arbitration award, and received on September 17, 2001 the order dated September 6, 2001, denying the motion for reconsideration. It explains that with the verification/certification under oath that "*all allegations in the petition for review are true and correct*," the statements of material dates made on pages 1 and 4 of the petition are therefore verified or certified under oath. The CA thus held that since a review of the material dates revealed that the petition was filed within the fifteen-day period from petitioner TIPTEO's receipt of the voluntary arbitrators' denial of its motion for reconsideration, the petition could be given due course.[31]

The TIP lastly contends that under the Court's Revised Circular No. 1-88[32] that Salon cited, the dismissal of a case where there is no verified statement of material dates is at the

---

[29] Section 6, Rule 43.

[30] *Id*.

[31] *Rollo*, pp. 72-73; Decision promulgated on November 20, 2002, pp. 4-5.

[32] Implementing Section 12, Art XVIII of the 1987 Constitution and Complementing Administrative Circular No. 1 of January 28, 1988 on Expediting Disposition of Cases Pending in the Supreme Court.

discretion of the court. It then concludes with the statement that it has been held in a number of cases that rules on technicalities are adopted to serve justice and equity, and not to hamper them.

THE COURT'S DECISION

We resolve to **DENY** the petition for lack of merit.

The Procedural Issue

We first resolve the procedural question raised – the alleged failure of TIP to attach a verified statement of the material dates to its petition with the CA, as required by the Rules of Court[33] and Supreme Court Revised Circular No. 1-88.[34]

We clarify in this regard that the review the TIP filed with the appellate court was not a special civil action for *certiorari* under Rule 65 of the Rules of Court; it was an appeal to the CA through a petition for review under Rule 43. This is consistent with our ruling in *Luzon Development Bank v. Association of Luzon Development Bank Employees*[35] that decisions of voluntary arbitrators or panel of voluntary arbitrators should be appealable to the CA. The CA correctly treated the petition of TIP as an appeal filed under Rule 43 which, parenthetically, also requires a statement of material dates in the petition.[36] The rationale for the requirement is to enable the appellate court to determine whether the petition was filed within the period fixed in the rules.[37]

The CA reviewed the material dates contained in the petition and concluded that the petition "*was filed within the fifteen (15)-day period from receipt of the voluntary arbitrator's denial of its motion for reconsideration x x x*." Proceeding from this premise and in the exercise of the discretion granted it by the Rules in considering technical deficiencies, the CA concluded

---

[33] *Supra* note 29.

[34] *Supra* note 32.

[35] G.R. No. 120319, October 6, 1995, 249 SCRA 162.

[36] *Supra* note 33.

[37] *Id.*, last sentence.

that the petition "*could be given due course.*"[38] We respect the CA's exercise of its discretion as it was exercised within the limits allowed by the Rules; the material data on the filing of the petition are reflected in the petition. The CA was therefore properly guided in considering whether the petition had been timely filed. Consequently, we declare that the CA committed no reversible error when it gave due course to the petition.

The Substantive Issues

a. The Sale of Papers

The first substantive issue is on the sale of test papers to students. We find it unfortunate that the tribunals below failed to recognize the appropriate TIP rule that should govern the situation. Thus, Memorandums Nos. P-22, P-25, and P-66 have all been invoked. To clear the air, Memorandum No. P-22 is an issuance on August 4, 1988 on the subject: Mimeographed Examinations whose relevant terms provide:[39]

> There have been complaints received by this office that a number of teachers have been abusing the use of printed test materials to the detriment of the students:
>
> 1. A certain teacher uses the same printed matter in all of his classes and charges each student ₱1.00. This printed test material is only one page.
>
> 2. Some teachers are having printed examinations for which they charge the students exhorbitantly.
>
> x x x x x x x x x
>
> To correct these practices we have several suggestions:
>
> x x x x x x x x x
>
> 3. Faculty members who have no other recourse but to print their examinations should ask for the permission of their Faculty Coordinator, Department Head or Dean before they sell such examination papers to students.

---

[38] *Supra* note 31.

[39] *Supra* note 12.

> 4. The cost of the stenciled examination paper should be determined by the Faculty Coordinator, Department Head and Dean by presenting the official receipts or the cost of printing. More or less, the cost per page should be for Newsprint paper – ₱0.40 and Whitewove paper – ₱0.60.
>
> For your guidance and strict compliance effective this semester SY 1988-89.

We quote this Memorandum in full because it indicates the concern that the school sought to address in coming out with a regulation, which concern is exactly the cause for the students' complaints. The Memorandum stresses, too, that an approval process had been in place as early as 1989.

Memorandum No. P-25 issued in 2000-2001 is on the subject of PHOTOCOPY CENTER, "created with the major task of servicing students on their handout requirements" and "shall be limited to required handout instructional materials assigned by faculty members and *will not include other photocopy needs of the students*."[40] Apparently, this Memorandum addresses its own objectionable practice and is very specific on the concern it addresses – handout instructional materials.

Memorandum No. P-66 issued on April 23, 1993 is on the subject of "UNAUTHORIZED BOOKBINDING OF REPORTS AND PROJECTS, MIMEOGRAPHING OR PHOTOCOPYING OF TEST QUESTIONNAIRES, HANDOUTS, OR ANY PRINTED MATERIAL." Significantly, this Memorandum specifically provides that "Faculty members who intend to use mimeographed or photocopied test questionnaires should first refer these to their respective department officers. If approved, they should not sell these more than the cost of the prevailing price of photocopies which are between ₱0.25 to ₱0.35 centavos per page. x x x 2. *Any faculty member found violating the school's policies shall be subject to disciplinary action, either suspension or dismissal, depending on the gravity of the offense*."

Under these regulatory measures, it appears clearly that Memorandum No. P-22, while specifically on the subject of

[40] *Supra* note 11.

Mimeographed Examinations, is not the current TIP issuance on the matter. Memorandum No. P-66 is the latest issuance and the one that specifies the requirements and penalizes violations. On the other hand, Memorandum No. P-25 appears to be an issuance with little relevance on the present dispute because it deals with instructional materials and by its own terms does not cover "other photocopy needs of the students." An additional reason for its irrelevance, of course, is the existence of at least two issuances that deal specifically with examination papers.

Salon never denied that she had charged her students the cost of their examination papers without the approval of the proper school authorities pursuant to Memorandums Nos. P-22 and P-66. The rationale behind the school policy of closely regulating the cost and sale of examination papers is to free the students from avoidable financial burdens, and to prevent the abuse of the use of printed examination papers by the teachers, as expressly stated in Memorandum No. P-22. It is of no moment that Salon kept within the price range set by the school for the cost per page of the examination paper. Her transgressions spring from her failure to secure prior approval of her use of photocopied exam papers, and of the attendant cost. These transgressions link up directly with the students' allegations that they had to return and could not write on the exam papers they paid for – a possible indicator of the intent to abuse.[41]

Salon's guilt is not erased or mitigated by her excuse that she had no choice but to secure reimbursement from the students for the cost of the examination papers that the school should provide but does not. The school does not deny that the teachers have to be reimbursed, but at the same time it imposes measures to avoid abuses. Unless there is a showing of patent unreasonableness (and we find none in this case), these measures have to be complied with. In saying this, we do not thereby indicate our approval of the school practice of not providing test papers as part of services to students covered by their matriculation fees. Tests are the traditional and the accepted mode of measuring students' performance and should be part and parcel of the basic services that a school should offer. Charging their costs to students at the time of the

[41] *Supra* note 4, p. 2.

examination renders the students' capacity to take the examinations dependent on their finances at examination time. However, these are policy questions outside the scope of our present inquiry, as the substantive reasonableness of the school's policies and issuances is not a question directly before us, nor are these issuances patently unreasonable. Thus, they do not enter the picture at all in the determination of Salon's guilt and penalty.

b. Grade Tampering

Salon admitted that she changed the grade of Manalo from one of "*failure*" (5.0) to "*dropped*" (6.0) at the behest of a colleague, the mother of Manalo, to save the son from being harmed by his father for his failing grade. Salon thought she was doing the family of Manalo a favor, but her act produced the opposite result because the father himself lodged a complaint against her for grade tampering;[42] as suspected all along, the father was not satisfied with a grade of 6.0 for his son.

As in the case of unauthorized selling of examination papers, Salon's guilt is not erased or mitigated by the fact that she meant well, or that she tried to rectify her indiscretion after realizing that she violated the grading system of the school.[43] Two differences exist between the examination paper selling violation and the present one. *First*, her examination paper violation is largely a transgression *against* a school regulation. The present one *goes beyond* a school violation; it is a violation against the Manual of Regulation for Private Schools whose Section 79 provides: [44]

> Sec. 79. Basis for Grading. The final grade or rating given to a pupil or student in a subject should be based on his scholastic record. Any addition or diminution to the grade x x x shall not be allowed.

Second, the present violation involves elements of falsification and dishonesty. Knowing fully what Manalo deserved, Salon gave him a grade of 6.0 instead of a failing grade. In the process,

---

[42] *Supra* note 19.

[43] *Rollo*, p. 78, Salon's affidavit, last paragraph.

[44] DECS Order No. 92, Series of 1992.

she changed – in short, falsified – her own records by changing the submitted record and the supporting documents. Viewed in any light, this is Serious Misconduct under Article 282(a) of the Labor Code, and a just cause for termination of employment.

Be that as it may, the mother of Manalo, being a teacher herself, should have been questioned or investigated for urging Salon to give her son a passing grade. What Mrs. Manalo did was in itself highly irregular and should have been subjected to disciplinary action, in the interest of fairness.

The Due Process Issue

Salon claims that her right to due process was violated because her investigation was a "hoax,"[45] a gripe session where the complaining students were allowed to engage in a spontaneous barrage of malicious allegations against her, and where she was not afforded an opportunity to defend herself and to be represented by a counsel of her own choice or by a union representation. She adds that she was not given any notice before her termination.

The records of the case belie these claims.

Salon was given the opportunity to show cause why she should not be dismissed. *First*, in a Memorandum dated October 30, 2003[46] issued by Ms. Royer, Assistant Faculty Coordinator of the HSSD, Salon was asked to explain why no disciplinary action should be taken against her for "*selling photocopied examination papers*." She was also furnished a copy of the complaint of the father of Manalo regarding her "*tampering*" the grade of Manalo.[47] Salon submitted her explanations to the two documents consisting of (a) her letter dated October 31, 2004 addressed to Ms. Royer, where she admitted photocopying the examination papers and charging her students ₱0.50 a page;[48] and (b) her letter dated November 14, 2000 addressed to TIP President

---

[45] *Id.*, p. 78; Petition; Annex "5".

[46] *Supra* note 4, p. 2.

[47] *Rollo*, p. 143, TIP's Comment, Annex "2".

[48] *Supra* note 5.

Dr. Teresita U. Quirino, where she admitted changing the grade of Manalo.[49]

Second. An investigation was conducted by a committee created by the TIP, which submitted a report/recommendation dated November 20, 2000, confirming the unauthorized selling of examination papers and the tampering of the grade of Manalo. The committee recommended Salon's dismissal.[50]

Third. In a memorandum dated December 4, 2000,[51] Dr. Quirino advised Salon that her position as Faculty Member is terminated effective 30 days from receipt of the memorandum.[52] This was her notice of termination – the 2nd notice that statutory due process requires in a dismissal situation.

Thus, not only was Salon notified in writing about the charges against her, she was given a reasonable opportunity to explain her side; she was also called to an investigation where, again, she had the opportunity to explain why she should not be dismissed. She was only dismissed after the conclusion of the investigation and after she had been given a second notice in writing that she was being terminated as a faculty member of the school. In short, she has nothing to complain about in terms of the process she underwent that led to her dismissal.

The Penalty

In the same breath that she justifies her actions, Salon entreats this Court to impose on her a penalty less harsh than dismissal if she will be held accountable for her misdeeds.[53] She points out in this regard that it was the first time that she was charged of an offense, and that she had been with the school for more than ten (10) years already, and there was no bad faith or malicious intention on her part.[54]

---

[49] *Supra* note 19.

[50] *Supra* note 7.

[51] *Supra* note 8.

[52] *Id*.

[53] *Rollo*, p. 26; Petition, par. 36.

[54] *Id*.

We do not find these entreaties sufficiently compelling or convincing as Salon is no ordinary employee. She is a teacher from whom a lot is expected; she is expected to be an exemplar of uprightness, integrity and decency, not only in the school, but also in the larger community. She is a role model for her students; in fact, as she claims, she stands in *loco parenti* to them. She is looked up to and is accorded genuine respect by almost everyone as a person tasked with the heavy responsibility of molding and guiding the young into what they should be – productive and law-abiding citizens.

What Salon committed is a corrupt act, no less, that we cannot allow to pass without giving a wrong signal to all who look up to teachers, and to this Court, as the models who should lead the way and set the example in fostering a culture of uprightness among the young and in the larger community. From the personal perspective, Salon demonstrated, through her infractions, that she is not fit to continue undertaking the serious task and the heavy responsibility of a teacher. She failed in a teacher's most basic task – in honestly rating the performance of students. Her failings lost her the trust and confidence of her employer, and even of her students.

Under the circumstances, our conclusion can only be for Salon's dismissal for two counts of valid causes – *i.e.*, for serious violation of TIP's Memorandum No. P-66, for unauthorized selling of examination papers, and for serious misconduct, for falsifying Manalo's grade and violating the grading rules under the Manual of Regulations for Private Schools.

The affirmation of the penalties the CA imposed brings into focus the appellate court's award of saparation pay in consideration of her more than 10 years of service with TIP.[55] Given the finding of guilt and the penalty imposed, no basis exists to support and justify this award. No court, not even this Court, can make an award that is not based on law.[56] Neither can this award be justified even if viewed as a discretionary financial assistance,

---

[55] *Id.*, p. 51; CA Amended Decision, p.3.

[56] PHILIPPINE CONSTITUTION, Article VIII, Section 14.

since this kind of award can be imposed only where the cause for dismissal is not serious misconduct or a cause reflecting on the employee's moral character.[57] The dismissal we affirm is precisely for serious misconduct. The causes cited reflect as well on salon's moral character. Hence, we delete any award of separation pay/financial assistance that the appellate court decreed.

WHEREFORE, premises considered, we hereby *DENY* the petition for lack of merit. We hereby *AFFIRM* the amended decision of the Court of Appeals promulgated on May 22, 2003, but *DELETE* the award of separation pay. Costs against the petitioners.

SO ORDERED.

Quisumbing (Chairperson), Ynares-Santiago,[*] *Chico-Nazario,* [**] and *Leonardo-De Castro,*[***] *JJ.*, concur.

---

[57] *PLDT vs. NLRC*, G.R. No. 80609, August 23, 1980, 164 SCRA 671; see also *Cosmopolitan Funeral Homes v. NLRC*, G.R. No. 86693, July 2, 1990, 187 SCRA 109; *Toyota Motor Phils. Corp. Workers Association (TMPCWA) v. NLRC*, G.R. Nos. 158786 & 158789; *Toyota Motor Phils. Corp. v. Toyota Motor Phils. Corp. Workers Association (TMPCWA)*, G.R. Nos. 158798-99, October 19, 2007, 537 SCRA 171.

[*] 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.

THIRD DIVISION

[G.R. No. 164631. June 26, 2009]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **RENE RALLA BELISTA,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; REPUBLIC ACT NO. 6657; DEPARTMENT OF AGRARIAN REFORM; ORIGINAL AND EXCLUSIVE JURISDICTION THEREOF; JURISDICTION ON JUST COMPENSATION CASES FOR THE TAKING OF LANDS IS VESTED IN THE COURTS. — Clearly, under Section 50, DAR has primary jurisdiction to determine and adjudicate agrarian reform matters and exclusive original jurisdiction over all matters involving the implementation of agrarian reform, except those falling under the exclusive jurisdiction of the DA and the DENR. Further exception to the DAR's original and exclusive jurisdiction are all petitions for the determination of just compensation to landowners and the prosecution of all criminal offenses under RA No. 6657, which are within the jurisdiction of the RTC sitting as a Special Agrarian Court. Thus, jurisdiction on just compensation cases for the taking of lands under RA No. 6657 is vested in the courts.

2. REMEDIAL LAW; COURTS; SPECIAL AGRARIAN COURTS; ORIGINAL AND EXCLUSIVE JURISDICTION THEREOF. — In *Republic v. CA*, the Court explained: Thus, Special Agrarian Courts, which are Regional Trial Courts, are given original and exclusive jurisdiction over two categories of cases, to wit: (1) "all petitions for the determination of just compensation to landowners" and (2) "the prosecution of all criminal offenses under [R.A. No. 6657]." The provisions of §50 must be construed in harmony with this provision by considering cases involving the determination of just compensation and criminal cases for violations of R.A. No. 6657 as excepted from the plenitude of power conferred on the DAR. Indeed, there is a reason for this distinction. The DAR is an administrative agency which cannot be granted

jurisdiction over cases of eminent domain (for such are takings under R.A. No. 6657) and over criminal cases. Thus, in *EPZA v. Dulay* and *Sumulong v. Guerrero* - we held that the valuation of property in eminent domain is essentially a judicial function which cannot be vested in administrative agencies, while in *Scoty's Department Store v. Micaller*, we struck down a law granting the then Court of Industrial Relations jurisdiction to try criminal cases for violations of the Industrial Peace Act. In a number of cases, the Court has upheld the original and exclusive jurisdiction of the RTC, sitting as SAC, over all petitions for determination of just compensation to landowners in accordance with Section 57 of RA No. 6657.

3. ID.; ID.; ID.; HAS ORIGINAL AND EXCLUSIVE JURISDICTION OVER PETITIONS FOR THE DETERMINATION OF JUST COMPENSATION; ONLY A STATUTE CAN CONFER JURISDICTION ON COURTS AND ADMINISTRATIVE AGENCIES WHILE RULES OF PROCEDURE CANNOT. — The RTC dismissed petitioner's petition for determination of just compensation relying on Sections 5, 6 and 7 of Article XIX of the 2003 DARAB Rules of Procedure xxx. Notably, the above-mentioned provisions deviated from Section 11, Rule XIII of the 1994 DARAB Rules of Procedure xxx. where DARAB acknowledges that the decision of just compensation cases for the taking of lands under RA 6657 is a power vested in the courts. Although Section 5, Rule XIX of the 2003 DARAB Rules of Procedure provides that the land valuation cases decided by the adjudicator are now appealable to the Board, such rule could not change the clear import of Section 57 of RA No. 6657 that the original and exclusive jurisdiction to determine just compensation is in the RTC. Thus, Section 57 authorizes direct resort to the SAC in cases involving petitions for the determination of just compensation. In accordance with the said Section 57, petitioner properly filed the petition before the RTC and, hence, the RTC erred in dismissing the case. Jurisdiction over the subject matter is conferred by law. Only a statute can confer jurisdiction on courts and administrative agencies while rules of procedure cannot.

APPEARANCES OF COUNSEL

Piczon Beramo & Associates for petitioner.

D E C I S I O N

PERALTA, *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court filed by Land Bank of the Philippines (petitioner), seeking to annul and set aside the May 26, 2004 Decision[1] and the July 28, 2004 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 81096.

The antecedent facts and proceedings, as narrated by the CA, are as follows:

> It appears that spouses Pablo Ralla and Carmen Munoz Ralla had donated their eight (8) parcels of lot located in Ligao, Albay to their daughter, Rene Ralla Belista, the herein private respondent.
>
> The eight (8) parcels of lot were placed by the Department of Agrarian Reform (DAR, for brevity) under the coverage of the Comprehensive Agrarian Reform Program (Presidential Decree No. 27 and Executive Order No. 228). Consequently, private respondent claimed payment of just compensation over said agricultural lands.
>
> It further appears that the DAR's evaluation of the subject farms was only ₱227,582.58, while petitioner Land Bank of the Philippines (LBP, for brevity) assessed the same at ₱317,259.31.
>
> Believing that her lots were grossly underestimated, private respondent, on 11 November 2002, filed a Petition for Valuation and Payment of Just Compensation against petitioning bank before

---

[1] Penned by Associate Justice Andres B. Reyes, Jr., with Associate Justices Buenaventura J. Guerrero and Edgardo F. Sundiam, concurring; *rollo*, pp. 40-46.

[2] Penned by Associate Justice Andres B. Reyes, Jr., with Associate Justices Mario L. Guariña III (vice *J.* Guerrero who retired) and Edgardo F. Sundiam, concurring; *rollo*, p. 49.

the DARAB-Regional Adjudicator for Region V (RARAD-V) docketed as DCN D-05-02-VC-005.

On 07 July 2003, the RARAD-V issued a Decision, in favor of herein private respondent, the fallo of which reads:

> Wherefore, just compensation for the subject areas is hereby preliminarily fixed at TWO MILLION EIGHT HUNDRED NINETY-SIX THOUSAND and FOUR HUNDRED EIGHT & 91/100 (₱2,896,408.91) PESOS. Land Bank of the Philippines, Legaspi City, is hereby ordered to pay herein petitioner said amount pursuant to existing rules and guidelines, minus the sum already remitted per Order dated January 2, 2003.
>
> SO ORDERED.

As both parties interposed their respective motions for reconsideration, the RARAD-V eventually issued an Order dated 8 October 2003, the decretal portion of which reads:

> Wherefore, the Decision dated July 7, 2003 is MODIFIED, fixing the valuation claim of petitioner herein with respect to her due share in the above lots to the tune of Two Million Five Hundred Forty Thousand, Two Hundred Eleven and 58/100 (₱2,540,211.58) Pesos. Land Bank Legaspi City is hereby ordered to pay herein petitioner said amount pursuant to existing rules and guidelines, minus the sum already paid per Order dated January 2, 2003.
>
> SO ORDERED.

Aggrieved, petitioner Bank, on 28 October 2003, filed an original Petition for Determination of Just Compensation at the same sala of the RTC, docketed as Agrarian Case No. 03-06.

The court *a quo motu proprio* dismissed the case when it issued the herein first assailed Order dated 12 November 2003 "for failure to exhaust administrative remedies and/or comply with Sections 5, 6, and 7, Rule XIX, 2003 DARAB Rules of Procedure.

Petitioner LBP lodged a Motion for Reconsideration arguing, *inter alia*, "that the DARAB 2003 Rules of Procedure does not apply to SAC nor its precursor DARAB Case and that the ground for dismissal of the case is not among the instances when a court may dismiss a case on its motion."

As the court *a quo* denied its Motion for Reconsideration in an Order dated 28 November 2003, petitioner LBP elevated the case before the Tribunal through the present Petition for Review, theorizing:

I. WHETHER OR NOT THE SAC *A QUO* ERRED IN DISMISSING THE CASE *MOTU PROPIO* ON THE GROUND OF PLAINTIFF'S FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES.

II. WHETHER OR NOT SECTIONS 5, 6, AND 7, RULE XIX OF THE DARAB 2003 RULES OF PROCEDURE APPLY TO CASES FILED AND PENDING BEFORE THE DARAB OR ITS ADJUDICATORS PRIOR TO ITS EFFECTIVITY AND TO CASES FILED AND PENDING WITH THE SPECIAL AGRARIAN COURTS.[3]

On May 26, 2004, the CA rendered its assailed Decision dismissing the petition.

The CA ruled that under Section 5, Rule XIX of the 2003 DARAB Rules of Procedure, an appeal from the adjudicator's resolution shall be filed before the DARAB and not before the RTC; that petitioner's filing of the case before the RTC without first seeking the intervention of the DARAB is violative of the doctrine of non-exhaustion of administrative remedies. The CA found that petitioner's petition for determination of just compensation was filed in the RTC on October 28, 2003 when the 2003 DARAB Rules of Procedure was already in effect, *i.e.*, on February 8, 2003, and under its transitory provision, it is provided that the 2003 Rules shall govern all cases filed on or after its effectivity; and, since an appeal from the adjudicator's resolution should first be filed with the DARAB, the RTC, sitting as a Special Agrarian Court (SAC), did not err in dismissing petitioner's petition.

Petitioner filed a motion for reconsideration, which was denied in a Resolution dated July 28, 2004.

Petitioner is now before the Court raising the following arguments:

---

[3] *Rollo,* pp. 41-43.

1. THE COURT OF APPEALS ERRED IN LAW IN DISMISSING THE PETITION FOR REVIEW CONSIDERING THAT THE LBP DID NOT VIOLATE THE "DOCTRINE OF NON-EXHAUSTION OF ADMINISTRATIVE REMEDIES" WHEN IT FILED THE ORIGINAL PETITION FOR DETERMINATION OF JUST COMPENSATION BEFORE THE COURT *A QUO* WITHOUT FIRST SEEKING THE INTERVENTION OF THE DARAB.

2. THE COURT OF APPEALS ERRED IN DECLARING THAT THE APPLICABLE RULE IS THE 2003 DARAB RULES OF PROCEDURE, DESPITE THE FACT THAT THE PETITION (FOR VALUATION AND PAYMENT OF JUST COMPENSATION) WAS FILED BEFORE THE RARAD ON NOVEMBER 11, 2002.[4]

Petitioner contends that the petition for valuation and payment of just compensation was filed with the DARAB- Regional Adjudicator for Region V (RARAD) on November 11, 2002, long before the effectivity of the 2003 Rules of Procedure; that under the transitory provision of the 2003 DARAB Rules, all cases pending with the Board and the adjudicators prior to the date of the Rules' effectivity shall be governed by the DARAB Rules prevailing at the time of their filing; that clear from the transitory provision that it is the proceeding of the DARAB which is governed by the 2003 DARAB Rules of Procedure, thus, it is the date of filing of the petition with the DARAB or any of its adjudicators which is the reckoning date of the applicability of the 2003 DARAB Rules and not the date of filing with the SAC; that under the 1994 DARAB Rules prevailing at the time of the filing of the respondent's claim for just compensation, the Rules provided that the decision of the adjudicator on land valuation and preliminary determination of just compensation shall not be appealable to the Board, but shall be brought directly to the RTC; that it was in the observance of the 1994 DARAB Rules that petitioner brought the adjudicator's decision to the RTC sitting as SAC.

In his Comment, respondent claims that petitioner's petition with the RTC is an original action and, since the case was filed at

[4] *Id.* at 29-30.

a time when appeal to the DARAB Central Office was already provided in the 2003 DARAB Rules before resorting to judicial action, the RTC correctly dismissed the petition, which was correctly affirmed by the CA.

Petitioner filed a Reply reiterating its arguments in the petition.

The issue for resolution is whether it is necessary that in cases involving claims for just compensation under Republic Act (RA) No. 6657 that the decision of the Adjudicator must first be appealed to the DARAB before a party can resort to the RTC sitting as SAC.

The court rules in the negative.

Sections 50 and 57 of RA No. 6657 provide:

Section 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) x x x

Section 57. *Special Jurisdiction.* – The Special Agrarian Court shall have original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners, and the prosecution of all criminal offenses under this Act. x x x

The Special Agrarian Courts shall decide all appropriate cases under their special jurisdiction within thirty (30) days from submission of the case for decision.

Clearly, under Section 50, DAR has primary jurisdiction to determine and adjudicate agrarian reform matters and exclusive original jurisdiction over all matters involving the implementation of agrarian reform, except those falling under the exclusive jurisdiction of the DA and the DENR. Further exception to the DAR's original and exclusive jurisdiction are all petitions for the determination of just compensation to landowners and the prosecution of all criminal offenses under RA No. 6657, which are within the jurisdiction of the RTC sitting as a Special Agrarian Court. Thus, jurisdiction on just compensation cases for the taking of lands under RA No. 6657 is vested in the courts.

In *Republic v. CA*,[5] the Court explained:

> Thus, Special Agrarian Courts, which are Regional Trial Courts, are given original and exclusive jurisdiction over two categories of cases, to wit: (1) "all petitions for the determination of just compensation to landowners" and (2) "the prosecution of all criminal offenses under [R.A. No. 6657]." The provisions of §50 must be construed in harmony with this provision by considering cases involving the determination of just compensation and criminal cases for violations of R.A. No. 6657 as excepted from the plenitude of power conferred on the DAR. Indeed, there is a reason for this distinction. The DAR is an administrative agency which cannot be granted jurisdiction over cases of eminent domain (for such are takings under R.A. No. 6657) and over criminal cases. Thus, in *EPZA v. Dulay* and *Sumulong v. Guerrero* - we held that the valuation of property in eminent domain is essentially a judicial function which cannot be vested in administrative agencies, while in *Scoty's Department Store v. Micaller*, we struck down a law granting the then Court of Industrial Relations jurisdiction to try criminal cases for violations of the Industrial Peace Act.[6]

In a number of cases, the Court has upheld the original and exclusive jurisdiction of the RTC, sitting as SAC, over all petitions for determination of just compensation to landowners in accordance with Section 57 of RA No. 6657.

In *Land Bank of the Philippines v. Wycoco*,[7] the Court upheld the RTC's jurisdiction over Wycoco's petition for determination of just compensation even where no summary administrative proceedings was held before the DARAB which has primary jurisdiction over the determination of land valuation. The Court held:

> In *Land Bank of the Philippines v. Court of Appeals*, the landowner filed an action for determination of just compensation without waiting for the completion of DARAB's re-evaluation of the land. This, notwithstanding, the Court held that the trial court properly acquired

---

[5] G.R. No. 122256, October 30, 1996, 263 SCRA 758.

[6] *Id.* at 763.

[7] G.R. Nos. 140160 and 146733, January 13, 2004, 419 SCRA 67.

jurisdiction because of its exclusive and original jurisdiction over determination of just compensation, thus –

> … It is clear from Sec. 57 that the RTC, sitting as a Special Agrarian Court, has "original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners." This "original and exclusive" jurisdiction of the RTC would be undermined if the DAR would vest in administrative officials original jurisdiction in compensation cases and make the RTC an appellate court for the review of administrative decisions. Thus, although the new rules speak of directly appealing the decision of adjudicators to the RTCs sitting as Special Agrarian Courts, it is clear from Sec. 57 that the original and exclusive jurisdiction to determine such cases is in the RTCs. Any effort to transfer such jurisdiction to the adjudicators and to convert the original jurisdiction of the RTCs into an appellate jurisdiction would be contrary to Sec. 57 and, therefore, would be void. Thus, direct resort to the SAC [Special Agrarian Court] by private respondent is valid.

In the case at bar, therefore, the trial court properly acquired jurisdiction over Wycoco's complaint for determination of just compensation. It must be stressed that although no summary administrative proceeding was held before the DARAB, LBP was able to perform its legal mandate of initially determining the value of Wycoco's land pursuant to Executive Order No. 405, Series of 1990.[8] x x x

In *Land Bank of the Philippines v. Natividad*,[9] wherein Land Bank questioned the alleged failure of private respondents to seek reconsideration of the DAR's valuation, but instead filed a petition to fix just compensation with the RTC, the Court said:

> At any rate, in *Philippine Veterans Bank v. CA*, we held that there is nothing contradictory between the DAR's primary jurisdiction to determine and adjudicate agrarian reform matters and exclusive original jurisdiction over all matters involving the implementation

---

[8] *Id.* at 76-77.

[9] G.R. No. 127198, May 16, 2005, 458 SCRA 441.

of agrarian reform, which includes the determination of questions of just compensation, and the original and exclusive jurisdiction of regional trial courts over all petitions for the determination of just compensation. The first refers to administrative proceedings, while the second refers to judicial proceedings.

In accordance with settled principles of administrative law, primary jurisdiction is vested in the DAR to determine in a preliminary manner the just compensation for the lands taken under the agrarian reform program, but such determination is subject to challenge before the courts. The resolution of just compensation cases for the taking of lands under agrarian reform is, after all, essentially a judicial function.

Thus, the trial court did not err in taking cognizance of the case as the determination of just compensation is a function addressed to the courts of justice.[10]

In *Land Bank of the Philippines v. Celada*,[11] where the issue was whether the SAC erred in assuming jurisdiction over respondent's petition for determination of just compensation despite the pendency of the administrative proceedings before the DARAB, the Court stated that:

It would be well to emphasize that the taking of property under RA No. 6657 is an exercise of the power of eminent domain by the State. The valuation of property or determination of just compensation in eminent domain proceedings is essentially a judicial function which is vested with the courts and not with administrative agencies. Consequently, the SAC properly took cognizance of respondent's petition for determination of just compensation.[12]

The RTC dismissed petitioner's petition for determination of just compensation relying on Sections 5, 6 and 7 of Article XIX of the 2003 DARAB Rules of Procedure, to wit:

Section 5. *Appeal*. A party who disagrees with the resolution of the Adjudicator may bring the matter to the Board by filing with the

---

[10] *Id.* at 450-451.

[11] G.R. No. 164876, January 23, 2006, 479 SCRA 495.

[12] *Id.* at 504-505.

Adjudicator concerned a Notice of Appeal within fifteen (15) days from receipt of the resolution. The filing of a Motion for Reconsideration of said resolution shall interrupt the period herein fixed. If the motion is denied, the aggrieved party may file the appeal within the remaining period, but in no case shall it be less than five (5) days.

Section 6. *When Resolution Deemed Final*. Failure on the part of the aggrieved party to contest the resolution of the Adjudicator within the aforecited reglementary period provided shall be deemed a concurrence by such party with the land valuation, hence said valuation shall become final and executory.

Section 7. *Filing of Original Action with the Special Agrarian Court for Final Determination*. The party who disagrees with the decision of the Board may contest the same by filing an original action with the Special Agrarian Court (SAC) having jurisdiction over the subject property within fifteen (15) days from his receipt of the Board's decision.

Notably, the above-mentioned provisions deviated from Section 11, Rule XIII of the 1994 DARAB Rules of Procedure which provides:

Section 11. *Land Valuation and Preliminary Determination and Payment of Just Compensation* – The decision of the Adjudicator on land valuation and preliminary determination and payment of just compensation shall not be appealable to the Board, but shall be brought directly to the Regional Trial Courts designated as Special Agrarian Courts within fifteen (15) days from receipt of the notice thereof. Any party shall be entitled to only one motion for reconsideration.

where DARAB acknowledges that the decision of just compensation cases for the taking of lands under RA 6657 is a power vested in the courts.[13] Although Section 5, Rule XIX of the 2003 DARAB Rules of Procedure provides that the land valuation cases decided by the adjudicator are now appealable

---

[13] *Republic v. Court of Appeals*, G.R. No. 122256, October 30, 1996, 263 SCRA 758, 764.

to the Board, such rule could not change the clear import of Section 57 of RA No. 6657 that the original and exclusive jurisdiction to determine just compensation is in the RTC. Thus, Section 57 authorizes direct resort to the SAC in cases involving petitions for the determination of just compensation.[14] In accordance with the said Section 57, petitioner properly filed the petition before the RTC and, hence, the RTC erred in dismissing the case. Jurisdiction over the subject matter is conferred by law.[15] Only a statute can confer jurisdiction on courts and administrative agencies while rules of procedure cannot.[16]

WHEREFORE, the petition for review on *certiorari* is *GRANTED*. The Decision dated May 26, 2004 and the Resolution dated July 28, 2004, of the Court of Appeals in CA-G.R. SP No. 81096, are *REVERSED* and *SET ASIDE*. The Regional Trial Court, Branch 3, Legaspi City, sitting as Special Agrarian Court, is *DIRECTED* to hear without delay petitioner's petition for the determination of just compensation.

SO ORDERED.

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

---

[14] *Confederation of Sugar Producers Association, Inc. vs. Department of Agrarian Reform (DAR),* G.R. No. 169514, March 30, 2007, 519 SCRA 582, 637.

[15] *Dao-ayan v. Department of Agrarian Reform Adjudication Board (DARAB)*, G.R. No. 172109, August 29, 2007, 531 SCRA 620, 626.

[16] *Republic v. Court of Appeals, supra* note 13.

SECOND DIVISION

[G.R. No. 170312. June 26, 2009]

PHILIPPINE BASKETBALL ASSOCIATION, *petitioner, vs.* **HONORABLE MANUEL B. GAITE, in his official capacity as Deputy Executive Secretary for Legal Affairs of the Office of the President, and the GAMES AND AMUSEMENT BOARD, represented herein by its Chairman, Eduardo R. Villanueva,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW; DECISION OF THE GAMES AND AMUSEMENT BOARD IS APPEALABLE TO THE OFFICE OF THE PRESIDENT, WHOSE DECISION IS APPEALABLE TO THE COURT OF APPEALS THROUGH A PETITION FOR REVIEW. — The GAB was created by Executive Order (*EO*) No. 392, series of 1951, which amended EO No. 120, series of 1948. Subsequent issuances broadened the scope of the GAB's supervisory authority from its initial mandate over Jai Alai, Boxing and Wrestling, and Racing. PD No. 871 charged the GAB with the supervision and regulation of the professional basketball association and other professional sports. The thrust of the law is to promote professionalism; to prevent illegal game practices; to supervise and regulate the operation and conduct of professional basketball games, other professional games, and their participants; and to ensure integrity and provide ample protection to all concerned at all times. Section 10, PD No. 871 directs that the decisions, orders, and rulings of the GAB may be appealed directly to the OP. This appellate procedure is provided as follows: **Sec. 10.** *Appeals, orders, rulings and decisions of the Board*. Orders, rulings and decisions of the Board on matters connected with or arising out of basketball may be appealed to the Office of the President, whose decision shall be final, within seventy-two (72) hours from receipt of the order, ruling or decision appealed from. The parties may file a motion for reconsideration of the order, ruling, or decision of the OP. Since the OP is essentially an administrative agency exercising quasi-judicial functions, its decisions or resolutions

may be appealed to the CA through a petition for review under Rule 43 of the Rules of Court.

2. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; NOT PROPER WHEN AN APPEAL OR ANY OTHER REMEDY AT LAW IS AVAILABLE; EXCEPTIONS; NOT PRESENT IN CASE AT BAR. — Under these clear and unambiguous terms, the PBA should have appealed the ruling of respondent Gaite of the OP to the CA within 15 days from notice, and its failure to comply with the prescribed process is a ground for the dismissal of the petition. Rule 65 – the legal basis for the present petition – itself bars its use as a mode of review when an appeal or any other remedy at law is available. While jurisprudence has recognized exceptions to this rule, the exceptions – like any other exception – must be strictly, rather than liberally, applied. In other words, a petitioner wrongly filing a Rule 65 petition must show a clear entitlement to the jurisprudentially-recognized exceptions. These exceptions are: *when public welfare and the advancement of public policy dictates; when the interests of substantial justice so require; and when the questioned order amounts to an oppressive exercise of judicial authority.* In applying these exceptions, the words of this Court in *Lapid v. Laurea* are worth repeating and remembering: Members of the bar are reminded that their first duty is to comply with the rules of procedure, rather than seek exceptions as loopholes. Technical rules of procedure are not designed to frustrate the ends of justice. These are provided to effect the prompt, proper and orderly disposition of cases and thus effectively prevent the clogging of court dockets. ***Utter disregard of these rules cannot justly be rationalized by harking on the policy of liberal construction.*** Unfortunately, the PBA failed to show that its case falls under any of the exceptions.

3. ID.; ID.; ID.; DISMISSAL OF THE PETITION PROPER IN CASE AT BAR; ELEMENT OF PUBLIC INTEREST, NOT ESTABLISHED. — The element of public interest is clearly with the GAB in issues that would affect its viability and operations. The purposes of PD No. 871 and the justification for the creation of the GAB are clear in their public interest objectives. Self-evident as well is the purpose of the 3% collection from gross revenue and income that the PD has recognized in the GAB's favor. Thus, the PBA has a gigantic

stumbling block to hurdle in claiming public interest as a compelling reason for us to recognize its present petition as one of the exceptions. As earlier stated, it failed in this regard. It cannot simply cite public interest as basis for its claimed exception, and hope that these words will operate as magic incantations that would open the restrictive doors of Rule 65. Nor can the PBA cite the interest of substantial justice or oppressive exercise of judicial authority as reasons. The CA did not act without legal reason in dismissing the PBA's petition for *certiorari*. In fact, by law and established jurisprudence, the CA would have acted oppressively and in excess of its jurisdiction if it had disregarded Rules 43 and 65 without sufficient justification. The CA could not recognize any exceptional application of Rule 65 as a substitute for a Rule 43 review, since the PBA failed to cite any viable basis to justify the application of any of the jurisprudentially-provided exceptions.

4. ID.; ID.; ID.; PETITION IS DISMISSIBLE WHERE THE PARTY USED A WRONG MODE OF REVIEW. — As a pure statement of fact and without any pejorative meaning intended, the remedy the PBA used appears to us to be an error of counsel that the PBA — the client — wholly bears. It is absolutely incorrect to claim that Rule 43 does not allow an immediate remedy if that had been the result desired. Section 12 of Rule 43 expressly allows the CA to order a stay of execution upon such terms as are just. Separately from Section 12, Rule 43 is Rule 58 on injunction as a provisional remedy that could have been used, with proper supporting justification, to stay the implementation of the OP decision. Running counter, of course, to any move to prevent the release of the fund in escrow is the PBA-GAB MOA before the OP, where the parties expressly agreed on the disposition of the funds after a decision shall have been rendered. For these reasons, we fully sustain the CA's ruling that the PBA used a wrong mode of review, and that its petition should be dismissed. In the absence of any attendant grave abuse of discretion, we see no reason to disturb the CA decision or to further discuss the other issues raised in this petition.

APPEARANCES OF COUNSEL

Sayuno Mendoza & San Jose for petitioner.
The Solicitor General for respondents.

D E C I S I O N

BRION, *J.*:

Before us is the petition for review on *certiorari* under Rule 45 of the Rules of Court, filed by petitioner Philippine Basketball Association (*PBA*) to reverse the July 28, 2005 Court of Appeals (*CA*) Decision[1] and the subsequent denial of the motion for reconsideration[2] in CA-G.R. No. 87289.

FACTUAL ANTECEDENTS

The PBA is an association of various basketball clubs owned by business companies – Airfreight 2100, Inc., Alaska Milk Corporation, Asian Coatings Philippines, Inc.,[3] Coca-Cola Bottlers Philippines, Inc., Energy Food and Drinks Corporation, Ginebra San Miguel, Inc., Philippine Long Distance Telephone Company, Inc., Purefoods Hormel Company, Inc., San Miguel Corporation, and Sta. Lucia Realty and Development, Inc. It conducts basketball games that the public can watch live upon purchase of admission tickets. The games are also broadcasted over television and radio by a franchisee which pays the PBA franchise fees based on the actual proceeds from advertisements, less airtime costs, production expenses, and sales commissions.

On January 6, 1976, then President Ferdinand E. Marcos enacted Presidential Decree (*PD*) No. 871 placing professional basketball and other professional games under the control and supervision of the Games and Amusement Board (*GAB*), a respondent in this case. Under this PD, the GAB was mandated, among others, to issue permits for the conduct of games and licenses to persons, entities, and associations performing duties connected with professional basketball games or with other professional games. The law also mandated the PBA and other professional game associations to remit 3% of their gross receipts

---

[1] Penned by Associate Justice Jose L. Sabio, Jr., with Associate Justices Edgardo P. Cruz and Magdangal M. De Leon, concurring; *rollo,* pp. 31-36.

[2] *Id.,* pp. 37-38.

[3] Formerly Pilipinas Shell Petroleum Corporation.

and income from television, radio, and motion pictures, if any, which shall be used to defray expenses of the GAB. Section 8 of PD No. 871 provides:

> **Sec. 8.** *Admission receipts and other income*. – Any person, entity or association conducting professional basketball games or other professional games shall set aside and **remit to the Board three percent (3%) of the gross receipts and income from television, radio and motion pictures, if any,** which shall be available to defray expenses of the Board assigned to supervise the games and for such other expenses in other activities of the Board. Provided, however, that all professional basketball games conducted by the Philippine Basketball Association shall only be subject to amusement tax of five percent (5%) of the gross tax receipts from the sale of admission tickets. [Emphasis supplied.]

On December 29, 1999, the PBA and Viva Vintage Sports, Inc. (*VVSI*) forged a Memorandum of Agreement granting the VVSI exclusive rights to broadcast the PBA games on television and radio for the 2000 to 2002 PBA seasons. Initially, VVSI paid the franchise fees to the PBA, and from these, the latter remitted the required 3% to the GAB.

Starting November 2001, the VVSI began to default in the payment of the franchise fees; it took some time before it could comply with its contractual obligations. At some point in 2002, it again failed to pay the franchise fees. On January 7, 2004, the PBA wrote VVSI a letter demanding payment of the unpaid fees.

The VVSI's failure to pay the fees affected the PBA's own ability to remit the 3% of gross receipts and income required by Section 8 of PD No. 871. The GAB maintained that the PBA, by law, was obligated to remit 3% of its income from television, radio, and motion pictures, regardless of whether these gross receipts were actually received by the PBA. It therefore assessed the PBA the amount of ₱3,452,233.32 representing its 3% share in the PBA's gross receipts and income from the television/radio broadcast of PBA games for the year 2002.

When they failed to agree on the interpretation of Section 8 of PD No. 871, the PBA and the GAB submitted their dispute

to the Office of the President (*OP*) for adjudication. In the course of their submission, the parties executed a Memorandum of Agreement (PBA-GAB MOA) where the PBA agreed to deposit the assessed amount of ₱3,452,233.32 in escrow with the Equitable-PCI Bank. The PBA-GAB MOA conditioned the release of the deposited amount on the following terms:

a. That the legal issue raised by the PBA is resolved by the Office of the President and/or by any court or competent judicial bodies having jurisdiction over the case, requiring PBA to pay assessments of this nature to GAB. In the event that PBA fails to bring the case before the court or any competent judicial bodies within ten (10) days from receipt of the order or resolution of the Office of the President, it is considered that PBA is no longer interested to bring the matter before the court of any judicial bodies, and that the order of the resolution of the Office of the President is considered final and executory.

b. That in the event the PBA is adjudged to pay the amount in issue, the escrow amount together with interest less the escrow fees charged by the bank, which shall be deducted from the interest less the escrow fees charged by the bank, which shall be deducted from the interest earned, shall be credited to the account of GAB immediately and on the other hand, if it is adjudged that PBA is not legally obligated to pay the GAB, the principal amount together with the accrued interest earned less the escrow fees charged by the bank, which shall be deducted from the interest charged by the bank which shall be deducted from the interest earned will be returned to the PBA immediately.[4]

In a letter dated August 17, 2004, the OP, through respondent Manuel B. Gaite (then Deputy Secretary for Legal Affairs), ruled in favor of the GAB on the grounds that PD No. 871 intended the operating association, the PBA, to pay GAB the equivalent of 3% of its gross revenue and income from television and/or radio broadcast once earned; that income is considered earned when one's right to it becomes fixed under the terms of the governing contract; that it does not matter whether PBA

[4] *Rollo,* pp. 57-58.

has actually received the fee due it from its franchisee, or whether this franchisee has physically transferred the amount to the PBA, because once the PBA's own contractual fees become due and payable, these fees constitute income from which to source and determine the GAB's 3% share; that if the legislature intended the 3% imposition to be based on the PBA's actual receipt of radio/TV coverage earnings, it should have said expressly so, in the same way done with ticket sales; that since the GAB did not have a hand in the selection of the PBA's franchisee for the television and radio coverage and the negotiation and execution of the coverage contract, its right to collect the 3% share should not be affected or made dependent on the ability of the PBA's franchisee to fulfill its financial obligations and the PBA's ability to successfully effect the collection.

On September 15, 2004, the PBA wrote the OP a letter seeking the reconsideration of Gaite's ruling on the grounds of injustice, unjust enrichment, and gross misinterpretation of Section 8 of PD No. 871. The OP, through Gaite, denied the request for reconsideration in a letter dated October 18, 2004.

Thereafter, the GAB sought the release of the fund in escrow with the Equitable-PCI Bank. On November 5, 2004, the PBA filed a petition for *certiorari* (under Rule 65 of the Rules of Court) with the CA to assail the OP decision. The appellate court ruled that the PBA's Rule 65 petition for *certiorari* was not the appropriate remedy to challenge the OP decision. Even assuming it to be the correct remedy, the CA found that the OP committed no grave abuse of discretion in interpreting and implementing PD No. 871. The CA denied the PBA's subsequent motion for reconsideration.

The PBA subsequently filed the present petition for review on *certiorari* under Rule 45 of the Rules of Court raising the following —

ISSUES

I.

THE COURT OF APPEALS COMMITTED SERIOUS AND GRAVE ERROR IN DECLARING THAT THE REMEDY OF *CERTIORARI*

UNDER RULE 65 OF THE RULES OF COURT WAS NOT THE PROPER REMEDY UNDER THE CIRCUMSTANCES;

II.

THE COURT OF APPEALS COMMITTED SERIOUS GRAVE ERROR IN RULING THAT THE OFFICE OF THE PRESIDENT THROUGH RESPONDENT DEPUTY EXECUTIVE SECRETARY FOR LEGAL AFFAIRS MANUEL B. GAITE: 1) DID NOT EXERCISE A QUASI-JUDICIAL FUNCTION WHEN IT INTERPRETED PD 871; AND 2) DID NOT COMMIT GRAVE ABUSE OF DISCRETION;

III.

THE COURT OF APPEALS FAILED TO RESOLVE THE LEGAL ISSUE AS TO THE PROPER INTERPRETATION OF SECTION 8, PD NO. 871.

OUR RULING

The threshold issue is whether the CA erred in dismissing the PBA's petition for *certiorari* for being an improper remedy. **We rule that the CA correctly dismissed the petition.**

The PBA argued that it chose to file a petition for *certiorari* under Rule 65 of the Rules of Court because the GAB was trying to secure the release of the escrow deposit, and no other plain, speedy, or adequate remedy was available to stop the GAB. The PBA emphasized that it deliberately chose not to pursue the remedy of appeal since the issues presented by the case were urgent. It pointed out that at the time the petition for *certiorari* was filed, the period for appeal had not yet lapsed; thus, it was not merely substituting the extraordinary remedy of *certiorari* for a lost appeal. The PBA lastly argued that assuming that the use of a petition for *certiorari* as a remedy was erroneous, the technical rules of procedure may be relaxed in the interest of substantial justice and the merits of the case.

The respondents, through the Office of the Solicitor General (*OSG*), defended the CA Decision by pointing out that the proper remedy from a decision of the OP is a petition for review under Rule 43 of the Rules of Court.

We find the OSG's position to be well taken.

The GAB was created by Executive Order (*EO*) No. 392, series of 1951, which amended EO No. 120, series of 1948. Subsequent issuances broadened the scope of the GAB's supervisory authority from its initial mandate over Jai Alai, Boxing and Wrestling, and Racing. PD No. 871 charged the GAB with the supervision and regulation of the professional basketball association and other professional sports. The thrust of the law is to promote professionalism; to prevent illegal game practices; to supervise and regulate the operation and conduct of professional basketball games, other professional games, and their participants; and to ensure integrity and provide ample protection to all concerned at all times.[5]

Section 10, PD No. 871 directs that the decisions, orders, and rulings of the GAB may be appealed directly to the OP. This appellate procedure is provided as follows:

Sec. 10. *Appeals, orders, rulings and decisions of the Board*. Orders, rulings and decisions of the Board on matters connected with or arising out of basketball may be appealed to the Office of the President, whose decision shall be final, within seventy-two (72) hours from receipt of the order, ruling or decision appealed from.

The parties may file a motion for reconsideration of the order, ruling, or decision of the OP. Since the OP is essentially an administrative agency exercising quasi-judicial functions, its decisions or resolutions may be appealed to the CA through a petition for review under Rule 43 of the Rules of Court. Sections 1 and 3 of this Rule state:

Section 1. *Scope*. — This Rule shall apply **to appeals from judgments or final orders of the** Court of Tax Appeals and from awards, judgments, final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of its quasi-judicial functions. Among these agencies are the Civil Service Commission, Central Board of Assessment Appeals, Securities and Exchange Commission, **Office of the President**, Land Registration Authority, Social Security Commission, Civil Aeronautics Board, Bureau of Patents, Trademarks and Technology Transfer, National Electrification

[5] PD No. 871, Whereas clauses.

Administration, Energy Regulatory Board, National Telecommunications Commission, Department of Agrarian Reform under Republic Act No. 6657, Government Service Insurance System, Employees Compensation Commission, Agricultural Inventions Board, Insurance Commission, Philippine Atomic Energy Commission, Board of Investments, Construction Industry Arbitration Commission, and voluntary arbitrators authorized by law.

x x x x x x x x x

Sec. 3. *Where to appeal.* — **An appeal under this Rule may be taken to the Court of Appeals** within the period and in the manner herein provided, whether the appeal involves questions of fact, of law, or mixed questions of fact and law. [Emphasis supplied.]

Under these clear and unambiguous terms, the PBA should have appealed the ruling of respondent Gaite of the OP to the CA within 15 days from notice,[6] and its failure to comply with the prescribed process is a ground for the dismissal of the petition.[7] Rule 65 — the legal basis for the present petition — itself bars its use as a mode of review when an appeal or any other remedy at law is available.[8] While jurisprudence has recognized exceptions to this rule, the exceptions — like any other exception — must be strictly, rather than liberally, applied.[9] In other words, a petitioner wrongly filing a Rule 65 petition must show a clear entitlement to the jurisprudentially-recognized exceptions. These exceptions are: *when public welfare and the advancement of public policy dictates; when the interests of substantial justice so require; and when the questioned order amounts to an oppressive exercise of judicial authority*.[10] In applying these

---

[6] RULES OF COURT, Rule 43, Section 4.

[7] *Nippon Paint Employees Union-Olalia v. CA*, G.R. No. 159010, November 19, 2004, 443 SCRA 286.

[8] *Lapid v. Laurea*, G.R. No. 139607, October 28, 2002, 391 SCRA 277.

[9] *Commissioner of Internal Revenue v. CA*, G.R. No. 107135, February 23, 1999, 303 SCRA 508; *Tagle v. Equitable-PCI Bank*, G.R. No. 172299, April 22, 2008, 552 SCRA 424.

[10] O. Herrera, *Remedial Law* (Vol. II), pp. 675-676; *Hanjin Engineering and Construction Co., Ltd. v. CA*, G.R. No. 165910, April 10, 2006, 487 SCRA 78.

exceptions, the words of this Court in *Lapid v. Laurea*[11] are worth repeating and remembering:

> Members of the bar are reminded that their first duty is to comply with the rules of procedure, rather than seek exceptions as loopholes. Technical rules of procedure are not designed to frustrate the ends of justice. These are provided to effect the prompt, proper and orderly disposition of cases and thus effectively prevent the clogging of court dockets. Utter disregard of these rules cannot justly be rationalized by harking on the policy of liberal construction. [Emphasis supplied.]

Unfortunately, the PBA failed to show that its case falls under any of the exceptions.

The element of public interest is clearly with the GAB in issues that would affect its viability and operations. The purposes of PD No. 871 and the justification for the creation of the GAB are clear in their public interest objectives. Self-evident as well is the purpose of the 3% collection from gross revenue and income that the PD has recognized in the GAB's favor. Thus, the PBA has a gigantic stumbling block to hurdle in claiming public interest as a compelling reason for us to recognize its present petition as one of the exceptions. As earlier stated, it failed in this regard. It cannot simply cite public interest as basis for its claimed exception, and hope that these words will operate as magic incantations that would open the restrictive doors of Rule 65.

Nor can the PBA cite the interest of substantial justice or oppressive exercise of judicial authority as reasons. The CA did not act without legal reason in dismissing the PBA's petition for *certiorari*. In fact, by law and established jurisprudence, the CA would have acted oppressively and in excess of its jurisdiction if it had disregarded Rules 43 and 65 without sufficient justification. The CA could not recognize any exceptional application of Rule 65 as a substitute for a Rule 43 review, since the PBA failed to cite any viable basis to justify the application of any of the jurisprudentially-provided exceptions.

---

[11] *Supra* note 8.

As a pure statement of fact and without any pejorative meaning intended, the remedy the PBA used appears to us to be an error of counsel that the PBA — the client — wholly bears. It is absolutely incorrect to claim that Rule 43 does not allow an immediate remedy if that had been the result desired. Section 12 of Rule 43 expressly allows the CA to order a stay of execution upon such terms as are just. Separately from Section 12, Rule 43 is Rule 58 on injunction as a provisional remedy that could have been used, with proper supporting justification, to stay the implementation of the OP decision. Running counter, of course, to any move to prevent the release of the fund in escrow is the PBA-GAB MOA before the OP, where the parties expressly agreed on the disposition of the funds after a decision shall have been rendered.[12]

For these reasons, we fully sustain the CA's ruling that the PBA used a wrong mode of review, and that its petition should be dismissed. In the absence of any attendant grave abuse of discretion, we see no reason to disturb the CA decision or to further discuss the other issues raised in this petition.

WHEREFORE, we *DENY* the Philippine Basketball Association's petition for review on *certiorari* for lack of merit, and fully *AFFIRM* the Court of Appeals' Decision of July 28, 2005, and the denial of the motion for reconsideration that followed.

SO ORDERED.

Quisumbing (Chairperson), Ynares-Santiago,[*]*Chico-Nazario,*[**]and *Leonardo-de Castro,*[***] *JJ.,* concur.

---

[12] Quoted in part on pages 3 and 4 hereof.

[*] 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, 3002.

[***] Designated additional Member of the Second Division effective May 11, 2009 per Special Order No. 635 dated May 7, 2009.

SECOND DIVISION

[G.R. No. 174141. June 26, 2009]

PENTAGON STEEL CORPORATION, *petitioner, vs.* **COURT OF APPEALS, NATIONAL LABOR RELATIONS COMMISSION and PERFECTO BALOGO,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; ARTICLE 233 OF THE LABOR CODE; STATEMENTS OR AGREEMENTS MADE AT CONCILIATION PROCEEDINGS ARE PRIVILEGED COMMUNICATION AND CANNOT BE USED AS EVIDENCE. — The petitioner contends that the CA cannot use the parties' actions and/or agreements during the negotiation for a compromise agreement as basis for the conclusion that the respondent was illegally dismissed because an offer of compromise is not admissible in evidence under Section 27, Rule 130 of the Rules of Court. We agree with the petitioner, but for a different reason. The correct reason for the CA's error in considering the actions and agreements during the conciliation proceedings before the labor arbiter is Article 233 of the Labor Code which states that *"[i]nformation and statements made at conciliation proceedings shall be treated as privileged communication and shall not be used as evidence in the Commission. Conciliators and similar officials shall not testify in any court or body regarding any matters taken up at conciliation proceedings conducted by them."* This was the provision we cited in *Nissan Motors Philippines, Inc. v. Secretary of Labor* when we pointedly disallowed the award made by the public respondent Secretary; the award was based on the information NCMB Administrator Olalia secured from the confidential position given him by the company during conciliation.

2. ID.; ID.; ID.; ID. RATIONALE.— In the present case, we find that the CA did indeed consider the statements the parties made during conciliation; thus, the CA erred by considering excluded materials in arriving at its conclusion. The reasons behind the exclusion are two-fold. *First*, since the law favors the settlement of controversies out of court, a person is entitled to "buy his

or her peace" without danger of being prejudiced in case his or her efforts fail; hence, any communication made toward that end will be regarded as privileged. Indeed, if every offer to buy peace could be used as evidence against a person who presents it, many settlements would be prevented and unnecessary litigation would result, since no prudent person would dare offer or entertain a compromise if his or her compromise position could be exploited as a confession of weakness. *Second,* offers for compromise are irrelevant because they are not intended as admissions by the parties making them. A true offer of compromise does not, in legal contemplation, involve an admission on the part of a defendant that he or she is legally liable, or on the part of a plaintiff, that his or her claim is groundless or even doubtful, since it is made with a view to avoid controversy and save the expense of litigation. It is the distinguishing mark of an offer of compromise that it is made tentatively, hypothetically, and in contemplation of mutual concessions.

3. ID.; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; DISMISSAL; ABANDONMENT; ELEMENTS. — The rule is that the burden of proof lies with the employer to show that the dismissal was for a just cause. In the present case, the petitioner claims that there was no illegal dismissal since the respondent abandoned his job. The petitioner points out that it wrote the respondent various memoranda requiring him to explain why he incurred absences without leave, and requiring him as well to report for work; the respondent, however, never bothered to reply in writing. In evaluating a charge of abandonment, the jurisprudential rule is that abandonment is a matter of intention that cannot be lightly presumed from equivocal acts. To constitute abandonment, two elements must concur: (1) the failure to report for work or absence without valid or justifiable reason, and (2) a clear intent, *manifested through overt acts,* to sever the employer-employee relationship. The employer bears the burden of showing a deliberate and unjustified refusal by the employee to resume his employment without any intention of returning.

4. ID.; ID.; ID.; ID.; THE EMPLOYER HAS THE BURDEN OF PROVING THAT THE EMPLOYEE'S OVERT ACTS POINT UNERRINGLY TO HIS INTENT NOT TO WORK ANYMORE; CASE AT BAR.— *Second,* there was no clear

intention on the respondent's part to sever the employer-employee relationship. Considering that "intention" is a mental state, the petitioner must show that the respondent's overt acts point unerringly to his intent not to work anymore. In this case, we see no reason to depart from the unanimous factual findings of the NLRC and the CA that the respondent's actions after his absence from work for ten (10) days due to illness showed his willingness to return to work. Both tribunals found that after the respondent presented his medical certificate to the petitioner to explain his absence, he even went back to his doctor for a certification that he was already fit to return to work. These findings of fact we duly accept as findings that we must not only respect, but consider as final, since they are supported by substantial evidence.

5. ID.; ID.; ID.; ID.; NEGATED BY THE EMPLOYEE'S IMMEDIATE FILING OF A COMPLAINT FOR ILLEGAL DISMISSAL COUPLED WITH A PRAYER FOR REINSTATEMENT. — In addition, the respondent's filing of the amended complaint for illegal dismissal on January 20, 2003 strongly speaks against the petitioner's charge of abandonment, for it is illogical for an employee to abandon his employment and, thereafter, file a complaint for illegal dismissal. That abandonment is negated finds support in a long line of cases where the immediate filing of a complaint for illegal dismissal was coupled with a prayer for reinstatement; the filing of the complaint for illegal dismissal is proof enough of the desire to return to work. The prayer for reinstatement, as in this case, speaks against any intent to sever the employer-employee relationship.

6. ID.; ID.; ID.; ID.; IT IS HIGHLY UNLIKELY FOR AN EMPLOYEE TO ABANDON HIS EMPLOYMENT AFTER LONG YEARS OF SERVICE AND SURRENDER THE BENEFITS EARNED FROM YEARS OF HARD WORK. — We additionally take note of the undisputed fact that the respondent had been in the petitioner's employ for 23 years. Prior to his dismissal, the respondent's service record was unblemished having had no record of infraction of company rules. As the NLRC correctly held, we find it difficult to accept the petitioner's allegation that the respondent absented himself for unjustifiable reasons with the intent to abandon his job. To our mind, abandonment after the respondent's long years

of service and the consequent surrender of benefits earned from years of hard work are highly unlikely. Under the given facts, no basis in reason exists for the petitioner's theory that the respondent abandoned his job.

7. ID.; ID.; ID.; CONSTRUCTIVE DISMISSAL; WHEN PRESENT; CASE AT BAR. — A dismissal effected through the fig leaf of an alleged violation of a company directive is no less than an actual illegal dismissal that jurisprudence has labeled as a constructive dismissal. *Hyatt Taxi Services, Inc. v. Catinoy* describes this type of company action when it ruled that "[c]onstructive dismissal does not always involve forthright dismissal or diminution in rank, compensation, benefit and privileges – there may be constructive dismissal if an act of clear discrimination, insensibility, or disdain by an employer becomes so unbearable on the part of the employee that it could foreclose any choice by him except to forego his continued employment." The respondent's situation is no different from what *Hyatt* defined, given the result of the petitioner's action and the attendant insensibility and disdain the employer exhibited. We significantly note that by reporting for work repeatedly, the respondent manifested his willingness to comply with the petitioner's rules and regulations and his desire to continue working for the latter. The petitioner, however, barred him from resuming his work under the pretext that he had violated a company directive. This is a clear manifestation of the petitioner's lack of respect and consideration for the respondent who had long served the company without blemish, but who had to absent himself because of illness. The petitioner's actions, under these circumstances, constitute constructive dismissal.

8. ID.; ID.; ID.; ILLEGAL DISMISSAL; LEGAL CONSEQUENCE. — The respondent's illegal dismissal carries the legal consequence defined under Article 279 of the Labor Code: the illegally dismissed employee is entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances and other benefits or their monetary equivalent, computed from the time his compensation was withheld from him up to the time of his actual reinstatement. The imposition of this legal consequence is a matter of law that allows no discretion on the part of the decision maker, except only to the extent recognized by the law itself as expressed in jurisprudence.

9. ID.; ID.; ID.; ID.; REINSTATEMENT; DOCTRINE OF STRAINED RELATIONS; THE DEGREE OF HOSTILITY ATTENDANT TO A LITIGATION IS NOT BY ITSELF, SUFFICIENT PROOF OF THE EXISTENCE OF STRAINED RELATIONS THAT WOULD RULE OUT THE POSSIBILITY OF REINSTATEMENT; CASE AT BAR. — As the CA correctly ruled, the NLRC erred when it awarded separation pay instead of reinstatement. The circumstances in this case do not warrant an exception to the rule that reinstatement is the consequence of an illegal dismissal. *First.* The existence of strained relations between the parties was not clearly established. We have consistently ruled that the *doctrine of strained relations* cannot be used recklessly or applied loosely to deprive an illegally dismissed employee of his means of livelihood and deny him reinstatement. Since the application of this doctrine will result in the deprivation of employment despite the absence of just cause, the implementation of the doctrine of strained relationship must be supplemented by the rule that *the existence of a strained relationship is for the employer to clearly establish and prove in the manner it is called upon to prove the existence of a just cause; the degree of hostility attendant to a litigation is not, by itself, sufficient proof of the existence of strained relations that would rule out the possibility of reinstatement.* Indeed, labor disputes almost always result in "strained relations," and the phrase cannot be given an overarching interpretation; otherwise, an unjustly dismissed employee can never be reinstated.

10. ID.; ID.; ID.; ID.; ID.; THE CONFLICT OCCASIONED BY THE EMPLOYEE'S FILING OF AN ILLEGAL DISMISSAL CASE DOES NOT MERIT THE SEVERANCE OF THE EMPLOYEE-EMPLOYER RELATIONSHIP BETWEEN THE PARTIES. — In the present case, we find no evidentiary support for the conclusion that strained relations existed between the parties. To be sure, the petitioner did not raise the defense of strained relationship with the respondent before the labor arbiter. Consequently, this issue – factual in nature – was not the subject of evidence on the part of both the petitioner and the respondent. There thus exists no competent evidence on which to base the conclusion that the relationship between the petitioner and the respondent has reached the point where their relationship is now best severed. We agree with

the CA's specific finding that the conflict, if any, occasioned by the respondent's filing of an illegal dismissal case, does not merit the severance of the employee-employer relationship between the parties.

11. ID.; ID.; ID.; ID.; PAYMENT OF SEPARATION PAY IN LIEU OF REINSTATEMENT WILL WORK INJUSTICE TO THE EMPLOYEE WHEN CONSIDERED WITH HIS LONG AND DEVOTED YEARS IN SERVICE. — The records disclose that respondent has been in the petitioner's employ for 23 years and has no previous record of inefficiency or infraction of company rules prior to his illegal dismissal from service. We significantly note that payment of separation pay in lieu of respondent's reinstatement will work injustice to the latter when considered with his long and devoted years in the petitioner's service. Separation pay may take into account the respondent's past years of service, but will deprive the respondent of compensation for the future productive years that his security of tenure protects. We take note, too, that the respondent, after 23 years of service, shall in a few years retire; any separation pay paid at this point cannot equal the retirement pay due the respondent upon retirement. For all these reasons, we uphold the CA ruling that the respondent should be reinstated to his former position or to a substantially equivalent position without loss of seniority rights.

APPEARANCES OF COUNSEL

Puno & Associates Law Office for petitioner.
The Solicitor General for public respondents.
Jose S. Torregoza for private respondent.

D E C I S I O N

BRION, *J.*:

Before this Court is the Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court filed by Pentagon Steel Corporation (the *petitioner*). It seeks to set aside:

[1] *Rollo,* pp. 3-23.

(a) the Decision of the Court of Appeals (*CA*) dated June 28, 2006[2] modifying the Decision of the National Labor Relations Commission (*NLRC*) dated January 31, 2005;[3] and

(b) the Resolution of the CA dated August 15, 2006,[4] denying the motion for reconsideration that the petitioner subsequently filed.

THE FACTUAL ANTECEDENTS

The petitioner, a corporation engaged in the manufacture of G.I. wire and nails, employed respondent Perfecto Balogo (the *respondent*) since September 1, 1979 in its wire drawing department. The petitioner alleged that the respondent absented himself from work on August 7, 2002 without giving prior notice of his absence. As a result, the petitioner sent him a letter by registered mail dated August 12, 2002, written in Filipino, requiring an explanation for his absence. The petitioner sent another letter to the respondent on August 21, 2002, also by registered mail, informing him that he had been absent without official leave (AWOL) from August 7, 2002 to August 21, 2002. Other letters were sent to the respondent by registered mail, all pointing out his absences; however, the respondent failed to respond. Thus, the petitioner considered him on AWOL from August 7, 2002.[5]

On September 13, 2002, the respondent filed a complaint with the Arbitration Branch of the NLRC for underpayment/ nonpayment of salaries and wages, overtime pay, holiday pay, service incentive leave, 13th month pay, separation pay, and ECOLA. The respondent alleged that on August 6, 2002, he contracted flu associated with diarrhea and suffered loose bowel movement due to the infection. The respondent maintained that

---

[2] Penned by Associate Justice Lucas P. Bersamin (now a member of this Court), and concurred in by Associate Justice Martin S. Villarama, Jr. and Associate Justice Celia C. Librea-Leagogo; *id.*, pp. 144-155.

[3] *Id.*, pp. 88-96.

[4] *Id.*, pp. 178-180.

[5] *Id.*, p. 145.

his illness had prevented him from reporting for work for ten (10) days. When the respondent finally reported for work on August 17, 2002, the petitioner refused to take him back despite the medical certificate he submitted. On August 19, 2002, the respondent again reported for work, exhibiting a note from his doctor indicating that he was fit to work. The petitioner, however, did not allow him to resume work on the same date. Subsequently, the respondent again reported for work on August 21 and 23, 2002 and October 10 and 18, 2002, to no avail. He was thus driven to file a complaint against the petitioner.[6]

During the conciliation proceedings on October 9, 2002, the respondent presented the medical certificate covering his period of absence. The petitioner required him, however, to submit himself to the company physician to determine whether he was fit to return to work in accordance with existing policies. On October 22, 2002, still during the conciliation proceedings, the respondent presented a medical certificate issued by the company physician; according to the petitioner, the respondent refused to return to work and insisted that he be paid his separation pay. The petitioner refused the respondent's demand for separation pay for lack of basis.

On January 20, 2003, the respondent formally amended his complaint to include his claim of illegal dismissal.[7]

The Labor Arbiter Ruling

On October 27, 2003, the labor arbiter rendered his decision dismissing the illegal dismissal charge, but directed the petitioner "to pay the complainant his SIL and 13th month pay in the amount of Five Thousand One Hundred Sixty-Six Pesos and 66/100 (₱5,166.66)."[8]

In dismissing the respondent's claim of illegal dismissal, the labor arbiter found that no dismissal took place; thus, the petitioner never carried the burden of proving the legality of a dismissal.

---

[6] *Id.*, p. 145.

[7] *Id.*, pp. 45-46.

[8] Penned by Labor Arbiter Gaudencio P. Demaisip, Jr.; *id.*, pp. 71-77.

The labor arbiter noted that the respondent's allegation that he reported for work is not reliable for lack of corroborating evidence, as the respondent in fact failed to respond to the petitioner's memoranda. Thus, the decision was confined to the directive to pay service incentive leave and 13th month pay.

The NLRC Ruling

The respondent appealed the labor arbiter's decision to the NLRC on November 14, 2003, specifically questioning the ruling that no illegal dismissal took place. On January 31, 2005, the NLRC Third Division vacated and set aside the decision of the labor arbiter.[9] The decision directed the company to pay the respondent separation pay, backwages, 13th month pay, and service incentive leave.[10]

The NLRC ruled that the petitioner's defense of abandonment has no legal basis since there was no clear intent on the respondent's part to sever the employer-employee relationship. The NLRC found it difficult to accept the petitioner's allegation

---

[9] Penned by then Presiding Commissioner Lourdes C. Javier, concurred in by Commissioner Tito F. Genilo; *id.*, pp. 88-96.

[10] The dispositive portion reads:

WHEREFORE, the decision dated 27 October 2002 is VACATED and SET ASIDE. The respondent company is directed to pay complainant the following computed as of date herein promulgated.

1. Separation Pay (one month for every Year of service)		
Sept. 1, 1979 – Jan. 31, 2005 (25 yrs.) =		₱ 182,000.00
2. Backwages		
Salary August 6, 2002 – Jan. 31, 2005		
P250 x 26 x 29.83	=	193,895.00
3. 13th Month Pay	=	16, 157.92
4. Service Incentive Leave Pay		
₱250 x5/12 x 29.83	=	3,107.29
		₱ 395,160.21

The other claims are dismissed.

that the respondent absented himself for unknown reasons; this kind of action is inconsistent with the respondent's twenty-three (23) years of service and lack of derogatory record during these years. As a consequence, the NLRC held that the respondent was illegally dismissed. Together with this conclusion, however, the NLRC also considered the *strained relationship existing between the parties* and, for this reason, *awarded separation pay in lieu of reinstatement, in addition to backwages*. On March 31, 2005, the NLRC denied the petitioner's motion for reconsideration.

The CA Ruling

On May 6, 2006, the petitioner filed a special civil action for *certiorari*[11] with the CA, alleging grave abuse of discretion on the part of the NLRC in ruling that illegal dismissal took place, and in awarding the respondent separation pay and backwages.

In a Decision dated June 28, 2006, the CA affirmed the NLRC's finding that the dismissal was illegal, but modified the challenged decision by adding reinstatement and the payment of "full backwages, inclusive of allowances and other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement."[12]

The CA held that the respondent was constructively dismissed when the petitioner repeatedly refused to accept the respondent back to work despite the valid medical reason that justified his absence from work. The CA concluded that the respondent complied with the petitioner's directive to submit a written explanation when the former presented the medical certificate to explain his absences.

The CA also disregarded the petitioner's charge of abandonment against the respondent. The appellate court ruled that the petitioner failed to prove a clear and deliberate intent on the respondent's part to discontinue working with no intention of returning. The

---

[11] Docketed as CA-G.R. SP No. 89587; *rollo*, pp. 117-143.

[12] *Supra* note 2, p. 154.

CA took note of the respondent's eagerness to return to work when he obtained a note from his doctor about his fitness to return to work. The CA also ruled that the respondent's filing of a complaint for illegal dismissal with a prayer for reinstatement manifested his desire to return to his job, thus negating the petitioner's charge of abandonment.

The CA, however, disagreed with the NLRC's application of the doctrine of "strained relations," citing jurisprudence that the doctrine should be strictly applied in order not to deprive an illegally dismissed employee of his right to reinstatement. The CA also held that to deny the respondent the benefits due from his long service with the company would be very harsh since his long service would not be amply compensated by giving him only separation pay.

Petitioner moved for reconsideration of the decision, but the CA denied the motion for lack of merit in the Resolution dated August 15, 2006.[13]

In this present petition, the petitioner imputes grave abuse of discretion against the CA:

1) in basing its decision on the proceedings that transpired when the parties were negotiating for a compromise agreement during the preliminary conference of the case;

2) in declaring that respondent was illegally dismissed by the petitioner; and

3) in ordering that respondent be reinstated to his former position with backwages.

THE COURT'S RULING

We do not find the petition meritorious.

Before going into the substantive merits of the controversy, we shall first resolve the propriety of the CA's consideration of the proceedings that transpired during the mandatory preliminary conference of the case.

---

[13] *Supra* note 4, pp.178-180.

Statements and/or agreements made at conciliation proceedings are privileged and cannot be used as evidence

The petitioner contends that the CA cannot use the parties' actions and/or agreements during the negotiation for a compromise agreement as basis for the conclusion that the respondent was illegally dismissed because an offer of compromise is not admissible in evidence under Section 27, Rule 130 of the Rules of Court.[14]

We agree with the petitioner, but for a different reason. The correct reason for the CA's error in considering the actions and agreements during the conciliation proceedings before the labor arbiter is Article 233 of the Labor Code which states that *"[i]nformation and statements made at conciliation proceedings shall be treated as privileged communication and shall not be used as evidence in the Commission. Conciliators and similar officials shall not testify in any court or body regarding any matters taken up at conciliation proceedings conducted by them."* This was the provision we cited in *Nissan Motors Philippines, Inc. v. Secretary of Labor*[15] when we pointedly disallowed the award made by the public respondent Secretary; the award was based on the information NCMB Administrator Olalia secured from the confidential position given him by the company during conciliation.

In the present case, we find that the CA did indeed consider the statements the parties made during conciliation; thus, the CA erred by considering excluded materials in arriving at its conclusion. The reasons behind the exclusion are two-fold.

First, since the law favors the settlement of controversies out of court, a person is entitled to "buy his or her peace" without danger of being prejudiced in case his or her efforts fail; hence, any communication made toward that end will be

[14] Sec. 27. *Offer of compromise not admissible.* – In civil cases, an offer of compromise is not an admission of any liability, and is not admissible in evidence against the offeror.

[15] G.R. Nos. 158190-91, June 21, 2006, 401 SCRA 604, 626-627.

regarded as privileged.[16] Indeed, if every offer to buy peace could be used as evidence against a person who presents it, many settlements would be prevented and unnecessary litigation would result, since no prudent person would dare offer or entertain a compromise if his or her compromise position could be exploited as a confession of weakness.[17]

Second, offers for compromise are irrelevant because they are not intended as admissions by the parties making them.[18] A true offer of compromise does not, in legal contemplation, involve an admission on the part of a defendant that he or she is legally liable, or on the part of a plaintiff, that his or her claim is groundless or even doubtful, since it is made with a view to avoid controversy and save the expense of litigation. It is the distinguishing mark of an offer of compromise that it is made tentatively, hypothetically, and in contemplation of mutual concessions.[19]

While we agree with the petitioner that the CA should not have considered the agreements and/or statements made by the parties during the conciliation proceedings, the CA's conclusion on illegal dismissal, however, was not grounded solely on the parties' statements during conciliation, but was amply supported by other evidence on record, which we discuss below. Based on these other pieces of evidence, the respondent was illegally dismissed; hence, our ruling regarding the statement made during conciliation has no effect at all on our final conclusion.

Respondent did not abandon his job

The rule is that the burden of proof lies with the employer to show that the dismissal was for a just cause.[20] In the present

---

[16] 32 C.J.S. Evidence § 522.

[17] *Marshall v. Taylor*, 168 Mo. 9, 240, 248, 153 S.W. 527; *Perkins v. Concord R. Co.*, 44 H.H. 223; *Pirie v. Wyld*, 11 Ont. 422; *New Country Corp. v. Toronto Gravel Road, etc*. C., 3 Ant. 584.

[18] 15 A.L.R.3d 13, §2 (a).

[19] *Supra* note 16.

[20] *Hanjin Engineering and Construction Co., Ltd. v. Court of Appeals*, G.R. No. 165910, April 10, 2006 487 SCRA 78; *Aliten v. U-Need Lumber & Hardware*, G.R. No. 168931, September 12, 2006, 501 SCRA 577.

case, the petitioner claims that there was no illegal dismissal since the respondent abandoned his job. The petitioner points out that it wrote the respondent various memoranda requiring him to explain why he incurred absences without leave, and requiring him as well to report for work; the respondent, however, never bothered to reply in writing.

In evaluating a charge of abandonment, the jurisprudential rule is that abandonment is a matter of intention that cannot be lightly presumed from equivocal acts.[21] To constitute abandonment, two elements must concur: (1) the failure to report for work or absence without valid or justifiable reason, and (2) a clear intent, *manifested through overt acts*, to sever the employer-employee relationship. The employer bears the burden of showing a deliberate and unjustified refusal by the employee to resume his employment without any intention of returning.[22]

We agree with the CA that the petitioner failed to prove the charge of abandonment.

First, the respondent had a valid reason for absenting himself from work. The respondent presented a medical certificate from his doctor attesting to the fact that he was sick with flu associated with diarrhea or loose bowel movement which prevented him from reporting for work for 10 days. The petitioner never effectively refuted the respondent's reason for his absence. We thus concur with the CA's view that the respondent submitted a valid reason for his absence and thereby substantially complied with the petitioner's requirement of a written explanation. We quote with approval the following discussion in the CA's decision:

> In his case, Balogo should be judged as having fully complied with the petitioner's directive by his presenting of the medical certificate to justify or explain his absences because the medical certificate already constituted the required "written explanation." Another written explanation from him would be superfluous and even

---

[21] *Hantex Trading Co., Inc., et al. v. Court of Appeals*, G.R. No. 148241, September 27, 2002, 390 SCRA 181.

[22] *Labor, et al. v. NLRC and Gold City Commercial Complex, Inc., and Uy*, G.R. No. 110388, September 14, 1995, 248 SCRA 183.

redundant if the facts already appearing in the medical certificate would inevitably be stated again in that other written explanation.

Why the petitioner persistently refused to accept Balogo back despite his presentation of the medical certificate and the doctor's note about his fitness to work was not credibly explained by the petitioner. The refusal is indicative of the petitioner's ill motive towards him, using the lack of written explanation as a clever ruse to terminate Balogo's employment.

Second, there was no clear intention on the respondent's part to sever the employer-employee relationship. Considering that "intention" is a mental state, the petitioner must show that the respondent's overt acts point unerringly to his intent not to work anymore.[23] In this case, we see no reason to depart from the unanimous factual findings of the NLRC and the CA that the respondent's actions after his absence from work for ten (10) days due to illness showed his willingness to return to work. Both tribunals found that after the respondent presented his medical certificate to the petitioner to explain his absence, he even went back to his doctor for a certification that he was already fit to return to work.These findings of fact we duly accept as findings that we must not only respect, but consider as final, since they are supported by substantial evidence.[24]

In addition, the respondent's filing of the amended complaint for illegal dismissal on January 20, 2003 strongly speaks against the petitioner's charge of abandonment, for it is illogical for an employee to abandon his employment and, thereafter, file a complaint for illegal dismissal.

That abandonment is negated finds support in a long line of cases where the immediate filing of a complaint for illegal dismissal was coupled with a prayer for reinstatement; the filing of the complaint for illegal dismissal is proof enough of the desire to

---

[23] *Lambo v. National Labor Relations Commission*, G.R. No. 111042, October 26, 1999, 317 SCRA 420; *Dagupan Bus Company v. National Labor Relations Commission*, G.R. No. 94291, November 9, 1990, 191 SCRA 328.

[24] *Duldulao v. Court of Appeals*, G.R. No. 164893, March 1, 2007, 517 SCRA 191; *Heirs of the Late Panfilo V. Pajarillo v. Court of Appeals*, G.R. Nos. 155056-57, October 19, 2007, 537 SCRA 96.

return to work.[25] The prayer for reinstatement, as in this case, speaks against any intent to sever the employer-employee relationship.[26]

We additionally take note of the undisputed fact that the respondent had been in the petitioner's employ for 23 years. Prior to his dismissal, the respondent's service record was unblemished having had no record of infraction of company rules. As the NLRC correctly held, we find it difficult to accept the petitioner's allegation that the respondent absented himself for unjustifiable reasons with the intent to abandon his job. To our mind, abandonment after the respondent's long years of service and the consequent surrender of benefits earned from years of hard work are highly unlikely. Under the given facts, no basis in reason exists for the petitioner's theory that the respondent abandoned his job.

Respondent was constructively dismissed

The above conclusion necessarily leads us to sustain the NLRC's finding, as affirmed by the CA, that the respondent was dismissed without just cause. Again, we quote with approval the CA's disquisition:

> That Balogo was dismissed in contravention of the letter and spirit of the Constitution and the Labor Code on the security of tenure guaranteed to him as employee is clear for us. A dismissal need not be expressed orally or in writing, for it can also be implied. When the employer continuously refuses to accept the employee back despite his having a valid reason for his absence from work, illegal dismissal results because the employee is thus prevented from returning to work under the façade of a violation of a company directive.

A dismissal effected through the fig leaf of an alleged violation of a company directive is no less than an actual illegal dismissal that jurisprudence has labeled as a constructive dismissal. *Hyatt*

---

[25] *Supra* note 19.

[26] *Big AA Manufacturer v. Antonio, et al.*, G.R. No. 160854, March 3, 2006, 484 SCRA 33.

Taxi Services, Inc. v. Catinoy[27] describes this type of company action when it ruled that "[c]onstructive dismissal does not always involve forthright dismissal or diminution in rank, compensation, benefit and privileges – there may be constructive dismissal if an act of clear discrimination, insensibility, or disdain by an employer becomes so unbearable on the part of the employee that it could foreclose any choice by him except to forego his continued employment."

The respondent's situation is no different from what *Hyatt* defined, given the result of the petitioner's action and the attendant insensibility and disdain the employer exhibited. We significantly note that by reporting for work repeatedly, the respondent manifested his willingness to comply with the petitioner's rules and regulations and his desire to continue working for the latter. The petitioner, however, barred him from resuming his work under the pretext that he had violated a company directive. This is a clear manifestation of the petitioner's lack of respect and consideration for the respondent who had long served the company without blemish, but who had to absent himself because of illness. The petitioner's actions, under these circumstances, constitute constructive dismissal.[28]

The respondent's illegal dismissal carries the legal consequence defined under Article 279 of the Labor Code: the illegally dismissed employee is entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances and other benefits or their monetary equivalent, computed from the time his compensation was withheld from him up to the time of his actual reinstatement.[29] The imposition of this legal consequence is a matter of law that allows no discretion on the part of the decision maker, except only to the extent recognized by the law itself as expressed in jurisprudence.

---

[27] G.R. No. 143204, June 26, 2001, 359 SCRA 686.

[28] *See Ruperto Suldao v. Cimech System Construction, Inc., et al.*, G.R. No. 171392, October 30, 2006, 506 SCRA 256.

[29] *Premiere Development Bank v. Mantal*, G.R. No. 167716, March 23, 2006, 485 SCRA 234; *Philippine Amusement Gaming Corporation v. Angara*, G.R. No. 142937, July 25, 2006, 496 SCRA 453.

Respondent is entitled to reinstatement not separation pay

As the CA correctly ruled, the NLRC erred when it awarded separation pay instead of reinstatement. The circumstances in this case do not warrant an exception to the rule that reinstatement is the consequence of an illegal dismissal.

First. The existence of strained relations between the parties was not clearly established. We have consistently ruled that the *doctrine of strained relations* cannot be used recklessly or applied loosely to deprive an illegally dismissed employee of his means of livelihood and deny him reinstatement. Since the application of this doctrine will result in the deprivation of employment despite the absence of just cause, the implementation of the doctrine of strained relationship must be supplemented by the rule that *the existence of a strained relationship is for the employer to clearly establish and prove in the manner it is called upon to prove the existence of a just cause; the degree of hostility attendant to a litigation is not, by itself, sufficient proof of the existence of strained relations that would rule out the possibility of reinstatement.*[30] Indeed, labor disputes almost always result in "strained relations," and the phrase cannot be given an overarching interpretation; otherwise, an unjustly dismissed employee can never be reinstated.[31]

In the present case, we find no evidentiary support for the conclusion that strained relations existed between the parties. To be sure, the petitioner did not raise the defense of strained relationship with the respondent before the labor arbiter. Consequently, this issue – factual in nature – was not the subject of evidence on the part of both the petitioner and the respondent. There thus exists no competent evidence on which to base the conclusion that the relationship between the petitioner and the respondent has reached the point

---

[30] *Industrial Corporation v. Morales*, G.R. No. 161158, May 9, 2005, 458 SCRA 339, 347 citing *Procter and Gamble Philippines v. Bondesto*, G.R. No. 139847, March 5, 2004, 425 SCRA 1.

[31] *Quijano v. Mercury Drug Corporation*, G.R. No. 126561, July 8, 1998, 292 SCRA 109, citing *Capili v. NLRC*, 270 SCRA 488, 295 (1997).

where their relationship is now best severed.[32] We agree with the CA's specific finding that the conflict, if any, occasioned by the respondent's filing of an illegal dismissal case, does not merit the severance of the employee-employer relationship between the parties.

Second. The records disclose that respondent has been in the petitioner's employ for 23 years and has no previous record of inefficiency or infraction of company rules prior to his illegal dismissal from service. We significantly note that payment of separation pay in lieu of respondent's reinstatement will work injustice to the latter when considered with his long and devoted years in the petitioner's service. Separation pay may take into account the respondent's past years of service, but will deprive the respondent of compensation for the future productive years that his security of tenure protects. We take note, too, that the respondent, after 23 years of service, shall in a few years retire; any separation pay paid at this point cannot equal the retirement pay due the respondent upon retirement.

For all these reasons, we uphold the CA ruling that the respondent should be reinstated to his former position or to a substantially equivalent position without loss of seniority rights.

WHEREFORE, premises considered, we hereby *DENY* the petition, and, consequently, *AFFIRM* the Decision of the Court of Appeals dated June 28, 2006 and its Resolution dated August 15, 2006 in CA-G.R. SP No. 89587.

SO ORDERED.

Quisumbing (Chairperson), Ynares-Santiago,[*] *Chico-Nazario,*[**] and *Leonardo-de Castro,*[***] *JJ.*, concur.

---

[32] *Id.*, p.120.

[*] 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.

THIRD DIVISION

[G.R. No. 179943. June 26, 2009]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **MARLON ALBERT DE LEON y HOMO,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; ROBBERY WITH HOMICIDE; ELEMENTS. — In *People v. De Jesus*, this Court had exhaustively discussed the crime of robbery with homicide, thus: For the accused to be convicted of the said crime, the prosecution is burdened to prove the confluence of the following elements: (1) the taking of personal property is committed with violence or intimidation against persons; (2) the property taken belongs to another; (3) the taking is *animo lucrandi*; and (4) by reason of the robbery or on the occasion thereof, homicide is committed. In robbery with homicide, the original criminal design of the malefactor is to commit robbery, with homicide perpetrated on the occasion or by reason of the robbery. The intent to commit robbery must precede the taking of human life. The homicide may take place before, during or after the robbery. It is only the result obtained, without reference or distinction as to the circumstances, causes or modes or persons intervening in the commission of the crime that has to be taken into consideration. There is no such felony of robbery with homicide through reckless imprudence or simple negligence. The constitutive elements of the crime, namely, robbery with homicide, must be consummated. xxx When homicide is committed by reason or on the occasion of robbery, all those who took part as principals in the robbery would also be held liable as principals of the single and indivisible felony of robbery with homicide, although they did not actually take part in the killing, unless it clearly appears that they endeavored to prevent the same.

2. ID.; CONSPIRACY; IMPLIED CONSPIRACY; WHEN PRESENT. — From the above disquisition, the testimonies of the witnesses, and pieces of evidence presented by the prosecution, the crime of robbery with homicide was indeed committed. There was no mistaking from the actions of all the accused that their main intention was to rob the gasoline

station and that on occasion of such robbery, a homicide was committed. The question now is whether there was conspiracy in the commission of the crime. According to appellant, the prosecution failed to prove that he was a co-conspirator. However, this Court finds no merit to appellant's argument. If it is proved that two or more persons aimed by their acts towards the accomplishment of the same unlawful object, each doing a part so that their combined acts, though apparently independent, were in fact connected and cooperative, indicating a closeness of personal association and a concurrence of sentiment, a conspiracy may be inferred though no actual meeting among them to concert means is proved. That would be termed an implied conspiracy. The prosecution was able to prove the presence of an implied conspiracy. The witnesses were able to narrate in a convincing manner, the circumstances surrounding the commission of the robbery and positively identified appellant as one of the robbers.

3. ID.; ID.; ONCE SHOWN, THE ACT OF ONE IS THE ACT OF ALL THE CONSPIRATORS. — Therefore, it can be inferred from the role appellant played in the commission of the robbery, that a conspiracy existed and he was part of it. To be a conspirator, one need not participate in every detail of the execution; he need not even take part in every act or need not even know the exact part to be performed by the others in the execution of the conspiracy. Each conspirator may be assigned separate and different tasks which may appear unrelated to one another but, in fact, constitute a whole collective effort to achieve their common criminal objective. Once conspiracy is shown, the act of one is the act of all the conspirators. The precise extent or modality of participation of each of them becomes secondary, since all the conspirators are principals.

4. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TRIAL COURT'S FINDINGS WITH RESPECT THERETO ARE ENTITLED TO THE HIGHEST DEGREE OF RESPECT AND WILL NOT BE DISTURBED ON APPEAL. — As to the credibility of the witnesses, the RTC's findings must not be disturbed. The well-settled rule in this jurisdiction is that the trial court's findings on the credibility of witnesses are entitled to the highest degree of respect and will not be disturbed on appeal without any clear showing that it overlooked, misunderstood or misapplied some

facts or circumstances of weight or substance which could affect the result of the case.

5. ID.; ID.; DEFENSES OF DENIAL AND ALIBI; NEGATIVE AND SELF-SERVING. — For his defense, appellant merely denied participating in the robbery. However, his presence during the commission of the crime was well-established as appellant himself testified as to the matter. Granting that he was merely present during the robbery, his inaction does not exculpate him. To exempt himself from criminal liability, a conspirator must have performed an overt act to dissociate or detach himself from the conspiracy to commit the felony and prevent the commission thereof. Appellant offered no evidence that he performed an overt act neither to escape from the company of the robbers nor to prevent the robbery from taking place. His denial, therefore, is of no value. Courts generally view the defenses of denial and alibi with disfavor on account of the facility with which an accused can concoct them to suit his defense. As both evidence are negative and self-serving, they cannot attain more credibility than the testimonies of prosecution witnesses who testify clearly, providing thereby positive evidence on the various aspects of the crime committed.

6. CRIMINAL LAW; ROBBERY WITH HOMICIDE; A CONTINUING OFFENSE; CASE AT BAR. — Consequently, the CA was correct in ruling that appellant was guilty only of one count of robbery with homicide. In the crime of robbery with homicide, there are series of acts, borne from one criminal resolution, which is to rob. A continued (continuous or continuing) crime is defined as a single crime, consisting of a series of acts but all arising from one criminal resolution. Although there is a series of acts, there is only one crime committed; hence, only one penalty shall be imposed. In the case before Us, [appellant] and his companions intended only to rob one place; and that is the Energex gasoline station. That they did; and in the process, also took away by force the money and valuables of the employees working in said gasoline station. Clearly inferred from these circumstances are the series of acts which were borne from one criminal resolution. A continuing offense is a continuous, unlawful act or series of acts set on foot by a single impulse and operated by an unintermittent force, however long a time it may occupy. This can be said of the case at hand. x x x.

7. ID.; ID.; IMPOSABLE PENALTY; USE OF AN UNLICENSED FIREARM IS A SPECIAL AGGRAVATING CIRCUMSTANCE IN THE HOMICIDE OR MURDER COMMITTED; USE OF UNLICENSED FIREARM NOT PROVEN IN CASE AT BAR. — Under Article 294 of the Revised Penal Code, as amended by R.A. No. 7659, robbery with homicide is punishable by *reclusion perpetua* to death, which are both indivisible penalties. Article 63 of the same Code provides that, in all cases in which the law prescribes a penalty composed of two indivisible penalties, the greater penalty shall be applied when the commission of the deed is attended by one aggravating circumstance. It must be remembered that the Informations filed with the RTC alleged the aggravating circumstance of the use of unlicensed firearm. Pursuant to the third paragraph of Section 1 of P.D. No. 1866, as amended by R.A. No. 8294, such use of an unlicensed firearm is a special and not a generic aggravating circumstance in the homicide or murder committed. xxx. After a careful study of the records of the present case, this Court found that the use of unlicensed firearm was not duly proven by the prosecution. Although jurisprudence dictates that the existence of the firearm can be established by mere testimony, the fact that appellant was not a licensed firearm holder must still be established. The prosecution failed to present written or testimonial evidence to prove that appellant did not have a license to carry or own a firearm, hence, the use of unlicensed firearm as an aggravating circumstance cannot be appreciated.

8. ID.; ID.; CIVIL LIABILITIES OF ACCUSED-APPELLANT. — Finally, it is worth noting that the RTC ordered appellant to indemnify the heirs of Edralin Macahis the amount of ₱50,000.00 as death indemnity, ₱12,000.00 as compensatory damages for the stolen service firearm if restitution is no longer possible and ₱50,000.00 as moral damages. Actual damages were never proven during the trial. Hence, this Court's rulings on temperate damages apply, thus: In *People vs. Abrazaldo*, we laid down the doctrine that where the amount of actual damages for funeral expenses cannot be determined because of the absence of receipts to prove them, temperate damages may be awarded in the amount of ₱25,000 This doctrine specifically refers to a situation where no evidence at all of funeral expenses was presented in the trial court. However, in

instances where actual expenses amounting to less than ₱25,000 are proved during the trial, as in the case at bar, we apply the ruling in the more recent case of *People vs. Villanueva* which modified the Abrazaldo doctrine. In *Villanueva*, we held that "when actual damages proven by receipts during the trial amount to less than ₱25,000, the award of temperate damages for ₱25,000 is justified in lieu of the actual damages of a lesser amount." To rule otherwise would be anomalous and unfair because the victim's heirs who tried but succeeded in proving actual damages of an amount less than ₱25,000 would be in a worse situation than those who might have presented no receipts at all but would now be entitled to ₱25,000 temperate damages.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for appellant.

D E C I S I O N

PERALTA, *J.*:

This is an appeal from the Decision[1] of the Court of Appeals (CA), affirming with modification the Decision[2] of the Regional Trial Court (RTC), Branch 76, San Mateo, Rizal, finding appellant Marlon Lambert De Leon y Homo guilty beyond reasonable doubt of the crime of robbery with homicide.

The factual and procedural antecedents are as follows:

According to the prosecution, in the early morning, around 2 o'clock of January 7, 2000, Eduardo Zulueta and Fortunato Lacambra III, both gasoline boys; Julieta Amistoso, cashier; and Edralin Macahis, security guard; all employees of Energex Gasoline Station, located at *Barangay* Guinayan, San Mateo,

[1] Penned by Associate Justice Enrico A. Lanzanas, with Associate Justices Remedios S. Fernando and Rosalinda Asuncion-Vicente, concurring; *rollo*, pp. 3-23.

[2] Penned by Judge Jose C. Reyes, Jr. (now Justice of the Court of Appeals); CA *rollo*, pp. 36-54.

Rizal, were on duty when a mint green-colored Tamaraw FX arrived for service at the said gasoline station.[3]

Eduardo Zulueta was the one who attended to the said vehicle. He went to the driver's side in order to take the key of the vehicle from the driver so that he could open the gas tank. He saw through the lowered window shield that there were about six to seven persons aboard the vehicle. He proceeded to fill up ₱50.00 worth of diesel in the gas tank.After doing this, he returned the key to the driver. While returning the key, the driver told him that the engine of the vehicle would not start.[4] Eduardo Zulueta offered to give the vehicle a push. While Eduardo Zulueta and fellow gasoline boy Fortunato Lacambra III were positioned at the back of the vehicle, ready to push the same, the six male passengers of the same vehicle, except the driver, alighted and announced a hold-up. They were armed with a shotgun and .38 caliber pistol.[5]

Fortunato Lacambra III was ordered to lie down,[6] while Eduardo Zulueta was directed to go near the Car Wash Section.[7] At that instance, guns were poked at them.[8]

Appellant, who guarded Eduardo Zulueta, poked a gun at the latter and took the latter's wallet containing a pawnshop ticket and ₱50.00, while the companion of the former, hit the latter on his nape with a gun.[9]

Meanwhile, four members of the group went to the cashier's office and took the money worth ₱3,000.00.[10] Those four robbers

---

[3] Records, pp. 206-209.

[4] *Id.* at 207-208.

[5] *Id*, at 206 and 208.

[6] *Id.* at 206.

[7] *Id.* at 208.

[8] *Id.* at 206 and 208.

[9] *Id.* at 208.

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

were also the ones who shot Edralin Macahis in the stomach.[11] Thereafter, the same robbers took Edralin Macahis' service firearm.[12]

After he heard successive gunshots, Eduardo Zulueta saw appellant and his companions immediately leave the place.[13] The robbers boarded the same vehicle and proceeded toward San Mateo, Rizal.[14] When the robbers left, Eduardo Zulueta stood up and found Julieta Amistoso, who told him that the robbers took her bag and jewelry. He also saw that Edralin Macahis had a gunshot wound in the stomach. He immediately hailed a vehicle which transported the injured Edralin Macahis to the hospital.[15] Later on, Edralin Macahis died at the hospital due to the gunshot wound.[16]

The following day, Eduardo Zulueta identified appellant as one of the robbers who poked a gun at him.[17]

However, according to appellant, from January 4 to 6, 2000, he stayed at the house of his Tita Emma at Pantok, Binangonan, Rizal, helping the latter in her canteen. On the evening of January 6, at approximately 9 o'clock, appellant asked permission from his Tita Emma to go to Antipolo. Catherine Homo, appellant's cousin and the latter's younger brother, accompanied appellant to the terminal. While waiting for a ride, the vehicle, a Tamaraw FX, of a certain Christian Gersalia, a relative of appellant and Catherine Homo, passed by. Catherine Homo asked Christian Gersalia if he would allow appellant to hitch a ride on his vehicle. Christian Gersalia agreed. Aside from Christian Gersalia, there were other passengers in the said vehicle.[18]

---

[11] *Id.* at 206.

[12] *Id.*

[13] *Id.* at 208.

[14] *Id.* at 206

[15] *Id.* at 208

[16] *Id.* at 205.

[17] *Id.* at 208.

[18] *Id.* at 210 and 211.

When the vehicle reached Masinag, where appellant was supposed to alight, he was not allowed to do so; instead, he was asked by the other passengers to join them in their destination. While on the road, appellant fell asleep. When he woke up, they were in a gasoline station. He then saw Christian Gersalia and the other passengers conducting a hold-up. He never left the vehicle and was not able to do anything because he was overwhelmed with fear. After he heard the gunshots, Christian Gersalia and the other passengers went to the vehicle and proceeded towards Marikina. On their way, they were followed by policemen who fired at them. The other passengers fired back at the policemen. It was then that the vehicle hit a wall prompting the other passengers to scamper in different directions leaving him behind. When the policemen arrived, he was immediately arrested.[19]

As a result of the above incident, four Informations for Robbery with Homicide were filed against appellant, Rudy Gersalia, Christian Gersalia, Dondon Brenvuela, Jonathan Brenvuela, Pantoy Servantes, an *alias* "Rey," an *alias* "Jonard," an *alias* "Precie," and an *alias* "Renato," which read as:

Criminal Case No. 4747

That on or about the 7th day of January 2000, in the Municipality of San Mateo, Province of Rizal, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together with Rudy Gersalia, Christian Gersalia, Dondon Brenvuela, Jonathan Brenvuela, Pantoy Servantes, *Alias* "Rey," *Alias* "Jonard," *Alias* " Precie" and *Alias* "Renato" whose true names, identities and present whereabouts are still unknown and still at-large, and conspiring and mutually helping and assisting one another, while armed with unlicensed firearms and acting as a band, with intent of gain with aggravating circumstances of treachery, abuse of superior strength and using disguise, fraud or craft and taking advantage of nighttime, and by means of motor vehicle and by means of force, violence and intimidation, employed upon ENERGEX GASOLINE STATION, owned by Regino C. Natividad, and represented by Macario C. Natividad, did then and there willfully, unlawfully and feloniously rob, steal and carry away its cash earnings

[19] *Id.* at 211.

worth ₱3,000.00, to the damage and prejudice of said Energex Gasoline Station in the aforesaid amount of ₱3,000.00 and on the occasion of the said robbery, the above-named accused, while armed with unlicensed firearms with intent to kill, conspiring and confederating together with Rudy Gersalia, Christian Gersalia, Dondon Brenvuela, Jonathan Brenvuela, Pantoy Servantes, *Alias* "Rey," *Alias* "Jonard," *Alias* "Precie" and *Alias* "Renato," whose true names, identities and present whereabouts are still unknown and still at-large, did then and there willfully, unlawfully and feloniously attack, assault and shoot one EDRALIN MACAHIS, a Security Guard of Energex Gasoline Station, thereby inflicting upon him gunshot wound on his trunk which directly caused his death.

Contrary to law.

Criminal Case No. 4748

That on or about the 7th day of January 2000 in the Municipality of San Mateo, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating , together with Rudy Gersalia, Christian Gersalia, Dondon Brenvuela, Jonathan Brenvuela, Pantoy Servantes, *Alias* "Rey," *Alias* "Jonard," *Alias* " Precie" and *Alias* "Renato," whose true names, identities and present whereabouts are still unknown and still at-large and conspiring and mutually helping and assisting one another, while armed with unlicensed firearms and acting as a band, with intent of gain, with aggravating circumstances of treachery, abuse of superior strength and using disguise, fraud or craft and taking advantage of nighttime, and by means of a motor vehicle and by means of force, violence and intimidation, employed upon the person of JULIETA A. AMISTOSO, the Cashier of Energex Gasoline Station, did then and there willfully, unlawfully and feloniously rob, steal and carry away the following, to wit:

a) One (1) ladies ring with sapphire stone valued at ₱1,500.00
b) One (1) Omac ladies wristwatch valued at ₱2,000.00
c) Guess black bag valued at ₱500.00
d) Leather wallet valued at ₱150.00
e) White T-Shirt valued at ₱175.00

to her damage and prejudice in the total amount of ₱4,325.00 and on the occasion of the said robbery, the above-named accused while armed with unlicensed firearms with intent to kill, conspiring and confederating together with Rudy Gersalia, Christian Gersalia, Dondon

Brenvuela, Jonathan Brenvuela, Pantoy Servantes, *Alias* "Rey," *Alias* "Jonard," *Alias* "Precie" and *Alias* "Renato," whose true names, identities and present whereabouts are still unknown and still at-large, did then and there willfully, unlawfully and feloniously attack, assault and shoot one EDRALIN MACAHIS, a Security Guard of Energex Gasoline Station, thereby inflicting upon him gunshot wound on his trunk which directly caused his death.

Contrary to law.

Criminal Case No. 4749

That on or about the 7th day of January 2000, in the Municipality of San Mateo, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together with Rudy Gersalia, Christian Gersalia, Dondon Brenvuela, Jonathan Brenvuela, Pantoy Servantes, *Alias* "Rey," *Alias* "Jonard," *Alias* "Precie" and Alias "Renato," whose true names, identities and present whereabouts are still unknown and still at-large, and conspiring and mutually helping and assisting one another, while armed with unlicensed firearms and acting as a band, with intent of gain, with aggravating circumstances of treachery, abuse of superior strength and using disguise, fraud or craft and taking advantage of nighttime, and by means of a motor vehicle and by means of force, violence and intimidation, employed upon EDRALIN MACAHIS, a Security Guard of Energex Gasoline Station, did then and there willfully, unlawfully and feloniously rob, steal, and carry away his service firearm .12 gauge shotgun with serial number 13265 valued at ₱12,000.00 owned by Alert and Quick (A-Q) Security Services Incorporated represented by its General Manager Alberto T. Quintos to the damage and prejudice of said Alert and Quick (A-Q) Security Services Incorporated in the aforesaid amount of ₱12,000.00 and on the occasion of the said robbery the above-named accused, while armed with unlicensed firearms, with intent to kill conspiring and confederating together with Rudy Gersalia, Christian Gersalia, Dondon Brenvuela, Jonathan Brenvuela, Pantoy Servantes, *Alias* "Rey", *Alias* "Jonard", *Alias* " Precie" and *Alias* "Renato", whose true names, identities and present whereabouts are still unknown and still at-large, did then and there willfully, unlawfully and feloniously attack, assault and shoot one EDRALIN MACAHIS, thereby inflicting upon him gunshot wound on his trunk which directly caused his death.

Contrary to law.

Criminal Case No. 4750

That on or about the 7th day of January 2000, in the Municipality of San Mateo, Province of Rizal, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together with Rudy Gersalia, Christian Gersalia, Dondon Brenvuela, Jonathan Brenvuela, Pantoy Servantes, *Alias* "Rey," *Alias* "Jonard," *Alias* "Precie" and *Alias* "Renato," whose true names, identities and present whereabouts are still unknown and still at-large and conspiring and mutually helping and assisting one another, while armed with unlicensed firearms and acting as a band, with intent of gain, with aggravating circumstances of treachery, abuse of superior strength and using disguise, fraud or craft and taking advantage of nighttime, and by means of a motor vehicle and by means of force, violence and intimidation, employed upon the person of EDUARDO ZULUETA, a gasoline boy of Energex Gasoline Station, did then and there willfully, unlawfully and feloniously rob, steal and carry away the following to wit:

a) Pawnshop Ticket from M. Lhuiller Pawnshop for one (1) black Citizen men's watch (automatic) valued at ₱2,000.00

b) Cash money worth ₱50.00

to his damage and prejudice in the total amount of ₱2,050.00 and on the occasion of the said robbery, the above-named accused, while armed with unlicensed firearms with intent to kill, conspiring and confederating together with Rudy Gersalia, Christian Gersalia, Dondon Brenvuela, Jonathan Brenvuela, Pantoy Servantes, *Alias* "Rey," *Alias* "Jonard," *Alias* "Precie" and *Alias* "Renato," whose true names, identities and present whereabouts are still unknown and still at-large, did then and there willfully, unlawfully and feloniously attack, assault and shoot one EDRALIN MACAHIS, a Security Guard of Energex Gasoline Station, thereby inflicting upon him gunshot wound on his trunk which directly caused his death.

Contrary to law.

Upon arraignment on March 23, 2000, appellant, with the assistance of counsel *de parte*, entered a plea of not guilty on all the charges. Thereafter, trial on the merits ensued.

The prosecution presented five witnesses, namely: Macario C. Natividad,[20] then officer-in-charge of Energex Gasoline Station where the incident took place; Edito Macahis,[21] a cousin of the deceased security guard Edralin Macahis; Fortunato Lacambra III,[22] a gasoline boy of the same gas station; Eduardo Zulueta,[23] also a gasoline boy of the same gas station, and Alberto Quintos,[24] general manager of Alert and Quick Security Services, Inc., where the deceased security guard was employed.

The defense, on the other hand, presented two witnesses, namely: Catherine Homo,[25] a cousin of appellant and the appellant[26] himself.

On December 20, 2001, the RTC rendered its Decision[27] convicting appellant beyond reasonable doubt of all the charges against him, the dispositive portion of which reads:

1. In Criminal Case No. 4747, finding accused Marlon Albert de Leon *y* Homo guilty beyond reasonable doubt of the crime of Robbery with Homicide, as defined and penalized under No. 1 of Art. 294 of the Revised Penal Code, as amended by Sec. 9 of R.A. 7659, in relation to Sec. 1 of P.D. 1866, as further amended by Sec. 1 of R.A. 8294, having acted in conspiracy with other malefactors who have, to date, remained at-large, and sentencing the said Marlon Albert de Leon y Homo to the penalty of Death, taking into consideration the use of an unlicensed firearm in the commission of the crime as an aggravating circumstance; to pay Energex Gasoline Station owned by Regino Natividad and represented by Macario C. Natividad the amount of ₱3,000.00 as compensatory damages and to pay the costs;

---

[20] TSN, May 4, 2000.

[21] TSN, May 11 and December 14, 2000.

[22] TSN, May 18, 2000.

[23] TSN, May 25 and June 7, 2000.

[24] TSN, September 6 and 21, 2000.

[25] TSN, May 3, 2001.

[26] TSN, May 30, 2001 and July 3, 2001.

[27] Records, pp. 203-219.

2. In Crim. Case No. 4748, finding accused Marlon Albert de Leon *y* Homo guilty beyond reasonable doubt of the crime of Robbery with Homicide, as defined and penalized under No. 1 of Art. 294 of the Revised Penal Code, as amended by Sec. 9 of R.A. 7659, in relation to Sec. 1 of P.D. 1866, as further amended by Sec. 1 of R.A. 8294, having acted in conspiracy with other malefactors who have, to date, remained at-large, and sentencing the said Marlon Albert de Leon *y* Homo to the penalty of Death, taking into consideration the use of an unlicensed firearm in the commission of the crime as an aggravating circumstance, and to pay the costs;

3. In Crim. Case No. 4749, finding accused Marlon Albert de Leon *y* Homo guilty beyond reasonable ground of the crime of Robbery with Homicide, as defined and penalized under No. 1 of Art. 294 of the Revised Penal Code, as amended by Sec. 9 of R.A. 7659, in relation to Sec. 1 of P.D. 1866, as further amended by Sec. 1 of R.A. 8294, having acted in conspiracy with other malefactors who have, to date, remained at-large, and sentencing the said Marlon Albert de Leon *y* Homo to the penalty of Death, taking into consideration the use of an unlicensed firearm in the commission of the crime as an aggravating circumstance; to indemnify the heirs of Edralin Macahis in the amount of ₱50,000.00 as death indemnity; to pay ₱12,000.00 as compensatory damages for the stolen service firearm if restitution is no longer possible and ₱50,000.00 as moral damages, and to pay the costs;

4. In Crim. Case No. 4750, finding accused Marlon Albert de Leon *y* Homo guilty beyond reasonable doubt of the crime of Robbery with Homicide, as defined and penalized under No. 1 of Art. 294 of the Revised Penal Code, as amended by Sec. 9 of R.A 7659, in relation to Sec. 1 of P.D. 1866, as further amended by Sec. 1 of R.A. 8294, having acted in conspiracy with other malefactors who have, to date, remained at-large, and sentencing the said Marlon Albert de Leon *y* Homo to the penalty of Death, taking into consideration the use of an unlicensed firearm in the commission of the crime as an aggravating circumstance and to pay Eduardo Zulueta, victim of the robbery, in the amount of ₱2,050.00 as compensatory damages for the stolen properties if restitution is no longer possible and to pay the costs.

As against accused Rudy Gersalia and Christian Gersalia, who have, to date, remained at-large, let a warrant of arrest be issued against them and let these cases be, in the meantime, sent to the

archives without prejudice to their reinstatement upon apprehension of the said accused.

As against accused Dondon Brenvuela, Jonathan Brenvuela, Pantoy Servantes, *Alias* "Rey," *Alias* "Jonard," Alias "Precie and *Alias* "Renato," whose true names, identities and present whereabouts are still unknown and are still at-large, let these cases be, in the meantime, sent to the archives without prejudice to their reinstatement upon the identification and apprehension of the said accused.

SO ORDERED.

The cases were appealed to this Court, however, on September, 21, 2004,[28] in conformity with the Decision dated July 7, 2004 in G.R. Nos. 147678-87 entitled *The People of the Philippines v. Efren Mateo y Garcia*, modifying the pertinent provisions of the Revised Rules of Criminal Procedure, more particularly Sections 3 and 10 of Rule 125 and any other rule insofar as they provide for direct appeals from the RTCs to this Court in cases where the penalty imposed is death, *reclusion perpetua* or life imprisonment, as well as the Resolution of this 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 VII, Section 5 of the Constitution, and allowing an intermediate review by the CA before such cases are elevated to this Court. This Court transferred the cases to the CA for appropriate action and disposition.

The CA, on June 29, 2007,[29] affirmed with modification, the Decision of the RTC, with the dispositive portion reading:

WHEREFORE, the appealed decision is AFFIRMED with MODIFICATION. Accused Marlon Albert de Leon *y* Homo is hereby found guilty beyond reasonable doubt of the crime of Robbery with Homicide of only one count.

Given the passage of Republic Act 9346 which took effect on 24 June 2006, the penalty imposed upon Marlon de Leon *y* Homo is hereby reduced or commuted to *reclusion perpetua*.

[28] *Rollo*, p. 2.

[29] *Id.* at 3-23.

SO ORDERED.

On December 10, 2007, this Court accepted the appeal,[30] the penalty imposed being *reclusion perpetua*.

The Office of the Solicitor General (OSG), on February 8, 2008, filed its Manifestation and Motion In Lieu of the Supplemental Brief[31] dated February 4, 2008 stating that it will no longer file a supplemental brief, considering that appellant has not raised any new issue that would require the filing of a supplemental brief.

Appellant filed a Manifestation[32] on February 22, 2008 stating that he re-pleads and adopts his Appellant's Brief and Reply Brief as Supplemental Brief.

Appellant, in his Brief,[33] assigned the following errors:

I

THE TRIAL COURT GRAVELY ERRED IN FINDING ACCUSED-APPELLANT A CO-CONSPIRATOR IN THE COMMISSION OF THE CRIME CHARGED DESPITE THE FAILURE OF THE PROSECUTION TO PROVE THE SAME AND GUILT BEYOND REASONABLE DOUBT.

II

ON THE ASSUMPTION THAT ACCUSED-APPELLANT IS GUILTY OF ROBBERY WITH HOMICIDE, THE TRIAL COURT GRAVELY ERRED IN IMPOSING FOUR (4) DEATH PENALTIES DESPITE THAT THE CRIME CHARGED WAS PRODUCED BY ONE SINGLE ACT WHICH SHOULD BE METED WITH A SINGLE PENALTY.

The OSG, in its Appellee's Brief,[34] insisted that all the elements of the crime and the appellant's participation in the crime had been established.

---

[30] *Id.* at 28

[31] *Id.* at 29-30

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

[33] CA *rollo*, pp. 66-94.

[34] *Id.* at 122-145.

Appellant, in his Reply Brief,[35] argued that the penalty should not be death, but only *reclusion perpetua*, because the aggravating circumstance of use of unlicensed firearm, although alleged in the Information, was not alleged with specificity.

Article 294, paragraph 1 of the Revised Penal Code provides:

Art. 294. *Robbery with violence against or intimidation of persons – Penalties.* - Any person guilty of robbery with the use of violence against or any person shall suffer:

1. The penalty of *reclusion perpetua* to death, when by reason or on occasion of the robbery, the crime of homicide shall have been committed, or when the robbery shall have been accompanied by rape or intentional mutilation or arson.

In *People v. De Jesus*,[36] this Court had exhaustively discussed the crime of robbery with homicide, thus:

For the accused to be convicted of the said crime, the prosecution is burdened to prove the confluence of the following elements:

(1) the taking of personal property is committed with violence or intimidation against persons;

(2) the property taken belongs to another;

(3) the taking is *animo lucrandi*; and

(4) by reason of the robbery or on the occasion thereof, homicide is committed.[37]

In robbery with homicide, the original criminal design of the malefactor is to commit robbery, with homicide perpetrated on the occasion or by reason of the robbery.[38] The intent to commit robbery must precede the taking of human life.[39] The homicide may take place

[35] Records, pp. 152-156.

[36] G.R. No. 134815, May 27, 2004, 429 SCRA 384.

[37] *Id.* at 401-402, citing *People v. Pedroso*, 391 Phil. 43, 56 (2000).

[38] *People v. Salazar*, G.R. No. 99355, August 11, 1997, 277 SCRA 67; *People v. Abuyan*, G.R. No. 77285, September 4, 1992, 213 SCRA 569, 582.

[39] *People v. Ponciano*, G.R. No. 86453, December 5, 1991, 204 SCRA 627, 639.

before, during or after the robbery. It is only the result obtained, without reference or distinction as to the circumstances, causes or modes or persons intervening in the commission of the crime that has to be taken into consideration.[40] There is no such felony of robbery with homicide through reckless imprudence or simple negligence. The constitutive elements of the crime, namely, robbery with homicide, must be consummated.

It is immaterial that the death would supervene by mere accident; or that the victim of homicide is other than the victim of robbery, or that two or more persons are killed, or that aside from the homicide, rape, intentional mutilation, or usurpation of authority, is committed by reason or on the occasion of the crime. Likewise immaterial is the fact that the victim of homicide is one of the robbers; the felony would still be robbery with homicide. Once a homicide is committed by or on the occasion of the robbery, the felony committed is robbery with homicide. All the felonies committed by reason of or on the occasion of the robbery are integrated into one and indivisible felony of robbery with homicide. The word "homicide" is used in its generic sense. Homicide, thus, includes murder, parricide, and infanticide.

Intent to rob is an internal act, but may be inferred from proof of violent unlawful taking of personal property. When the fact of asportation has been established beyond reasonable doubt, conviction of the accused is justified even if the property subject of the robbery is not presented in court. After all, the property stolen may have been abandoned or thrown away and destroyed by the robber or recovered by the owner.[41] The prosecution is not burdened to prove the actual value of the property stolen or amount stolen from the victim. Whether the robber knew the actual amount in the possession of the victim is of no moment, because the motive for robbery can exist regardless of the exact amount or value involved.[42]

When homicide is committed by reason or on the occasion of robbery, all those who took part as principals in the robbery would also be held liable as principals of the single and indivisible felony of robbery with homicide, although they did not actually take part

---

[40] *People v. Mangulabnan,* 99 Phil. 992 (1956).

[41] See *People v. Puloc,* G.R. No. 92631, September 30, 1991, 202 SCRA 179, 186.

[42] *People v. Corre, Jr.,* 415 Phil. 386, 398 (2001).

in the killing, unless it clearly appears that they endeavored to prevent the same.[43]

If a robber tries to prevent the commission of homicide after the commission of the robbery, he is guilty only of robbery and not of robbery with homicide. All those who conspire to commit robbery with homicide are guilty as principals of such crime, although not all profited and gained from the robbery. One who joins a criminal conspiracy adopts the criminal designs of his co-conspirators and can no longer repudiate the conspiracy once it has materialized.[44]

Homicide is said to have been committed by reason or on the occasion of robbery if, for instance, it was committed (a) to facilitate the robbery or the escape of the culprit; (b) to preserve the possession by the culprit of the loot; (c) to prevent discovery of the commission of the robbery; or, (d) to eliminate witnesses in the commission of the crime. As long as there is a nexus between the robbery and the homicide, the latter crime may be committed in a place other than the *situs* of the robbery.

From the above disquisition, the testimonies of the witnesses, and pieces of evidence presented by the prosecution, the crime of robbery with homicide was indeed committed. There was no mistaking from the actions of all the accused that their main intention was to rob the gasoline station and that on occasion of such robbery, a homicide was committed. The question now is whether there was conspiracy in the commission of the crime. According to appellant, the prosecution failed to prove that he was a co-conspirator. However, this Court finds no merit to appellant's argument.

If it is proved that two or more persons aimed by their acts towards the accomplishment of the same unlawful object, each doing a part so that their combined acts, though apparently independent, were in fact connected and cooperative, indicating a closeness of personal association and a concurrence of sentiment,

---

[43] *People v. Carrozo*, 396 Phil. 764, 782 (2002) *People v. Pedroso, supra* note 37; *People v. Verzosa*, G.R. No. 118944, August 20, 1998, 294 SCRA 466.

[44] *People v. Palijon*, 397 Phil. 545, 561 (2000).

a conspiracy may be inferred though no actual meeting among them to concert means is proved. That would be termed an implied conspiracy.[45]The prosecution was able to prove the presence of an implied conspiracy. The witnesses were able to narrate in a convincing manner, the circumstances surrounding the commission of the robbery and positively identified appellant as one of the robbers. Witness Eduardo Zulueta testified that appellant was one of the robbers who poked a gun at him, thus:

Q. Were you able to identify those two armed male persons who poked their guns at you?

A: Yes, sir.

Q: Kindly look around inside this courtroom and inform the Hon. Court whether those two (2) persons who poked their guns at you were (sic) present now?

A: Only one, sir, and there he is.

(At this juncture, witness pointing to a certain person who answered by the name of MARLON ALBERT DE LEON when asked.)

Q: This Marlon De Leon was he the one who guarded you in the carwash or not?

A: Yes, sir.

Q: Now, what happened to you at the carwash where this Marlon De Leon was guarding you?

A: His gun was poked at me, sir.

Q: What else transpired, Mr. Witness, or what else happened to you aside from that?

A: He hit me with his gun on my nape, sir.

Q: What else, Mr. Witness?

A: He got my wallet from my pocket, sir.

Q: Who hit you with a gun?

---

[45] *People v. Del Rosario*, G.R. No. 127755, April 14, 1999, 305 SCRA 740, citing *People v. Furugganan*, 193 SCRA 471 (1991).

A: His other companion, sir.[46]

Appellant was also identified by witness Fortunato Lacambra III, thus:

Q: What about that person who ordered Zulueta to go to the carwash section and hit him, was he also armed?

A: Yes, sir.

Q: What kind of firearm was he carrying then?

A: Also .38 caliber, sir.

Q: Were you able to identify or recognize that person who approached and ordered Zulueta to go to the carwash section?

A: Yes, sir.

Q: If that person is inside the courtroom, will you be able to identify him?

A: Yes, sir.

Q: Kindly point to him?

A: That man, sir. (Witness pointed to a person who answered by the name of Marlon Albert de Leon).[47]

Therefore, it can be inferred from the role appellant played in the commission of the robbery, that a conspiracy existed and he was part of it. To be a conspirator, one need not participate in every detail of the execution; he need not even take part in every act or need not even know the exact part to be performed by the others in the execution of the conspiracy. Each conspirator may be assigned separate and different tasks which may appear unrelated to one another but, in fact, constitute a whole collective effort to achieve their common criminal objective.[48] Once conspiracy is shown, the act of one is the act of all the conspirators. The precise extent or modality of participation of each of them becomes secondary,[49] since all the conspirators are principals.

---

[46] TSN, May 20, 2000, pp. 7-8.

[47] TSN, May 18, 2000, p. 6.

[48] *People v. Tulin,* 416 Phil. 364, 386 (2000).

[49] *People v. Quinicio,* 417 Phil. 571, 586 (2000).

As to the credibility of the witnesses, the RTC's findings must not be disturbed. The well-settled rule in this jurisdiction is that the trial court's findings on the credibility of witnesses are entitled to the highest degree of respect and will not be disturbed on appeal without any clear showing that it overlooked, misunderstood or misapplied some facts or circumstances of weight or substance which could affect the result of the case.[50]

For his defense, appellant merely denied participating in the robbery. However, his presence during the commission of the crime was well-established as appellant himself testified as to the matter. Granting that he was merely present during the robbery, his inaction does not exculpate him. To exempt himself from criminal liability, a conspirator must have performed an overt act to dissociate or detach himself from the conspiracy to commit the felony and prevent the commission thereof.[51] Appellant offered no evidence that he performed an overt act neither to escape from the company of the robbers nor to prevent the robbery from taking place. His denial, therefore, is of no value. Courts generally view the defenses of denial and alibi with disfavor on account of the facility with which an accused can concoct them to suit his defense. As both evidence are negative and self-serving, they cannot attain more credibility than the testimonies of prosecution witnesses who testify clearly, providing thereby positive evidence on the various aspects of the crime committed.[52]

Consequently, the CA was correct in ruling that appellant was guilty only of one count of robbery with homicide. In the crime of robbery with homicide, there are series of acts, borne from one criminal resolution, which is to rob. As decided[53] by the Court of Appeals:

---

[50] *People v. Yatco,* 429 Phil. 163, 173 (2000), see also *People v. Boquirin,* 432 Phil. 722, 728, 729 (2002), *People v. Taboga,* 426 Phil. 908 (2002).

[51] *People of the Philippines v. Felipe dela Cruz,* G.R. No. 168173, December 24, 2008, citing *People v. Dominador Werba,* 431 SCRA 482 (2004); *People v. Morial,* 363 SCRA 96 (2001).

[52] *People v.Werba, supra,* at 495.

[53] *Rollo,* pp. 20-21.

A continued (continuous or continuing) crime is defined as a single crime, consisting of a series of acts but all arising from one criminal resolution.[54] Although there is a series of acts, there is only one crime committed; hence, only one penalty shall be imposed.[55]

In the case before Us, [appellant] and his companions intended only to rob one place; and that is the Energex gasoline station. That they did; and in the process, also took away by force the money and valuables of the employees working in said gasoline station. Clearly inferred from these circumstances are the series of acts which were borne from one criminal resolution. A continuing offense is a continuous, unlawful act or series of acts set on foot by a single impulse and operated by an unintermittent force, however long a time it may occupy.[56] This can be said of the case at hand.

Akin to the extant case is that of *People v. De la Cruz*,[57] wherein the robbery that took place in several houses belonging to different persons, when not absolutely unconnected, was held not to be taken as separate and distinct offenses. They formed instead, component parts of the general plan to despoil all those within the vicinity. In this case, the Solicitor General argued that the [appellant] had committed eight different robberies, because the evidence shows distinct and different acts of spoilation in different houses, with several victimized persons.[58] The Highest Tribunal, however, ruled that the perpetrated acts were not entirely distinct and unconnected from one another.[59] Thus, the single offense or crime.

Now, this Court comes to the penalty imposed by the CA. The decision[60] merely states that, in view of the enactment of

---

[54] Reyes, *The Revised Penal Code, Book One* (Fourteenth Ed., Revised 1998) p. 671.

[55] *Id.*

[56] *Id.*

[57] No. L-1745. May 23, 1950. *En Banc*. Listed as unpublished in 88 Phil. 784. Supreme Court Unpublished Decisions (Volume 1), Judge David Nitafan and the Editorial Staff of the Central Lawbook Publishing Co., Inc., pp. 349-354.

[58] *Id.* at 354.

[59] *Id.*

[60] *Rollo*, p. 22.

R.A. 9346, the sentence of Death Penalty, imposed upon appellant, is automatically commuted to *reclusion perpetua*, but is silent as to how it had arrived into such a conclusion.

Under Article 294 of the Revised Penal Code, as amended by R.A. No. 7659, robbery with homicide is punishable by *reclusion perpetua* to death, which are both indivisible penalties. Article 63 of the same Code provides that, in all cases in which the law prescribes a penalty composed of two indivisible penalties, the greater penalty shall be applied when the commission of the deed is attended by one aggravating circumstance.[61] It must be remembered that the Informations filed with the RTC alleged the aggravating circumstance of the use of unlicensed firearm. Pursuant to the third paragraph of Section 1 of P.D. No. 1866, as amended by R.A. No. 8294, such use of an unlicensed firearm is a special and not a generic aggravating circumstance in the homicide or murder committed. As explained by this Court in *Palaganas v. People:*[62]

> Generic aggravating circumstances are those that generally apply to all crimes such as those mentioned in Article 14, paragraphs No. 1, 2, 3, 4, 5, 6, 9, 10, 14, 18, 19 and 20, of the Revised Penal Code. It has the effect of increasing the penalty for the crime to its maximum period, but it cannot increase the same to the next higher degree. It must always be alleged and charged in the information, and must be proven during the trial in order to be appreciated.[63] Moreover, it can be offset by an ordinary mitigating circumstance.
>
> On the other hand, special aggravating circumstances are those which arise under special conditions to increase the penalty for the offense to its maximum period, but the same cannot increase the penalty to the next higher degree. Examples are quasi-recidivism under Article 160 and complex crimes under Article 48 of the Revised Penal Code. It does not change the character of the offense charged.[64] It must always be alleged and charged in the information, and must

---

[61] *People v. Montinola*, 413 Phil. 176, 192 (2000).

[62] G.R. No. 165483, September 12, 2006, 501 SCRA 533, 557-559.

[63] Revised Rules on Criminal Procedure, Rule 110, Secs. 8 and 9.

[64] *People v. Agguihao*, G.R. No. 104725, March 10, 1994, 231 SCRA 9, 21.

be proven during the trial in order to be appreciated.[65] Moreover, it cannot be offset by an ordinary mitigating circumstance.

It is clear from the foregoing that the meaning and effect of generic and special aggravating circumstances are exactly the same except that in case of generic aggravating, the same CAN be offset by an ordinary mitigating circumstance whereas in the case of special aggravating circumstance, it CANNOT be offset by an ordinary mitigating circumstance.

Aside from the aggravating circumstances abovementioned, there is also an aggravating circumstance provided for under Presidential Decree No. 1866,[66] as amended by Republic Act No. 8294,[67] which is a special law. Its pertinent provision states:

If homicide or murder is committed with the use of an unlicensed firearm, such use of an unlicensed firearm shall be considered as an aggravating circumstance.

In interpreting the same provision, the trial court reasoned that such provision is "silent as to whether it is generic or qualifying."[68] Thus, it ruled that "when the law is silent, the same must be interpreted in favor of the accused."[69] Since a generic aggravating circumstance is more favorable to petitioner compared to a qualifying aggravating circumstance, as the latter changes the nature of the crime and increase the penalty thereof by degrees, the trial court proceeded to declare

---

[65] CA *rollo*, pp. 41-42; TSN, July 27, 1998, pp. 2-8.

[66] CODIFYING THE LAWS ON ILLEGAL/UNLAWFUL POSSESSION, MANUFACTURE, DEALING IN, ACQUISITION OR DISPOSITION, OF FIREARMS, AMMUNITION OR EXPLOSIVES; AND IMPOSING STIFFER PENALTIES FOR CERTAIN VIOLATIONS THEREOF AND FOR RELEVANT PURPOSES.

[67] AN ACT AMENDING THE PROVISIONS OF PRESIDENTIAL DECREE NO. 1866, AS AMENDED, ENTITLED: CODIFYING THE LAWS ON ILLEGAL/UNLAWFUL POSSESSION, MANUFACTURE, DEALING IN, ACQUISITION OR DISPOSITION, OF FIREARMS, AMMUNITION OR EXPLOSIVES; AND IMPOSING STIFFER PENALTIES FOR CERTAIN VIOLATIONS THEREOF AND FOR RELEVANT PURPOSES. (6 June 1997)

[68] *Rollo*, pp. 71-72.

[69] *Id.* at 72.

that the use of an unlicensed firearm by the petitioner is to be considered only as a generic aggravating circumstance.[70] This interpretation is erroneous, since we already held in several cases that with the passage of Republic Act No. 8294 on 6 June 1997, the use of an unlicensed firearm in murder or homicide is now considered as a SPECIAL aggravating circumstance and not a generic aggravating circumstance.[71] Republic Act No. 8294 applies to the instant case since it took effect before the commission of the crimes in 21 April 1998. Therefore, the use of an unlicensed firearm by the petitioner in the instant case should be designated and appreciated as a SPECIAL aggravating circumstance and not merely a generic aggravating circumstance.

In another case,[72] this Court ruled that, the existence of the firearm can be established by testimony, even without the presentation of the firearm.[73] In the said case, it was established that Elmer and Marcelina Hidalgo died of, and Pedro Hidalgo sustained, gunshot wounds. The ballistic examination of the slugs recovered from the place of the incident showed that they were fired from a .30 carbine rifle and a .38 caliber firearm. The prosecution witnesses positively identified appellant therein as one of those who were holding a long firearm. It was also established that the same appellant was not a licensed firearm holder. Hence, this Court ruled that the trial court and the CA correctly appreciated the use of unlicensed firearm as an aggravating circumstance.

After a careful study of the records of the present case, this Court found that the use of unlicensed firearm was not duly proven by the prosecution. Although jurisprudence dictates that the existence of the firearm can be established by mere testimony, the fact that appellant was not a licensed firearm holder must still be established. The prosecution failed to present written or testimonial evidence to prove that appellant did not have a license

---

[70] *Id*.

[71] *People v. Malinao,* G.R. No. 128148, February 16, 2004, 423 SCRA 34, 51; *People v. Castillo,* 382 Phil. 503 (2002); *People v. Lumilan,* 380 Phil. 133, 145 (2000).

[72] *People v. Dulay*, G.R. No. 174775, October 11, 2007, 535 SCRA 656.

[73] *People v. Malinao,* 467 Phil. 432 (2004).

to carry or own a firearm, hence, the use of unlicensed firearm as an aggravating circumstance cannot be appreciated.

Finally, it is worth noting that the RTC ordered appellant to indemnify the heirs of Edralin Macahis the amount of ₱50,000.00 as death indemnity, ₱12,000.00 as compensatory damages for the stolen service firearm if restitution is no longer possible and ₱50,000.00 as moral damages. Actual damages were never proven during the trial. Hence, this Court's rulings[74] on temperate damages apply, thus:

> In *People vs. Abrazaldo*,[75] we laid down the doctrine that where the amount of actual damages for funeral expenses cannot be determined because of the absence of receipts to prove them, temperate damages may be awarded in the amount of ₱25,000[76] This doctrine specifically refers to a situation where no evidence at all of funeral expenses was presented in the trial court. However, in instances where actual expenses amounting to less than ₱25,000 are proved during the trial, as in the case at bar, we apply the ruling in the more recent case of *People vs. Villanueva*[77] which modified the Abrazaldo doctrine. In *Villanueva*, we held that "when actual damages proven by receipts during the trial amount to less than ₱25,000, the award of temperate damages for ₱25,000 is justified in lieu of the actual damages of a lesser amount." To rule otherwise would be anomalous and unfair because the victim's heirs who tried but succeeded in proving actual damages of an amount less than ₱25,000 would be in a worse situation than those who might have presented no receipts at all but would now be entitled to ₱25,000 temperate damages.[78]

WHEREFORE, the Decision dated June 29, 2007 of the Court of Appeals is hereby *AFFIRMED* with *MODIFICATION***.** Appellant Marlon Albert de Leon *y* Homo is hereby found guilty

---

[74] *People v. Werba, supra* note 51, at 499.

[75] G.R. No. 124392, February 7, 2003, 397 SCRA 137.

[76] *Id*.

[77] 456 Phil. 14 (2003).

[78] *Id*.

beyond reasonable doubt of the crime of Robbery with Homicide, the penalty of which, is *reclusion perpetua* in view of the absence of any mitigating or aggravating circumstance. Appellant is also liable to pay the heirs of the victim, ₱25,000.00 as temperate damages, in addition to the other civil indemnities and damages adjudged by the Regional Trial Court, Branch 76, San Mateo, Rizal.

SO ORDERED.

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

EN BANC

[A.C. No. 7036. June 29, 2009]

JUDGE LILY LYDIA A. LAQUINDANUM, *complainant, vs.* **ATTY. NESTOR Q. QUINTANA,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; 2004 RULES ON NOTARIAL PRACTICE AND THE CODE OF PROFESSIONAL RESPONSIBILITY; VIOLATED BY THE RESPONDENT IN CASE AT BAR; IMPOSABLE PENALTY; ACT OF NOTARIZING DOCUMENTS OUTSIDE ONE'S AREA OF COMMISSION PARTAKES OF MALPRACTICE OF LAW AND FALSIFICATION. — We adopt the findings of the OBC. However, we find the penalty of suspension from the practice of law for six (6) months and revocation and suspension of Atty. Quintana's notarial commission for two (2) years more appropriate considering the gravity and number of his offenses. After a careful review of the records and evidence, there is no doubt that Atty. Quintana violated the 2004 Rules on Notarial Practice and the Code of Professional Responsibility when

he committed the following acts: (1) he notarized documents outside the area of his commission as a notary public; (2) he performed notarial acts with an expired commission; (3) he let his wife notarize documents in his absence; and (4) he notarized a document where one of the signatories therein was already dead at that time. The act of notarizing documents outside one's area of commission is not to be taken lightly. Aside from being a violation of Sec. 11 of the 2004 Rules on Notarial Practice, it also partakes of malpractice of law and falsification. Notarizing documents with an expired commission is a violation of the lawyer's oath to obey the laws, more specifically, the 2004 Rules on Notarial Practice. Since the public is deceived into believing that he has been duly commissioned, it also amounts to indulging in deliberate falsehood, which the lawyer's oath proscribes. Notarizing documents without the presence of the signatory to the document is a violation of Sec. 2(b)(1), Rule IV of the 2004 Rules on Notarial Practice, Rule 1.01 of the Code of Professional Responsibility, and the lawyer's oath which unconditionally requires lawyers not to do or declare any falsehood. Finally, Atty. Quintana is personally accountable for the documents that he admitted were signed by his wife. He cannot relieve himself of liability by passing the blame to his wife. He is, thus, guilty of violating Canon 9 of the Code of Professional Responsibility, which requires lawyers not to directly or indirectly assist in the unauthorized practice of law.

2. ID.; ID.; CODE OF PROFESSIONAL RESPONSIBILITY; EVERY LAWYER MUST UPHOLD AT ALL TIMES THE INTEGRITY AND DIGNITY OF THE LEGAL PROFESSION. — All told, Atty. Quintana fell miserably short of his obligation under Canon 7 of the Code of Professional Responsibility, which directs every lawyer to uphold at all times the integrity and dignity of the legal profession.

3. ID.; NOTARY PUBLIC; NOTARIAL COMMISSION IS A PRIVILEGE GRANTED ONLY TO THOSE QUALIFIED TO PERFORM DUTIES IMBUED WITH PUBLIC INTEREST AND SHOULD NOT BE TREATED AS A MONEY-MAKING VENTURE .— That Atty. Quintana relies on his notarial commission as the sole source of income for his family will not serve to lessen the penalty that should be imposed on him. On the contrary, we feel that he should be reminded that a

> notarial commission should not be treated as a money-making venture. It is a privilege granted only to those who are qualified to perform duties imbued with public interest. As we have declared on several occasions, notarization is not an empty, meaningless, routinary act. It is invested with substantive public interest, such that only those who are qualified or authorized may act as notaries public. The protection of that interest necessarily requires that those not qualified or authorized to act must be prevented from imposing upon the public, the courts, and the administrative offices in general. It must be underscored that notarization by a notary public converts a private document into a public document, making that document admissible in evidence without further proof of the authenticity thereof.

D E C I S I O N

PUNO, *C.J.*:

This administrative case against Atty. Nestor Q. Quintana (Atty. Quintana) stemmed from a letter[1] addressed to the Court filed by Executive Judge Lily Lydia A. Laquindanum (Judge Laquindanum) of the Regional Trial Court of Midsayap, Cotabato requesting that proper disciplinary action be imposed on him for performing notarial functions in Midsayap, Cotabato, which is beyond the territorial jurisdiction of the commissioning court that issued his notarial commission, and for allowing his wife to do notarial acts in his absence.

In her letter, Judge Laquindanum alleged that pursuant to A.M. No. 03-8-02-SC, executive judges are required to closely monitor the activities of notaries public within the territorial bounds of their jurisdiction and to see to it that notaries public shall not extend notarial functions beyond the limits of their authority. Hence, she wrote a letter[2] to Atty. Quintana directing him to stop notarizing documents within the territorial jurisdiction of the Regional Trial Court of Midsayap, Cotabato (which is outside the territorial jurisdiction of the commissioning court

---

[1] Dated November 29, 2005; *rollo*, pp. 3-5.

[2] Exhibit "A", *id.* at 6-8.

that issued his notarial commission for Cotabato City and the Province of Maguindanao) since certain documents[3] notarized by him had been reaching her office.

However, despite such directive, respondent continuously performed notarial functions in Midsayap, Cotabato as evidenced by: (1) the Affidavit of Loss of ATM Card[4] executed by Kristine C. Guro; and (2) the Affidavit of Loss of Driver's License[5] executed by Elenita D. Ballentes.

Under Sec. 11, Rule III[6] of the 2004 Rules on Notarial Practice, Atty. Quintana could not extend his notarial acts beyond Cotabato City and the Province of Maguindanao because Midsayap, Cotabato is not part of Cotabato City or the Province of Maguindanao. Midsayap is part of the Province of Cotabato. The City within the province of Cotabato is Kidapawan City, and not Cotabato City.

Judge Laquindanum also alleged that, upon further investigation of the matter, it was discovered that it was Atty. Quintana's wife who performed notarial acts whenever he was out of the office as attested to by the Joint Affidavit[7] executed by Kristine C. Guro and Elenita D. Ballentes.

In a Resolution dated February 14, 2006,[8] we required Atty. Quintana to comment on the letter of Judge Laquindanum.

In his Response,[9] Atty. Quintana alleged that he filed a petition for notarial commission before Branch 18, Regional Trial Court,

---

[3] Exhibit "B" and Exhibit "C," *id.* at 9 & 10-13.

[4] Exhibit "D", *id.* at 21.

[5] Exhibit "E", *id.* at 22.

[6] SEC. 11. Jurisdiction and Term. - A person commissioned as notary public may perform notarial acts in any place within the territorial jurisdiction of the commissioning court for a period of two (2) years commencing the first day of January of the year in which the commissioning is made, unless earlier revoked or the notary public has resigned under these Rules and the Rules of Court.

[7] Exhibit "F", *rollo*, p. 24

[8] *Rollo*, p. 27.

[9] Dated September 29, 2005; *id.* at 30-36.

Midsayap, Cotabato. However, the same was not acted upon by Judge Laquindanum for three weeks. He alleged that the reason for Judge Laquindanum's inaction was that she questioned his affiliation with the Integrated Bar of the Philippines (IBP) Cotabato City Chapter, and required him to be a member of IBP Kidapawan City Chapter and to obtain a Certification of Payments from the latter chapter. Because of this, he opted to withdraw his petition. After he withdrew his petition, he claimed that Judge Laquindanum sent a clerk from her office to ask him to return his petition, but he did not oblige because at that time he already had a Commission for Notary Public[10] issued by Executive Judge Reno E. Concha of the Regional Trial Court, Branch 14, Cotabato City.

Atty. Quintana lamented that he was singled out by Judge Laquindanum, because the latter immediately issued notarial commissions to other lawyers without asking for so many requirements. However, when it came to him, Judge Laquindanum even tracked down all his pleadings; communicated with his clients; and disseminated information through letters, pronouncements, and directives to court clerks and other lawyers to humiliate him and be ostracized by fellow lawyers.

Atty. Quintana argued that he subscribed documents in his office at Midsayap, Cotabato; and Midsayap is part of the Province of Cotabato. He contended that he did not violate any provision of the 2004 Rules on Notarial Practice, because he was equipped with a notarial commission. He maintained that he did not act outside the province of Cotabato since Midsayap, Cotabato, where he practices his legal profession and subscribes documents, is part of the province of Cotabato. He claimed that as a lawyer of good moral standing, he could practice his legal profession in the entire Philippines.

Atty. Quintana further argued that Judge Laquindanum had no authority to issue such directive, because only Executive Judge Reno E. Concha, who issued his notarial commission, and the

---

[10] Dated and effective May 24, 2004 until December 31, 2005; Exhibit "J", *id.* at 23.

Supreme Court could prohibit him from notarizing in the Province of Cotabato.

In a Resolution dated March 21, 2006,[11] we referred this case to the Office of the Bar Confidant (OBC) for investigation, report and recommendation.

In the February 28, 2007 Hearing[12] before the OBC presided by Atty. Ma. Crisitina B. Layusa (Hearing Officer), Judge Laquindanum presented a Deed of Donation,[13] which was notarized by Atty. Quintana in 2004.[14] Honorata Rosil appears as one of the signatories of the document as the donor's wife. However, Honorata Rosil died on March 12, 2003, as shown by the Certificate of Death[15] issued by the Civil Registrar of Ibohon, Cotabato.

Judge Laquindanum testified that Atty. Quintana continued to notarize documents in the years 2006 to 2007 despite the fact that his commission as notary public for and in the Province of Maguindanao and Cotabato City had already expired on December 31, 2005, and he had not renewed the same.[16] To support her claim, Judge Laquindanum presented the following: (1) Affidavit of Loss [of] Title[17] executed by Betty G. Granada with subscription dated April 8, 2006 at Cotabato City; (2) Certificate of Candidacy[18]

---

[11] *Rollo*, p. 50.

[12] TSN, *id.* at 132-334.

[13] Exhibit "G"; *id.* at 78-79.

[14] Exhibit "G-2", *id.* at 79.

[15] Exhibit "H", *id.* at 80.

[16] As evidenced by the following: (i) Certification dated June 14, 2006 issued by Clerk of Court Abdul S. Buayan of the Regional Trial Court of Cotabato City; Exhibit "M", *id.* at 94; (ii) Certification dated January 5, 2007 issued by Clerk of Court Abdul S. Buayan of the Regional Trial Court of Cotabato City; Exhibit "N", *id.* at 97; (iii) Certification dated January 3, 2007 issued by Acting Clerk of Court Lilibeth S. Palines of the Regional Trial Court of Midsayap, Cotabato; Exhibit "O", *id.* at 100; and (iv) Certification dated January 3, 2007 issued by Clerk of Court Atty. Teresa Gagabe-Natividad of the Regional Trial Court of Kabacan, Cotabato; Exhibit "P", *id.* at 101.

[17] Exhibit "K-5", *id.* at 88.

[18] Exhibit "Q", *id.* at 102-103.

of Mr. Elias Diosanta Arabis with subscription dated July 18, 2006; (3) Affidavit of Loss [of] Driver's License[19] executed by Anecito C. Bernabe with subscription dated February 20, 2007 at Midsayap, Cotabato; and (4) Affidavit of Loss[20] executed by Santos V. Magbanua with subscription dated February 22, 2007 at Midsayap, Cotabato.

For his part, Atty. Quintana admitted that all the signatures appearing in the documents marked as exhibits of Judge Laquindanum were his except for the following: (1) Affidavit of Loss of ATM Card[21] executed by Kristine C. Guro; and (2) Affidavit of Loss of Driver's License[22] executed by Elenita D. Ballentes; and (3) Affidavit of Loss[23] executed by Santos V. Magbanua. He explained that those documents were signed by his wife and were the result of an entrapment operation of Judge Laquindanum: to let somebody bring and have them notarized by his wife, when they knew that his wife is not a lawyer. He also denied the he authorized his wife to notarize documents. According to him, he slapped his wife and told her to stop doing it as it would ruin his profession.

Atty. Quintana also claimed that Judge Laquindanum did not act on his petition, because he did not comply with her requirements for him to transfer his membership to the Kidapawan Chapter, wherein her sister, Atty. Aglepa, is the IBP President.

On the one hand, Judge Laquindanum explained that she was only performing her responsibility and had nothing against Atty. Quintana. The reason why she did not act on his petition was that he had not paid his IBP dues,[24] which is a requirement before a

---

[19] Exhibit "R", *id.* at 104.

[20] Exhibit "S", *id.* at 105.

[21] *Supra* note 4.

[22] *Supra* note 5.

[23] *Supra* note 20.

[24] As evidenced by the following: (i) Certification dated March 23, 2004 issued by Emerlinda Molina Diaz, Treasurer of the IBP North Cotabato Chapter; Exhibit "T", *rollo*, p. 128; and (ii) Certification dated March 16, 2004 issued by Frances Cynthia Guiani-Sayadi of the IBP Cotabato City Chapter; Exhibit "U", *id.* at 106.

notarial commission may be granted. She told his wife to secure a certification of payment from the IBP, but she did not return.

This was denied by Atty. Quintana, who claimed that he enclosed in his Response the certification of good standing and payments of his IBP dues. However, when the same was examined, there were no documents attached thereto. Due to oversight, Atty. Quintana prayed that he be given time to send them later which was granted by the Hearing Officer.

Finally, Atty. Quintana asked for forgiveness for what he had done and promised not to repeat the same. He also asked that he be given another chance and not be divested of his privilege to notarize, as it was the only bread and butter of his family.

On March 5, 2007, Atty. Quintana submitted to the OBC the documents[25] issued by the IBP Cotabato City Chapter to prove that he had paid his IBP dues.

In a Manifestation[26] dated March 9, 2007, Judge Laquindanum submitted a Certification[27] and its entries show that Atty. Quintana paid his IBP dues for the year 2005 only on January 9, 2006 per Official Receipt (O.R.) No. 610381. Likewise, the arrears of his IBP dues for the years 1993, 1995, 1996, and 1998 to 2003 were also paid only on January 9, 2006 per O.R. No. 610387. Hence, when he filed his petition for notarial commission in 2004, he had not yet completely paid his IBP dues.

In its Report and Recommendation,[28] the OBC recommended that Atty. Quintana be disqualified from being appointed as a notary public

---

[25] (i) Receipt of Payments with O.R. No. 610381 covering the year 2005 to 2006; *rollo*, p. 117; (ii) O.R. No. 610488 covering the year 2007; *id.* at 116; (iii) Certification dated January 12, 2006 of good standing and good moral character; *id.* at 112; (iv) Certification dated March 1, 2007 of good standing and good moral character; *id.* at 113; and (v) Certification dated March 2, 2007 stating that Atty. Quintana is a member of the IBP Cotabato City Chapter, and that he has fully paid his IBP dues from 1985 to 2003; *id.* at 114.

[26] *Rollo*, p. 124.

[27] Dated March 6, 2007; *id.* at 125.

[28] Dated October 3, 2008; *id.* at 335-348.

for two (2) years; and that if his notarial commission still exists, the same should be revoked for two (2) years. The OBC found the defenses and arguments raised by Atty. Quintana to be without merit, *viz*:

Apparently, respondent has extended his notarial acts in Midsayap and Kabacan, Cotabato, which is already outside his territorial jurisdiction to perform as Notary Public.

Section 11 of the 2004 Rules on Notarial Practice provides, thus:

> ***"Jurisdiction and Term – A person commissioned as notary public may perform notarial acts in any place within the territorial jurisdiction of the commissioning court for a period of two (2) years commencing the first day of January of the year in which the commissioning court is made, unless earlier revoked [or] the notary public has resigned under these Rules and the Rules of Court.***

Under the rule[,] respondent may perform his notarial acts within the territorial jurisdiction of the commissioning Executive Judge Concha, which is in Cotabato City and the [P]rovince of Maguindanao only. But definitely he cannot extend his commission as notary public in Midsayap or Kabacan and in any place of the province of Cotabato as he is not commissioned thereat to do such act. Midsayap and Kabacan are not part of either Cotabato City or [P]rovince of Maguindanao but part of the province of North Cotabato. Thus, the claim of respondent that he can exercise his notarial commission in Midsayap, Cotabato because Cotabato City is part of the province of Cotabato is absolutely devoid of merit.

x x x x x x x x x

Further, evidence on record also shows that there are several documents which the respondent's wife has herself notarized. Respondent justifies that he cannot be blamed for the act of his wife as he did not authorize the latter to notarize documents in his absence. According to him[,] he even scolded and told his wife not to do it anymore as it would affect his profession.

In the case of *Lingan v. Calubaquib et al., Adm. Case No. 5377, June 15, 2006 the Court held, thus:*

> ***"A notary public is personally accountable for all entries in his notarial register; He cannot relieve himself of this responsibility by passing the buck to their (sic) secretaries"***

A person who is commissioned as a notary public takes full responsibility for all the entries in his notarial register. Respondent cannot take refuge claiming that it was his wife's act and that he did not authorize his wife to notarize documents. He is personally accountable for the activities in his office as well as the acts of his personnel including his wife, who acts as his secretary.

Likewise, evidence reveals that respondent notarized in 2004 a Deed of Donation *(Rollo, p. 79)* wherein, (sic) Honorata Rosel (Honorata Rosil) one of the affiants therein, was already dead at the time of notarization as shown in a Certificate of Death *(Rollo, p.80)* issued by the Civil Registrar General of Libungan, Cotabato.

Sec. 2, (b), Rule IV of the 2004 Rules on Notarial Practice provides, thus[:]

"A person shall not perform a notarial act if the person involved as signatory to the instrument or document (1) is not in the notary's presence personally at the time of the notarization; and (2) is not personally known to the notary public through competent evidence of identity as defined by these Rules."

Clearly, in notarizing a Deed of Donation without even determining the presence or qualifications of affiants therein, respondent only shows his gross negligence and ignorance of the provisions of the 2004 Rules on Notarial Practice.

x x x x x x x x x

Furthermore, respondent claims that he, being a lawyer in good standing, has the right to practice his profession including notarial acts in the entire Philippines. This statement is barren of merit.

While it is true that lawyers in good standing are allowed to engage in the practice of law in the Philippines.(sic) However, not every lawyer even in good standing can perform notarial functions without having been commissioned as notary public as specifically provided for under the 2004 Rules on Notarial Practice. He must have submitted himself to the commissioning court by filing his petition for issuance of his notarial (sic) Notarial Practice. The commissioning court may or may not grant the said petition if in his sound discretion the petitioner does not meet the required qualifications for [a] Notary Public. Since respondent herein did not submit himself to the procedural rules for the issuance of the notarial commission, he has no reason at all to claim that he can

perform notarial act[s] in the entire country for lack of authority to do so.

Likewise, contrary to the belief of respondent, complainant being the commissioning court in Midsayap, Cotabato has the authority under Rule XI of the 2004 Rules on Notarial Practice to monitor the duties and responsibilities including liabilities, if any, of a notary public commissioned or those performing notarial acts without authority in her territorial jurisdiction.[29]

x x x x x x x x x

We adopt the findings of the OBC. However, we find the penalty of suspension from the practice of law for six (6) months and revocation and suspension of Atty. Quintana's notarial commission for two (2) years more appropriate considering the gravity and number of his offenses.

After a careful review of the records and evidence, there is no doubt that Atty. Quintana violated the 2004 Rules on Notarial Practice and the Code of Professional Responsibility when he committed the following acts: (1) he notarized documents outside the area of his commission as a notary public; (2) he performed notarial acts with an expired commission; (3) he let his wife notarize documents in his absence; and (4) he notarized a document where one of the signatories therein was already dead at that time.

The act of notarizing documents outside one's area of commission is not to be taken lightly. Aside from being a violation of Sec. 11 of the 2004 Rules on Notarial Practice, it also partakes of malpractice of law and falsification.[30] Notarizing documents with an expired commission is a violation of the lawyer's oath to obey the laws, more specifically, the 2004 Rules on Notarial Practice. Since the public is deceived into believing that he has been duly commissioned, it also amounts to indulging in deliberate falsehood, which the lawyer's oath proscribes.[31] Notarizing documents without

---

[29] *Id.* at 344-348.

[30] *Tan Tiong Bio v. Gonzales*, A.C. No. 6634, August 23, 2007, 530 SCRA 748.

[31] *Zoreta v. Simpliciano*, A.C. 6492, November 18, 2004, 443 SCRA 1.

the presence of the signatory to the document is a violation of Sec. 2(b)(1), Rule IV of the 2004 Rules on Notarial Practice,[32] Rule 1.01 of the Code of Professional Responsibility, and the lawyer's oath which unconditionally requires lawyers not to do or declare any falsehood. Finally, Atty. Quintana is personally accountable for the documents that he admitted were signed by his wife. He cannot relieve himself of liability by passing the blame to his wife. He is, thus, guilty of violating Canon 9 of the Code of Professional Responsibility, which requires lawyers not to directly or indirectly assist in the unauthorized practice of law.

All told, Atty. Quintana fell miserably short of his obligation under Canon 7 of the Code of Professional Responsibility, which directs every lawyer to uphold at all times the integrity and dignity of the legal profession.

That Atty. Quintana relies on his notarial commission as the sole source of income for his family will not serve to lessen the penalty that should be imposed on him. On the contrary, we feel that he should be reminded that a notarial commission should not be treated as a money-making venture. It is a privilege granted only to those who are qualified to perform duties imbued with public interest. As we have declared on several occasions, notarization is not an empty, meaningless, routinary act. It is invested with substantive public interest, such that only those who are qualified or authorized may act as notaries public. The protection of that interest necessarily requires that those not qualified or authorized to act must be prevented from imposing upon the public, the courts, and the administrative offices in general. It must be underscored that notarization by a notary public converts a private document into a public document, making that document admissible in evidence without further proof of the authenticity thereof.[33]

---

[32] (b) A person shall not perform a notarial act if the person involved as signatory to the instrument or document —

(1) is not in the notary's presence personally at the time of the notarization;

[33] *Maddela v. Dallong-Galacinao*, A.C. No. 6491, January 31, 2005, 450 SCRA 19, 26 *citing Nunga v. Viray*, A.C. No. 4758, 366 Phil. 155, 160 (1999).

IN VIEW WHEREOF, the notarial commission of Atty. Nestor Q. Quintana, if still existing, is hereby *REVOKED*, and he is *DISQUALIFIED* from being commissioned as notary public for a period of two (2) years. He is also *SUSPENDED* from the practice of law for six (6) months effective immediately, with a WARNING that the repetition of a similar violation will be dealt with even more severely. He is *DIRECTED* to report the date of his receipt of this Decision to enable this Court to determine when his suspension shall take effect.

Let a copy of this decision be entered in the personal records of respondent as a member of the Bar, and copies furnished the Bar Confidant, the Integrated Bar of the Philippines, and the Court Administrator for circulation to all courts in the country.

SO ORDERED.

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

Carpio Morales, on leave.

INDEX

INDEX

DAMAGES

CITATION

Page

I. LOCAL CASES

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

II. FOREIGN CASES

REFERENCES

I. LOCAL AUTHORITIES

A. CONSTITUTION

Page

B. STATUTES

Page

Page

Page

Page

Page

C. OTHERS

D. BOOKS
(Local)

Page

II. FOREIGN AUTHORITIES

A. STATUTES

B. BOOKS