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OF THE

PHILIPPINES

FROM

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MANILA
2013

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2013

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

EN BANC

[A.C. No. 6674. June 30, 2009]

ROBERT BERNHARD BUEHS, *complainant, vs.* **ATTY. INOCENCIO T. BACATAN,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JURISDICTION; ONCE ACQUIRED, CONTINUES UNTIL THE CASE IS TERMINATED OR UNTIL THE WRIT OF EXECUTION HAS BEEN ISSUED TO ENFORCE THE JUDGMENT.— Respondent claimed that when he indorsed the criminal complaint for the complainants, he could already do so as counsel because he had already rendered his Decision in the illegal dismissal case. Respondent is mistaken. Jurisdiction, once acquired, is not lost upon the instance of the parties but continues until the case is terminated, or until the writ of execution has been issued to enforce the judgment. The Indorsement was dated June 26, 2003, at which time the decision had not yet been enforced, as evidenced by respondent's issuance of an *Alias* Writ of Execution dated December 28, 2004.

2. LEGAL ETHICS; CODE OF PROFESSIONAL RESPONSIBILITY; RELEVANT PROVISIONS ON A LAWYER REPRESENTING CONFLICTING INTERESTS.— Relevant provisions of the Code of Professional Responsibility state: Rule 15.01 – A lawyer, in conferring with a prospective client, shall ascertain as soon as practicable whether the matter would involve a conflict with

another client or his own interest, and if so, shall forthwith inform the prospective client. Rule 15.03 – A lawyer shall not represent conflicting interests except by written consent of all concerned given after a full disclosure of the facts.

3. ID.; ID.; ID.; STERN RULE AGAINST A LAWYER DISCHARGING CONFLICTING DUTIES IS FOUNDED ON THE PRINCIPLES OF PUBLIC POLICY AND GOOD TASTE.— In *Samala v. Valencia*, the Court held that a lawyer may not undertake to discharge conflicting duties any more than he may represent antagonistic interests. This stern rule is founded on the principles of public policy and good taste, which springs from the relation of attorney and client, which is one of trust and confidence. Lawyers should not only keep inviolate the client's confidence, but also avoid the appearance of treachery and double-dealing. Only then can litigants be encouraged to entrust their secrets to their lawyers, which is of paramount importance in the administration of justice. A conflict of interests also exists when the acceptance of a new relation will prevent an attorney from the full discharge of his duty of undivided fidelity and loyalty to his client or invite suspicion of unfaithfulness or double-dealing in the performance thereof.

4. ID.; ID.; ID.; ID.; CASE AT BAR.— In the present case, respondent was appointed as Voluntary Arbitrator for the parties in the illegal dismissal case. He took on the duty to act as a disinterested person to hear the parties' contentions and give judgment between them. However, instead of exhibiting neutrality and impartiality expected of an arbitrator, respondent indorsed a criminal complaint to the Office of the City Prosecutor of Zamboanga City for possible criminal prosecution against herein complainant, and signed the said Indorsement as counsel for complainants in the illegal dismissal case. The Court cannot accept the contention of respondent that the phrase "counsel for the complainants," found in the Indorsement, was a mere misprint. For if it were so, he could have easily crossed out the phrase or prepared another Indorsement deleting said phrase. His claim of misprint, therefore, is a last futile attempt based on the clearly established evidence that he was acting in both capacities as counsel and arbitrator at the same time, an act which was clearly reprehensible and violative of the principle of conflict of interests.

5. ID.; ID.; GROSS IGNORANCE OF THE LAW; ISSUANCE OF A HOLD DEPARTURE ORDER BY A VOLUNTARY ARBITRATOR IN A LABOR CASE; CASE AT BAR.— Respondent likewise showed gross ignorance of the law when he issued a Hold Departure Order requesting the BID to place petitioner in its Watchlist, completely contravening Supreme Court Circular No. 39-97, which provides that said Orders shall be issued only in criminal cases within the exclusive jurisdiction of the Regional Trial Courts.

6. ID.; ID.; NONPAYMENT OF IBP MEMBERSHIP DUES; EFFECT THEREOF; CASE AT BAR.— Lastly, as the Investigating Commissioner also discovered that respondent failed to update his IBP membership dues and pay his community tax certificate for the year 2004, he is likewise liable under Sections 9 and 10, Rule 139-A of the Rules of Court, which read: Section 9. *Membership dues*. – Every member of the Integrated Bar shall pay such annual dues as the Board of Governors shall determine with the approval of the Supreme Court. A fixed sum equivalent to ten percent (10%) of the collections from each Chapter shall be set aside as a Welfare Fund for disabled members of the Chapter and the compulsory heirs of deceased members. Section 10. *Effect of non-payment of dues*. – Subject to the provisions of Section 12 of this Rule, default in the payment of annual dues for six months shall warrant suspension of membership in the Integrated Bar, and default in such payment for one year shall be a ground for the removal of the name of the delinquent member from the Roll of Attorneys.

7. ID.; ID.; GROSS MISCONDUCT, HANDLING CASES INVOLVING "CONFLICTING INTERESTS", AND NONPAYMENT OF IBP DUES; PROPER PENALTY IN CASE AT BAR.— Under Section 27, Rule 138 of the Rules of Court, a member of the Bar may be disbarred or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office. Gross misconduct has been defined as any inexcusable, shameful or flagrantly unlawful conduct on the part of the person involved in the administration of justice, conduct that is prejudicial to the rights of the parties or to the right determination of the cause. Such conduct is generally motivated by a premeditated, obstinate or intentional purpose. The term, however, does not necessarily imply corruption or criminal intent. In previous cases involving

representation of conflicting interests, the Court has sanctioned erring lawyers either by reprimand, or by suspension from the practice of law from six months to two years. In the afore-cited case *Tadlip v. Borres, Jr.*, therein respondent lawyer and provincial adjudicator found guilty of gross ignorance of the law was suspended from the practice of law for six (6) months. In *Santos, Jr. v. Llamas*, where the respondent lawyer did not pay his IBP dues for eight years because he believed that as a senior citizen, he was exempt from paying the same, the Court suspended him from the practice of law for one (1) year, or until the respondent paid his dues. In the present case, the Investigating Commissioner recommended the imposition of a one (1) year suspension, while the IBP Board of Governors recommended a two (2) year suspension. The Court, taking into account the recommendations of the Investigating Commissioner and the Board of Governors of the IBP, deems it appropriate to impose a penalty of two (2) year suspension upon respondent, which is within the range of the penalty of six (6) months to two (2) years for offenses similar to those committed by respondent Atty. Bacatan, as held in several cases.

APPEARANCES OF COUNSEL

The Law Firm of Dennis C. Pangan and Associates for complainant.

D E C I S I O N

PERALTA, *J.*:

Before this Court is a petition for the disbarment of respondent Atty. Inocencio T. Bacatan filed on February 11, 2005 by complainant Robert Bernhard Buehs, charging respondent with representation of conflicting interests and gross misconduct for usurpation of authority.

It appears that on July 19, 1993, Genaro Alvarez and Sergia Malukuh, two employees of Mar Fishing Company, Inc., filed a labor case for illegal dismissal with prayer for backwages and other damages against said company and/or complainant in the latter's capacity as Executive Vice- President and Chief

Operations Officer of Miramar Fish Company, Inc., and former General Manager of Mar Fishing Co., Inc., and the Mar Fishing Workers Union National Federation of Labor (MFWU-NFL).

The case was docketed as NCMB RB IX Case No. VA-12-0045-879 entitled *Genaro Alvarez and Sergia Malukuh v. Mar Fishing Company, Inc. and/or Robert Buehs and Mar Fishing Workers Union NFL*, and later assigned to respondent, who was then an accredited Voluntary Arbitrator of the National Conciliation and Mediation Board (NCMB) of the Department of Labor and Employment (DOLE), Regional Office 9, Zamboanga City.

Respondent rendered a Decision[1] dated May 30, 1997 in favor of Alvarez and Malukuh, ordering Mar Fishing Company, Inc. and MFWU-NFL to pay complainants in said case their separation pay, backwages, moral damages, exemplary damages and other benefits in the amount of ₱1,563,360.00. On appeal, the Court of Appeals (CA) modified said Decision by deleting the award of moral and exemplary damages.[2] The Decision became final and executory when the Court denied complainant's petition for review on *certiorari* and, subsequently, his motion for reconsideration, in its Resolution[3] dated April 4, 2001.

Upon motion of Alvarez and Malukuh, respondent issued a Writ of Execution[4] on February 8, 2002 to enforce the Decision dated May 30, 1997. Respondent also issued a levy on execution on the properties of Miramar Fish Company, Inc. prompting the latter to question said levy on execution on the ground that it was not a party to the labor case, and to file a case with the CA docketed as CA-G.R. SP No. 76721, entitled *Miramar Fish Corp. v. Inocencio T. Bacatan, et al.*

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[1] *Rollo,* Vol. I, pp. 13-14.

[2] Docketed as C.A. GR SP No. 45145, entitled "*Mar Fishing Company, Inc., et al. v. Alvarez et al.*"

[3] *Rollo,* Vol. I, p. 50.

[4] *Id.* at 25-27.

In the said case, the CA issued a Temporary Restraining Order (TRO) on April 30, 2003, and eventually, a Writ of Preliminary Injunction on July 11, 2003, restraining and enjoining respondent from enforcing his Order for the levy on execution of the properties owned by Miramar Fish Company.

During the pendency of the proceedings, Alvarez and Malukuh, represented by respondent as their counsel, filed a criminal complaint for violation of Article 41 of the Labor Code against petitioner. Respondent, in his Indorsement[5] dated June 26, 2003, stated that he was acting as counsel for complainants in said case, who were the same complainants in the labor case pending before him.

On November 3, 2004, without notice and hearing, respondent also issued an Order[6] directing the BID to place herein complainant in its Watchlist and to issue a Hold Departure Order. However, complainant was not given a copy of the said Hold Departure Order.

In the present petition with administrative complaint against respondent, complainant alleged that:

1. Respondent clearly represented conflicting interests by acting as counsel for Alvarez and Malukuh in the criminal case they filed against herein complainant while the labor case filed by Alvarez and Malukuh against complainant was still pending before him.

2. Respondent usurped the judicial powers of the Regional Trial Court and the higher judicial authorities by issuing a Hold Departure Order/Watchlist Order without any notice or hearing.[7]

On the other hand, in his Comment[8] dated May 3, 2005, respondent asserted that it was complainant who resorted to

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[5] *Id*. at 28.

[6] *Id*. at 31.

[7] *Id*. at 8-9.

[8] *Id*. at 35-44.

legal maneuvers to delay, if not evade, his monetary obligations. Thus, the former was compelled to ask for an Order to place petitioner in the Watchlist of the Bureau of Immigration and Deportation (BID), as the latter had resigned from his position. He also claimed that it was erroneous to say that the issue was still pending with the arbitrator at the stage of execution because as of March 30, 1997, when he submitted the Decision, he was already in *functus officio*. He further stated that the phrase "counsel for complainants" printed under his name was a misprint, and he could not be considered as one actively prosecuting the case.

Respondent, in turn, filed a Counter-Affidavit[9] wherein he prayed that the petition for disbarment against him be dismissed, and that the name of Atty. Dennis Pangan, counsel for petitioner, be stricken from the Roll of Attorneys. He likewise alleged that all the foregoing pleadings, including those filed through Atty. Pangan, were designed to unreasonably delay the judgment of the court.

In its Resolution[10] dated August 31, 2005, the Court referred the case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation within ninety (90) days from receipt of the record.

On November 23, 2005, respondent filed an Addendum and/or Supplement to his Comment[11] dated October 23, 2005. He claimed that he did not violate the principle of contradiction because, according to him, the labor case and criminal complaint were not cognate to each other.

On December 1, 2005, the IBP Commission on Bar Discipline directed the parties to appear in a mandatory conference on January 6, 2006.[12] On the scheduled date, the parties failed to

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[9] *Id.* at 45-48.

[10] *Id.* at 172.

[11] *Rollo,* Vol. II, pp. 2-4.

[12] *Rollo,* Vol. III, p. 1.

appear and, thus, the mandatory conference was reset to February 3, 2006.

Upon submission of complainant's exhibits and presentation of the witnesses, the IBP Commission on Bar Discipline, in an Order dated February 3, 2006, submitted the case for resolution and directed the parties to file their respective position papers. Of the parties, only complainant submitted his Position Paper[13] on March 16, 2006 reiterating his earlier arguments.

In the Report and Recommendation of the IBP dated May 31, 2006, Commissioner Lolita Quisumbing found respondent guilty of misconduct for representing the complainants in the criminal case filed by the latter against the petitioner. She held that respondent, as accredited Voluntary Arbitrator of the NCMB, exhibited his bias and partiality towards the complainants when he endorsed the criminal complaint and signed thereon as counsel for the complainants. She likewise found respondent guilty of gross ignorance of the law when he issued a Hold Departure Order in violation of Circular No. 39-97.[14]

The Investigating Commissioner also discovered from the respondent's Comment dated May 3, 2005 that the respondent's community tax certificate and IBP Number covered the year 2004, not the current year 2005, and concluded that respondent failed to update his IBP membership and pay his professional tax receipt for the year 2005.

In view of her findings, Commissioner Quisumbing recommended that respondent be suspended from the practice of law for one (1) year, and thereafter, submitted her Report and Recommendation to the Board of Governors of the IBP.

In its Resolution dated November 18, 2006, the Board of Governors of the IBP adopted and approved, with modification, the Report and Recommendation of the Investigating Commissioner, stating thus:

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[13] *Id.* at 25-36.

[14] Dated June 19, 1997, superseding Circular No. 38-94 dated June 6, 1994 and Circular No. 62-96 dated September 9, 1996.

x x x finding the recommendation fully supported by the evidence on record and the applicable laws and rules, and considering that Respondent is guilty of gross misconduct for representing conflicting interest, gross ignorance of the law for issuing a hold-departure and watchlist order without authority, and likewise, for failure to update his membership dues to the Integrated Bar of the Philippines, Atty. Inocencio T. Bacatan is hereby SUSPENDED from the practice of law for two (2) years.

In an Indorsement dated March 21, 2007, Atty. Rogelio Vinluan, Director for Bar Discipline of the IBP, referred the administrative case to the Office of the Bar Confidant (OBC).

In a Resolution dated July 16, 2007, the Court required the parties to manifest within thirty (30) days from notice whether they were willing to submit the case for decision on the basis of the pleadings/records already filed and submitted.

On February 20, 2008, the counsel for complainant filed a Manifestation stating that the complainant was submitting the case for decision on the basis of the pleadings/records already filed and submitted.

In a Resolution dated August 4, 2008, in view of respondent's failure to file a manifestation on whether he was willing to submit the case for decision on the basis of the pleadings/records already filed and submitted, the case was then submitted for resolution.

Respondent claimed that when he indorsed the criminal complaint for the complainants, he could already do so as counsel because he had already rendered his Decision in the illegal dismissal case.

Respondent is mistaken. Jurisdiction, once acquired, is not lost upon the instance of the parties but continues until the case is terminated, or until the writ of execution has been issued to enforce the judgment.[15] The Indorsement was dated June

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[15] *Abalos v. Philex Mining Corporation*, G.R. No. 140374, November 27, 2002, 393 SCRA 134, 141, citing *Deltaventures Resources, Inc. v. Cabato*, 327 SCRA 521 (2000).

26, 2003, at which time the decision had not yet been enforced, as evidenced by respondent's issuance of an *Alias* Writ of Execution[16] dated December 28, 2004.

Even assuming that he had already lost jurisdiction over the illegal dismissal case, he remains liable for representing conflicting interests. Relevant provisions of the Code of Professional Responsibility[17] state:

> Rule 15.01 – A lawyer, in conferring with a prospective client, shall ascertain as soon as practicable whether the matter would involve a conflict with another client or his own interest, and if so, shall forthwith inform the prospective client.
>
> Rule 15.03 – A lawyer shall not represent conflicting interests except by written consent of all concerned given after a full disclosure of the facts.

In *Samala v. Valencia*,[18] the Court held that a lawyer may not undertake to discharge conflicting duties any more than he may represent antagonistic interests. This stern rule is founded on the principles of public policy and good taste, which springs from the relation of attorney and client, which is one of trust and confidence. Lawyers should not only keep inviolate the client's confidence, but also avoid the appearance of treachery and double-dealing. Only then can litigants be encouraged to entrust their secrets to their lawyers, which is of paramount importance in the administration of justice.

A conflict of interests also exists when the acceptance of a new relation will prevent an attorney from the full discharge of his duty of undivided fidelity and loyalty to his client or invite suspicion of unfaithfulness or double-dealing in the performance thereof.[19]

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[16] *Rollo,* Vol. I, pp. 108-109.

[17] Promulgated by the Supreme Court on June 21, 1988.

[18] A.C. No. 5439, January 22, 2007, 512 SCRA 1, 7-8.

[19] *Pormento, Sr. v. Pontevedra,* A.C. No. 5128, March 31, 2005, 454 SCRA 167, 177.

In the present case, respondent was appointed as Voluntary Arbitrator for the parties in the illegal dismissal case. He took on the duty to act as a disinterested person to hear the parties' contentions and give judgment between them.[20] However, instead of exhibiting neutrality and impartiality expected of an arbitrator, respondent indorsed a criminal complaint to the Office of the City Prosecutor of Zamboanga City for possible criminal prosecution against herein complainant, and signed the said Indorsement as counsel for complainants in the illegal dismissal case. The Court cannot accept the contention of respondent that the phrase "counsel for the complainants," found in the Indorsement, was a mere misprint. For if it were so, he could have easily crossed out the phrase or prepared another Indorsement deleting said phrase. His claim of misprint, therefore, is a last futile attempt based on the clearly established evidence that he was acting in both capacities as counsel and arbitrator at the same time, an act which was clearly reprehensible and violative of the principle of the interests.

Respondent likewise showed gross ignorance of the law when he issued a Hold Departure Order requesting the BID to place petitioner in its Watchlist, completely contravening Supreme Court Circular No. 39-97, which provides that said Orders shall be issued only in criminal cases within the exclusive jurisdiction of the Regional Trial Courts.[21] *Apropos* is *Tadlip v. Borres, Jr.*,[22] where therein respondent, lawyer and provincial adjudicator, failed to apply the specific provisions of the 1994 New Rules of Procedure of the Department of Agrarian Reform Regional Arbitration Board (DARAB). The Court found him guilty of gross ignorance of the law and ruled that, since respondent became part of the quasi-judicial system of the government, his case may be likened to administrative cases of judges whose manner of deciding cases was also subject of administrative cases.

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[20] *Black's Law Dictionary Abridged,* Fifth Ed., p. 56.

[21] *Supra* note 14.

[22] A.C. No. 5708, November 11, 2005, 474 SCRA 441.

Lastly, as the Investigating Commissioner also discovered that respondent failed to update his IBP membership dues and pay his community tax certificate for the year 2004, he is likewise liable under Sections 9 and 10,[23] Rule 139-A of the Rules Court, which read:

> Section 9. *Membership dues*. – Every member of the Integrated Bar shall pay such annual dues as the Board of Governors shall determine with the approval of the Supreme Court. A fixed sum equivalent to ten percent (10%) of the collections from each Chapter shall be set aside as a Welfare Fund for disabled members of the Chapter and the compulsory heirs of deceased members.
>
> Section 10. *Effect of non-payment of dues*. – Subject to the provisions of Section 12 of this Rule, default in the payment of annual dues for six months shall warrant suspension of membership in the Integrated Bar, and default in such payment for one year shall be a ground for the removal of the name of the delinquent member from the Roll of Attorneys.

Having established the administrative liabilities of respondent, the Court now proceeds to determine the corresponding penalty.

Under Section 27, Rule 138 of the Rules of Court, a member of the Bar may be disbarred or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office.[24] Gross misconduct has been defined as any inexcusable, shameful or flagrantly unlawful conduct on the part of the person involved in the administration of justice, conduct that is prejudicial to the rights of the parties or to the right determination of the cause. Such conduct is generally motivated by a premeditated, obstinate or intentional purpose. The term, however, does not necessarily imply corruption or criminal intent.[25]

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[23] Effective January 16, 1973.

[24] As amended by SC Resolutions dated May 20, 1968 and February 13, 1992.

[25] *Spouses Donato v. Asuncion, Sr.*, A.C. No. 4914, March 3, 2004, 424 SCRA 199, 204, citing *Yap v. Judge Inopiquez, Jr.*, 403 SCRA 141 (2003).

In previous cases involving representation of conflicting interests, the Court has sanctioned erring lawyers either by reprimand, or by suspension from the practice of law from six months to two years.[26]

In the afore-cited case *Tadlip v. Borres, Jr.*,[27] therein respondent lawyer and provincial adjudicator found guilty of gross ignorance of the law was suspended from the practice of law for six (6) months.

In *Santos, Jr. v. Llamas*,[28] where the respondent lawyer did not pay his IBP dues for eight years because he believed that as a senior citizen, he was exempt from paying the same, the Court suspended him from the practice of law for one (1) year, or until the respondent paid his dues.

In the present case, the Investigating Commissioner recommended the imposition of a one (1) year suspension, while the IBP Board of Governors recommended a two (2) year suspension. The Court, taking into account the recommendations of the Investigating Commissioner and the Board of Governors of the IBP, deems it appropriate to impose a penalty of two (2) year suspension upon respondent, which is within the range of the penalty of six (6) months to two (2) years for offenses similar to those committed by respondent Atty. Bacatan, as held in several cases.[29]

WHEREFORE, respondent Atty. Inocencio T. Bacatan is found *GUILTY* of gross misconduct for representing conflicting interests, gross ignorance of the law for issuing an order without

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[26] *Paz v. Sanchez*, A.C. No. 6125, September 19, 2006, 502 SCRA 209, 218, citing *Gamilla v. Mariño, Jr.*, 339 SCRA 308 (2003); *Abragan v. Rodriguez*, 429 Phil. 607 (2002); *Artezuela v. Maderazo*, 431 Phil. 135 (2002); *De Guzman v. De Dios*, 403 Phil. 222 (2001); *Maturan v. Gonzales*, 350 Phil. 882, 887 (1998); *Vda. De Alisbo v. Jalandoni, Sr.*, 199 SCRA 321 (1991); and *Natan v. Capule*, 91 Phil. 640 (1952).

[27] *Supra* note 22.

[28] A.C. No. 4749, January 20, 2000, 322 SCRA 529.

[29] *Supra* note 26.

authority, and failure to update his membership dues to the IBP; and is *SUSPENDED* from the practice of law for two (2) years, effective upon receipt of this Decision, with a stern warning that a repetition of the same or similar acts will be dealt with more severely.

SO ORDERED.

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

Carpio Morales, on leave.

EN BANC

[A.M. No. RTJ-06-1984. June 30, 2009]
(Formerly OCA IPI No. 05-2255-RTJ)

VALERIANO F. NUÑEZ, *complainant, vs.* **JUDGE FRANCISCO B. IBAY, Regional Trial Court, Branch 135, Makati City,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; POWER TO HOLD A PERSON IN DIRECT CONTEMPT.— The power to hold a person in direct contempt is provided for under Section 1, Rule 71 of the Rules of Court, which reads: SECTION 1. *Direct contempt punished summarily.* – A person guilty of misbehavior in the presence of or so near a court as to obstruct or interrupt the proceedings before the same, including disrespect toward the court, offensive personalities toward others, or refusal to be sworn or to answer as a witness, or to subscribe an affidavit or deposition when lawfully required to do so, may be summarily adjudged in contempt by such court and punished by a fine not exceeding

two thousand pesos or imprisonment not exceeding ten (10) days, or both, if it be a Regional Trial Court or a court of equivalent or higher rank, or by a fine not exceeding two hundred pesos or imprisonment not exceeding one (1) day or both, if it be a lower court.

2. ID.; ID.; MUST BE EXERCISED JUDICIOUSLY AND SPARINGLY.—In *Sison v. Caoibes, Jr.*, the Court held that the power to declare a person in contempt of court, however plenary as it may seem, must be exercised judiciously and sparingly. A judge should never allow himself to be moved by pride, prejudice, passion or pettiness in the performance of his duties.

3. ID.; ID.; MUST BE EXERCISED ON THE PRESERVATIVE PRINCIPLE AND ON THE CORRECTIVE IDEA OF PUNISHMENT.— In *Oclarit v. Paderanga*, the Court held that the power to punish for contempt must be exercised on the preservative, not vindicative, principle and on the corrective and not retaliatory idea of punishment. Courts must exercise the power to punish for contempt for purposes that are impersonal, because that power is intended as a safeguard not for the judges as persons, but for the functions that they exercise.

4. ID.; ID.; REMEDIES OF A PERSON ADJUDGED IN CONTEMPT OF COURT.— The remedies provided under Section 2, Rule 71 of the Rules of Court, are as follows: SEC. 2. *Remedy therefrom.* – The person adjudged in direct contempt by any court may not appeal therefrom, but may avail himself of the remedies of *certiorari* or prohibition. The execution of the judgment shall be suspended pending resolution of such petition, provided such person files a bond fixed by the court which rendered the judgment and conditioned that he will abide by and perform the judgment should the petition be decided against him.

5. LEGAL ETHICS; JUDGES; INTEGRITY, LACK OF; SHOWN BY JUDGE'S CITING PERSONS IN CONTEMPT WITHOUT LEGAL BASIS; CASE AT BAR.— In the instant case, respondent Judge averred that someone was out to harass and embarrass him, which was why six different complaints were simultaneously filed against him, prompting him to cite the complainants for contempt of court. He explained that the individual acts of the complainants were contemptuous, *viz*:

Allan Macrohon, Rodrigo Gonzales, and Redeem Ongtingco caused an overflow of water into the chambers of respondent Judge, damaging his computer system at the old RTC. On March 18, 2005, Venancio P. Inonog, security-driver of the Chief of the Business Permit Section of Makati City, also parked his vehicle at respondent's parking slot; On April 12, 2005, John Panaligan, electrician of the Makati City Hall, erroneously switched off the electrical outlets of respondent Judge's sala; including herein complainant's improper parking, because they disrupted the speedy administration of justice. [Disagreeing with the respondent judge, the court held that] aside from the fact that respondent Judge failed to substantiate his allegation, the Court does not see how the improper parking by complainant, or by a certain Oscar dela Cruz, could, even in the remotest manner, disrupt the speedy administration of justice. At most, it would cause respondent Judge inconvenience or annoyance, but still, this does not fall under any of the aforementioned acts for which a person could be cited for contempt. Neither does it appear from the records, nor from the evidence presented, that complainant intended any disrespect toward respondent Judge. In fact, upon being summoned, complainant immediately apologized for his mistake. x x x Respondent Judge had already cited six persons for contempt, including herein complainant. Worse, respondent Judge immediately detained complainant, thereby preventing him from resorting to the remedies provided under Section 2, Rule 71 of the Rules of Court, x x x Such abusive behavior on the part of respondent Judge fails to show his integrity, which is essential not only to the proper discharge of the judicial office, but also to his personal demeanor. In addition, Sections 1 and 2, Canon 2 of the New Code of Judicial Conduct for the Philippine Judiciary state that: SECTION 1. Judges shall ensure that not only is their conduct above reproach, but that it is perceived to be so in the view of a reasonable observer. SEC. 2. The behavior and conduct of judges must reaffirm the people's faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done.

6. LEGAL ETHICS; JUDGES; GROSS MISCONDUCT; JUDGE'S PENCHANT FOR CITING PERSONS IN CONTEMPT WITHOUT LEGAL BASIS, A CASE OF; PROPER PENALTY; CASE AT BAR.— The Court believes that the frequency of

his offenses already constitutes gross misconduct. "Gross" has been defined as flagrant and shameful, while "misconduct" means a transgression of some established and definite rule of action, willful in character, improper or wrong behavior. Under Section 8(3), Rule 140 of the Rules of Court, gross misconduct is classified as a serious offense punishable under the sanctions enumerated under the same Rule, Section 11 of which provides that: SEC. 11. Sanctions. – If the respondent is guilty of a serious charge, any of the following sanctions may be imposed: 1. Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine x x x 2. Suspension from office with salary and other benefits for more than three (3), but not exceeding six (6) months; or 3. A fine of more than ₱20,000.00, but not exceeding ₱40,000.00. In previous cases wherein judges cited persons for contempt without legal basis, the Court has found respondents guilty of grave abuse of authority and usually imposed a penalty of reprimand with a warning, or a fine of ₱5,000.00 with a warning. However, respondent Judge has been twice administratively sanctioned by the Court for the same offense. In *Panaligan v. Ibay*, respondent Judge was found to have abused his authority in citing a person for contempt without sufficient legal basis, for which he was sentenced to pay a fine of ₱5,000.00, with a stern warning that a repetition of the same or similar acts in the future would be dealt with more severely. In *Macrohon v. Ibay*, he was again found liable for the same offense and sentenced to pay a fine of ₱25,000.00, with a stern warning that a repetition of the same or similar acts would be dealt with more severely. In view of respondent Judge's penchant for citing persons for contempt even without legal basis, the Investigating Justice recommended that he be ordered to pay a fine of ₱5,000.00 with a stern warning, while the OCA recommended that he be suspended for four (4) months with a stern warning. Considering that respondent Judge had opted to avail himself of the Optional Retirement under Republic Act (R.A.) No. 910, as amended by R.A. No. 5095 and Presidential Decree (P.D.) No. 1438, effective at the close of office hours of August 18, 2007, which was approved by the Court (First Division) per Resolution dated November 14, 2007, provided that the amount of Four Hundred Thousand (₱400,000.00) Pesos shall be retained/withheld from his retirement benefits to answer for whatever adverse decision the Court may later impose upon him in A.M. No. RTJ-06-1984

(herein case) and OCA IPI No. 05-2248-RTJ, the Court, therefore, deems it appropriate to impose a fine of ₱40,000.00, with a stern warning that a repetition of the same or similar acts in the future would be dealt with more severely.

APPEARANCES OF COUNSEL

Public Attorney's Office for complainant.

D E C I S I O N

PERALTA, *J.*:

Before this Court is a *Sinumpaang Salaysay*[1] dated April 22, 2005 filed by complainant Valeriano F. Nuñez with the Office of the Court Administrator (OCA) against respondent Judge Francisco B. Ibay of Branch 135 of the Regional Trial Court (RTC) of Makati City, charging the latter with grave abuse of authority.

Complainant alleged the following in his complaint:

Complainant was a driver at the Engineering Department of the Makati City Hall. On April 1, 2005, at around five o'clock in the afternoon, he parked the government vehicle which he was driving, an L-300 van with plate number SFN-767, at the basement of the Makati City Hall and left the key in their office because drivers were not allowed to bring such vehicles home. After the flag ceremony on April 4, 2005, complainant went to the Office of the Engineering Department where he received an Order[2] from respondent Judge, directing the former to appear before the latter on that same day at ten o'clock in the morning and to explain why he occupied the parking space allotted for respondent Judge.

When complainant appeared before respondent Judge, the latter asked him if he had a lawyer. Although complainant replied in the negative, respondent Judge still further questioned the

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

[2] *Id.* at 4.

complainant. Complainant apologized and explained that he did not intend to park in respondent Judge's space, and that he did not know that such space was reserved for respondent Judge.

However, respondent Judge refused to accept complainant's apology and, instead, found the latter guilty of direct contempt of court for using the former's parking space, sentencing complainant to five (5) days imprisonment and a fine of one thousand pesos (₱1,000.00).[3] Respondent then ordered the jail guard to bring complainant to the City Jail in Fort Bonifacio, where the latter was incarcerated for two days. On April 5, 2005, complainant was released after filing a Motion for Reconsideration[4] and paying the fine of ₱1,000.00.

In his Comment[5] dated June 27, 2005, respondent Judge alleged that judges were assigned their respective parking spaces in the basement of the City Hall of Makati City. Respondent Judge, in particular, placed a marker with his name at the space allotted to him, facilitating the orderly parking which allowed him to work as early as seven o'clock in the morning, almost daily. He stated that he already programmed his activities to maintain and/or improve his present position as the third ranking judge for the year 2004 among the RTC judges of Makati City.

Respondent Judge claimed that on the date and time in question, he was set to dispose a criminal case, and over the weekend, had even conceptualized the matter on how to administer the proceedings to accomplish the requirements of that criminal case. However, the inconsiderate and improper parking of complainant disturbed his train of thought as to the intended disposition of his cases.

In addition, respondent Judge recounted that there were similar incidents which happened to him. Sometime in August 2002, Allan Macrohon, Rodrigo Gonzales, and Redeem Ongtinco caused an overflow of water into the chambers of respondent Judge,

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[3] *Id.* at 5.

[4] *Id.* at 6-7.

[5] *Id.* at 14-18.

damaging his computer system at the old RTC. On March 18, 2005, Venancio P. Inonog, security-driver of the Chief of the Business Permit Section of Makati City, also parked his vehicle at respondent's parking slot. On April 12, 2005, John Panaligan, electrician of the Makati City Hall, erroneously switched off the electrical outlets of respondent Judge's sala.

Respondent Judge cited Macrohon, Gonzales, Ongtinco, Inonog, and Panaligan in contempt on the ground that they disrupted respondent Judge's performance of official duties. In turn, Macrohon, *et al*., Inonog, and Panaligan all filed their respective administrative complaints[6] against respondent Judge.

On November 25, 2005, the OCA recommended that the instant complaint be redocketed as a regular administrative matter, and that respondent Judge be fined ten thousand pesos (₱10,000.00) for grave abuse of authority.[7]

In its Resolution[8] dated March 15, 2006, the Court referred the administrative case to Associate Justice Renato Dacudao of the Court of Appeals for investigation, report and recommendation within ninety (90) days from receipt of the records. On June 22, 2006, the Investigating Justice issued an Order setting the said case for hearing.

The Investigating Justice submitted a Partial Report on September 6, 2006 in which he stated that he had just finished receiving the evidence for the parties and required them to submit their respective memorandum. He also asked for an extension of two months from September 20, 2006, or until November 20, 2006, within which to submit his Final Investigation, Report and Recommendation.

In his Investigation, Report and Recommendation dated September 22, 2006, the Investigating Justice concluded:

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[6] Docketed as OCA-IPI No. 05-2246-RTJ, OCA-IPI No. 2248-RTJ, and OCA-IPI No. 05-2247-RTJ, respectively.

[7] *Rollo*, pp. 19-22.

[8] *Id.* at 23-24.

Based on the testimonies of both parties and their witnesses, the undersigned Investigating Justice believes that the complainant was not the person who parked the van on respondent judge's parking slot, but rather that it was Oscar de los Reyes. Complainant during the hearing maintained that he parked the L-300 van in the middle, and not on the side, which was the parking slot assigned to respondent judge. Although the witness, Oscar de los Reyes testified that, after buying "*merienda*" (on April 2, 2005), he parked the van at the same place, he failed to explain where exactly he parked the van. Thus, we cannot discount the possibility that De los Reyes might have parked the van at the same place, meaning the basement parking, but not necessarily on the very same spot or slot.

But whether it was complainant or it was Oscar de los Reyes who parked the van, it would not change or alter the fact that respondent judge committed grave abuse of authority in holding the complainant in contempt of court for parking on his slot. Respondent judge himself declared that had he known that it was De los Reyes who parked the van he would not have asked complainant to explain, but instead De los Reyes. x x x In addition, why still subject complainant to further humiliation by having him handcuffed, like a common criminal, after citing him for contempt of court? Obviously, respondent judge was really bent on citing for contempt of court the person responsible for doing the parking in the parking slot which he believed, (perhaps erroneously), was his assigned parking slot. Obviously, too, there is a streak of cruel sadism, of pettiness or meanness, in respondent judge's character, as it would seem that he could not refrain from exhibiting such excesses as causing the manacling (apparently in open court at that), of an unintentional offender like the complainant herein, who had the misfortune to injure, if innocuously, his wounded pride and ego as a judge.

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In this case, the undersigned Investigating Justice finds no reason why complainant's act of parking on the parking slot of respondent judge would constitute contempt of court. It may have caused respondent judge some delay in immediately parking his car that morning of April 4, 2005, but to say that the "one-hour disruption" delayed the administration of justice would be stretching the logic of the situation too much. According to respondent judge, "time is of the essence" in his decision-making program. But the irony of it is that the amount of time respondent judge allotted in hearing the

explanation as well as the motion for reconsideration of complainant in this case must have cost him more than the one hour he claimed he lost.

As justification for his actions, respondent judge said that because of the "prior or previous incidents" he was convinced that the particular incident was intentional and deliberate. Such reasoning is unacceptable. There was no showing that complainant or Oscar de los Reyes intentionally or deliberately parked the van on respondent judge's slot in order to purposely annoy or irk him. And, even if it did annoy or irk respondent judge, he should remember that, the power to cite persons in contempt is at his disposal for purposes that are strictly impersonal, because that power is intended as a safeguard not for the judges as persons, but for the official functions that they exercise or perform.

Besides, it was unfair for respondent judge to assume that complainant knew of the prior or previous incident, where respondent judge cited a driver for contempt of court for parking on his parking slot, just because both drivers are employees of the Makati City Hall; this is clearly a *non-sequitur*. And, assuming that complainant knew of the said incident, this alone would not prove that what he did was intentional or deliberate.

Neither would respondent judge's allegation, that someone, "an unknown person inside," is orchestrating the filing of these cases against him for the chief or sole purpose of harassing him, exonerate him of the charge. To begin with, he failed to present any proof to substantiate this allegation. All he could point to are mere coincidences or speculations. What is more, respondent judge seemed to have taken some kind of pleasurable satisfaction in citing these complainants in contempt of court simply for parking on the slot which he assumed was allot(t)ed to him; or for switching the lights off in his office; or for accidentally drenching his computers. He, in fact, even admitted having issued all these Orders to punish the complainants in these cases for disrupting or disturbing him in performing his duties; hence, he cannot blame these persons for filing a case or cases against him, as these persons must have felt aggrieved by his actuations in precipitately citing them for contempt. Nor can he accuse "an unknown person" of orchestrating all of these. All the cases or incidents he mentioned only strengthened the undersigned Investigating Justice's perception that respondent judge has an unseemly propensity for abusing the power granted to him by law.

Respondent judge ought to be reminded that as a member of the bench, he is expected to take recourse to the contempt power only as a last resort, when all other alternative courses of action are exhausted in the pursuit of maintaining respect for the court and its processes; and that when a less harsh remedy can be availed of by the judge, he should at all times hesitate to use his contempt power, and instead opt for the less harsh remedy.

Thus, if respondent judge wanted to "teach complainant a lesson," he could have done so by merely reprimanding or admonishing him considering that when complainant appeared before respondent judge he immediately begged for forgiveness.

Respondent judge's act of citing complainant in contempt of court for parking on his slot is a violation of Rule 2.01 of the Code of Judicial Conduct, which provides that "A judge should so behave at all times as to promote public confidence in the integrity and impartiality of the judiciary."

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For the reasons heretofore stated, the undersigned Investigating Justice finds respondent judge guilty of grave abuse of authority for using contempt as a retaliatory measure – aggravated in this case by a streak of cruel sadism, of pettiness or meanness, in respondent's character, as elsewhere indicated.

RECOMMENDATIONS

Notwithstanding the finding of guilt of the respondent judge, the undersigned Investigating Justice deems that certain circumstances must be considered in imposing the proper penalty.

It must be noted that respondent judge has a very good performance record. His strong adherence to the Supreme Court's reminder that, "members of the judicial branch – judges and judicial personnel alike – to be conscientious, diligent and thorough in the performance of their functions. At all time(s) they must observe the high standard of public service required of them." is quite admirable and commendable. Also, he already admitted his error in declaring complainant in contempt of court. All these may be taken as mitigating circumstances which could alleviate his culpability.

UPON THE VIEW WE TAKE OF THIS CASE, THUS, the undersigned Investigating Justice hereby recommends that the

respondent Judge be fined in the amount of **PESOS: FIVE THOUSAND (Php5,000.00)** with a stern **warning** that a repetition of the same or similar acts in the future will be dealt with more severely.

In a Resolution dated February 7, 2007, the Court referred the administrative matter to the OCA for evaluation, report and recommendation, within thirty (30) days from notice, on the propriety of consolidating the instant case with the other administrative cases filed against respondent Judge.

In its Memorandum dated March 30, 2007, the OCA observed that:

> After a cautious evaluation of the entire records of the instant case, this Office agrees with the Investigating Justice's findings that respondent committed grave abuse of authority in citing complainant in contempt of court. Respondent wrongly argues that complainant delayed the administration of justice when he improperly parked the van on respondent's assigned slot which disrupted his scheduled disposition of cases. Respondent's reaction to the complainant's mistake is exaggerated. The complainant's act may have caused inconvenience to the respondent but it could not delay the administration of justice.
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> There is no evidence to show that complainant Nuñez parked the van at respondent's slot purposely to annoy him or he was aware of the previous similar incident which involved Venancio Inonog. In fact, complainant explained that his mistake was not deliberate and he asked for respondent's forgiveness. Respondent likewise failed to substantiate his allegation that someone is orchestrating the filing of administrative cases against him for the sole purpose of harassing him. The other complainants cannot be faulted for filing the said cases as they may have felt aggrieved by respondent's actuations in citing them for contempt for flimsy and personal reasons.
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> Respondent's order dated April 4, 2005 citing complainant Nuñez in contempt of court betrays not only his ignorance as regards the Rule on Contempt of Court, but it also shows his despotic nature. The fact that respondent had also declared Inonog, Panaligan, Macrohon and two others in contempt of court shows that he does not possess the judicial temperament which a judge should possess.
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The power to punish for contempt must be used sparingly with due regard to the provisions of the law and the constitutional rights of the individual. It should be exercised strictly for the preservation of the dignity of the court and its proceedings. In the instant complaint, respondent exercised the said power in an arbitrary and oppressive manner and for purposes that are purely personal.

The exacting standards of conduct demanded from judges are designed to promote public confidence in the integrity and impartiality of the judiciary. When the judge himself becomes the transgressor of the law which he is sworn to apply, he places his office in disrepute, encourages disrespect for the law and impairs public confidence in the integrity of the judiciary itself.

After a cautious evaluation of the entire records of the instant case, this Office finds the recommended penalty not commensurate to respondent's offense. This is not respondent's first offense. He had been administratively sanctioned for grave abuse of authority and was ordered by the Court to pay a fine on June 21, 2006 in the case of *Panaligan v. Ibay* docketed as A.M. No. RTJ-06-1972. In the case filed by Allan Macrohon, *et al.*, docketed as A.M. No. RTJ-06-1970, respondent was ordered by the Court to pay a fine of ₱25,000.00 for gravely abusing his authority and was also warned that a repetition of the same or similar offense shall be dealt with more severely. Respondent has another pending case filed by Venancio Inonog for the same charge. In the said case of Allan Macrohon, et al. against respondent, the Court stated that "the similarity of the charges in these administrative complaints against him betrays a deplorable proclivity for the use of contempt powers at the slightest provocation."

Taking into consideration that the instant complaint is a third transgression of a similar offense, this Office recommends that respondent Judge Francisco B. Ibay be SUSPENDED for FOUR (4) MONTHS with STERN WARNING that a repetition of similar act shall be dealt with more severely.

In its Resolution dated July 25, 2007, the Court required the parties to manifest whether they were willing to submit the case for decision on the basis of the pleadings/records already filed and submitted within 30 days from notice.

In its Resolution dated November 21, 2007, the Court deemed as served upon the complainant the copy of the Resolution dated July 25, 2007 which was sent to complainant, but was returned unserved with postman's notation "RTS-Unknown."

In its Resolution dated March 3, 2008, after failure of respondent Judge to manifest whether he was willing to submit the case for decision on the basis of the pleadings/records already filed and submitted as required in the Resolution dated July 25, 2007, the Court deemed the case for decision.

The issue which lies before this Court is whether respondent Judge can be held administratively liable for grave abuse of authority in citing complainant for contempt of court.

The power to hold a person in direct contempt is provided for under Section 1, Rule 71 of the Rules of Court, which reads:

> SECTION 1. *Direct contempt punished summarily.* – A person guilty of misbehavior in the presence of or so near a court as to obstruct or interrupt the proceedings before the same, including disrespect toward the court, offensive personalities toward others, or refusal to be sworn or to answer as a witness, or to subscribe an affidavit or deposition when lawfully required to do so, may be summarily adjudged in contempt by such court and punished by a fine not exceeding two thousand pesos or imprisonment not exceeding ten (10) days, or both, if it be a Regional Trial Court or a court of equivalent or higher rank, or by a fine not exceeding two hundred pesos or imprisonment not exceeding one (1) day or both, if it be a lower court.

In *Sison v. Caoibes, Jr.*,[9] the Court held that the power to declare a person in contempt of court, however plenary as it may seem, must be exercised judiciously and sparingly. A judge should never allow himself to be moved by pride, prejudice, passion or pettiness in the performance of his duties.

Respondent Judge averred that someone was out to harass and embarrass him, which was why six different complaints were simultaneously filed against him, prompting him to cite

[9] A.M. No. RTJ-03-1771, May 27, 2004, 429 SCRA 258.

the complainants for contempt of court. He explained that the individual acts of the complainants were contemptuous, including herein complainant's improper parking, because they disrupted the speedy administration of justice.

The Court disagrees. Aside from the fact that respondent Judge failed to substantiate his allegation, the Court does not see how the improper parking by complainant, or by a certain Oscar dela Cruz, could, even in the remotest manner, disrupt the speedy administration of justice. At most, it would cause respondent Judge inconvenience or annoyance, but still, this does not fall under any of the aforementioned acts for which a person could be cited for contempt. Neither does it appear from the records, nor from the evidence presented, that complainant intended any disrespect toward respondent Judge. In fact, upon being summoned, complainant immediately apologized for his mistake.

In *Oclarit v. Paderanga*,[10] the Court held that the power to punish for contempt must be exercised on the preservative, not vindicative, principle and on the corrective and not retaliatory idea of punishment. Courts must exercise the power to punish for contempt for purposes that are impersonal, because that power is intended as a safeguard not for the judges as persons, but for the functions that they exercise.

By the time the instant complaint was filed, respondent Judge had already cited six persons for contempt, including herein complainant. Worse, respondent Judge immediately detained complainant, thereby preventing him from resorting to the remedies provided under Section 2, Rule 71 of the Rules of Court, cited as follows:

SEC.2. *Remedy therefrom*. – The person adjudged in direct contempt by any court may not appeal therefrom, but may avail himself of the remedies of *certiorari* or prohibition. The execution of the judgment shall be suspended pending resolution of such petition, provided such person files a bond fixed by the court which rendered

[10] 403 Phil. 146 (2001).

the judgment and conditioned that he will abide by and perform the judgment should the petition be decided against him.

Such abusive behavior on the part of respondent Judge fails to show his integrity, which is essential not only to the proper discharge of the judicial office, but also to his personal demeanor.[11] In addition, Sections 1 and 2, Canon 2 of the New Code of Judicial Conduct for the Philippine Judiciary[12] state that:

SECTION 1. Judges shall ensure that not only is their conduct above reproach, but that it is perceived to be so in the view of a reasonable observer.

SEC. 2. The behavior and conduct of judges must reaffirm the people's faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done.

The Court believes that the frequency of his offenses already constitutes gross misconduct. "Gross" has been defined as flagrant and shameful, while "misconduct" means a transgression of some established and definite rule of action, willful in character, improper or wrong behavior.[13] Under Section 8(3), Rule 140 of the Rules of Court, gross misconduct is classified as a serious offense punishable under the sanctions enumerated under the same Rule, Section 11 of which provides that:

SEC. 11. Sanctions. – If the respondent is guilty of a serious charge, any of the following sanctions may be imposed:

1. Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations. *Provided*, however, that the forfeiture of benefits shall in no case include accrued leave credits;

2. Suspension from office with salary and other benefits for more than three (3), but not exceeding six (6) months; or

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[11] New Code of Judicial Conduct for the Philippine Judiciary, Canon 2.

[12] A. M. No. 03-05-01-SC, effective June 1, 2004.

[13] *Black's Law Dictionary Abridged,* Fifth Ed., pp. 359 and 517.

3. A fine of more than ₱20,000.00, but not exceeding ₱40,000.00.

In previous cases wherein judges cited persons for contempt without legal basis, the Court has found respondents guilty of grave abuse of authority and usually imposed a penalty of reprimand with a warning, or a fine of ₱5,000.00 with a warning.[14]

However, respondent Judge has been twice administratively sanctioned by the Court for the same offense. In *Panaligan v. Ibay*,[15] respondent Judge was found to have abused his authority in citing a person for contempt without sufficient legal basis, for which he was sentenced to pay a fine of ₱5,000.00, with a stern warning that a repetition of the same or similar acts in the future would be dealt with more severely. In *Macrohon v. Ibay*,[16] he was again found liable for the same offense and sentenced to pay a fine of ₱25,000.00, with a stern warning that a repetition of the same or similar acts would be dealt with more severely.

In view of respondent Judge's penchant for citing persons for contempt even without legal basis, the Investigating Justice recommended that he be ordered to pay a fine of ₱5,000.00 with a stern warning, while the OCA recommended that he be suspended for four (4) months with a stern warning. Considering that respondent Judge had opted to avail himself of the Optional Retirement under Republic Act (R.A.) No. 910, as amended by R.A. No. 5095 and Presidential Decree (P.D.) No. 1438, effective at the close of office hours of August 18, 2007, which was approved by the Court (First Division) per Resolution dated

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[14] *Panaligan v. Ibay*, A.M. No. RTJ-06-1972, June 21, 2006, 491 SCRA 545; *Office of the Court Administrator v. Paderanga*, A.M. No. RTJ-01-1660, August 25, 2005, 468 SCRA 21; *Ruiz v. How*, 459 Phil. 728 (2003).

[15] *Supra* note 13.

[16] *Macrohon v. Ibay*, A.M. No. RTJ-06-1970, November 30, 2006, 509 SCRA 75.

November 14, 2007,[17] provided that the amount of Four Hundred Thousand (₱400,000.00) Pesos shall be retained/withheld from his retirement benefits to answer for whatever adverse decision the Court may later impose upon him in A.M. No. RTJ-06-1984 (herein case) and OCA IPI No. 05-2248-RTJ, the Court, therefore, deems it appropriate to impose a fine of ₱40,000.00, with a stern warning that a repetition of the same or similar acts in the future would be dealt with more severely.

WHEREFORE, respondent Judge Francisco B. Ibay is found *GUILTY* of grave abuse of authority for citing complainant Valeriano F. Nuñez for contempt without legal basis, and is *ORDERED* to *PAY a FINE* of Forty Thousand Pesos (₱40,000.00), to be deducted from his retirement benefits, which in this case shall be deductible from the Four Hundred Thousand Pesos (₱400,000.00) withheld from his retirement benefits, per Resolution dated November 14, 2007.

SO ORDERED.

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

Carpio Morales, J., on leave.

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[17] A.M. No. 12796-Ret. (Re: Application for Optional Retirement under R.A. 910, as amended by R.A. 5095 and PD 1438, of Hon. Francisco B. Ibay (Judge, Regional Trial Court, Branch 135, Makati City).

THIRD DIVISION

[G.R. Nos. 159517-18. June 30, 2009]

HILARIO P. SORIANO and ROSALINDA ILAGAN, *petitioners, vs.* **PEOPLE OF THE PHILIPPINES, BANGKO SENTRAL NG PILIPINAS (BSP), and PHILIPPINE DEPOSIT INSURANCE CORPORATION (PDIC),** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; A CLEAR SHOWING OF CAPRICE AND ARBITRARINESS IN THE EXERCISE OF DISCRETION IS IMPERATIVE.— The term *grave abuse of discretion*, in its juridical sense, connotes capricious, despotic, oppressive or whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse must be of such degree as to amount to an evasion of positive duty or a virtual refusal to perform a duty enjoined by law, as where the power is exercised in an arbitrary and capricious manner by reason of passion and hostility. The word *capricious*, usually used in tandem with the term *arbitrary*, conveys the notion of willful and unreasoning action. Thus, when seeking the corrective hand of *certiorari*, a clear showing of caprice and arbitrariness in the exercise of discretion is imperative.

2. ID.; CRIMINAL PROCEDURE; MOTION TO QUASH; DUPLICITY OF OFFENSES IN A SINGLE INFORMATION, AS A GROUND THEREFOR; PROHIBITED TO AVOID CONFUSING THE ACCUSED IN PREPARING HIS DEFENSE; CASE AT BAR NOT A CASE OF.— Indisputably, duplicity of offenses in a single information is a ground to quash the Information under Section 3(e), Rule 117 of the 1985 Rules of Criminal Procedure. The Rules prohibit the filing of a duplicitous information to avoid confusing the accused in preparing his defense. By duplicity of charges is meant a single complaint or information that charges more than one offense. Otherwise stated, there is duplicity (or multiplicity) of charges when a single Information charges more than one offense. In this case, however, Soriano

was faced not with one information charging more than one offense, but with more than one information, each charging a different offense — violation of DOSRI rules in one, and *estafa thru falsification of commercial documents* in the others. Ilagan, on the other hand, was charged with *estafa thru falsification of commercial documents* in separate informations. Thus, petitioners erroneously invoke duplicity of charges as a ground to quash the Informations.

3. ID.; ID.; ID.; ID.; SINGLE ACT OR INCIDENT MIGHT OFFEND TWO OR MORE ENTIRELY DISTINCT AND UNRELATED PROVISIONS OF LAW.— A single act or incident might offend two or more entirely distinct and unrelated provisions of law, thus justifying the filing of several charges against the accused. In *Loney v. People*, this Court, in upholding the filing of multiple charges against the accused, held: As early as the start of the last century, this Court had ruled that a single act or incident might offend against two or more entirely distinct and unrelated provisions of law thus justifying the prosecution of the accused for more than one offense. The only limit to this rule is the Constitutional prohibition that no person shall be twice put in jeopardy of punishment for "**the same offense**." In ***People v. Doriquez***, we held that two (or more) offenses arising from the same act are not "the same" — x x x if one provision [of law] requires proof of an additional fact or element which the other does not, x x x. Phrased elsewise, where two different laws (or articles of the same code) define two crimes, prior jeopardy as to one of them is no obstacle to a prosecution of the other, although both offenses arise from the same facts, **if each crime involves some important act which is not an essential element of the other**. x x x Consequently, the filing of the multiple charges against petitioners, although based on the same incident, is consistent with settled doctrine.

4. ID.; ID.; ID.; THAT FACTS CHARGED DO NOT CONSTITUTE AN OFFENSE, A GROUND THEREFOR; FUNDAMENTAL TEST IS THE SUFFICIENCY OF THE AVERMENTS IN THE INFORMATION; CASE AT BAR.— The fundamental test in considering a motion to quash anchored on Section 3 (a), Rule 117 of the1985 Rules on Criminal Procedure, is the sufficiency of the averments in the information; that is, whether the facts alleged, if hypothetically admitted, would establish the essential

elements of the offense charged as defined by law. The trial court may not consider a situation contrary to that set forth in the criminal complaint or information. Facts that constitute the defense of the petitioners against the charge under the information must be proved by them during trial. Such facts or circumstances do not constitute proper grounds for a motion to quash the information on the ground that the material averments do not constitute the offense. We have reviewed the informations and find that they contain material allegations charging Soriano with violation of DOSRI rules and *estafa thru falsification of commercial documents*.

5. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; NOT A PROPER REMEDY TO ASSAIL DENIAL OF A MOTION TO QUASH; CASE AT BAR.—The Court has consistently held that a special civil action for *certiorari* is not the proper remedy to assail the denial of a motion to quash an information. The proper procedure in such a case is for the accused to enter a plea, go to trial without prejudice on his part to present the special defenses he had invoked in his motion to quash and if after trial on the merits, an adverse decision is rendered, to appeal therefrom in the manner authorized by law. Thus, petitioners should not have forthwith filed a special civil action for *certiorari* with the CA and instead, they should have gone to trial and reiterated the special defenses contained in their motion to quash. There are no special or exceptional circumstances in the present case that would justify immediate resort to a filing of a petition for *certiorari*. Clearly, the CA did not commit any reversible error, much less, grave abuse of discretion in dismissing the petition.

APPEARANCES OF COUNSEL

Peter Paul S. Romero for petitioners.
M.M. Lazaro & Associates for Bangko Sentral ng Pilipinas.
Office of the General Counsel for PDIC.

D E C I S I O N

NACHURA, *J.*:

Petitioners Hilario P. Soriano and Rosalinda Ilagan (petitioners) appeal by *certiorari* the August 5, 2003 Decision[1] of the Court of Appeals (CA) in the consolidated cases CA-G.R. SP. Nos. 64648 and 64649.

The antecedents.

Hilario P. Soriano (Soriano) and Rosalinda Ilagan (Ilagan) were the President and General Manager, respectively, of the Rural Bank of San Miguel (Bulacan), Inc. (RBSM). Allegedly, on June 27, 1997 and August 21, 1997, during their incumbency as president and manager of the bank, petitioners indirectly obtained loans from RBSM. They falsified the loan applications and other bank records, and made it appear that Virgilio J. Malang and Rogelio Mañaol obtained loans of ₱15,000,000.00 each, when in fact they did not.

Accordingly, on May 4, 2000, State Prosecutor Josefino A. Subia charged Soriano in the Regional Trial Court (RTC) of Malolos, Bulacan, with violation of Section 83 of Republic Act No. 337 (R.A. No. 337) or the *General Banking Act*, as amended by Presidential Decree No. 1795, or *Violation of the Director, Officer, Stockholder or Related Interest (DOSRI) Rules* (DOSRI Rules). The inculpatory portion of the Information reads:

> That on or about June 27, 1997 and thereafter, and within the jurisdiction of this Honorable Court, the said accused, in his capacity as President of the Rural Bank of San Miguel (Bulacan), Inc. did then and there, unlawfully, feloniously, and indirectly borrow or secure a loan with Rural Bank of San Miguel-San Miguel Branch amounting to Php15 million, without the consent and written approval of the majority of the directors of the bank, by using the name of one

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[1] Penned by Associate Justice Mercedes Gozo-Dadole (retired), with Associate Justices Conrado M. Vasquez, Jr. (now Presiding Justice) and Rosmari D. Carandang, concurring; *rollo*, pp. 57-67.

depositor VIRGILIO J. MALANG of San Miguel Bulacan who have no knowledge of the said loan, and once in possession of the said amount of Php14,775,000.00, net of interest converted the same to his own personal use and benefit, in flagrant violation of the said law.[2]

On the same date, an information for *estafa thru falsification of commercial document* was also filed against Soriano and Ilagan, *viz.*:

That on or about June 27, 1997 and thereafter, in San Miguel, Bulacan and within the jurisdiction of this Honorable Court, the said accused HILARIO P. SORIANO and ROSALINDA ILAGAN, as principals by direct participation, with unfaithfulness or abuse of confidence and taking advantage of their position as President of Rural Bank of San Miguel (Bulacan), Inc. and Manager of Rural Bank of San Miguel-San Miguel Branch, a duly organized banking institutions under Philippine Laws, conspiring, confederating and mutually helping one another, did then and there, willfully and feloniously falsify loan documents consisting of loan application/ information sheet, and promissory note dated June 27, 1997, disclosure statement on loan/credit transaction, credit proposal report, manager's check no. 06514 dated June 27, 1997 and undated RBSM-San Miguel Branch check voucher, by making it appear that one **VIRGILIO J. MALANG** filed the aforementioned documents when in truth and in fact, **VIRGILIO J. MALANG** did not participate in the execution of said loan document and that by virtue of said falsification and with deceit and intent to cause damage, the accused credited the loan proceeds of the loan amounting to Php14,775,000.00, net of interest, to the account of **VIRGILIO J. MALANG** with the RBSM and thereafter converted the same amount to their own personal gain and benefit, to the damage and prejudice of the Rural Bank of San Miguel-San Miguel Branch, its creditors and the Bangko Sentral Ng Pilipinas in the amount of Php14,775,000.00.

CONTRARY TO LAW.[3]

The informations were docketed as Criminal Case Nos. 1719-M-2000 and 1720-M-2000, respectively, and were raffled to Branch 14, presided by Judge Petrita Braga Dime.

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[2] *Id.* at 211-212.

[3] *Id.* at 214-215.

Another information for violation of Section 83 of R.A. No. 337, as amended, was filed against Soriano, this time, covering the ₱15,000,000.00 loan obtained in the name of Rogelio Mañaol. The information reads:

> That on or about August 21, 1997 and thereafter, and within the jurisdiction of this Honorable Court, the said accused, in his capacity as President of the Rural Bank of San Miguel (Bulacan), Inc. did then and there, unlawfully, feloniously, and indirectly borrow or secure a loan with Rural Bank of San Miguel-San Miguel Branch, a domestic rural ba[n]king institution created, organized and existing under Philippine laws, amounting to Php15.0 million, knowing fully well that the same has been done by him without the written approval of the majority of [the] board of directors of the said bank and which consent and approval the said accused deliberately failed to obtain and enter the same upon the record of said banking institution and to transmit a copy of which to the supervising department of the said bank, as required by the General Banking Act, by using the name of one depositor ROGELIO MAÑAOL of San Jose, San Miguel Bulacan who have no knowledge of the said loan, and once in possession of the said amount of Php 15.0 million, converted the same to his own personal use and benefit, in flagrant violation of the said law.[4]

Soriano and Ilagan were also indicted for *estafa thru falsification of commercial document* for obtaining said loan. Thus:

> That on or about August 21, 1997 and thereafter, in San Miguel, Bulacan and within the jurisdiction of this Honorable Court, the said accused **HILARIO P. SORIANO** and **ROSALINDA ILAGAN**, as principals by direct participation, with unfaithfulness or abuse of confidence and taking advantage of their position as President of Rural Bank of San Miguel (Bulacan), Inc. and Manager of Rural Bank of San Miguel-San Miguel Branch, a duly organized banking institutions under Philippine Laws, conspiring confederating and mutually helping one another, did then and there, willfully and feloniously falsify loan documents consisting of loan application/ information sheet and promissory note dated August 21, 1997, by making it appear that one **ROGELIO MAÑAOL** filled up the application/information sheet and filed the aforementioned loan

[4] *Id.* at 71.

documents when in truth and in fact, **ROGELIO MAÑAOL** did not participate in the execution of said loan document and that by virtue of said falsification and with deceit and intent to cause damage, the accused succeeded in securing a loan in the amount of Php15.0 million, from Rural Bank of San Miguel-San Miguel Branch in the name of **ROGELIO MAÑAOL**, which amount of Php 15.0 million representing loan proceeds the accused deposited to the account of **ROGELIO MAÑAOL** maintained with Rural Bank of San Miguel and thereafter converted the same amount to their own personal gain and benefit, to the damage and prejudice of the Rural Bank of San Miguel-San Miguel Branch, its creditors, the Bangko Sentral Ng Pilipinas and the Philippine Deposit Insurance Corporation in the amount of Php 15.0 million.

CONTRARY TO LAW.[5]

The cases were docketed as 1980-M-2000 and 1981-M-2000, respectively, and were raffled to Branch 77, presided by Judge Aurora Santiago-Lagman.

Petitioners moved to quash the informations in Criminal Case Nos. 1719-M-2000 and 1720-M-2000 (pending before Branch 14), and also in Criminal Case Nos. 1980-M-2000 and 1981-M-2000 (pending with Branch 77), on grounds that: (i) more than one (1) offense is charged; and (ii) the facts charged do not constitute an offense. Specifically, petitioners argued that the prosecutor charged more than one offense for a single act. Soriano was charged with violation of DOSRI rules and *estafa thru falsification of commercial document* for allegedly securing fictitious loans. They further argued that the facts as alleged in the information do not constitute an offense.

In an Order[6] dated November 15, 2000, RTC Branch 77 denied the motion to quash. Rejecting petitioners' arguments, it held:

Section 13 of Rule 110 of the Revised Rules of Criminal Procedure provides that the complaint or information must charge but only one offense, except only in those cases in which existing laws prescribe

[5] *Id.* at 68-69.

[6] *Id.* at 93-97.

a single punishment for various offenses. Under this Rule, the Information is defective when it charges two (2) or more offenses. The rule enjoining the charging of two (2) or more offenses in one information has for its aim to give the defendant the necessary knowledge of the charge to enable him to prove his defense (*People vs. Ferrer*, 101 Phil. 234, cited in Herrera Remedial Law IV., p. 72). While Section 3 (e) of Rule 117 of the Revised Rules of Court provides as one of the grounds where the accused may move to quash the complaint or information, considering Sec. 13 of Rule 110 of the Rules as aforestated, it is apparent that the said ground refers to a situation where the accused is being charged in one information or criminal complaint for more than one offense. The record shows that two (2) Informations were filed against the herein accused, one in Criminal Case No. 1980-M-2000 against accused Hilario P. Soriano for Violation of Sec. 83 of R.A. No. 337, as amended by PD 1795, and another one in Criminal Case No. 1981-M-2000 against accused Hilario P. Soriano and Rosalinda Ilagan for Estafa Thru Falsification of Commercial Documents. Thus, each Information charges only one offense.

Even assuming that the two (2) cases arose from the same facts, if they violate two (2) or more provisions of the law, a prosecution under one will not bar a prosecution under another (*Pp. vs. Tac-an*, 182 SCRA 601; *Lamera v. Court of Appeals*, 198 SCRA 186, cited in Herrera Criminal Procedure, Vol. 4, p. 453).

Upon the foregoing, this Court finds that there is no basis to quash the Informations filed in these two (2) cases as the accused are being charged therein with only one offense in each Information. As to the assertion of the accused that the facts charged do not constitute an offense, this Court finds that the allegations of both parties are evidentiary and the same can only be determined after a full blown trial on the merits of these cases where both parties will be given a chance to present their evidence in support of their respective positions.

WHEREFORE, the instant motion is DISMISSED and the arraignment of both accused and the pre-trial of these cases scheduled on December 4, 2000 at 10:00 o' clock in the morning, shall proceed as scheduled.[7]

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[7] *Id.* at 96-97.

Petitioners' motion to quash informations in Criminal Case Nos. 1719-M-2000 and 1720-M-2000 before Branch 14 likewise suffered the same fate, as Judge Braga Dime denied the same in an Order[8] dated November 27, 2000, holding that:

> Duplicity in criminal pleading is the joinder of two or more distinct and separate offenses in the same court of an indictment or information. (41 Am. Jur. 2d 1011). Whether two offenses are charged in an information, or otherwise, must not be made to depend upon the evidence presented at the trial court but upon the facts alleged in the information (*Provincial Fiscal of Nueva Ecija vs. CFI*, 79 Phil. 165). Where an offense may be committed in any of the different modes provided by law and the offense is alleged to have been committed in two or more modes specified, the indictment is sufficient. The allegations in the information of the various ways of committing the offense should be considered as a description of only one offense and the information cannot be dismissed on the ground of multifariousness (*Jurado v. Suy Yan*, L-30714, April 30, 1971)
>
> A perusal of the criminal information filed in the above-entitled cases indubitably show that each information charges only but one offense. Thus, in Criminal Case No. 1719-M-2000, Accused Hilario P. Soriano is charged only with violation of Sec. 83 of RA 337, as amended by PD 1796, while in Criminal Case No. 1720-M-2000, Accused Hilario P. Soriano and Rosalinda Ilagan are charged only with Estafa thru falsification of commercial document.
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> On the ground that the facts charged do not constitute an offense
>
> xxx xxx xxx
>
> [b]y simply reading the information filed against the Accused Hilario P. Soriano, in Crim. Case No. 1719-M-2000 it is clear that the allegations, which is hypothetically admitted by said accused, in the same information set out an offense for violation of Sec. 83 of RA 337 as amended by PD No. 1795.
>
> Finally, Accused, in addition to the two (2) grounds aforesaid, cited prematurity and lack of probable cause which would warrant the quashal of the two (2) informations.
>
> These additional grounds relied upon by the Accused for the quashal of the two (2) informations must necessarily fail because

[8] *Id.* at 240-243.

they are not one of the grounds enumerated in Sec. 3, Rule 117 of the Revised Rules of Court which this Court shall not consider, in accordance with Sec. 2, Rule 117 of the Revised Rules of Court.

WHEREFORE, premises considered, the Motion to Quash, dated September 1, 2000 filed by both Accused is hereby DENIED, for lack of merit.

SO ORDERED.[9]

Petitioners went up to the Court of Appeals via *certiorari*, assailing the Orders of Branch 77 and Branch 14. The petitions were docketed as CA-G.R. SP. Nos. 64648 and 64649. By decision[10] of August 5, 2003, the CA, which priorly consolidated the petitions, sustained the denial of petitioners' separate motions to quash:

WHEREFORE, FOREGOING PREMISES CONSIDERED, these petitions are **DENIED DUE COURSE** and accordingly **DISMISSED**. The assailed Orders dated November 15, 2000 and February 12, 2001 of the Regional Trial Court, Branch 77, Malolos, Bulacan in Criminal Case Nos. 1980-M-2000 and 1981-M-2000, entitled, "*People of the Philippines vs. Hilario P. Soriano* and *People of the Philippines vs. Hilario P. Soriano and Rosalinda Ilagan*", respectively, in CA-G.R. SP. No. 64648 and the Orders dated November 27, 2000 and March 9, 2001 of the Regional Trial Court, Branch 14, Malolos, Bulacan in Criminal Case Nos. 1719-M-2000 and 1720-M-2000, entitled "*People of the Philippines vs. Hilario P. Soriano* and *People of the Philippines vs. Hilario P. Soriano and Rosalinda Ilagan*", respectively, in CA-G.R. SP. No. 64649 are **affirmed**.[11]

Petitioners are now before this Court, submitting for resolution the same matters argued before the RTC and the CA. They insist that RTC Branch 14 and Branch 77 abused their discretion in denying their motions to quash informations. Thus, they posit that the CA committed reversible error in dismissing their petitions for *certiorari*.

The appeal should be denied.

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[9] *Id.* at 241-243.

[10] *Supra* note 1.

[11] *Id.* at 66-67.

The term *grave abuse of discretion*, in its juridical sense, connotes capricious, despotic, oppressive or whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse must be of such degree as to amount to an evasion of positive duty or a virtual refusal to perform a duty enjoined by law, as where the power is exercised in an arbitrary and capricious manner by reason of passion and hostility. The word *capricious*, usually used in tandem with the term *arbitrary*, conveys the notion of willful and unreasoning action. Thus, when seeking the corrective hand of *certiorari*, a clear showing of caprice and arbitrariness in the exercise of discretion is imperative.[12]

We reviewed the records before us, and we discerned no caprice or arbitrariness on the part of the RTC in denying the motions.

Petitioners assail the validity of the informations against them on the ground that more than one (1) offense is charged. They point that Soriano was charged with violation of DOSRI Rules and with *estafa thru falsification of commercial document* for allegedly obtaining loans from RBSM. Thus, they claim that the informations were duplicitous; hence, they should be quashed.

Indisputably, duplicity of offenses in a single information is a ground to quash the Information under Section 3(e), Rule 117[13] of the 1985 Rules of Criminal Procedure. The Rules prohibit the filing of a duplicitous information to avoid confusing the accused in preparing his defense.[14]

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[12] *Torres v. Abundo, Sr.*, G.R. No. 174263, January 24, 2007, 512 SCRA 564, 565.

[13] Sec. 3 Grounds.– The accused my move to quash the complaint or information on any of the following grounds:

x x x x x x x x x

(e) That more than one (1) offense is charged except in those cases in which the existing laws prescribe a single punishment for various offenses;

x x x x x x x x x

[14] *Loney v. People*, G.R. No. 152644, February 10, 2006, 482 SCRA 194, 209.

By duplicity of charges is meant a single complaint or information that charges more than one offense.[15] Section 13 of Rule 110 of the 1985 Rules on Criminal Procedure clearly states:

> Duplicity of Offense. – A complaint or information must charge but one offense, except only in those cases in which existing laws prescribe a single punishment for various offenses.

Otherwise stated, there is duplicity (or multiplicity) of charges when a single Information charges more than one offense.[16]

In this case, however, Soriano was faced not with one information charging more than one offense, but with more than one information, each charging a different offense — violation of DOSRI rules in one, and *estafa thru falsification of commercial documents* in the others. Ilagan, on the other hand, was charged with *estafa thru falsification of commercial documents* in separate informations. Thus, petitioners erroneously invoke duplicity of charges as a ground to quash the Informations.

Petitioners also contend that Soriano should be charged with one offense only, because all the charges filed against him proceed from and are based on a single act of obtaining fictitious loans. Thus, Soriano argues that he cannot be charged with *estafa thru falsification of commercial document*, considering that he is already being prosecuted for obtaining a DOSRI loan.

The contention has no merit.

Jurisprudence teems with pronouncements that a single act or incident might offend two or more entirely distinct and unrelated provisions of law,[17] thus justifying the filing of several charges against the accused.

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[15] *Id.* at 208.

[16] *Id.*

[17] *Loney v. People, supra,* See *Nierras v. Dacuycuy*, G.R. Nos. 59568-76, 11 January 1990, 181 SCRA 1; *People v. Doriquez*, 133 Phil. 295 (1968); *People v. Alvarez*, 45 Phil. 472 (1923); *People v. Cabrera*, 43 Phil. 64 (1922); *United States v. Capurro, et al.*, 7 Phil. 24 (1906).

In *Loney v. People*,[18] this Court, in upholding the filing of multiple charges against the accused, held:

> As early as the start of the last century, this Court had ruled that a single act or incident might offend against two or more entirely distinct and unrelated provisions of law thus justifying the prosecution of the accused for more than one offense. The only limit to this rule is the Constitutional prohibition that no person shall be twice put in jeopardy of punishment for "**the same offense**." In ***People v. Doriquez***, we held that two (or more) offenses arising from the same act are not "the same" —
>
> > x x x if one provision [of law] requires proof of an additional fact or element which the other does not, x x x. Phrased elsewise, where two different laws (or articles of the same code) define two crimes, prior jeopardy as to one of them is no obstacle to a prosecution of the other, although both offenses arise from the same facts, **if each crime involves some important act which is not an essential element of the other**.
>
> xxx xxx xxx
>
> Consequently, the filing of the multiple charges against petitioners, although based on the same incident, is consistent with settled doctrine.

As aptly pointed out by the BSP in its memorandum, there are differences between the two (2) offenses. A DOSRI violation consists in the failure to observe and comply with procedural, reportorial or ceiling requirements prescribed by law in the grant of a loan to a director, officer, stockholder and other related interests in the bank, *i.e.* lack of written approval of the majority of the directors of the bank and failure to enter such approval into corporate records and to transmit a copy thereof to the BSP supervising department. The elements of abuse of confidence, deceit, fraud or false pretenses, and damage, which are essential to the prosecution for *estafa*, are not elements of a DOSRI violation. The filing of several charges against Soriano was, therefore, proper.

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[18] *Supra* at 209-210, 212.

Petitioners next question the sufficiency of the allegations in the informations, contending that the same do not constitute an offense.

The fundamental test in considering a motion to quash anchored on Section 3 (a),[19] Rule 117 of the1985 Rules on Criminal Procedure, is the sufficiency of the averments in the information; that is, whether the facts alleged, if hypothetically admitted, would establish the essential elements of the offense charged as defined by law.[20] The trial court may not consider a situation contrary to that set forth in the criminal complaint or information. Facts that constitute the defense of the petitioners against the charge under the information must be proved by them during trial. Such facts or circumstances do not constitute proper grounds for a motion to quash the information on the ground that the material averments do not constitute the offense.[21]

We have reviewed the informations and find that they contain material allegations charging Soriano with violation of DOSRI rules and *estafa thru falsification of commercial documents*.

In Criminal Case Nos. 1719 & 1980 for violation of DOSRI rules, the informations alleged that Soriano was the president of RBSMI, while Ilagan was then its general manager; that during their tenure, Soriano, with the direct participation of Ilagan, and by using the names of Virgilio Malang and Rogelio Mañaol, was able to indirectly obtain loans without complying with the requisite board approval, reportorial and ceiling requirements, in violation of Section 83 of R.A. No. 377[22] as amended.

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[19] Section 3. Grounds. — The accused may move to quash the complaint or information on any of the following grounds:

(a) That the facts charged do not constitute an offense;

x x x x x x x x x

[20] *Caballero v. Sandiganbayan*, G.R. No. 137355-58, September 25, 2007, 534 SCRA 30, 43.

[21] *Torres v. Hon. Garchitorena*, 442 Phil. 765, 777 (2002).

[22] Sec. 83. No director or officer of any banking institution shall, either directly or indirectly, for himself or as the representative or agent of other, borrow any of the deposits of funds of such banks, nor shall he become a

Similarly, the informations in Criminal Case Nos. 1720 & 1981 charge petitioners with *estafa thru falsification of commercial document*. They allege that petitioners made it appear that Virgilio J. Malang and Rogelio Mañaol obtained loans and received the proceeds thereof when they did not in fact secure said loans or receive the amounts reflected in the promissory notes and other bank records.

The information in Criminal Case No. 1720 further alleges the elements of *estafa* under Article 315 (1)(b)[23] of the RPC

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guarantor, indorser, or surety for loans from such bank to others, or in any manner be an obligor for money borrowed from the bank or loaned by it, except with the written approval of the majority of the directors of the bank, excluding the director concerned. Any such approval shall be entered upon the records of the corporation and a copy of such entry shall be transmitted forthwith to the Superintendent of Banks. The office of any director or officer of a bank who violates the provisions of this section shall immediately become vacant and the director or officer shall be punished by imprisonment of not less than one year nor more than ten years and by a fine of not less than one thousand nor more than ten thousand pesos.

The Monetary Board may regulate the amount of credit accommodations that may be extended, directly or indirectly, by banking institutions to their directors, officers, or stockholders. However, the outstanding credit accommodations which a bank may extend to each of its stockholders owning two per cent (2%) or more of the subscribed capital stock, its directors, or its officers, shall be limited to an amount equivalent to the respective outstanding deposits and book value of the paid-in capital contribution in the bank: Provided, however, That loans and advances to officers in the form of fringe benefits granted in accordance with rules and regulations as may be prescribed by the Monetary Board shall not be subject to the preceding limitation.

[23] ART. 315. Swindling (estafa).– Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

x x x x x x x x x

1. With unfaithfulness or abuse of confidence, namely;

x x x x x x x x x

(b) By misappropriating or converting, to the prejudice of another, money, goods, or any personal property received by the offender in trust or on commission, or for administration, or under any obligation involving the duty to make delivery of or to return the same, even though such obligation be totally or partially guaranteed by a bond; or by denying having received such money, goods, or other property.

to wit: (i) that money, goods or other personal property be received by the offender in trust, or on commission, or for administration, or under any other obligation involving the duty to make delivery of or to return the same; (ii) that there be misappropriation or conversion of such money or property by the offender, or denial on his part of such receipt; (iii) that such misappropriation or conversion or denial is to the prejudice of another; and (iv) that there is demand made by the offended party to the offender.

The information in Criminal Case No. 1981, on the other hand, further alleged the following essential elements of *estafa* under Article 315 (2) (a)[24] of the RPC: (i) that there must be a false pretense, fraudulent act or fraudulent means; (ii) that such false pretense, fraudulent act or fraudulent means must be made or executed prior to or simultaneously with the commission of the fraud; (iii) that the offended party must have relied on the false pretense, fraudulent act, or fraudulent means—that is, he was induced to part with his money or property because of the false pretense, fraudulent act, or fraudulent means; and (iv) that, as a result thereof, the offended party suffered damage. The informations in Criminal Case Nos. 1720 & 1981, thus, charge petitioners with the complex crime of *estafa thru falsification of commercial documents*.

Verily, there is no justification for the quashal of the Information filed against petitioners. The RTC committed no grave abuse of discretion in denying the motions.

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[24] ART. 315. Swindling (estafa). – Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

x x x x x x x x x

2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:

(a) By using fictitious name, or falsely pretending to possess, power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of similar deceits.

x x x x x x x x x

In fine, the Court has consistently held that a special civil action for *certiorari* is not the proper remedy to assail the denial of a motion to quash an information. The proper procedure in such a case is for the accused to enter a plea, go to trial without prejudice on his part to present the special defenses he had invoked in his motion to quash and if after trial on the merits, an adverse decision is rendered, to appeal therefrom in the manner authorized by law.[25] Thus, petitioners should not have forthwith filed a special civil action for *certiorari* with the CA and instead, they should have gone to trial and reiterated the special defenses contained in their motion to quash. There are no special or exceptional circumstances in the present case that would justify immediate resort to a filing of a petition for *certiorari*. Clearly, the CA did not commit any reversible error, much less, grave abuse of discretion in dismissing the petition.

WHEREFORE, the petition for review is *DENIED* and the assailed Decision of the Court of Appeals is *AFFIRMED*. Costs against the petitioners.

SO ORDERED.

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

[25] *Sasot v. People*, G.R. No. 143193, June 29, 2005, 462 SCRA 138, 145.

THIRD DIVISION

[G.R. No. 161034. June 30, 2009]

ZENAIDA ACOSTA, EDUARDO ACOSTA, ARNOLD ACOSTA, DELIA ACOSTA, SPS. TEODULO MACHADO and AURORA ORENZA, SPS. ROLDAN PALARCA and PACITA PANGILINAN, SPS. FROMENCIO JONATAS and LUCENA M. MARIANO, SPS. MARCIAL IGLESIA and VIRGINIA LAPURGA, ATTY.-IN-FACT FELINO MACARAEG, SPS. MANUEL MANGROBANG and VALERIANA SOTIO, SPS. VIRGINIA DELA ROSA and ROMEO DELA ROSA, SPS. PACIFICO SOTIO and LOLITA SORIANO, JUAN DALINOC (deceased), represented by DAUGHTER CONSUELO DALINOC, SPS. MARIANO TORIO and MAXIMA MACARAEG, REPRESENTED BY LEGAL HEIRS TORIBIA TORIO and MAYUMI MACARAEG, TEOFILO MOLINA and AVELINO DIZON, *petitioners, vs.* **TRINIDAD SALAZAR and ANICETA SALAZAR,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JURISDICTION; REGISTRATION OF LAND; PROCEEDING *IN REM*.— It is true that the registration of land under the Torrens system is a proceeding *in rem* and not *in personam*. Such a proceeding *in rem*, dealing with a tangible *res*, may be instituted and carried to judgment without personal service upon the claimants within the state or notice by mail to those outside of it. Jurisdiction is acquired by virtue of the power of the court over the *res*. Such a proceeding would be impossible were this not so, for it would hardly do to make a distinction between constitutional rights of claimants who were known and those who were not known to the plaintiff, when the proceeding is to bar all.

2. ID.; ID.; ID.; PETITION FOR CANCELLATION OF ENTRIES CLASSIFIED AS QUASI *IN REM*; CASE AT BAR.—

Interestingly, however, the proceedings instituted by the Salazars – both in Branch 63 of the RTC of Tarlac for the cancellation of entries in OCT No. 40287 and later in Branch 64 of the RTC of Tarlac for quieting of title – can hardly be classified as actions *in rem*. The petition for cancellation of entries annotated at the back of OCT No. 40287 ought to have been directed against specific persons: namely, the heirs of Juan Soriano as appearing in Entry No. 20102 and, indubitably, against their successors-in-interest who have acquired different portions of the property over the years because it is in the nature of an action *quasi in rem.* Accordingly, the Salazars should have impleaded as party defendants the heirs of Juan Soriano and/or Vicenta Macaraeg as well as those claiming ownership over the property under their names because they are indispensable parties. This was not done in this case. Since no indispensable party was ever impleaded by the Salazars in their petition for cancellation of entry filed before Branch 63 of the RTC of Tarlac, herein petitioners are not bound by the dispositions of the said court. Consequently, the judgment or order of the said court never even acquired finality.

3. ID.; ID.; VOID ORDERS; MAY BE ENTIRELY DISREGARDED OR DECLARED INOPERATIVE BY ANY TRIBUNAL IN WHICH EFFECT IS SOUGHT TO BE GIVEN TO IT.— Paraphrasing by analogy this Court's ruling in *Metropolitan Waterworks & Sewerage System v. Sison*, a void order is not entitled to the respect accorded to a valid order. It may be entirely disregarded or declared inoperative by any tribunal in which effect is sought to be given to it. It has no legal or binding effect or efficacy for any purpose or at any place and thus cannot affect, impair or create rights. It is not entitled to enforcement and is, ordinarily, no protection to those who seek to enforce the same. Accordingly, all proceedings founded on the void court order are themselves regarded as invalid, and the situation is the same as it would be if there was no order issued by the court. It leaves the party litigants in the same position they were in before the trial. A void order, like any void judgment, may be said to be a lawless thing which can be treated as an outlaw and slain at sight.

4. CIVIL LAW; LAND TITLES; DEEDS AND REGISTRATION; TORRENS SYSTEM; RATIONALE; CASE AT BAR.— More crucial is the fact that both parties in this case are dealing with

property registered under the Torrens system. To allow any individual, such as the Salazars in this case, to impugn the validity of a Torrens certificate of title by the simple expediency of filing *ex parte* petition for cancellation of entries would inevitably erode the very reason why the Torrens system was adopted in this country, which is to quiet title to land and to put a stop forever to any question on the legality of the title, except claims that were noted, at the time of registration, in the certificate, or which may arise subsequent thereto. Once a title is registered under the Torrens system, the owner may rest secure, without the necessity of waiting in the portals of the courts or sitting in the *"mirador su casa"* to avoid the possibility of losing his land. Rarely will the court allow another person to attack the validity and indefeasibility of a Torrens certificate, unless there is compelling reason to do so and only upon a direct action filed in court proceeded in accordance with law.

APPEARANCES OF COUNSEL

Orlando M. Lambino for petitioners.
Eriberto S. Guerrero, Jr. for respondents.

D E C I S I O N

NACHURA, *J.*:

This is a petition for review on *certiorari* assailing the July 25, 2003 Decision[1] of the Court of Appeals (CA) as well as its November 25, 2003 Resolution[2] in CA-G.R. CV No. 70161, which reversed and set aside the December 20, 2000 Decision[3] of the Regional Trial Court (RTC), Branch 64, Tarlac City in Civil Case No. 7256. Said RTC decision dismissed the complaint for quieting of title filed by herein respondents Trinidad Salazar and Aniceta Salazar against petitioners.

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[1] Penned by Associate Justice Remedios A. Salazar-Fernando, with Associate Justices Delilah Vidallon Magtolis (retired) and Arturo D. Brion (now Supreme Court Associate Justice), concurring; *rollo* pp. 72-88.

[2] *Id.* at 95-96.

[3] CA *rollo*, pp. 40-43.

Below are the facts.

On November 19, 1985, respondents Trinidad and Aniceta Salazar (hereinafter, Salazars), filed a petition for the cancellation of the entries annotated at the back of Original Certificate of Title (OCT) No. 40287 registered in the names of spouses Juan Soriano and Vicenta Macaraeg, who died without issue.[4] The Salazars claim that two of the entries – Entry Nos. 19756 and 20102 – annotated at the back of the aforesaid title are void since no consolidation of rights appear in the Registry of Deeds (RD) of Tarlac to support the entries; and that Transfer Certificate of Title (TCT) No. 9297, which supposedly cancelled OCT No. 40287, is non-existent according to a certification issued by the RD.[5] On October 21, 1986, RTC Branch 63 of Tarlac resolved to grant the petition and ordered the cancellation of Entry No. 20102.[6] No respondent was impleaded in the said petition.

Subsequently, the Salazars filed an urgent motion praying for the issuance of an order to direct the RD of Tarlac to recall all titles issued under Entry Nos. 19756 and 20102 and to cancel

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[4] Docketed as LRC Land Case No. L-2829 before Branch 63, RTC of Tarlac and entitled: IN RE: CANCELLATION OF ENTRY, TITLE AND ISSUANCE OF TRANSFER TITLE, TRINIDAD SALAZAR AND ANICETA SALAZAR, Petitioners; I Records, p. 222-223.

[5] CA *Rollo*, p. 74.

[6] The dispositive portion of the October 21, 1986 Order reads:

WHEREFORE, The Register of Deeds of Tarlac is hereby ordered after payment of the required legal fees to CANCEL Entry No. 20102 found at the back of Original Certificate of Title No. 40287 of the Land Records of Tarlac and to issue a new transfer certificate of title over Lots (sic) Nos. 75, 76, and 288 embraced in OCT No. 40287 in the names of Trinidad Salazar married to Loreto Dasala and Aniceta Salazar married to Pablo Dungca both residents of Paniqui, Tarlac, thus partially cancelling OCT No. 40287 with respect to said lots.

The new transfer certificate issued to petitioners is hereby subject to real estate tax lien due to the government to be annotated in said new title.

SO ORDERED. (II Records, p. 736.)

all the tax declarations issued based thereon. The motion was granted in an Order issued on November 7, 1986.[7]

On November 20, 1986, the Salazars filed a second urgent motion praying that the owners of the affected property be ordered to appear before the court to show cause why their titles should not be cancelled.[8]

On October 20, 1987, the Salazars filed a new motion praying that the RD of Tarlac be ordered to comply with the court's order issued on November 7, 1986. The RD, however, explained that to comply with the said court order would remove the basis for the issuance of TCT No. 9297 which title had, in turn, been cancelled by many other transfer certificates of title and would indubitably result in the deprivation of the right to due process of the registered owners thereof.[9] On this basis, the RTC denied the motion and advised the Salazars to elevate the matter *en consulta* to the Land Registration Commission (now Land Registration Authority or LRA). After the Salazars moved for reconsideration, the RTC directed the RD of Tarlac to comply with the October 21, 1986 and November 7, 1986 orders. Threatened with contempt, the RD elevated the matter *en consulta* to the National Land Titles and Deeds Registration Administration, which, in turn, issued a resolution directing the RD to comply with the RTC's orders.[10] On March 7, 1989,

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[7] Pertinent portion of the November 7, 1986 Order reads:

WHEREFORE, the URGENT MOTION is hereby granted for being resoundingly meritorious.

The Register of Deeds of Tarlac, Tarlac is ordered to implement the cancellation of Entries No. 19556 (sic) and 20102 at the back of Original Certificate of Title No. 40287 of its office by recalling and cancelling all the titles it had issued based on the cancelled entries and for the Assessor's Office, Tarlac, Tarlac to cancel all tax declarations it had issued based on said cancelled entries. The Assessor is directed to declare or re-declare for taxation purposes Lots (sic) 75, 76 and 288 of the Cad. Survey of Ramos, in the name of the titled owner, Juan Soriano based on the latter's title.

`SO ORDERED. (*Id.* at 737.)

[8] *Rollo,* pp. 75 and 148.

[9] *Id.* at 75.

[10] *Id.* at 75-76.

OCT No. 40287 was reconstituted and TCT No. 219121 was issued in the names of the Salazars, *sans* Entry Nos. 19756 and 20102.

It was at this stage of the proceedings that herein petitioners together with other subsequent purchasers for value of the disputed property – twenty-seven (27) titleholders in all[11] – filed their formal written comment dated April 17, 1989.[12] In their comment, the oppositors contended, among others, that they had acquired their titles in good faith and for value, and that the lower court, acting as a land registration court, had no jurisdiction over issues of ownership.[13]

On September 14, 1989, the said court, apparently realizing its mistake, issued an Order, stating thus:

> Upon motion of Atty. Alcantara and without objection on the part of Atty. Molina and Atty. Lamorena, all the incidents in this case are hereby withdrawn without prejudice to the filing of an appropriate action in a proper forum.
>
> SO ORDERED.[14]

This prompted the Salazars to file a complaint for quieting of title impleading herein petitioners as well as other individuals who claim to have purchased the said property from the heirs of Juan Soriano. The case was docketed as Civil Case No. 7256 before Branch 64 of the RTC of Tarlac.[15] The complaint alleged that TCT No. 219121 was issued in the names of the Salazars without Entry Nos. 19756 and 20102 at the back of said title, but the previous TCTs issued by the RD of Tarlac as well as the tax declarations existing in the Assessor's Office have not been cancelled and revoked by the said government agencies to the detriment and prejudice of the complainants

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[11] CA *rollo*, p. 103.

[12] *Id.* at 122.

[13] *Id.* at 123.

[14] II Records, p. 771; Exh. "7".

[15] I Records, pp. 1-9.

(herein respondents). They also alleged that Pcs-395, from which Lot Nos. 702-A to 702-V were taken, is non-existent and, thus, the court should cause the cancellation and revocation of spurious and null and void titles and tax declarations.[16]

Defendants filed three separate answers. Defendants Raymundo Macaraeg, Martha Estacio (both deceased), Adelaida Macaraeg, Lucio Macaraeg, represented by Eufracia Macaraeg Baluyot as attorney-in-fact, Gregorio Baluyut and Eligia Obcena (hereinafter, Macaraegs) maintained that the November 7, 1986 order of the RTC is null and void because the court did not acquire jurisdiction over the case. They also argued that TCT No. 219121 issued in the name of the Salazars is void and that the case for quieting of title is not a direct, but a collateral, attack against a property covered by a Torrens certificate.[17]

Defendants, now herein petitioners, for their part, maintained that the Plan of Consolidation Subdivision Survey Pcs-396 had been an existing consolidation-subdivision survey plan annotated on OCT No. 40287 under Entry No. 20102 dated February 17, 1950 from which TCT No. 9297 was issued covering Lot Nos. 702-A to 702-V, inclusive, in the names of the heirs of Juan Soriano. They argued that TCT No. 219121 issued in the name of the Salazars is spurious and null and void from the beginning since it was acquired pursuant to an illegal order issued by the court.[18] By way of special and affirmative defenses, they also alleged, among others, (1) that the Salazars were not among the heirs of the late Juan Soriano, not within the fifth civil degree of consanguinity, and hence, they have no right to inherit; (2) that TCT No. 219121 constitutes a cloud upon the Torrens title of herein petitioners, and should therefore be cancelled and revoked; (3) that assuming, without admitting, that the Salazars have any right over the lots in question their right to enforce such action had already prescribed by laches or had been barred by prescription since more than forty (40) years had lapsed

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[16] *Rollo*, pp. 76-77.

[17] *Id.* at 78.

[18] *Id.* at 78-79.

since the heirs of Juan Soriano had registered the lots in question under TCT No. 9297 on February 17, 1950; and (4) that petitioners and/or their predecessors-in-interest acquired the lots in question in good faith and for value from the registered owners thereof.[19]

Defendant spouses Francisco Jonatas and Lucena M. Mariano and spouses Manuel Mangrobang and Valeriana Sotio filed their answers practically raising the same defenses.[20]

Meanwhile, on July 29, 1991, petitioners, together with the Macaraegs and Jonatas, *et al.*, filed before the CA a petition for annulment of judgment[21] rendered by RTC Branch 63 of Tarlac, Tarlac. The case, docketed as CA-G.R. SP No. 25643, was, however, dismissed on the ground of *litis pendencia*.[22]

On December 20, 2000, Branch 64 of the RTC of Tarlac dismissed the complaint for quieting of title. The trial court

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[19] *Id.* at 80-81.

[20] *Id.* at 81.

[21] CA *rollo,* pp. 101-117.

[22] Pertinent portion of the decision dated January 15, 1993 in CA-G.R. SP No. 25643 reads:

Considering the incidents that form the backdrop of the present petition as hereinabove discussed in this decision, it is clear that the present petition now before this Court is a duplication of the case already filed and pending before Branch 64 of the Regional Trial Court of Tarlac (Civil Case No. 725[6]). The main issue in said case, which is for quieting of the respective titles of all the parties involved, is the validity of the action taken by the respondent Branch 63 of the Regional Trial Court in Case No. L-2829 which led to the issuance of T.C.T. No. 219121 in the names of the Salazars, private respondents in the case now before us. It is apparent that any decision to be rendered in Civil Case No. 7256, which was filed ahead of this case, will settle the issue of who has the valid titles to the property in question. In the determination of this issue, the validity of the orders issued by the respondent Branch 63 necessarily will come to the fore and will have to be determined in the said proceedings.

x x x x x x x x x

WHEREFORE, this petition is DISMISSED with costs against the petitioners.

SO ORDERED. (CA *rollo*, pp. 124-125.)

faulted the Salazars for failure to present proof that they are heirs of the late Juan Soriano.[23] It also declared TCT No. 219121 issued in the name of the Salazars as null and void, and affirmed TCT No. 9297 as well as all certificates of title derived therefrom.[24]

Unsatisfied, the Salazars appealed to the CA,[25] which ruled in their favor.

According to the CA, it was erroneous for Branch 64 of the RTC of Tarlac to reverse and declare as null and void the decision of Branch 63, which is a court of equal rank. Such issue should have been properly ventilated in an action for annulment of final judgment. Consequently, the orders issued by RTC Branch 63, had become final and executory, hence, covered by *res judicata*.[26]

The CA also struck down the arguments raised by the appellees that the orders of RTC Branch 63 are null and void for lack of proper notice. It ratiocinated that the proceeding is a land registration proceeding, which is an action *in rem*. This being so, personal notice to the owners or claimants of the

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[23] II Records, pp. 825-829.

[24] The *fallo* of the December 20, 2000 RTC Decision reads:

WHEREFORE, judgment is hereby rendered:

1. Dismissing the complaint;
2. Ordering the Register of Deeds to cancel TCT No. 219121;
3. Restoring or maintaining the validity of [E]ntry No. 20102 at the back of OCT No. 40287 and also affirming TCT No. 297 and all titles derived therefrom.

No pronouncement as to costs.

SO ORDERED. (*Id.* at 828-829.)

[25] Filed on June 15, 2001 and docketed as CA-G.R. CV-No. 70161; CA *rollo*, p. 19.

[26] *Rollo*, p. 86.

land sought to be registered is not necessary in order to vest the court with jurisdiction over the *res* and over the parties.[27]

A motion for reconsideration[28] was filed, but the same was denied.[29] Hence, this petition.

Pivotal to the resolution of this case is the determination of the validity of the action taken by the Salazars in Branch 63 of the RTC of Tarlac.

We rule for petitioners.

It is true that the registration of land under the Torrens system is a proceeding *in rem* and not *in personam*. Such a proceeding *in rem*, dealing with a tangible *res*, may be instituted and carried to judgment without personal service upon the claimants within the state or notice by mail to those outside of it. Jurisdiction is acquired by virtue of the power of the court over the *res*. Such a proceeding would be impossible were this not so, for it would hardly do to make a distinction between constitutional rights of claimants who were known and those who were not known to the plaintiff, when the proceeding is to bar all.[30]

Interestingly, however, the proceedings instituted by the Salazars – both in Branch 63 of the RTC of Tarlac for the cancellation of entries in OCT No. 40287 and later in Branch 64 of the RTC of Tarlac for quieting of title – can hardly be classified as actions *in rem*. The petition for cancellation of entries annotated at the back of OCT No. 40287 ought to have been directed against specific persons: namely, the heirs of Juan Soriano as appearing in Entry No. 20102 and, indubitably, against their successors-in-interest who have acquired different portions of the property over the years because it is in the nature of an action *quasi in rem*. Accordingly, the Salazars should have impleaded as party defendants the heirs of Juan

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[27] *Id.* at 87.

[28] *Id.* at 89-94.

[29] *Id.* at 95-96.

[30] Peña, *Registration of Land Titles and Deeds*, 1988 ed., p. 42.

Soriano and/or Vicenta Macaraeg as well as those claiming ownership over the property under their names because they are indispensable parties. This was not done in this case.[31] Since no indispensable party was ever impleaded by the Salazars in their petition for cancellation of entry filed before Branch 63 of the RTC of Tarlac, herein petitioners are not bound by the dispositions of the said court.[32] Consequently, the judgment or order of the said court never even acquired finality.

Apparently realizing their mistake, the Salazars later on filed an action for quieting of title, also an action *quasi in rem*, albeit this time before Branch 64 of the RTC of Tarlac. Because the Salazars miserably failed to prove the basis for their claim, the RTC dismissed the complaint.[33] In fact, the RTC was bold enough to have pronounced thus:

> Who are the heirs of Juan Soriano who caused the consolidation and in whose favor TCT No. 9297 was issued? Certainly, they are not the plaintiffs. If the plaintiffs claim that they are the only heirs, they should file a case against those who executed the consolidation in whose favor [E]ntry [N]o. 20102 was made.
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> x x x In its order dated February 24, 2000, this Court ruled that it is necessary that plaintiffs should prove that they are the heirs of Juan Soriano, the registered owners as indicated in OCT No. 40287 of (sic) Vicenta Macaraeg, the late spouse. Despite the cue, the plaintiffs opted not to present evidence on how they became the heirs of Juan Soriano or Vicenta Macaraeg. There being [no] evidence presented to prove that plaintiffs are the heirs of the late Juan Soriano and Vicenta Macaraeg, they had no right and cause of action to prosecute this case.[34]

Needless to say, the failure of the Salazars to implead indispensable party defendants in the petition for cancellation of entries in OCT No. 40287 should have been a ground for the RTC to dismiss, or at least suspend, the proceedings of the

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[31] *Supra* note 4.

[32] *B.E. San Diego, Inc. v. Alzul*, G.R. No. 169501, June 8, 2007, 524 SCRA 402, 432.

[33] *Rollo*, p. 70.

[34] II Records, pp. 827-828.

case.[35] Yet, although the action proceeded, any judgment or order issued by the court thereon is still null and void for want of authority on the part of the court to act with respect to the parties never impleaded in the action.[36] Thus, the orders issued by said court dated October 21, 1986 and November 7, 1986 never acquired finality.[37] *Quod ab initio non valet, in tractu temporis non convalescit*.[38]

Paraphrasing by analogy this Court's ruling in *Metropolitan Waterworks & Sewerage System v. Sison*,[39] a void order is not entitled to the respect accorded to a valid order. It may be entirely disregarded or declared inoperative by any tribunal in which effect is sought to be given to it. It has no legal or binding effect or efficacy for any purpose or at any place and thus cannot affect, impair or create rights. It is not entitled to enforcement and is, ordinarily, no protection to those who seek to enforce the same. Accordingly, all proceedings founded on the void court order are themselves regarded as invalid, and the situation is the same as it would be if there was no order issued by the court. It leaves the party litigants in the same position they were in before the trial.[40] A void order, like any void judgment, may be said to be a lawless thing which can be treated as an outlaw and slain at sight.[41]

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[35] *Borlasa v. Polistico*, 47 Phil. 345 (1925) and *Cortez v. Avila*, 101 Phil. 705 (1957) cited in I Regalado, *Remedial Law Compendium*, 2002 ed., p. 82.

[36] *Arcelona v. Court of Appeals*, 345 Phil. 250, 267-268 (1997); *Alabang Development Corporation v. Valenzuela*, No. 54094, August 30, 1982, 116 SCRA 261, 277; *Director of Lands v. Court of Appeals*, 181 Phil. 432 (1979); and *Tanhu v. Judge Ramolete*, 160 Phil. 1101 (1975).

[37] *Heirs of Mayor Nemencio Galvez v. Court of Appeals*, G.R. No. 119193, March 29, 1996, 255 SCRA 672, 689-690; *Gomez v. Concepcion*, 47 Phil. 717, 722-723 (1925).

[38] That which is void originally does not by lapse of time become valid.

[39] G.R. No. L-40309, August 31, 1983, 124 SCRA 394 (1983).

[40] *Id.* at p. 404, citing 31 Am. Jur., 91-92.

[41] *Arcelona v. Court of Appeals*, G.R. No. 102900, October 2, 1997, 280 SCRA 20, 57; *Leonor v. Court of Appeals*, G.R. No. 112597, April 2, 1996, 256 SCRA 69, 82.

More crucial is the fact that both parties in this case are dealing with property registered under the Torrens system. To allow any individual, such as the Salazars in this case, to impugn the validity of a Torrens certificate of title by the simple expediency of filing an *ex parte* petition for cancellation of entries would inevitably erode the very reason why the Torrens system was adopted in this country, which is to quiet title to land and to put a stop forever to any question on the legality of the title, except claims that were noted, at the time of registration, in the certificate, or which may arise subsequent thereto.[42] Once a title is registered under the Torrens system, the owner may rest secure, without the necessity of waiting in the portals of the courts or sitting in the *"mirador su casa"* to avoid the possibility of losing his land.[43] Rarely will the court allow another person to attack the validity and indefeasibility of a Torrens certificate, unless there is compelling reason to do so and only upon a direct action filed in court proceeded in accordance with law.[44]

Finally, this Court also takes note of the fact that for more than 30 years – from the time Entry No. 20102 was annotated at the back of OCT No. 40287 on February 17, 1950 until the time of the filing of the *ex parte* petition for cancellation of entries on the said certificate of title on November 19, 1985 – the Salazars remained deafeningly quiet and never made any move to question the issue of ownership over the said land before the proper forum. They also failed to ventilate their claim during the intestate proceeding filed by the heirs of Juan Soriano sometime in 1939. Likewise, they miserably failed to stop the transfer of portions of the property to petitioners who, for themselves, were able to secure TCTs in their own names. All of these would lead to the inevitable conclusion that if there

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[42] *Legarda and Prieto v. Saleeby*, 31 Phil. 590-591.

[43] *Id*.

[44] Section 48 of Presidential Decree No. 1529 provides in full:

SEC 48. *Certificate not subject to collateral attack*. – A certificate of title shall not be subject to collateral attack. It cannot be altered, modified, or cancelled except in a direct proceeding in accordance with law.

is any validity to the claim of the Salazars over the said property – although such issue is not the subject of the present case – the same had already prescribed[45] or, at the very least, had become stale due to laches.

WHEREFORE, the petition is *GRANTED*. The assailed July 25, 2003 Decision of the Court of Appeals including its November 25, 2003 Resolution are hereby *SET ASIDE*. Accordingly, the December 20, 2000 Decision rendered by Branch 64 of the Regional Trial Court of Tarlac City, Tarlac is *REINSTATED*. Costs against respondents.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 165742. June 30, 2009]

TRI-CORP LAND & DEVELOPMENT, INC., represented by SOLITA S. JIMENEZ-PAULINO, *petitioner, vs.* **COURT OF APPEALS and GREYSTONE CORPORATION,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI;* GRAVE ABUSE OF DISCRETION, DEFINED.— As defined, grave abuse of discretion means such capricious and whimsical exercise of judgment as is equivalent to lack or excess of

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[45] Article 1141 of the Civil Code provides in full:

Art. 1141. Real actions over immovables prescribe after thirty years.

This provision is without prejudice to what is established for the acquisition of ownership and other real rights by prescription.

jurisdiction or, where the power is exercised in an arbitrary manner by reason of passion, prejudice, or personal hostility, and it must be so patent or gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.

2. ID.; ID.; FILING OF PLEADINGS; SERVICE BY MAIL; RECKONING TIME TO FILE TRI-CORP'S MOTION FOR RECONSIDERATION WAS THE DATE THE DECISION WAS RECEIVED BY ITS MAILBOX.— In its Memorandum, Tri-Corp asserts that it disagrees with the findings of the appellate court that its motion for reconsideration was filed out of time since it would be absurd to consider receipt by its mailbox as receipt by Tri-Corp when its representative, Solita S. Jimenez-Paulino, was not physically present in the Philippines. The petitioner in this case is Tri-Corp and not Solita Jimenez-Paulino. The reckoning time therefore to count the period to file Tri-Corp's motion for reconsideration was the date the decision was received by Tri-Corp's mailbox and not the date when it was received by its representative, Solita S. Jimenez-Paulino.

3. ID.; ID.; "PARTY IN INTEREST;" CASE AT BAR.— Tri-Corp further argues that the conclusion that Tri-Corp is not a party in interest is also absurd since Tri-Corp stands to lose an enormous amount at the instance of Greystone who stands to gain without giving anything of value. The Court of Appeals, in ruling that Tri-Corp is not a party in interest, pointed out in its decision that the contract to sell entered into by both parties contains a stipulation that in case of default or non-payment of the stipulated amortizations and the rentals, Greystone has the option to rescind the contract and forfeit all amounts paid as liquidated damages. Greystone rescinded the contract. As the contract to sell has been rescinded, there is legal basis to hold that Tri-Corp is no longer a party in interest.

4. POLITICAL LAW; HOUSING AND LAND USE REGULARITY BOARD (HLURB); HAS JURISDICTION OVER UNSOUND REAL ESTATE BUSINESS PRACTICES UNDER SECTION 1 OF P.D. NO.1344; CASE AT BAR.— In this case, Tri-Corp's chief quest is the cancellation of Entry No. 31976 from TCTs Nos. 205827 and 205828, and the cancellation of the CCT of the unit sold to it, and it alludes to Greystone's use of different descriptions of the condominium project in order to circumvent

existing laws, rules and regulations on registration of real estate projects in its petition. Under these circumstances, Tri-Corp is alluding to steps allegedly taken by Greystone in consummating an alleged unsound real estate business practice. The HLURB has the technical expertise to resolve this technical issue. Jurisdiction therefore properly pertains to the HLURB.

APPEARANCES OF COUNSEL

Gonzalez Law Office for petitioner.
Castro & Associates for respondent.

D E C I S I O N

QUISUMBING, *J.*:

This petition for *certiorari* under Rule 65 of the Rules of Court assails the Decision[1] dated June 9, 2004 and Resolution[2] dated September 21, 2004 of the Court of Appeals in CA-G.R. CV No. 71285. The Court of Appeals affirmed the Orders dated November 15, 2000[3] and June 11, 2001[4] of the Regional Trial Court (RTC) of Makati City, Branch 139 in LRC Case No. M-4086 dismissing the complaint filed by petitioner Tri-Corp Land and Development, Inc. (Tri-Corp) against respondent Greystone Corporation (Greystone) for lack of jurisdiction.

The facts, culled from the records, are as follows:

On February 12, 1998, Greystone executed in favor of Tri-Corp a Contract to Sell[5] whereby Tri-Corp agreed to pay the purchase price, exclusive of interest, in the amount of ₱13,500,000

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[1] *Rollo*, pp. 47-60. Penned by Associate Justice Renato C. Dacudao, with Associate Justices Edgardo F. Sundiam and Japar B. Dimaampao, concurring.

[2] *Id.* at 62-64.

[3] Records, pp. 255-264. Penned by Judge Florentino A. Tuason, Jr.

[4] *Id.* at 347-350. Penned by Pairing Judge Manuel D. Victorio.

[5] *Id.* at 53-56.

and payable in installments, of a unit of Casa Madeira, a residential condominium project located at Fatima Street, San Miguel Village, Makati City. Said unit, covered by Condominium Certificate of Title (CCT) No. 51232[6] was to be used as a family residence of Tri-Corp's officers and stockholders. However, when Tri-Corp applied for membership with the San Miguel Village Homeowner's Association (SMVHA), it was denied and not given gate passes for its vehicles. The reason cited by SMVHA for Tri-Corp's denial of application was that the construction of the Casa Madeira condominium project was in violation of village restrictions annotated as Entry No. 31976[7] and inscribed on October 9, 1961 at the back of Transfer Certificates of Title Nos. 205827[8] and 205828[9] covering the lots on which the condominium project was constructed. SMVHA filed a case against Greystone for this violation and prayed for the cancellation of the CCTs of the Casa Madeira condominium project before the Housing and Land Use Regulatory Board (HLURB). The case was docketed as HLURB Case No. REM-10045. Upon learning of the pending case, Tri-Corp filed a Complaint-in-Intervention[10] in said case for suspension of payments until the issue of violation of the village restriction and validity of the CCT to the condominium unit sold shall have been resolved. Tri-Corp, likewise, filed a petition[11] dated September 28, 2000, against Greystone before the HLURB for Suspension and Cancellation of Certificate of Registration and License to Sell of Greystone.

Greystone, in turn, filed an ejectment suit against Tri-Corp before the Metropolitan Trial Court of Makati City, for failure to pay under the Contract to Sell. The complaint was docketed as Civil Case No. 63308. Tri-Corp was ejected by the Sheriff

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

[7] *Rollo*, pp. 71 & 77.

[8] Records, pp. 20-23.

[9] *Id.* at 24-27.

[10] *Id.* at 212-215.

[11] *Id.* at 303-323.

in the said case for its refusal to pay the *supersedeas* bond. Civil Case No. 63308 is still pending on appeal.[12]

Tri-Corp also filed before the RTC of Makati City, sitting as a Land Registration Court, a Petition for Correction of Error/ Misrepresentation in the Master Deed entered as Memorandum on TCTs Nos. 205827 and 205828 with prayer for Temporary Restraining Order and Injunction.[13] The case was docketed as LRC Case No. M-4086. Tri-Corp alleged in its petition that Greystone used different descriptions of the condominium project in order to circumvent existing laws, rules and regulations on registration of real estate projects, to wit:

[1] Thus, to obtain approval of the San Miguel Village Association Construction and Permits Committee, **it styled its project as a "2-Unit Duplex Residence**, to conform with association rules.

[2] To obtain approval of Barangay Poblacion, Makati City, and the issuance of Certificate of Registration and Clearance No. 2758 on the same project, **it dubbed the same project as a "3-storey townhouse",** to suit *barangay* guidelines.

[3] To obtain from the City of Makati Building Permit No. C1096-01259, **it called the same project a "4-unit Residential Bldg." "Two-storey duplex"**, to comply with zoning ordinances.

[4] To obtain from the HLURB the Preliminary Approval of Condominium Plan, **it described Casa Madeira as a "Condominium Project",** for the purpose of complying with PD 957 and its implementing rules.

[5] To obtain from the HLURB the Final Approval, **it called the project a Condominium Plan/Subdivision Townhouse,** for the same purpose.

[6] To obtain from the HLURB a development permit, **it called the project a condominium** for the same purpose.

[7] To obtain from the HLURB a Certificate of Locational Viability for the same project, **it was designated as a "2 Storey with Attic Residential Condominium",** for the same purpose.

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[12] *Rollo*, p. 48.

[13] Records, pp. 1-19.

[8] To obtain from the Department of Environment and Natural Resources, National Capital Region an Environmental Compliance Certificate (ECC) **it designated the project as "four units, two storey with attic townhouse project",** to comply with the requirement of law.

[9] To obtain from the HLURB Certificate of Registration No. 97-09-3003, **it called Casa Madeira a condominium project**, for the purpose of complying with PD 957 and its implementing rules.

[10] These misrepresentations misled the petitioner as buyer and also mis[led] the buying public as to the real nature of [the] project.[14] [Emphasis supplied.]

During the hearing on Tri-Corp's application for a Writ of Preliminary Injunction on September 28, 2000, Greystone raised the issue of jurisdiction. Greystone contended in its Memorandum[15] that the RTC had no jurisdiction to try and decide the case because it involves an unsound real estate practice within the jurisdiction of the HLURB, Tri-Corp is not a party in interest, and same issues had been raised by Tri-Corp in the HLURB.

In an Order dated November 15, 2000, the RTC dismissed the case for lack of jurisdiction. The dispositive portion of the order states:

IN VIEW OF THE FOREGOING PREMISES, based on law and jurisprudence, the **COURT** hereby **ORDERS** that:

(a) The prayer for Temporary Restraining Order and/or Writ of Preliminary Injunction is hereby **DENIED** for lack of merit.
(b) The Complaint dated 19 September 1990 (sic) is hereby **DISMISSED**, the same being within the exclusive jurisdiction of [the] HLURB pursuant to PD[s] 987 and 1344.

SO ORDERED.[16]

Tri-Corp filed a motion for reconsideration but it was denied by the RTC in an Order dated June 11, 2001.

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[14] *Id.* at 5-6.

[15] *Id.* at 189-202.

[16] *Id.* at 264.

Tri-Corp appealed to the Court of Appeals. In a Decision promulgated on June 9, 2004, the Court of Appeals affirmed the orders of the RTC. The dispositive portion of the decision states:

> UPON THE VIEW WE TAKE OF THIS CASE, THUS, the appealed orders dated November 15, 2000 and June 11, 2001 must be, as they hereby, are **AFFIRMED**. Without costs in this instance.
>
> SO ORDERED.[17]

Tri-Corp filed a motion for reconsideration but it was denied by the Court of Appeals in a Resolution promulgated on September 21, 2004 for being filed out of time and for being without merit.

Alleging that the Court of Appeals committed grave abuse of discretion in affirming the orders of the RTC, Tri-Corp filed this original action for *certiorari* under Rule 65.

Tri-Corp alleges that:

I.

THE APPELLATE COURT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DECLARED THE MOTION FOR RECONSIDERATION AS HAVING BEEN FILED OUT OF TIME DESPITE PROOFS OF TRAVEL.

II.

THE APPELLATE COURT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR EXCESS OF JURISDICTION IN DECLARING THAT HEREIN PETITIONER IS NOT A PARTY IN INTEREST.

III.

THE APPELLATE COURT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR EXCESS OF JURISDICTION WHEN IT RESOLVED THE INSTANT CASE IN FAVOR OF RESPONDENT GREYSTONE WITHOUT DUE REGARD TO THE

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[17] *Rollo*, p. 60.

PROTECTIVE MANTLE ENSHRINED UNDER PD 957 TOWARDS BUYERS OF CONDOMINIUM UNITS.[18]

In sum, the issue is, did the Court of Appeals act with grave abuse of discretion in denying Tri-Corp's motion for reconsideration for being filed out of time, in declaring Tri-Corp as not a party in interest, and in affirming the RTC's Order dismissing the case for lack of jurisdiction?

In its Memorandum,[19] Tri-Corp asserts that it disagrees with the findings of the appellate court that its motion for reconsideration was filed out of time since it would be absurd to consider receipt by its mailbox as receipt by Tri-Corp when its representative, Solita S. Jimenez-Paulino, was not physically present in the Philippines.[20] Tri-Corp further argues that the conclusion that Tri-Corp is not a party in interest is also absurd since Tri-Corp stands to lose an enormous amount at the instance of Greystone who stands to gain without giving anything of value.[21] Tri-Corp also argues that the Court of Appeals overlooked the fact that the case is one for cancellation of inscriptions and cancellation of the CCT, which is within the ambit of the Register of Deeds to perform, and the case is not a simple buyer-seller of condominium relationship but one which seeks the alteration of annotations and cancellation of titles with the jurisdiction of the RTC sitting as a Land Registration Court.[22]

On the other hand, Greystone, in its Memorandum,[23] argues that it is clear that since Tri-Corp's mailbox, MBE Center, received a copy of the decision of the Court of Appeals on June 16, 2004, it had until July 1, 2004 within which to file a motion for reconsideration. Its motion for reconsideration, which was filed only on July 13, 2004[24] was clearly filed out of time.

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[18] *Id.* at 645.
[19] *Id.* at 637-654.
[20] *Id.* at 646.
[21] *Id.* at 649-650.
[22] *Id.* at 651.
[23] *Id.* at 485-521.
[24] *Id.* at 501.

As defined, grave abuse of discretion means such capricious and whimsical exercise of judgment as is equivalent to lack or excess of jurisdiction or, where the power is exercised in an arbitrary manner by reason of passion, prejudice, or personal hostility, and it must be so patent or gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[25]

After review, we find that the Court of Appeals did not act with grave abuse of discretion because of the following reasons:

First, the petitioner in this case is Tri-Corp and not Solita Jimenez-Paulino. The reckoning time therefore to count the period to file Tri-Corp's motion for reconsideration was the date the decision was received by Tri-Corp's mailbox and not the date when it was received by its representative, Solita S. Jimenez-Paulino.

Second, the Court of Appeals, in ruling that Tri-Corp is not a party in interest, pointed out in its decision that the contract to sell entered into by both parties contains a stipulation that in case of default or non-payment of the stipulated amortizations and the rentals, Greystone has the option to rescind the contract and forfeit all amounts paid as liquidated damages. Greystone rescinded the contract.[26] As the contract to sell has been rescinded, there is legal basis to hold that Tri-Corp is no longer a party in interest.

Third, the Court of Appeals decision affirming the trial court's Orders dismissing Tri-Corp's petition on the ground that it does not have jurisdiction over the case, has legal basis.

Section 1 of Presidential Decree No. 1344[27] entitled "Empowering the National Housing Authority to Issue Writ of Execution in the Enforcement of its Decisions under Presidential Decree No. 957" provides:

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[25] *Cathay Pacific Steel Corporation v. Court of Appeals*, G.R. No. 164561, August 30, 2006, 500 SCRA 226, 235-236.

[26] Records, pp. 207-209.

[27] Done on April 2, 1978.

SECTION 1. In the exercise of its functions to regulate the real estate trade and business and in addition to its powers provided for in Presidential Decree No. 957, the National Housing Authority shall have *exclusive jurisdiction* to hear and decide cases of the following nature:

A. Unsound real estate business practices;

B. Claims involving refund and any other claims filed by subdivision lot or condominium unit buyer against the project owner, developer, dealer, broker or salesman; and

C. Cases involving specific performance of contractual and statutory obligations filed by buyers of subdivision lot or condominium unit against the owner, developer, dealer, or salesman. [Emphasis supplied.]

In this case, Tri-Corp's chief quest is the cancellation of Entry No. 31976 from TCTs Nos. 205827 and 205828, and the cancellation of the CCT of the unit sold to it, and it alludes to Greystone's use of different descriptions of the condominium project in order to circumvent existing laws, rules and regulations on registration of real estate projects in its petition. Under these circumstances, Tri-Corp is alluding to steps allegedly taken by Greystone in consummating an alleged unsound real estate business practice. The HLURB has the technical expertise to resolve this technical issue. Jurisdiction therefore properly pertains to the HLURB.

In view of the foregoing, it cannot be said that the Court of Appeals, in affirming the RTC Orders dismissing the case for lack of jurisdiction, acted with grave abuse of discretion that would warrant the filing of a petition for *certiorari* under Rule 65 against it.

WHEREFORE, the instant petition is *DISMISSED* for lack of merit. Costs against petitioner.

SO ORDERED.

Ynares-Santiago,[*] *Chico-Nazario,*[**] *Leonardo-de Castro,*[***] and *Brion, JJ.,* concur.

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[*] Designated member of the Second Division per Special Order No. 645.

[**] Designated member of the Second Division per Special Order No. 658.

[***] Designated member of the Second Division per Special Order No. 635.

THIRD DIVISION

[G.R. No. 168660. June 30, 2009]

HILARION, JR. and ENRICO ORENDAIN, represented by FE D. ORENDAIN, *petitioners,*[1] *vs.* **TRUSTEESHIP OF THE ESTATE OF DOÑA MARGARITA RODRIGUEZ,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PETITION FOR REVIEW ON *CERTIORARI*; ERRONEOUSLY LABELED ACTIONS ALLOWED BASED ON THE AVERMENTS CONTAINED IN THE PETITION; CASE AT BAR.— It is noteworthy that the present petition, albeit captioned as a petition for *certiorari*, is actually a petition for review on *certiorari*, raising only pure questions of law. On more than one occasion, we have allowed erroneously labeled actions based on the averments contained in the petition or complaint. Thus, we now disregard the incorrect designation and treat this as a petition for review on *certiorari* under Rule 45 of the Rules of Court.

2. CIVIL LAW; SUCCESSION; WILLS; STIPULATION PROHIBITING PERPETUAL ALIENATION OF PROPERTIES VALID ONLY FOR TWENTY (20) YEARS; DISSOLUTION OF PERMANENT TRUST, PROPER IN CASE AT BAR.— Quite categorical from the last will and testament of the decedent is the creation of a perpetual trust for the administration of her properties and the income accruing therefrom, for specified beneficiaries. The decedent, in Clause 10 of her will, listed a number of properties to be placed under perpetual administration of the trust. In fact, the decedent unequivocally forbade the

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[1] The case before the Regional Trial Court of Manila, Branch 4, is entitled *"Trusteeship of the Estate of Doña Margarita Rodriguez v. Jesus Ayala and Lorenzo Rodriguez."* In the present petition filed by petitioners, they erroneously designate the petitioner as the *Trusteeship of the Estate of Doña Margarita Rodriguez v. Jesus Ayala and Lorenzo Rodriguez*, the executors of the estate. The title of the present petition should reflect the actual petitioners, and the Trusteeship of the Estate of Doña Margarita Rodriguez, represented by the executors, as the respondent.

alienation or mortgage of these properties. In all, the decedent did not contemplate the disposition of these properties, but only sought to bequeath the income derived therefrom to various sets of beneficiaries. On this score, we held in *Rodriguez v. Court of Appeals* that the perpetual prohibition was valid only for twenty (20) years. x x x Thus, at present, there appears to be no more argument that the trust created over the properties of the decedent should be dissolved as the twenty-year period has, quite palpably, lapsed.

3. ID.; ID.; ID.; DISPOSITION OF PROPERTIES; INTESTACY RULES APPLY WHEN DECEDENT DID NOT INSTITUTE AN HEIR; CASE AT BAR.— Apparent from the decedent's last will and testament is the creation of a trust on a specific set of properties and the income accruing therefrom. Nowhere in the will can it be ascertained that the decedent intended any of the trust's designated beneficiaries to inherit these properties. The decedent's will did not institute any heir thereto x x x. Plainly, the RTC was mistaken in denying petitioners' motion to dissolve and ordering the disposition of the properties in Clause 10 according to the testatrix's wishes. As regards these properties, intestacy should apply as the decedent did not institute an heir therefor. Article 782, in relation to paragraph 2, Article 960 of the Civil Code, provides: Art. 782. An heir is a person called to the succession either by the provision of a will or by operation of law. x x x Art. 960. Legal or intestate succession takes place: x x x (2) When the will does not institute an heir to, or dispose of all the property belonging to the testator. In such case, legal succession shall take place only with respect to the property of which the testator has not disposed. x x x

4. ID.; ID.; ID.; PERMANENT TRUST ALLOWED UNDER PAR. 4, ARTICLE 1014 OF THE CIVIL CODE, APPLICABLE ONLY TO PROPERTY INHERITED BY THE STATE BY VIRTUE OF INTESTATE SUCCESSION; CASE AT BAR NOT A CASE OF.— We find as erroneous the RTC's holding that paragraph 4, Article 1013 of the same code specifically allows a perpetual trust, because this provision of law is inapplicable. Suffice it to state that the article is among the Civil Code provisions on intestate succession, specifically on the State inheriting from a decedent, in default of persons entitled to succeed. Under this article, the allowance for a permanent trust, approved by a court of law, covers property inherited by the State by virtue

of intestate succession. The article does not cure a void testamentary provision which did not institute an heir. Accordingly, the article cannot be applied to dispose of herein decedent's properties.

5. ID.; ID.; ID.; STIPULATION PROHIBITING PERPETUAL ALIENATION OF PROPERTIES VALID ONLY FOR TWENTY (20) YEARS; REMAND OF CASE TO LOWER COURT FOR DETERMINATION OF HEIRSHIP, PROPER IN CASE AT BAR.— To obviate confusion, we clarify that the petitioners, although correct in moving for the dissolution of the trust after the twenty-year period, are not necessarily declared as intestate heirs of the decedent. Our remand of the case to the RTC means that the probate court should now make a determination of the heirship of the intestate heirs of the decedent where petitioners, and all others claiming to be heirs of the decedent, should establish their status as such consistent with our ruling in *Heirs of Yaptinchay v. Hon. Del Rosario.*

APPEARANCES OF COUNSEL

Carreon & Associates Law Office for petitioner.
Estella and Virtudazo Law Firm for respondents.

D E C I S I O N

NACHURA, *J.*:

This petition for *certiorari*, filed under Rule 65 of the Rules of Court, assails the Order[2] of the Regional Trial Court (RTC) of Manila, Branch 4 in SP. PROC. No. 51872 which denied petitioners' (Hilarion, Jr. and Enrico Orendain, heirs of Hilarion Orendain, Sr.) Motion to Dissolve the Trusteeship of the Estate of Doña Margarita Rodriguez.

First, we revisit the long settled facts.

On July 19, 1960, the decedent, Doña Margarita Rodriguez, died in Manila, leaving a last will and testament. On September

[2] Penned by Judge Socorro B. Inting, *rollo*, pp. 17-18.

23, 1960, the will was admitted to probate by virtue of the order of the Court of First Instance of Manila City (CFI Manila) in Special Proceeding No. 3845. On August 27, 1962, the CFI Manila approved the project of partition presented by the executor of Doña Margarita Rodriguez's will.

At the time of her death, the decedent left no compulsory or forced heirs and, consequently, was completely free to dispose of her properties, without regard to legitimes,[3] as provided in her will. Some of Doña Margarita Rodriguez's testamentary dispositions contemplated the creation of a trust to manage the income from her properties for distribution to beneficiaries specified in the will, to wit:

x x x x x x x x x

CLAUSULA SEGUNDA O PANG-DALAWA: - x x x Ipinaguutos ko na matapos magawa ang pagaayos ng aking Testamentaria at masara na ang Expediente ng aking Testamentaria, ang lahat ng pagaare ko sa aking ipinaguutos na pangasiwaan sa habang panahon ay ipagbukas sa Juzgado ng tinatawag na "FIDEICOMISO" at ang ilalagay na "fideicomisario" ang manga taong nasabi ko na sa itaas nito, at ang kanilang gaganahin ay ang nasasabi sa testamentong ito na gaganahen ng tagapangasiwa at albacea. x x x

CLAUSULA TERCERA O PANG-TATLO: - Ipinaguutos ko na ang kikitain ng lahat ng aking pagaare, na ang hindi lamang kasama ay ang aking lupain na nasasabi sa Certificado de Transferencia de Titulo No. 7156 (Lote No. 1088-C), Certificado Original de Titulo No. 4588 (LOTE No. 2492), Certificado Original de Titulo No. 4585 (Lote No. 1087) ng lalawigan ng Quezon, at ang bahaging maytanim na palay ng lupang nasasaysay sa Certificado Original de Titulo No. 4587 (Lote No. 1180) ng Quezon, ay IIPUNIN SA BANCO upang maibayad sa anillaramiento, ang tinatawag na "estate Tax", ang "impuesto de herencia" na dapat pagbayaran ng aking pinagbibigyan na kasama na din ang pagbabayaran ng "Fideicomiso", gastos sa abogado na magmamakaalam ng testamentaria at gastos sa Husgado. Ngunit bago ipasok sa Banco

[3] See Article 886 of the Civil Code.

ang kikitaen ng nabangit na manga gagaare, ay aalisin muna ang manga sumusunod na gastos:

x x x x x x x x x

CLAUSULA DECIMA O PANG-SAMPU: - Ipinaguutos ko na ang manga pagaareng nasasabi sa Clausulang ito ay pangangasiwaan sa habang panahon, at ito nga ang ipagbubukas ng "Fideicomiso" sa Jusgado pagkatapos na maayos ang naiwanan kong pagaare. Ang pangangasiwaang pagaare ay ang manga sumusunod:

x x x x x x x x x

Ang lahat ng pagaaring nasasabe sa Clusulang ito (hindi kasama ang "generator" at automovil) hindi maisasanla o maipagbibili kailan man, maliban sa pagaaring nasa Quezon Boulevard, Maynila, na maaring isanla kung walang fondo na gagamitin sa ipagpapaigui o ipagpapagawa ng panibago alinsunod sa kaayusang hinihingi ng panahon.

x x x x x x x x x

CLAUSULA DECIMA SEGUNDA O PANG-LABING DALAWA: - Ang kuartang matitipon sa Banco ayon sa tagubilin na nasasaysay sa Clausulang sinusundan nito ay gagamitin sa manga sumusunod na pagkakagastusan; at ganito din ang gagawin sa lahat ng aking pagaare na nasasakop ng fideicomiso at walang ibang pinaguukulan. Ang pagkakagastusan na ito ay ang sumusunod:

x x x x x x x x x

CLAUSULA VIGESIMA CUARTA O PANG-DALAWANGPU AT APAT: - Ipinaguutos ko sa aking manga Tagapangasiwa na sa fondong ipinapasok sa Banco para sa gastos ng Niña Maria, Misa at iba pa, kukuha sila na kakailanganin para maitulong sa manga sumusunod: Florentina Luna, Roberta Ponce, Marciada Ponce, Benita Ponce, Constancia Pineda, Regino Pineda, Tomas Payumo, Rosito Payumo, Loreto Payumo, Brigido Santos at Quintin Laino, Hilarion Orendain at *manga anak. Ang manga dalaga kung sakali at inabutan ng pagkamatay ko na ako ay pinagtiisan at hindi humiwalay sa akin, kung magkasakit ay ipagagamot at ibabayad sa medico, at ibibili ng gamot, at kung kailangan ang operacion ay ipaooperacion at ipapasok sa Hospital na kinababagayan ng kaniyang sakit, at kahit maypagkakautang pa sa "impuesto de herencia at estate tax" ay ikukuha sa nasabing fondo at talagang ibabawas doon, at ang*

paggagamot ay huag pagtutuusan, at ang magaalaga sa kanya ay bibigyan ng gastos sa pagkain at sa viaje at iba pa na manga kailangan ng nagaalaga. Kung nasa provincia at dadalhin ditto sa Maynila ay bibigyan ng gastos sa viaje ang maysakit at ang kasama sa viaje, at ang magaalaga ay dito tutuloy sa bahay sa Tuberias at Tanduay na natatalaga sa manga may servicio sa akin, at kung mamatay at gusting iuwi sa provincia ang bangkay ay iupa at doon ilibing at dapit ng Pare at hated sa nicho na natotoka sa kanya. Ganito din ang gagawain kung mayasawa man ay nasa poder ko ng ako ay mamatay. Ang wala sa poder ko datapua at nagservicio sa akin, kaparis ng encargado, ang gagawaing tulong ay ipagagamot, ibibili ng gamot at kung kailangan ang operacion o matira sa Hospital, ipaooperacion at ipagbabayad sa Hospital.[4] emphasis supplied)

xxx xxx xxx

As regards Clause 10 of the will which explicitly prohibits the alienation or mortgage of the properties specified therein, we had occasion to hold, in *Rodriguez, etc., et al. v. Court of Appeals, et al.*,[5] that the clause, insofar as the first twenty-year period is concerned, does not violate Article 870[6] of the Civil Code. We declared, thus:

The codal provision does not need any interpretation. It speaks categorically. What is declared void is the testamentary disposition prohibiting alienation after the twenty-year period. In the interim, such a provision does not suffer from the vice of invalidity. It cannot be stricken down. Time and time again, We have said, and We now repeat, that when a legal provision is clear and to the point, there is no room for interpretation. It must be applied according to its literal terms.

Even with the purpose that the testatrix had in mind were not as unequivocal, still the same conclusion emerges. There is no room for intestacy as would be the effect if the challenged resolution of January 8, 1968 were not set aside. The wishes of the testatrix constitute the law. Her will must be given effect. This is so even if there could be an element of uncertainty insofar as the ascertainment thereof is

[4] Records, Vol. I, pp. 3-15.

[5] G.R. No. L-28734, March 28, 1969, 137 Phil. 371.

[6] Art. 870. The dispositions of the testator declaring all or part of the estate inalienable for more than twenty years are void.

concerned. In the language of a Civil Code provision: "If a testamentary disposition admits of different interpretations, in case of doubt, that interpretation by which the disposition is to be operative shall be preferred." Nor is this all. A later article of the Civil Code equally calls for observance. Thus: "The words of a will are to receive an interpretation which will give to every expression some effect, rather than one which will render any of the expressions inoperative; and of two modes of interpreting a will, that is to be preferred which will prevent intestacy."

xxx xxx xxx

Nothing can be clearer, therefore, than that [Petra, Antonia and Rosa, all surnamed Rodriguez] could not challenge the provision in question. [They] had no right to vindicate. Such a right may never arise. The twenty-year period is still with us. What would transpire thereafter is still locked up in the inscrutable future, beyond the power of mere mortals to foretell. At any rate, We cannot anticipate. Nor should We. We do not possess the power either of conferring a cause of action to a party when, under the circumstances disclosed, it had none.[7]

Almost four decades later, herein petitioners Hilarion, Jr. and Enrico Orendain, heirs of Hilarion Orendain, Sr. who was mentioned in Clause 24 of the decedent's will, moved to dissolve the trust on the decedent's estate, which they argued had been in existence for more than twenty years, in violation of Articles 867[8] and 870 of the Civil Code, and inconsistent with our ruling in *Rodriguez v. Court of Appeals*.[9]

On April 18, 2005, the RTC issued the herein assailed Order:[10]

The above-cited provisions of the civil code find no application in the present motion to dissolve the trust created by the testatrix. There is no question that the testamentary disposition of Doña Margarita Rodriguez prohibiting the mortgage or sale of properties

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[7] *Supra* note 5 at pp. 376-379.

[8] Art. 867. The following shall not take effect.

x x x x x x x x x

2. Provisions which contain a perpetual prohibition to alienate, and even a temporary one, beyond the limit fixed in Article 863.

x x x x x x x x x

[9] *Supra* note 5.

[10] *Rollo,* pp. 17-18.

mentioned in clause X of her Last Will and Testament forevermore is void after the lapse of the twenty year period. However, it does not mean that the trust created by [the] testatrix in order to carry out her wishes under clauses 12, 13 and 24 will also become void upon expiration of the twenty year period. As ruled by the Supreme Court in *Emetrio Barcelon v. CA, "the codal provision cited in Art. 870 is clear and unequivocal and does not need any interpretation. What is declared void is the testamentary disposition prohibiting alienation after the twenty year period."* Hence, the trustees may dispose of the properties left by the testatrix in order to carry out the latter's testamentary disposition.

The question as to whether a trust can be perpetual, the same finds support in Article 1013[,] paragraph 4 of the Civil Code, which provides that *"the Court, at the instance of an interested party or its motion, may order the establishment of a permanent trust so that only the income from the property shall be used."* In the present case, the testatrix directed that all the twenty five (25) pieces of property listed in the tenth clause should be placed under the trusteeship and should be perpetually administered by the trustees and a certain percentage of the income from the trust estate should be deposited in a bank and should be devoted for the purposes specifically indicated in the clauses 12, 13 and 24.

The wishes of the testatrix constitute the law. Her will must be given effect. This is even if there could be an element of uncertainty insofar as the ascertainment thereof is concerned. This Court so emphatically expressed it in a decision rendered more than sixty years ago. Thus, respect for the will of a testator as [an] expression of his last testamentary disposition, constitutes the principal basis of the rules which the law prescribes for the correct interpretation of all of the clauses of the will; the words and provision therein written must be plainly construed in order to avoid a violation of his intentions and real purpose. The will of the testator clearly and explicitly stated must be respected and complied with as an inviolable law among the parties in interest. Such is the doctrine established by the Supreme Court of Spain, constantly maintained in a great number of decisions.

Hence, this petition, positing the following issues:

1. WHETHER THE TRUSTEESHIP OVER THE PROPERTIES LEFT BY DOÑA MARGARITA RODRIGUEZ CAN BE DISSOLVED APPLYING ARTICLES 867 AND 870 OF THE CIVIL CODE.

2. WHETHER THE LOWER COURT IS CORRECT IN STATING THAT THE ABOVE-CITED PROVISIONS OF THE CIVIL CODE FINDS NO APPLICATION IN THE PRESENT MOTION TO DISSOLVE THE TRUST CREATED BY THE TESTATRIX.

3. CONCOMITANT THERETO, [WHETHER] THE LOWER COURT [IS] CORRECT IN APPLYING ARTICLE 1013 PARAGRAPH 4 OF THE CIVIL CODE.[11]

Before we delve into the foregoing issues, it is noteworthy that the present petition, albeit captioned as a petition for *certiorari*, is actually a petition for review on *certiorari*, raising only pure questions of law. On more than one occasion, we have allowed erroneously labeled actions based on the averments contained in the petition or complaint.[12] Thus, we now disregard the incorrect designation and treat this as a petition for review on *certiorari* under Rule 45 of the Rules of Court.

The petition is impressed with merit.

The issues being intertwined, we shall discuss them jointly.

Quite categorical from the last will and testament of the decedent is the creation of a perpetual trust for the administration of her properties and the income accruing therefrom, for specified beneficiaries. The decedent, in Clause 10 of her will, listed a number of properties to be placed under perpetual administration of the trust. In fact, the decedent unequivocally forbade the alienation or mortgage of these properties. In all, the decedent did not contemplate the disposition of these properties, but only sought to bequeath the income derived therefrom to various sets of beneficiaries.

On this score, we held in *Rodriguez v. Court of Appeals*[13] that the perpetual prohibition was valid only for twenty (20) years. We affirmed the CA's holding that the trust stipulated in the decedent's will prohibiting perpetual alienation or mortgage of the

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[11] Petitioner's Memorandum, *rollo*, p. 98.

[12] *Benguet State University v. Commission on Audit*, G.R. No. 169637, June 8, 2007, 524 SCRA 437, 444.

[13] *Supra* note 5.

properties violated Articles 867 and 870 of the Civil Code. However, we reversed and set aside the CA's decision which declared that that portion of the decedent's estate, the properties listed in Clause 10 of the will, ought to be distributed based on intestate succession, there being no institution of heirs to the properties covered by the perpetual trust.

As previously quoted, we reached a different conclusion and upheld the trust, only insofar as the first twenty-year period is concerned. We refrained from forthwith declaring the decedent's testamentary disposition as void and the properties enumerated in Clause 10 of the will as subject to intestate succession. We held that, *in the interim, since the twenty-year period was then still upon us*, the wishes of the testatrix ought to be respected.

Thus, at present, there appears to be no more argument that the trust created over the properties of the decedent should be dissolved as the twenty-year period has, quite palpably, lapsed.

Notwithstanding the foregoing, the RTC ruled otherwise and held that: (a) only the perpetual prohibition to alienate or mortgage is declared void; (b) the trust over her properties stipulated by the testatrix in Clauses 12, 13 and 24 of the will remains valid; and (c) the trustees may dispose of these properties in order to carry out the latter's testamentary disposition.

We disagree.

Apparent from the decedent's last will and testament is the creation of a trust on a specific set of properties and the income accruing therefrom. Nowhere in the will can it be ascertained that the decedent intended any of the trust's designated beneficiaries to inherit these properties. The decedent's will did not institute any heir thereto, as clearly shown by the following:

1. Clause 2 instructed the creation of trust;

2. Clause 3 instructed that the remaining income from specified properties, after the necessary deductions for expenses, including the estate tax, be deposited in a fund with a bank;

3. Clause 10 enumerated the properties to be placed in trust for perpetual administration (*pangasiwaan sa habang panahon*);

4. Clauses 11 and 12 directed how the income from the properties ought to be divided among, and distributed to the different beneficiaries; and

5. Clause 24 instructed the administrators to provide medical support to certain beneficiaries, to be deducted from the fund deposits in the bank mentioned in Clauses 2 and 3.

Plainly, the RTC was mistaken in denying petitioners' motion to dissolve and ordering the disposition of the properties in Clause 10 according to the testatrix's wishes. As regards these properties, intestacy should apply as the decedent did not institute an heir therefor. Article 782, in relation to paragraph 2, Article 960 of the Civil Code, provides:

> Art. 782. An heir is a person called to the succession either by the provision of a will or by operation of law.
>
> xxx xxx xxx
>
> Art. 960. Legal or intestate succession takes place:
>
> xxx xxx xxx
>
> (2) When the will does not institute an heir to, or dispose of all the property belonging to the testator. In such case, legal succession shall take place only with respect to the property of which the testator has not disposed;
>
> xxx xxx xxx

We find as erroneous the RTC's holding that paragraph 4,[14] Article 1013 of the same code specifically allows a perpetual trust, because this provision of law is inapplicable. Suffice it to state

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[14] Art. 1013. After the payment of debts and charges, the personal property shall be assigned to the municipality or city where the deceased last resided in the Philippines, and the real estate to the municipalities or cities, in which the same is situated.

x x x x x x x x x

The court, at the instance of an interested party, or on its own motion, may order the establishment of a permanent trust, so that only the income from the property shall be used.

that the article is among the Civil Code provisions on intestate succession, specifically on the State inheriting from a decedent, in default of persons entitled to succeed. Under this article, the allowance for a permanent trust, approved by a court of law, covers property inherited by the State by virtue of intestate succession. The article does not cure a void testamentary provision which did not institute an heir. Accordingly, the article cannot be applied to dispose of herein decedent's properties.

We are not unmindful of our ruling in *Palad, et al. v. Governor of Quezon Province, et al.*[15] where we declared, thus:

> Article 870 of the New Civil Code, which regards as void any disposition of the testator declaring all or part of the estate inalienable for more than 20 years, is not violated by the trust constituted by the late Luis Palad; because the will of the testator does not interdict the alienation of the parcels devised. The will merely directs that the income of said two parcels be utilized for the establishment, maintenance and operation of the high school.
>
> Said Article 870 was designed "to give more impetus to the socialization of the ownership of property and to prevent the perpetuation of large holdings which give rise to agrarian troubles." The trust herein involved covers only two lots, which have not been shown to be a large landholding. And the income derived therefrom is being devoted to a public and social purpose – the education of the youth of the land. The use of said parcels therefore is in a sense socialized. There is no hint in the record that the trust has spawned agrarian conflicts.[16]

In this case, however, we reach a different conclusion as the testatrix specifically prohibited the alienation or mortgage of her properties which were definitely more than the two (2) properties in the aforecited case. The herein testatrix's large landholdings cannot be subjected indefinitely to a trust because the ownership thereof would then effectively remain with her even in the afterlife.

In light of the foregoing, therefore, the trust on the testatrix's properties must be dissolved and this case remanded to the lower court to determine the following:

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[15] No. L-24302, August 18, 1972, 46 SCRA 354.

[16] *Id.* at 243-244.

1. The properties listed in Clause 10 of the will, constituting the perpetual trust, which are still within reach and have not been disposed of as yet; and

2. The intestate heirs of the decedent, with the nearest relative of the deceased entitled to inherit the remaining properties.

One final note. To obviate confusion, we clarify that the petitioners, although correct in moving for the dissolution of the trust after the twenty-year period, are not necessarily declared as intestate heirs of the decedent. Our remand of the case to the RTC means that the probate court should now make a determination of the heirship of the intestate heirs of the decedent where petitioners, and all others claiming to be heirs of the decedent, should establish their status as such consistent with our ruling in *Heirs of Yaptinchay v. Hon. del Rosario*.[17]

WHEREFORE, premises considered, the petition is *GRANTED*. The Order of the Regional Trial Court of Manila, Branch 4 in SP. PROC. No. 51872 is *REVERSED* and SET *ASIDE*. The trust approved by the Regional Trial Court of Manila, Branch 4 in SP. PROC. No. 51872 is *DISSOLVED*. We ORDER the Regional Trial Court of Manila, Branch 4 in SP. PROC. No. 51872 to determine the following:

1. the properties listed in Clause 10 of Doña Margarita Rodriguez's will, constituting the perpetual trust, which are still within reach and have not been disposed of as yet; and

2. the intestate heirs of Doña Margarita Rodriguez, with the nearest relative of the decedent entitled to inherit the remaining properties.

SO ORDERED.

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

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[17] G.R. No. 146818, February 6, 2006, 481 SCRA 556.

THIRD DIVISION

[G.R. No. 168848. June 30, 2009]

HEIRS OF THE LATE JOSE DE LUZURIAGA,[1] **represented by JOSE DE LUZURIAGA, JR., HEIRS OF MANUEL R. DE LUZURIAGA, HEIRS OF THE LATE REMEDIOS DE LUZURIAGA-VALERO, and THE LATE NORMA DE LUZURIAGA DIANON,** *petitioners, vs.* **REPUBLIC OF THE PHILIPPINES thru the OFFICE OF THE SOLICITOR GENERAL,** *respondent.*

[G.R. No. 169019. June 30, 2009]

HEIRS OF THE LATE JOSE DE LUZURIAGA, represented by JOSE DE LUZURIAGA, JR., and HEIRS OF THE LATE REMEDIOS DE LUZURIAGA-VALERO and THE LATE NORMA DE LUZURIAGA-DIANON, *petitioners, vs.* **REPUBLIC OF THE PHILIPPINES thru the OFFICE OF THE SOLICITOR GENERAL,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENT; RELIEF FROM JUDGMENT; PETITION FOR RELIEF, EXPLAINED — A petition for relief is in effect a second opportunity for an aggrieved party to ask for a new trial. Once granted either by the trial court or the appellate court, the final judgment whence relief is sought is deemed set aside and the case shall stand as if such judgment had never been rendered. In such a case, "the court shall then proceed to hear and determine the case as if a timely motion for new trial or reconsideration had been granted by it."

2. ID.; ID.; ID.; ID.; REGLEMENTARY PERIOD UNDER RULES THEREFOR ARE MANDATORY IN CHARACTER; SUSPENSION OF MANDATORY CHARACTER IN INTEREST OF JUSTICE.—

[1] **Luzuriaga** in some parts of the records.

While the reglementary periods fixed under the rules for relief from judgment are mandatory in character, procedural rules of the most mandatory character in terms of compliance may, in the interest of substantial justice, be relaxed. Since rules of procedure are mere tools designed to facilitate the attainment of justice, they are not to be applied with severity and rigidity when such application would clearly defeat the very rationale for their existence. In line with this postulate, the Court can and will relax or altogether suspend the application of the rules, or except a particular case from the rules' operation when their rigid application tends to frustrate rather than promote the ends of justice.

3. ID.; ID.; PLEADINGS; VERIFICATION; SUSPENDED IN INTEREST OF JUSTICE.— It cannot be over-emphasized that the requirement on verification is simply a condition affecting the form of pleadings. Non-compliance with it is not jurisdictional, and would not render the pleading fatally defective. A pleading required by the Rules of Court to be verified may be given due course even without a verification if the circumstances warrant the suspension of the rules in the interest of justice.

4. ID.; ID.; JUDGMENTS; EXECUTION OF; EXECUTION MUST CONFORM TO WHAT THE DECISION POSITIVELY DECREES.— Basic is the rule that execution must conform to what the decision dispositively decrees. Logically, an execution is void if it does not strictly conform to every essential particulars of the judgment rendered. Be that as it may, the issuance of the reconstituted title is rendered moot and ineffective by the grant of relief from judgment.

5. ID.; ID.; RELIEF FROM JUDGMENT; QUIETING OF TITLE; MAY PROCEED INDEPENDENTLY; CASE AT BAR.— Petitioners' contention that a petition for relief from judgment and the special civil action for quieting of title cannot proceed separately is without solid basis. Cad. Case No. 97-583 and the suit for quieting of title in Civil Case No. 99-10924 each involves different concerns and can proceed independently. The cause of action of the Republic's petition for relief from judgment of "double titling" of the subject lot is different from DAALCO's quest for quieting of title. From another perspective, DAALCO basically seeks to nullify the issuance of OCT No. RO-58 in

the name of the De Luzuriaga heirs, while the Republic's petition assails the grant of ownership to De Luzuriaga, Sr. over a parcel of land duly registered under OCT No. 2765 in the name of Lizares, who thereafter transferred the title to his heirs or assigns. In fine, both actions may proceed independently, albeit a consolidation of both cases would be ideal to obviate multiplicity of suits.

6. CIVIL LAW; LAND TITLES AND DEEDS; APPLICATION FOR REGISTRATION; PUBLICATION REQUIRED FOR CADASTRAL COURT PROCEEDINGS.— Sec. 7 of Act No. 2259, otherwise known as the Cadastral Act, and Sec. 35 of PD 1529, otherwise known as the Land Registration Decree, provide for the publication of the application for registration and the schedule of the initial hearing. This is so since judicial cadastral proceedings, like ordinary administrative registration, are *in rem*, and are governed by the usual rules of practice, procedure, and evidence. Due publication is required to give notice to all interested parties of the claim and identity of the property that will be surveyed. And any additional territory or change in the area of the claim cannot be included by amendment of the plan or application without new publication, otherwise the cadastral court does not acquire jurisdiction over the additional or amended claim. But where the identity and area of the claimed property are not the subjects of amendment but other collateral matters, a new publication is not needed.

APPEARANCES OF COUNSEL

Dennis M. Cortes and *Lyndon P. Caña* for Heirs of the Late Remedios Luzuriaga-Valero.

Law Offices of Mirano Mirano & Mirano for Dr. Antonio A. Lizares Company, Inc.

D E C I S I O N

VELASCO, JR., *J.*:

Before us are two petitions under Rule 45 interposed by the heirs of the late Jose De Luzuriaga, assailing the November

26, 2004 Decision[2] and May 25, 2005 Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 75321. The first is a Verified Petition for Review on *Certiorari* under **G.R. No. 169019**, while the second is styled Supplemental Petition and docketed as **G.R. No. 168848**.

The assailed CA decision and resolution reversed and set aside the Orders dated August 31, 2001[4] and October 24, 2002[5] in Cadastral Case No. 97-583 of the Regional Trial Court (RTC), Branch 51 in Bacolod City.

The Facts

Subject of the instant controversy is Lot No. 1524 of the Bacolod Cadastre, particularly described as follows:

> A parcel of land (Lot No. 1524 of the Cadastral Survey of Bacolod), with the improvements thereon, situated in the Municipality of Bacolod. Bounded on the N. and NE., by the Lupit or Magsungay Pequeño River; on the SE., by Calle Araneta and Lots Nos. 440, 442 and 441; on the SW., by the Sapa Mamlot; and on the W. by Creeks x x x; containing an area of [TWO HUNDRED SIXTY EIGHT THOUSAND SEVEN HUNDRED AND SEVENTY TWO (268,772) square meters], more or less.[6]

On May 16, 1997, petitioners filed an *Application for the Registration of Title*, docketed as Cad. Case No. 97-583 before the RTC. In it, the subject lot was specifically identified as Lot No. 1524, AP-06-005774, Cad. 39, Bacolod Cadastre, situated in the City of Bacolod, Island of Negros. The survey plan, conducted by Geodetic Engineer Eluminado E. Nessia, Jr. and duly approved on May 17, 1997 by the Department of Environment and Natural Resources (DENR) Regional Office, Iloilo City;

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[2] *Rollo* (G.R. No. 168848), pp. 21-25. Penned by Associate Justice Arsenio J. Magpale and concurred in by Associate Justices Mariflor P. Punzalan Castillo and Ramon M. Bato, Jr.

[3] *Id.* at 48-49.

[4] *Id.* at 181-183. Penned by Judge Anita G. Chua.

[5] *Id.* at 195-197.

[6] *Id.* at 226-227.

and the technical description of the subject lot, prepared by the Office of the Regional Technical Director, Land Management Services, DENR, Region VI, Iloilo City, were submitted to the RTC.

On May 12, 1998, the application was amended to state, thus: "x x x that the parcel of land in question be ordered registered and that an original Certificate of Title be issued in the name of the late Jose R. [De] Luzuriaga, Sr. pursuant to Decree No. 22752 covering Lot No. 1524 of Bacolod Cadastre."[7]

Subsequently, the RTC issued an Order of general default except as against respondent Republic of the Philippines, which entered its due appearance through the Office of the Solicitor General (OSG) which, in turn, designated Bacolod Assistant City Prosecutor Abraham Bayona to represent the OSG at the trial.

Among the evidence petitioners adduced during the hearings was a copy of Decree No. 22752[8] dated October 7, 1916, issued by the General Land Registration Office (GLRO) pursuant to the decision in the cadastral case confirming and granting unto the late Jose R. De Luzuriaga full ownership of Lot No. 1524.

RTC Decision Granting Application for Registration of Lot 1524

By Decision[9] dated May 24, 1999, the trial court ratified its order of general default and judicially confirmed the incomplete title of the late De Luzuriaga, Sr. over Lot No. 1524 pursuant to Decree No. 22752. The *fallo* reads:

> WHEREFORE, premises considered, the order of general default previously entered is ratified and JUDGMENT is hereby rendered confirming the title of the late Jose R. De Luzuriaga, Sr. over Lot No. 1524 of Bacolod Cadastre under Decree No. 22752 dated October 7, 1916

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[7] *Id.* at 168.

[8] *Id.* at 226-228.

[9] *Id.* at 170-174. Penned by Presiding Judge Ramon B. Posadas.

(Exh. "K" & "L") identified in the approved Survey Plan (Exh. "M") and technically described in the Technical Description (Exh. "N").

As soon as this decision becomes final, let an Original Certificate of Title be issued in the name of the late Jose R. De Luzuriaga, Sr., pursuant to Decree No. 22752 covering Lot No. 1524 of Bacolod Cadastre in accordance with law.

SO ORDERED.

The OSG, for the Republic, received a copy of the Decision on June 22, 1999, but opted not to file an appeal.

Pursuant to the above decision the Bacolod Registry issued Original Certificate of Title (OCT) No. RO-58 in the name of De Luzuriaga, Sr.

DAALCO Sues for Quieting of Title

Meanwhile, in September 1999, Dr. Antonio A. Lizares, Co., Inc. (DAALCO) filed a Complaint[10] against petitioners before the RTC for *Quieting of Title, Annulment and Cancellation of [OCT] No. RO-58* with prayer for injunctive relief and damages, docketed as Civil Case No. 99-10924 and entitled *Dr. Antonio A. Lizares Co., Inc., (DAALCO) v. Jose R. De Luzuriaga, III, et al*.[11] In gist, DAALCO claimed that its predecessor-in-interest, Antonio Lizares, was the registered, lawful, and absolute owner of Lot No. 1524 as evidenced by a Transfer Certificate of Title (TCT) No. 190-R (T-247 [T-19890]) issued by the Register of Deeds (RD) of Bacolod City on February 8, 1939. Said TCT served to replace OCT No. 2765 in the name of Lizares and was issued pursuant to Decree

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[10] *Id.* at 240-258.

[11] The complete case title is: *Dr. Antonio A. Lizares Co., Inc., (DAALCO) v. Jose R. De Luzuriaga, III, Lance, Rock, Anthony, Perpetua, and Deke Mark all surnamed Gianon representing the heirs of Norma De Luzuriaga Gianon, Irene Garovillo De Luzuriaga, Rolando, Rogie, Rogine, Mark, Mat and Bernie all surnamed De Luzuriaga Diaz, Desiree Depallo, Israel De Luzuriaga and Frederick De Luzuriaga, representing the heirs of Manuel De Luzuriaga, Rosanna, Jeremy, Franklin, Corazon, Teresa, Idoy, Alindajao and Bagatsing, all surnamed Valero, representing the heirs of Remedios De Luzuriaga Valero and the Register of Deeds of Bacolod City*.

No. 22752, GLRO Cad. Rec. No. 55 as early as November 14, 1916 and registered in the registration book of the Office of the RD of Negros Occidental, at Vol. 10, p. 283.

To buttress its case, DAALCO pointed to the fact that the RD, after the finality of the May 24, 1999 RTC Decision, did not issue an OCT in the name of De Luzuriaga, Sr., as prayed for in the application of petitioners and as ordered by the cadastral court. What the RD instead issued—owing to the issuance in 1916 of OCT No. 2765 in the name of Lizares—was a reconstituted title, *i.e.*, OCT No. RO-58. Finally, DAALCO maintained having been in actual, open, and continuous possession as registered owner of the subject lot.

The Petition for Relief from Judgment by the Republic

On November 24, 1999, or six months after the RTC rendered its Decision, the Republic through the OSG, however, sought the annulment thereof via an unverified Petition for Relief from Judgment[12] filed before the same RTC which rendered the above decision in Cad. Case No. 97-583.

To support its prayer for annulment, the Republic alleged, *first*, that petitioners failed to indicate in their application all the heirs of the late De Luzuriaga, Sr. and their corresponding authorization for the application in their behalf.

Second, the Republic asserted that petitioners cannot use Decree No. 22752 as basis for the application of land registration as said decree effectively barred said application. It invited attention to Section 39 of Presidential Decree No. (PD) 1529, which requires the simultaneous issuance of the decree of registration and the corresponding certificate of title. As argued, the policy of simultaneous issuance prescribed in the decree has not been followed in the instant case.

Third, the Republic, relying on *Metropolitan Waterworks and Sewerage System v. Court of Appeals*,[13]contended that

[12] *Rollo* (G.R. No. 168848), pp. 175-180, dated November 23, 1999.
[13] G.R. No. 103558, November 17, 1992, 215 SCRA 783.

no new title over the subject lot can be issued in favor of the applicant, the same lot being already covered by a title, specifically OCT No. 2765 in the name of Lizares.

Fourth, again citing jurisprudence,[14] the Republic maintained that the applicant, even if entitled to registration by force of Decree No. 22752, is already barred by laches, the same registration decree having been issued 83 long years ago.

In the meantime, Judge Anita G. Chua replaced retired Judge Ramon B. Posadas as presiding judge of the RTC, Branch 51 in Bacolod City.

The Ruling of the RTC

By Order dated August 31, 2001, Judge Chua, on the finding that the "petition for relief from judgment is not sufficient in form and substance and having been filed out of time,"[15] denied the petition. Specifically, the RTC found the Republic's petition to be unverified and filed beyond the 60th day from receipt on June 22, 1999 of a copy of the May 24, 1999 RTC Decision.

Subsequently, the Republic moved for reconsideration[16] of the above denial order arguing that its procedural lapses are not fatal to its case. It cited *Uy v. Land Bank of the Philippines*,[17] in which the Court held that the merits of the substantive aspects of the case are deemed a special circumstance or compelling reason for the reinstatement of its petition and prayed for the relaxation of the Rules. Moreover, the OSG alleged that the RTC did not acquire jurisdiction over Cadastral Case No. 97-583 inasmuch as the corresponding amended application for registration dated May 5, 1998 was not published and a copy of which the Republic was not served.

Finally, the Republic raised anew the argument on the unavailability of Decree No. 22752 as basis for the application

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[14] *Garbin v. Court of Appeals*, G.R. No. 107653, February 5, 1996, 253 SCRA 187.

[15] *Rollo* (G.R. No. 168848), p. 183.

[16] *Id.* at 184-194, dated December 11, 2001.

[17] G.R. No. 136100, July 24, 2000, 336 SCRA 419.

of land registration in view of the implementation of Sec. 39 of PD 1529.

The Republic later filed a Supplement (To Motion for Reconsideration) reiterating the merits of its case.

The RTC denied the Republic's motion for reconsideration through an Order of October 24, 2002. In the same order, the trial court observed that the Republic is actually asking the present presiding judge to review the decision of her predecessor, Judge Posadas, and to annul the same decision. Pursuing the point, the RTC, citing *Miranda v. Court of Appeals*[18] and *Nery v. Leyson*,[19] ratiocinated that a judge who succeeds another has no reviewing and appellate authority and jurisdiction over his predecessor's final judgment on the merits of a case, such authority residing, as it does, in the ordinary course of things, with the appellate court.

Aggrieved, the Republic elevated the case before the CA through a Petition for *Certiorari* under Rule 65. Docketed as CA-G.R. SP No. 75321, the petition raised the sole issue of whether the RTC gravely abused its discretion in denying its petition for relief from judgment.

The Ruling of the CA

On November 26, 2004, the appellate court rendered the assailed decision granting *certiorari* and ordered the remand of the instant case to the trial court for reception of evidence to determine whether the RTC's Decision confirming the title of the late Luzuriaga, Sr. over Lot 1524 will result in a double titling of the subject lot. The *fallo* of the CA's decision reads:

> WHEREFORE, premises considered, the instant petition for *certiorari* is GRANTED. Accordingly, the case is remanded to the court *a quo* for reception of evidence in order to resolve the issue of whether or not the Decision dated May 24, 1999 confirming the title of the late Jose R. De Luzuriaga, Sr. over Lot No. 1524 of Bacolod

[18] No. L-33007, June 18, 1976, 71 SCRA 295.

[19] G.R. No. 139306, August 29, 2000, 339 SCRA 232.

Cadastre really resulted to "double titling" and thereafter, to rule on the merits of the petition for relief from judgment.

SO ORDERED.[20]

The CA predicated its ruling on the following factors: (1) the merits of the petition for relief from judgment far outweigh the procedural technicalities that obstruct it, *i.e.*, not verified and filed out of time; and (2) the Republic was able to make out a *prima facie* case of "double titling," supported by a Letter/Report[21] issued by the Bacolod City RD on December 7, 2001 showing that Lot No. 1524 was already registered under, and an OCT already issued in, another man's name.

Through the equally assailed May 25, 2005 Resolution, the CA denied petitioners' motion for reconsideration.

Hence, we have these petitions, with the supplemental petition filed on July 28, 2005; while the main petition for review on *certiorari* was filed on August 11, 2005, which explains the lower docket number of the former.

The Issues

Petitioners raise as ground for review in **G.R. No. 169019** the following issues and assignment of errors:

A. WITH ALL DUE RESPECT, THE HONORABLE [CA] SERIOUSLY ERRED IN GRANTING THE PETITION FOR *CERTIORARI* OF THE SOLICITOR GENERAL'S OFFICE, WITHOUT MAKING A DEFINITE FINDING OF ACTUAL PRESENCE OF GRAVE ABUSE OF DISCRETION, COMMITTED BY THE LOWER COURT, VIOLATING THE WELL-KNOWN PRINCIPLE THAT *CERTIORARI* IS NOT PROPER WHERE THERE IS NO GRAVE ABUSE OF DISCRETION, AND WHEN THERE ARE UNSETTLED FACTUAL CONTROVERSIES IN THE CASE;

B. WITH ALL DUE RESPECT, THE HONORABLE [CA] IN ITS HEREIN CONTESTED DECISION x x x DIRECTLY VIOLATED THE LONG-HELD PRINCIPLE OF "JUDICIAL STABILITY" THAT HOLDS

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[20] *Rollo* (G.R. No. 168848), p. 25.

[21] *Rollo* (G.R. No. 169019), p. 76.

THAT NO REVIEW CAN BE HAD BY ONE COURT OF A DECISION OF ANOTHER COURT OF CONCURRENT JURISDICTION, AND THE RULE THAT NO SUCCEEDING JUDGE CAN REVIEW A DECISION OF THE PREVIOUS PRESIDING JUDGE, AS HELD BY THE SUPREME COURT IN *HACBANG V. LEYTE AUTOBUS CO., INC.* 62 O.G. 31, Aug. 1, 1966, *MIRANDA VS. COURT OF APPEALS*, 71 SCRA 295, AND *NERY VS. LEYSON*, 339 SCRA 23;

C. WITH ALL DUE RESPECT, THE SUBJECT DECISION OF THE HONORABLE [CA] VIOLATED THE PRINCIPLE OF *RES JUDICATA* OR FINALITY OF JUDGMENT;

D. WITH ALL DUE RESPECT, THE HONORABLE [CA] GRIEVOUSLY ERRED IN GRANTING THE OSG'S PETITION FOR *CERTIORARI* UNDER RULE 65, WHICH WAS CLEARLY RESORTED TO FOR THE FAILURE OF THE SOLICITOR GENERAL TO SEASONABLY FILE A MOTION FOR RECONSIDERATION, NOTICE OF APPEAL, OR PETITION FOR RELIEF FROM JUDGMENT OF THE ORDER OR OF THE DECISION OF THE HONORABLE COURT, RTC BRANCH 51, IN THE CASE *A QUO*, WHICH RESORT OR DEVISE IS THOROUGHLY FROWNED UPON IN OUR JURISDICTION;

E. THE HONORABLE [CA], WITH ALL DUE RESPECT, GRIEVOUSLY ERRED IN FINDING THAT THERE IS AN "EXCEPTIONAL CASE" IN THIS ABOVE-ENTITLED CASE WHICH JUSTIFIES THE GRANT OF THE PETITION, WHEN IN TRUTH AND IN FACT, THERE IS NONE;

MOST IMPORTANTLY:

F. A POTENTIAL FOR SERIOUS CONFLICT OF DECISIONS HAS BEEN CREATED BY THE ORDER OF THE HONORABLE [CA] WITH ALL DUE RESPECT, IN REMANDING THE CASE FOR FURTHER PROCEEDINGS TO THE COURT *A QUO*, WHEN THERE IS ALREADY A SIMILAR CASE INVOLVING PRINCIPALLY THE SAME ISSUE OF ALLEGED "DOUBLE TITLING" IN ANOTHER BRANCH OF THE [RTC] OF NEGROS OCCIDENTAL NAMELY, BRANCH 46, IN THE CASE ENTITLED *DAALCO VS. LUZURIAGA, ET AL.* WITH CIVIL CASE [NO.] 99-10924, FOR QUIETING OF TITLE.[22]

In **G.R. No. 168848**, petitioners raise the sole issue in their Supplemental Petition of:

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[22] *Id.* at 8-9.

WHETHER OR NOT THE RESOLUTION DATED NOVEMBER 26, 2004 AND RESOLUTION DATED MAY 25, 2005 WERE CONTRARY TO LAW AND/OR JURISPRUDENCE OF THE SUPREME COURT[23]

In the meantime, on September 12, 2005, DAALCO filed a Motion for Leave to Intervene,[24] apprising the Court of, among other things, the pendency of its complaint docketed as Civil Case No. 99-10924.

The Court's Ruling

The core issue in these petitions is whether the appellate court gravely abused its discretion in granting the Republic's petition for relief from judgment despite: (1) the May 24, 1999 Decision in Cadastral Case No. 97-583 having become final and executory; and (2) the issue of double titling having been raised in DAALCO's complaint in Civil Case No. 99-10924 for quieting of title and cancellation of OCT No. RO-58 before the RTC, Branch 46 in Bacolod City.

The petitions are bereft of merit.

The CA acted within its sound discretion in giving, under the factual premises and for reasons set out in the assailed decision, due course to the Republic's petition for relief from judgment and remanding the case to the trial court for reception of evidence. Under the peculiar facts and circumstances of the case, we agree with the appellate court's holding that the RTC committed grave abuse of discretion in dismissing the petition for relief from the May 24, 1999 Decision.

Procedural Issue: Relaxation of the Rules to Promote Substantial Justice

We can concede that the unverified petition for relief from judgment of the OSG was filed out of time. Such a petition must be filed within: (a) sixty (60) days from knowledge of judgment, order, or other proceedings to be set aside; and (b) six (6) months from entry of such judgment, order, or other

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[23] *Rollo* (G.R. No. 168848), p. 12.

[24] *Id.* at 235-239, dated September 6, 2005.

proceedings.[25] In the case at bar, the OSG admits receiving the May 24, 1999 Decision on June 22, 1999. Thus, when it did not file a notice of appeal of said decision within the 15-day reglementary period for filing an appeal, the OSG was left with the remaining remedy of relief from judgment subject to the conditions provided under Secs. 1 and 3 of Rule 38 of the Rules of Court. But, as thing turned out, the OSG, for the Republic, belatedly filed its petition only on November 24, 1999, or more than five months from receipt or knowledge of the May 24, 1999 RTC Decision.

The Republic ascribes its failure to file a timely notice of appeal or a petition for relief from judgment on the negligence of the OSG person—in charge of receiving all pleadings assigned to Asst. Solicitor Josefina C. Castillo—who belatedly gave the copy of the RTC Decision to the latter due to oversight. And the Republic prays for the relaxation of the rigid application of the Rules based on the merits of its petition for relief from judgment.

While the reglementary periods fixed under the rules for relief from judgment are mandatory in character,[26] procedural rules of the most mandatory character in terms of compliance may, in the interest of substantial justice, be relaxed.[27] Since rules of procedure are mere tools designed to facilitate the attainment of justice, they are not to be applied with severity and rigidity when such application would clearly defeat the very rationale for their existence. In line with this postulate, the Court can and will relax or altogether suspend the application of the rules, or except a particular case from the rules' operation

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[25] *Reyes v. Court of Appeals*, G.R. No. 150722, August 17, 2007, 530 SCRA 468, 474; citing *Quelnan v. VHF Philippines*, G.R. No. 138500, September 16, 2005, 470 SCRA 73.

[26] *Lynx Industries Contractor, Inc. v. Tala*, G.R. No. 164333, August 24, 2007, 531 SCRA 169, 175; *Reyes*, *supra* note 25.

[27] *Department of Agrarian Reform v. Republic*, G.R. No. 160560, July 29, 2005, 465 SCRA 419, 428; citing *Yao v. Court of Appeals*, G.R. No. 132428, October 24, 2000, 344 SCRA 202, 221.

when their rigid application tends to frustrate rather than promote the ends of justice.[28]

The peculiarities of the instant case impel us to do so now. Foremost of these is the fact that the Republic had properly made out a *prima facie* case of double titling over the subject lot, meriting a ventilation of the factual and legal issues relative to that case.

Apropos the matter of verification which the OSG failed to observe, it cannot be over-emphasized that the requirement on verification is simply a condition affecting the form of pleadings. Non-compliance with it is not jurisdictional, and would not render the pleading fatally defective.[29] A pleading required by the Rules of Court to be verified may be given due course even without a verification if the circumstances warrant the suspension of the rules in the interest of justice.[30] So it must be here.

Substantive Issue: *Prima Facie* Case of Double Titling

Relief from judgment is an equitable remedy; it is allowed only in exceptional cases where there is no other available or adequate remedy.[31] And its determination rests with the court. In the instant case, certain attending facts and circumstances,

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[28] *Metro Rail Transit Corporation v. Court of Tax Appeals*, G.R. No. 166273, September 21, 2005, 470 SCRA 562, 566; citing *Go v. Tan*, G.R. No. 130330, September 26, 2003, 412 SCRA 123, 128-129.

[29] *Guy v. Asia United Bank*, G.R. No. 174874, October 4, 2007, 534 SCRA 703, 716; citing *Heavylift Manila, Inc. v. Court of Appeals*, G.R. No. 154410, October 20, 2005, 473 SCRA 541 and *Robern Development Corporation v. Quitain*, G.R. No. L-13042, September 23, 1999, 315 SCRA 150.

[30] *Linton Commercial Co., Inc. v. Hellera*, G.R. No. 163147, October 10, 2007, 535 SCRA 434, 446; citing *Precision Electronics Corporation v. National Labor Relations Commission*, G.R. No. 86657, October 23, 1989, 178 SCRA 667, 670.

[31] *Regalado v. Regalado*, G.R. No. 134154, February 28, 2006, 483 SCRA 473, 482; citing *Tuason v. Court of Appeals*, G.R. No. 116607, April 10, 1996, 256 SCRA 158.

as shall be set forth below, make for an exceptional case for allowing relief from judgment.

Register of Deeds report shows doubling titling when another OCT is issued for subject lot

First. The Letter/Report[32] issued by the Bacolod City RD on December 7, 2001, ineluctably indicating the registration of subject Lot No. 1524 and the subsequent issuance of an OCT in the name of another person, provides a reasonable ground to believe that a case of double titling would result should another title issue for the same lot in the name of De Luzuriaga, Sr. Thus, there exists a compelling need for another hard look at Cad. Case No. 97-583 and for the trial court to address the likelihood of duplication of titles or "double titling," an eventuality that will undermine the Torrens system of land registration.

OCT already issued for subject lot

Second. The prior issuance on November 14, 1916 of OCT No. 2765 in the name of Lizares over Lot No. 1524 persuasively buttresses a *prima facie* case on the issue of double titling. Civil Case No. 99-10924 for quieting of title filed by DAALCO before the RTC, Branch 46 in Bacolod City tends to show that DAALCO's predecessor-in-interest, Lizares, was issued OCT No. 2765 in 1916 ostensibly pursuant to Decree No. 22752, GLRO Cad. Rec. No. 55. This is confirmed by the adverted Letter/Report.

Decree No. 22752 is the same decree petitioners relied upon in Cad. Case No. 97-583 for judicial confirmation of imperfect title over subject Lot No. 1524. Obviously, one and the same decree cannot serve as basis for a valid grant of separate titles in fee simple over the same lot to two different persons.

Ownership of subject lot best ventilated in civil case

Third. Since petitioners and DAALCO separately claim owning Lot No. 1524, the ownership issue would be best litigated in Civil Case No. 99-10924 filed by DAALCO for quieting of

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[32] *Supra* note 21.

title. Lest it be overlooked, both parties anchor in a way their ownership claim on Decree No. 22752. It ought to be stressed, however, that an OCT was issued several months after Decree No. 22752 was rendered, and the certificate was issued to Lizares, not to De Luzuriaga, Sr. De Luzuriaga, Sr., during his lifetime, never contested or assailed the title issuance to Lizares, suggesting the possibility of a lawful transfer of ownership from one to the other during the period material. In any case, for purposes of Cad. Case No. 97-583, the fact that an OCT was already issued for the subject lot would, perforce, foreclose the issuance of another OCT for the same lot.

As has been consistently held, neither prescription nor laches may render inefficacious a decision in a land registration case.[33] In line with this doctrine of the inapplicability of prescription and laches on registration cases, the Court has ruled that "the failure on the part of the administrative authorities to do their part in the issuance of the decree of registration cannot oust the prevailing party from ownership of the land."[34] Following these doctrinal pronouncements, petitioners argue that they can rightfully bank on Decree No. 22752 to defeat the claim of DAALCO.

Petitioners' above posture may be given cogency but for the issuance, pursuant to the same decree, of OCT No. 2765 in the name of Lizares. Nothing on the records adequately explains, nor do petitioners attempt to do so, how a registration decree adjudicating Lot No. 1524 to De Luzuriaga, Sr. became the very medium for the issuance of a certificate of title in favor of Lizares. Consequently, whatever rights petitioners might have over the subject lot as heirs of De Luzuriaga, Sr. ought to be litigated against the successors-in-interest of Lizares to put a final rest to their clashing claims over Lot No. 1524.

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[33] *Republic v. Nillas*, G.R. No. 159595, January 23, 2007, 512 SCRA 286, 299; citing *Sta. Ana v. Menla*, 111 Phil. 947 (1961) and other cases.

[34] *Republic v. Nillas, supra*.

Issuance of reconstituted title beyond the judgment in the cadastral case

Fourth. OCT No. RO-58 was issued by the RD of Bacolod City purportedly in execution of the final and executory decision in Cad. Case No. 97-583. Yet the Court notes that the title issuance went beyond the scope of the judgment sought to be executed. The second paragraph of the *fallo* of the May 24, 1999 RTC Decision granting and confirming ownership of subject Lot No. 1524 unto the late Jose R. De Luzuriaga clearly ordered, thus:

> As soon as this decision becomes final, **let an Original Certificate of Title be issued in the name of the late Jose R. De Luzuriaga, Sr.**, pursuant to Decree No. 22752 covering Lot No. 1524 of Bacolod Cadastre in accordance with law.[35]

But the RD of Bacolod City—in grave abuse of discretion, instead of issuing an OCT in the name of De Luzuriaga, Sr., as directed by the court—issued a reconstituted title over Lot No. 1524 in the name of the heirs of De Luzuriaga, Sr. Not lost on the Court is the fact that a reconstituted title is ordered issued in an ordinary civil case, not in a cadastral proceeding for judicial confirmation of imperfect title over unregistered property, as in the instant case.

Basic is the rule that execution must conform to what the decision dispositively decrees.[36] Logically, an execution is void if it does not strictly conform to every essential particulars of the judgment rendered.[37] Be that as it may, the issuance of the reconstituted title is rendered moot and ineffective by the grant of relief from judgment.

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[35] *Supra* note 9.

[36] *Florentino v. Rivera*, G.R. No. 167968, January 23, 2006, 479 SCRA 523, 530; citing *Jose Clavano, Inc. v. Housing and Land Use Regulatory Board*, G.R. No. 143781, February 27, 2002, 378 SCRA 172, 182-183.

[37] *Florez v. UBS Marketing Corporation*, G.R. No. 169747, July 27, 2007, 528 SCRA 396, 405; citing *Ex-Bataan Veterans Agency, Inc. v. National Labor Relations Commission*, G.R. No. 121428, November 29, 1995, 250 SCRA 418.

Cadastral Case and Quieting of Title Case can proceed independently

Fifth. Petitioners' contention that a petition for relief from judgment and the special civil action for quieting of title cannot proceed separately is without solid basis. Cad. Case No. 97-583 and the suit for quieting of title in Civil Case No. 99-10924 each involves different concerns and can proceed independently. The cause of action of the Republic's petition for relief from judgment of "double titling" of the subject lot is different from DAALCO's quest for quieting of title. From another perspective, DAALCO basically seeks to nullify the issuance of OCT No. RO-58 in the name of the De Luzuriaga heirs, while the Republic's petition assails the grant of ownership to De Luzuriaga, Sr. over a parcel of land duly registered under OCT No. 2765 in the name of Lizares, who thereafter transferred the title to his heirs or assigns. In fine, both actions may proceed independently, albeit a consolidation of both cases would be ideal to obviate multiplicity of suits.

The RTC Had Jurisdiction in Cadastral Case

The Republic, after participating in the proceedings below, has raised the issue of jurisdiction, drawing attention to the non-publication of the amended application for registration during the trial of Cad. Case No. 93-857. The Court cannot see its way clear to the jurisdictional challenge posed by the Republic. As it were, the Republic entered its appearance in Cad. Case No. 97-583 represented by prosecutor Bayona. The petitioners in that case appeared to have complied with the essential jurisdictional requirement of publication. The required survey plan, technical description, and original tracing cloth have been duly presented and submitted as evidence. Prosecutor Bayona obviously found the cadastral proceedings to have been in order, else, he would have duly protested and assailed the same.

We hardly can subscribe to the Republic's argument that the publication of the amendment in petitioners' application is a condition *sine qua non* for the RTC, acting as cadastral court,

to acquire jurisdiction. Sec. 7[38] of Act No. 2259, otherwise known as the Cadastral Act, and Sec. 35[39] of PD 1529, otherwise known as the Land Registration Decree, provide for the publication of the application for registration and the schedule of the initial hearing. This is so since judicial cadastral proceedings, like ordinary administrative registration, are *in rem*, and are governed by the usual rules of practice, procedure, and evidence. Due publication is required to give notice to all interested parties of the claim and identity of the property that will be surveyed. And any additional territory or change in the area of the claim cannot be included by amendment of the plan or application without new publication, otherwise the cadastral court does not acquire jurisdiction over the additional or amended claim. But where the identity and area of the claimed property are not the subjects of amendment but other collateral matters, a new publication is not needed.

In the case at bar, there is no dispute that due publication was made for Lot No. 1524, its identity and area. The amendment in petitioners' application in the relief portion neither altered the area and identity of the subject lot nor added any territory. Thus, no new publication is required. Besides, the Republic, through Prosecutor Bayona, has been duly notified of such

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[38] Sec. 7. Upon the receipt of the order of the court setting the time for initial hearing of the petition, the Commission on Land Registration shall cause notice thereof to be published twice, in successive issues of the Official Gazette, in the English language. The notice shall be issued by order of the Court, attested by the Commissioner of the Land Registration Office, x x x.

[39] SEC. 35 (*Cadastral Survey preparatory to filing of petition*) (b) Thereupon, the Director of Lands shall give notice to persons claiming any interest in the lands, as well as to the general public, of the day on which such survey will begin, giving as fully and accurately as possible the description of the lands to be surveyed. Such notice shall be published once in the Official Gazette, and a copy of the notice in English or the national language shall be posted in a conspicuous place on the bulletin board of the municipal building of the municipality in which the lands or any portion thereof is situated. A copy of the notice shall also be sent to the mayor of such municipality as well as to the *barangay* captain and likewise to the Sangguniang Panlalawigan and the Sangguniang Bayan concerned. x x x

amendment. Consequently, the Republic could not plausibly argue that it was deprived of its day in court.

Anent DAALCO's motion to intervene and interest over the subject lot, it may address its motion to the lower court, although intervention may no longer be necessary in the light of Civil Case No. 99-10924 pending before the RTC, Branch 46 in Bacolod City, where DAALCO can properly ventilate its ownership claim as against that of petitioners, who, incidentally, are impleaded in said case as respondents/defendants.

A final consideration. A petition for relief is in effect a second opportunity for an aggrieved party to ask for a new trial.[40] Once granted either by the trial court or the appellate court, the final judgment whence relief is sought is deemed set aside and the case shall stand as if such judgment had never been rendered. In such a case, "the court shall then proceed to hear and determine the case as if a timely motion for new trial or reconsideration had been granted by it."[41]

Here, the presiding judge of the RTC, Branch 51 in Bacolod City, by the remand to the court of Cad. Case No. 97-583, is not asked to review and/or annul a final judgment of his or her predecessor or of another RTC, as there is nothing for the presiding judge to nullify in the first place, the annulling act having been taken by the CA. Hence, the trial court's invocation, as seconded by petitioners, of the teachings of *Nery*,[42] is off-tangent. *Nery*, it is true, held that a trial court is without jurisdiction to annul a final judgment of a co-equal court. *Nery* was, however, cast against a different factual and legal milieu. Suffice it to state for the nonce that *Nery* involved a final judgment of the RTC against which no petition for relief has been interposed. In view of the first reason, the final judgment was not effectively set aside, unlike here.

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[40] 1 Regalado, *REMEDIAL LAW COMPENDIUM* 400 (8th rev. ed.); citing *Vda. de Sayman v. Court of Appeals*, Nos. L-29479 & 29716, February 21, 1983, 120 SCRA 676.

[41] RULES OF COURT, Rule 38, Sec. 6.

[42] *Supra* note 19.

WHEREFORE, the Verified Petition for Review on *Certiorari* and Supplemental Petition are hereby *DENIED* for lack of merit. Accordingly, the CA's November 26, 2004 Decision and May 25, 2005 Resolution in CA-G.R. SP No. 75321 are hereby *AFFIRMED*.

Costs against petitioners.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 168859. June 30, 2009]

UNITED COCONUT PLANTERS BANK, JERONIMO U. KILAYKO, LORENZO V. TAN, ENRIQUE L. GANA, JAIME W. JACINTO, and EMILY R. LAZARO, *petitioners, vs.* **E. GANZON, INC.,** *respondent*.

[G.R. No. 168897. June 30, 2009]

E. GANZON, INC., *petitioner, vs.* **UNITED COCONUT PLANTERS BANK, JAIME W. JACINTO, and EMILY R. LAZARO,** *respondents*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JURISDICTION; APPELLATE JURISDICTION OF THE COURT OF APPEALS UNDER BATAS PAMBANSA BLG. 129.— Section 9(3) of Batas Pambansa Blg. 129, otherwise known as The Judiciary Reorganization Act of 1980, as amended**,** reads: SEC. 9.

Jurisdiction. – The Court of Appeals shall exercise: x x x (3) **Exclusive appellate jurisdiction** over all final judgments, decisions, resolutions, orders or awards of Regional Trial Courts and **quasi-judicial agencies, instrumentalities, boards or commissions,** including the Securities and Exchange Commission, the Social Security Commission, the Employees Compensation Commission and the Civil Service Commission, **except** those falling within the appellate jurisdiction of the Supreme Court in accordance with the Constitution, the Labor Code of the Philippines under Presidential Decree No. 442, as amended, the provisions of this Act, and of subparagraph (1) of the third paragraph and subparagraph 4 of the fourth paragraph of Section 17 of the Judiciary Act of 1948.

2. ID.; ID.; ID.; NON-EXCLUSIVITY OF THE ENUMERATION.— A perusal of Section 9(3) of Batas Pambansa Blg. 129, as amended, and Section 1, Rule 43 of the 1997 Revised Rules of Civil Procedure reveals that the BSP Monetary Board is not included among the quasi-judicial agencies explicitly named therein, whose final judgments, orders, resolutions or awards are appealable to the Court of Appeals. Such omission, however, does not necessarily mean that the Court of Appeals has no appellate jurisdiction over the judgments, orders, resolutions or awards of the BSP Monetary Board. It bears stressing that Section 9(3) of Batas Pambansa Blg. 129, as amended, on the appellate jurisdiction of the Court of Appeals, generally refers to quasi-judicial agencies, instrumentalities, boards, or commissions. The use of the word "including" in the said provision, prior to the naming of several quasi-judicial agencies, necessarily conveys the very idea of non-exclusivity of the enumeration. The principle of *expressio unius est exclusio alterius* does not apply where other circumstances indicate that the enumeration was not intended to be exclusive, or where the enumeration is by way of example only.

3. ID.; ID.; ID.; QUASI-JUDICIAL AGENCY; AFFECTS RIGHTS OF PRIVATE PARTIES EITHER THROUGH ADJUDICATION OR THROUGH RULE-MAKING.— A quasi-judicial agency or body is an organ of government other than a court and other than a legislature, which affects the rights of private parties through either adjudication or rule-making. The very definition of an administrative agency includes its being vested with quasi-judicial powers. The ever increasing variety of powers and

functions given to administrative agencies recognizes the need for the active intervention of administrative agencies in matters calling for technical knowledge and speed in countless controversies which cannot possibly be handled by regular courts. A "quasi-judicial function" is a term which applies to the action, discretion, *etc*., of public administrative officers or bodies, who are required to investigate facts, or ascertain the existence of facts, hold hearings, and draw conclusions from them, as a basis for their official action and to exercise discretion of a judicial nature.

4. ID.; ID.; ID.; ID.; THE BSP MONETARY BOARD IS A QUASI-JUDICIAL AGENCY EXERCISING QUASI-JUDICIAL FUNCTIONS OR POWERS.— Undoubtedly, the BSP Monetary Board is a quasi-judicial agency exercising quasi-judicial powers or functions. As aptly observed by the Court of Appeals, the BSP Monetary Board is an independent central monetary authority and a body corporate with fiscal and administrative autonomy, mandated to provide policy directions in the areas of money, banking and credit. It has power to issue subpoena, to sue for contempt those refusing to obey the subpoena without justifiable reason, to administer oaths and compel presentation of books, records and others, needed in its examination, to impose fines and other sanctions and to issue cease and desist order. Section 37 of Republic Act No. 7653, in particular, explicitly provides that the BSP Monetary Board shall exercise its discretion in determining whether administrative sanctions should be imposed on banks and quasi-banks, which necessarily implies that the BSP Monetary Board must conduct some form of investigation or hearing regarding the same.

5. ID.; ID.; ID.; ID.; ID.; ID.; THE COURT OF APPEALS HAS APPELLATE JURISDICTION OVER FINAL JUDGMENTS, ORDERS, RESOLUTIONS OR AWARDS OF THE BSP MONETARY BOARD ON ADMINISTRATIVE COMPLAINTS AGAINST BANKS OR QUASI-BANKS; CASE AT BAR.— Having established that the BSP Monetary Board is indeed a quasi-judicial body exercising quasi-judicial functions; then as such, it is one of those quasi-judicial agencies, though not specifically mentioned in Section 9(3) of Batas Pambansa Blg. 129, as amended, and Section 1, Rule 43 of the 1997 Revised Rules of Civil Procedure, are deemed included therein. Therefore, the Court of Appeals has appellate

jurisdiction over final judgments, orders, resolutions or awards of the BSP Monetary Board on administrative complaints against banks and quasi-banks, which the former acquires through the filing by the aggrieved party of a Petition for Review under Rule 43 of the 1997 Revised Rules of Civil Procedure. x x x The present case involves a decision of the BSP Monetary Board as regards an administrative complaint against a bank and its corporate officers for the alleged violation of Sections 36 and 37, Article IV of **Republic Act No. 7653**, in relation to Section 55.1(a) of **Republic Act No. 8791,** and for the **commission of irregularity and unsafe or unsound banking practice.** There is **nothing** in the aforesaid laws which state that the final judgments, orders, resolutions or awards of the BSP Monetary Board on administrative complaints against banks or quasi-banks shall be final and executory and beyond the subject of judicial review. x x x Moreover, the appellate jurisdiction of the Court of Appeals over the final judgments, orders, resolutions or awards of the BSP Monetary Board in administrative cases involving directors and officers of banks, quasi-banks, and trust entities, is affirmed in BSP Circular No. 477, Series of 2005.

6. COMMERCIAL LAW; NEW CENTRAL BANK ACT; LIQUIDATION OF BANK; ORDER OF BSP MONETARY BOARD CAN BE QUESTIONED BEFORE COURT OF APPEALS VIA A PETITION FOR *CERTIORARI*.— Under the new law, *i.e.*, Section 30 of Republic Act No. 7653, otherwise known as The New Central Bank Act, which took effect on 3 July 1993, the order of the BSP Monetary Board, even regarding the liquidation of a bank, can be questioned *via* a Petition for *Certiorari* before a court when the same was issued in excess of jurisdiction or with such grave abuse of discretion as to amount to lack or excess of jurisdiction. The court referred to therein can be construed to mean the Court of Appeals because it is in the said court where a Petition for *Certiorari* can be filed following the hierarchy of courts.

7. REMEDIAL LAW; APPEALS; FINDINGS OF FACTS; FINDINGS OF FACTS OF AN ADMINISTRATIVE AGENCY, WHICH HAS ACQUIRED EXPERTISE IN THE PARTICULAR FIELD OF ITS ENDEAVOR, ARE ACCORDED GREAT WEIGHT ON APPEAL; EXCEPTION.— Although, as a general rule, findings of facts of an administrative agency, which has acquired expertise in the particular field of its endeavor, are accorded great weight

on appeal, such rule cannot be applied with respect to the assailed findings of the BSP Monetary Board in this case. Rather, what applies is the recognized exception that if such findings are not supported by substantial evidence, the Court can make its own independent evaluation of the facts.

8. ID.; EVIDENCE.; SUBSTANTIAL EVIDENCE; STANDARD REQUIRED IN ADMINISTRATIVE PROCEEDINGS.— The standard of substantial evidence required in administrative proceedings is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. While rules of evidence prevailing in courts of law and equity shall not be controlling, the obvious purpose being to free administrative boards from the compulsion of technical rules so that the mere admission of matter which would be deemed incompetent in judicial proceedings would not invalidate the administrative order, this assurance of a desirable flexibility in administrative procedure does not go so far as to justify orders without basis in evidence having rational probative force.

9. ID.; CIVIL PROCEDURE; JUDGMENT; REMAND OF CASE; BY REMANDING THE CASE TO THE BSP MONETARY BOARD, THE COURT OF APPEALS ONLY ACTED IN ACCORDANCE WITH R.A. NO. 76653 AND R.A. NO. 8791.— By remanding the case to the BSP Monetary Board, the Court of Appeals only acted in accordance with Republic Act No. 7653 and Republic Act No. 8791, which tasked the BSP, through the Monetary Board, to determine whether a particular act or omission, which is not otherwise prohibited by any law, rule or regulation affecting banks, quasi-banks or trust entities, may be deemed as conducting business in an unsafe or unsound manner. Also, the BSP Monetary Board is the proper body to impose the necessary administrative sanctions for the erring bank and its directors or officers.

APPEARANCES OF COUNSEL

Roque & Butuyan Law Offices for E. Ganzon, Inc.
Carag De Mesa & Zaballero for UCPB, *et al.*

D E C I S I O N

CHICO-NAZARIO, *J.*:

These are two consolidated[1] Petitions for Review on *Certiorari* under Rule 45 of the 1997 Revised Rules of Civil Procedure.

United Coconut Planters Bank (UCPB) is a universal bank duly organized and existing under Philippine Laws. In **G.R. No. 168859,** UCPB and its corporate officers, *i.e.*, Jeronimo U. Kilayko, Lorenzo V. Tan, Enrique L. Gana, Jaime W. Jacinto and Emily R. Lazaro (UCPB, *et al.*) seek the reversal and setting aside of the Decision[2] dated 14 October 2004 and Resolution[3] dated 7 July 2005 of the Court of Appeals in CA-G.R. SP No. 81385 and the affirmation, instead, of the letter-decision[4] dated 16 September 2003 of the Monetary Board of the *Bangko Sentral ng Pilipinas* (BSP). The Court of Appeals, in its assailed Decision, set aside the aforesaid letter-decision of the BSP Monetary Board and remanded the case to the latter for further proceedings; and in its questioned Resolution, denied for lack of merit the Motion for Reconsideration of UCPB, *et al.*, as well as the Partial Motion for Reconsideration of E. Ganzon, Inc. (EGI).

On the other hand, EGI is a corporation duly organized and existing under Philippine laws and engaged in real estate construction and development business. In **G.R. No. 168897**,

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[1] These two Petitions were consolidated per Resolution dated 19 September 2005, *rollo* (G.R. No. 168859), p. 836.

[2] Penned by Associate Justice Lucenito N. Tagle with Associate Justices Eloy R. Bello, Jr. and Regalado E. Maambong, concurring, *rollo* (G.R. No. 168859), pp. 8-24.

[3] Penned by Associate Justice Lucenito N. Tagle with Associate Justices Rosmari D. Carandang and Estela Perlas M. Bernabe, concurring, *rollo* (G.R. No. 168859), pp. 26-29.

[4] Signed by Juan de Zuñiga, Jr., BSP's Assistant Governor and General Counsel, and Ma. Corazon J. Guerrero, BSP's Supervision and Examination Department; *rollo* (G.R. No. 168859), pp. 339-340.

EGI prays for this Court to review the same Decision dated 14 October 2004 and Resolution dated 7 July 2005 of the Court of Appeals in CA-G.R. SP No. 81385, and to order the appellate court to (1) act on its findings in the case instead of remanding the same to the BSP Monetary Board for further proceedings; (2) direct the BSP Monetary Board to impose the applicable administrative sanctions upon UCPB, *et al*.; and (3) to amend its assailed Decision and Resolution by deleting therefrom the statements requiring the BSP Monetary Board to scrutinize and dig deeper into the acts of UCPB, *et al*., and to determine if, indeed, there were irregular and unsound practices in its business dealings with EGI.

The factual antecedents of these consolidated petitions are as follows:

Beginning 1995 to 1998, EGI availed itself of credit facilities from UCPB to finance its business expansion. To secure said credit facilities, EGI mortgaged to UCPB its condominium unit inventories in EGI Rufino Plaza, located at the intersection of Buendia and Taft Avenues, Manila.

Initially, EGI was able to make periodic amortization payments of its loans to UCPB. When the negative effects of the Asian economic crisis on the property development sector finally caught up with the corporation in the middle of 1998, EGI started defaulting in its payment of amortizations, thus, making all of its obligations due and demandable. Subsequently, EGI was declared in default by UCPB in its letters dated 2 October 1998[5] and 16 February 1999.[6] Thereafter, UCPB stopped sending EGI monthly statements of its accounts.

In 1999, EGI and UCPB explored the possibility of using the mortgaged condominium unit inventories of EGI in EGI Rufino Plaza as payment for the loans of EGI to UCPB. Upon agreeing on the valuation of said mortgaged properties, EGI and UCPB

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[5] *Rollo* (G.R. No. 168859), p. 342.

[6] *Id.* at 343.

entered into a Memorandum of Agreement (MOA)[7] on 28 December 1998 in settlement of the loans of EGI from UCPB. Based on this MOA, the outstanding loan obligations of EGI with UCPB amounted to **₱915,838,822.50**, inclusive of all interest, charges and fees. UCPB, through its corporate officers, assured EGI that the said amount already represented the total loan obligations of EGI to UCPB.

On 18 January 2000, EGI and UCPB executed an Amendment of Agreement[8] to reflect the true and correct valuation of the properties of EGI listed in the MOA that would be transferred to UCPB in settlement of the total loan obligations of the former with the latter. The properties of EGI to be used in paying for its debt with UCPB were valued at **₱904,491,052.00**.

According to the MOA and its amendments, titles to the properties of EGI shall be transferred to UCPB by the following modes: (1) foreclosure of mortgage; (2) *dacion en pago*; (3) creation of a holding company; and (4) use of other alternatives as may be deemed appropriate by UCPB.

UCPB proceeded to foreclose some of the properties of EGI listed in the MOA. Per the Certificate of Sale[9] dated 13 April 2000, the foreclosure proceeds of said properties amounted only to **₱723,592,000.00**, less than the value of the properties of EGI stipulated in its amended MOA with UCPB.

UCPB applied the entire foreclosure proceeds of ₱723,592,000.00 to the principal amount of the loan obligations of EGI, pursuant to BSP Circular No. 239,[10] which provided that partial property payments shall first be applied to the principal. After deducting the said amount from the total loan obligations of EGI, there was still an unpaid balance of **₱192,246,822.50**.

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[7] *Id.* at 193-200.

[8] *Id.* at 363-372.

[9] *Id.* at 374-375.

[10] Amendments to the Manual of Regulations and the Manual of Accounts for Banks and for Non-Bank Financial Institutions, Series of 2000; *id.* at 217-221.

On 8 May 2001, some of the other properties of EGI at EGI Rufino Plaza, valued at **₱166,127,369.50**, were transferred by way of *dacion en pago* to UCPB. However, during the signing of the transaction papers for the *dacion en pago*, EGI Senior Vice-President, Architect Grace S. Layug (Layug), noticed that said papers stated that the remaining loan balance of EGI in the amount of ₱192,246,822.50 had increased to **₱226,963,905.50**. The increase was allegedly due to the addition of the transaction costs amounting to ₱34,717,083.00. EGI complained to UCPB about the increase, yet UCPB did not take any action on the matter.

This prompted EGI President Engineer Eulalio Ganzon (Ganzon) and Senior Vice-President Layug to review their files to verify the figures on the loan obligations of EGI as computed by UCPB. In the process, they discovered the UCPB Internal Memorandum dated 22 February 2001,[11] signed by UCPB corporate officers. The said Internal Memorandum presented two columns, one with the heading "ACTUAL" and the other "DISCLOSED TO EGI." The figures in the two columns were conflicting. The figures in the "DISCLOSED TO EGI" column computed the unpaid balance of the loan obligations of EGI to be **₱226,967,194.80**, the amount which UCPB actually made known to and demanded from EGI. The figures in the "ACTUAL" column calculated the remaining loan obligations of EGI to be only **₱146,849,412.58**.

Consequently, EGI wrote UCPB a letter dated 21 May 2001,[12] which included, among other demands, the refund by UCPB to EGI of the over-payment of ₱83,000,000.00;[13] return to EGI of

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[11] *Rollo* (G.R. No. 168859), pp. 376-380.

[12] *Id.* at 386-387.

[13] Based on EGI's letter dated 21 May 2001, EGI claimed that after the foreclosure its remaining obligation to UCPB was only ₱83M as indicated in UCPB's own documents. The said ₱83M is composed of the following: 1) remaining principal balance of ₱41,605,981.73; 2) accrued interest receivable of ₱2,436,457.00; and 3) ₱38,963,060.51. Thus, when it transferred to UCPB *via dacion en pago* some of its properties in the EGI Rufino Plaza valued at ₱166,127,369.50, it overpaid UCPB in the amount of ₱83M.

all the remaining Transfer Certificates of Title (TCTs)/ Condominium Certificates of Title (CCTs) in the possession of UCPB; and cost of damage to EGI for the delay in the release of its certificates of title.

In response, UCPB explained[14] that the "ACTUAL" column in its Internal Memorandum dated 22 February 2001 contained the same amounts reflected or recorded in its financial statements, in accordance with the Manual of Accounts for Banks, Manual of Regulations for Banks[15] and BSP Circular No. 202,[16] Series of 1999. In contrast, the "DISCLOSED TO EGI" column showed the total amount still due from EGI, including the total principal, interests, transaction and other costs after the foreclosure, whether reflected in the financial books of UCPB or not. Further, UCPB maintained that the difference in the figures in the two columns was because BSP Circular No. 202 and Section X305.4 of the Manual of Regulations for Bank disallowed banks from accruing in its books interest on loans which had become non-performing.

Despite the explanation of UCPB, EGI insisted that the figures appearing in the "ACTUAL" column of the former's Internal Memorandum dated 22 February 2001 revealed the true and actual amount of its loan obligations to UCPB, **₱146,849,412.58**.

EGI Senior Vice-President Layug met with UCPB Vice-President, Jaime W. Jacinto (Jacinto) to discuss the demand of EGI for the return of its overpayment. UCPB Vice-President Jacinto, however, refused to concede that UCPB had any obligation to make a refund to EGI and, instead, insisted that EGI Senior Vice-President Layug disclose who gave her a copy

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[14] This was the explanation given by UCPB, *et al*. when they were confronted as regards the discrepancy appearing in its Internal Memorandum with a "DISCLOSED TO EGI" and "ACTUAL" columns. But, there was no mention if this explanation was made through a letter sent to EGI or it is just done verbally.

[15] *Rollo* (G.R. No. 168859), pp. 212-213.

[16] Policies on the Non-Performing Loans and Restructured Loans of Banks; *id.* at 209-211.

of the UCPB Internal Memorandum dated 22 February 2001.

Based on the possession by EGI of the UCPB Internal Memorandum dated 22 February 2001, UCPB filed a criminal case for theft and/or discovery of secrets against EGI President Ganzon and Senior Vice-President Layug, but the said case was dismissed.[17]

On 5 November 2002, EGI, also on the basis of the UCPB Internal Memorandum dated 22 February 2001, EGI filed with the BSP an administrative complaint[18] against UCPB, *et al.*, for violation of Sections 36[19] and 37,[20] Article IV of Republic Act No.

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[17] The case was filed before the Office of the Prosecutor of Makati City but it was dismissed. UCPB, *et al*. then filed a Petition for Review before the Department of Justice (DOJ), but the DOJ similarly dismissed the same in its Resolution dated 2 September 2002, *rollo* (G.R. No. 168859), pp. 395-396.

[18] *Id.* at 407-425.

[19] **Section 36.** *Proceedings Upon Violation of This Act and Other Banking Laws, Rules, Regulations, Orders or Instructions*. — Whenever a bank or quasi-bank, or whenever any person or entity willfully violates this Act or other pertinent banking laws being enforced or implemented by the Bangko Sentral or any order, instruction, rule or regulation issued by the Monetary Board, the person or persons responsible for such violation shall unless otherwise provided in this Act be punished by a fine of not less than Fifty thousand pesos (₱50,000) nor more than Two hundred thousand pesos (₱200,000) or by imprisonment of not less than two (2) years nor more than ten (10) years, or both, at the discretion of the court. Whenever a bank or quasi-bank persists in carrying on its business in an unlawful or unsafe manner, the Board may, without prejudice to the penalties provided in the preceding paragraph of this section and the administrative sanctions provided in Section 37 of this Act, take action under Section 30 of this Act.

[20] **Section 37**. *Administrative Sanctions on Banks and Quasi-banks*. — Without prejudice to the criminal sanctions against the culpable persons provided in Sections 34, 35, and 36 of this Act, the Monetary Board may, at its discretion, impose upon any bank or quasi-bank, their directors and/or officers, for any willful violation of its charter or by-laws, willful delay in the submission of reports or publications thereof as required by law, rules and regulations; any refusal to permit examination into the affairs of

the institution; any willful making of a false or misleading statement to the Board or the appropriate supervising and examining department or its examiners; any willful failure or refusal to comply with, or violation of, any banking law or any order, instruction or regulation issued by the Monetary Board, or any order, instruction or ruling by the Governor; or any commission of irregularities, and/or conducting business in an unsafe or unsound manner as may be determined by the Monetary Board, the following administrative sanctions, whenever applicable:

(a) fines in amounts as may be determined by the Monetary Board to be appropriate, but in no case to exceed Thirty thousand pesos (₱30,000) a day for each violation, taking into consideration the attendant circumstances, such as the nature and gravity of the violation or irregularity and the size of the bank or quasi-bank;

(b) suspension of rediscounting privileges or access to Bangko Sentral credit facilities;

(c) suspension of lending or foreign exchange operations or authority to accept new deposits or make new investments;

(d) suspension of interbank clearing privileges; and/or

(e) revocation of quasi-banking license.

Resignation or termination from office shall not exempt such director or officer from administrative or criminal sanctions.

The Monetary Board may, whenever warranted by circumstances, preventively suspend any director or officer of a bank or quasi-bank pending an investigation: Provided, That should the case be not finally decided by the Bangko Sentral within a period of one hundred twenty (120) days after the date of suspension, said director or officer shall be reinstated in his position: Provided, further, That when the delay in the disposition of the case is due to the fault, negligence or petition of the director or officer, the period of delay shall not be counted in computing the period of suspension herein provided.

The above administrative sanctions need not be applied in the order of their severity.

Whether or not there is an administrative proceeding, if the institution and/or the directors and/or officers concerned continue with or otherwise persist in the commission of the indicated practice or violation, the Monetary Board may issue an order requiring the institution and/or the directors and/or officers concerned to cease and desist from the indicated practice or violation, and may further order that immediate action be taken to correct the conditions resulting from such practice or violation. The cease and desist order shall be immediately effective upon service on the respondents.

The respondents shall be afforded an opportunity to defend their action in a hearing before the Monetary Board or any committee chaired by any

7653,[21] in relation to Section 55.1(a)[22] of Republic Act No. 8791;[23] and for the commission of irregularities and conducting business in an unsafe or unsound manner.

In a letter-decision[24] dated 16 September 2003, the BSP Monetary Board dismissed the administrative complaint of EGI, holding as follows:

Please be informed that the Monetary Board decided to dismiss the complaint based on the evaluation conducted by the Supervision and Examination Department I and the Office of the General Counsel and Legal Services to the effect that:

1. UCPB computed interest on the loans based on BSP rules and regulations which prohibit banks from accruing interest on loans that have become non-performing (BSP Circular No. 202). This is different from interest which may have run and accrued based on the promissory notes/loan documents from the date of default up to settlement date.

Monetary Board member created for the purpose, upon request made by the respondents within five (5) days from their receipt of the order. If no such hearing is requested within said period, the order shall be final. If a hearing is conducted, all issues shall be determined on the basis of records, after which the Monetary Board may either reconsider or make final its order.

The Governor is hereby authorized, at his discretion, to impose upon banking institutions, for any failure to comply with the requirements of law, Monetary Board regulations and policies, and/or instructions issued by the Monetary Board or by the Governor, fines not in excess of Ten thousand pesos (₱10,000) a day for each violation, the imposition of which shall be final and executory until reversed, modified or lifted by the Monetary Board on appeal.

[21] Known as "The New Central Bank Act."

[22] **Section 55.** *Prohibited Transactions.* —

55.1. No director, officer, employee, or agent of any bank shall —

(a) Make false entries in any bank report or statement or participate in any fraudulent transaction, thereby affecting the financial interest of, or causing damage to, the bank or any person;

[23] Otherwise known as "The General Banking Law of 2000."

[24] *Rollo* (G.R. No. 168859), pp. 290-291.

2. Fair market value of assets to be foreclosed is different from the bid price submitted during foreclosure and there is no statutory obligation for the latter to be equivalent to the former.

3. Regarding the alleged ₱145,163,000.00 fabricated loan, the documents showed that there were the EGI Board Resolution to borrow, promissory note signed by Mr. Eulalio Ganzon, and Loan Agreement stating that the proceeds shall be used to pay outstanding availments and interest servicing.

4. There is no finding by Supervision and Examination Department I on the alleged double charging and/or padding of transaction costs.[25]

EGI filed a Motion for Reconsideration and a Supplemental Motion for Reconsideration of the aforequoted letter-decision of the BSP Monetary Board. The BSP Monetary Board denied both motions in its letter[26] dated 8 December 2003 as there was no sufficient basis to grant the same.

EGI then filed a Petition for Review under Rule 43 of the 1997 Revised Rules of Civil Procedure with the Court of Appeals raising the sole issue of "whether the Bangko Sentral ng Pilipinas erred in dismissing the administrative complaint filed by EGI against UCPB, *et al.*" The case was docketed as CA-G.R. SP No. 81385.

On 14 October 2004, the Court of Appeals rendered its assailed Decision granting the Petition for Review of EGI, thus, setting aside the BSP letter-decision dated 16 September 2003 and remanding the case to the BSP Monetary Board for further proceedings.

UCPB, *et al.*, moved for the reconsideration of the 14 October 2004 Decision of the appellate court, praying for a new judgment dismissing the appeal of EGI for lack of jurisdiction and/or lack of merit. EGI also filed a Partial Motion for Reconsideration of the same Court of Appeals Decision, with the prayer that the appellate court, instead of still remanding the case to the

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[25] *Id.*

[26] *Id.* at 331.

BSP Monetary Board for further proceedings, already direct the latter to impose the applicable administrative sanctions upon UCPB, *et al*.

In a Resolution dated 7 July 2005, the Court of Appeals denied for lack of merit both the Motion for Reconsideration of UCPB, *et al.* and the Motion for Partial Reconsideration of EGI.

G.R. No. 168859

Aggrieved by the 14 October 2004 Decision and 7 July 2005 Resolution of the Court of Appeals, UCPB, *et al*. comes before this Court, *via* a Petition for Review on *Certiorari* under Rule 45 of the 1997 Revised Rules of Civil Procedure, based on the following assignment of errors:

I. THE HONORABLE COURT OF APPEALS ACTED WITHOUT JURISDICTION AND GRAVELY ERRED IN HOLDING THAT IT HAS APPELLATE JURISDICTION OVER DECISIONS OF THE BSP/MONETARY BOARD.

II. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT THE BANGKO SENTRAL SUMMARILY DISMISSED THE COMPLAINT OF [EGI].

III. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN DISREGARDING THE FINDINGS OF FACT OF THE BANGKO SENTRAL AND IN HOLDING THAT [UCPB, *et al.*] COMMITTED IRREGULAR AND UNSOUND BANKING PRACTICES IN THE SUBJECT TRANSACTIONS.[27]

The Petition is docketed as G.R. No. 168859.

UCPB, *et al.*, aver that the Court of Appeals has no appellate jurisdiction over decisions, orders and/or resolutions of the BSP Monetary Board on administrative matters. The BSP Monetary Board is not among the quasi-judicial agencies enumerated under Rule 43 of the 1997 Revised Rules of Civil Procedure, over

[27] *Id.* at 59.

which the Court of Appeals has appellate jurisdiction. Further, there is nothing in Republic Act No. 7653 or in Republic Act No. 8791 which explicitly allows an appeal of the decisions or orders of the BSP Monetary Board to the Court of Appeals. Resultantly, the Court of Appeals has no power to review, much less set aside, the findings of fact of the BSP Monetary Board as contained in its letter-decision dated 16 September 2003.

UCPB, *et al*. also claim that, contrary to the ruling of the Court of Appeals, the letter-decision dated 16 September 2003 of the BSP Monetary Board plainly reveals that the administrative complaint of EGI against UCPB, *et al.* was not summarily dismissed. The charges of EGI against UCPB, *et al*. was resolved only after the BSP Monetary Board thoroughly reviewed pertinent bank records and studied the arguments raised by EGI in its complaint and Motion for Partial Reconsideration. In its letter-decision dated 16 September 2003, the BSP Monetary Board stated in no uncertain terms that the dismissal of the complaint of EGI was based on the evaluation conducted by its Supervision and Examination Department I and the Office of the General Counsel and Legal Services. Also, in its letter dated 8 December 2003, the BSP Monetary Board denied the Motion for Reconsideration and Supplemental Motion for Reconsideration of EGI because the latter did not present any new evidence in support of its motions. Hence, there is no basis for the claim of EGI that the BSP Monetary Board overlooked and completely ignored its accusations of irregular and unsound banking practice against UCPB, *et al.*

Finally, UCPB, *et al*., maintain that the findings of fact of administrative bodies like the BSP Monetary Board are accorded great respect, if not finality, especially if supported by substantial evidence. Such findings are to be respected by the courts, especially in the absence of grave abuse of discretion or grave errors by the BSP Monetary Board. No other office, much less an appellate tribunal, can substitute its own findings of fact over that of the concerned administrative agency in view of the expertise and specialized knowledge acquired by it on matters falling within its areas of concern. UCPB, *et al*. insist

that it is the BSP which has the necessary expertise to draft guidelines for the evaluation of the performance and conduct of banks. Thus, the Court of Appeals committed grave error in disregarding the findings of fact of the BSP Monetary Board which justified the latter's dismissal of the administrative complaint of EGI against UCPB, *et al*.

The issue of jurisdiction of the Court of Appeals over appeals of decisions, orders and/or resolutions of the BSP Monetary Board on administrative matters must first be resolved, before the other issues raised herein by UCPB, *et al*.

Truly, there is nothing in Republic Act No. 7653 or in Republic Act No. 8791 which explicitly allows an appeal of the decisions of the BSP Monetary Board to the Court of Appeals. However, this shall not mean that said decisions are beyond judicial review.

Section 9(3) of Batas Pambansa Blg. 129, otherwise known as The Judiciary Reorganization Act of 1980, as amended, reads:

SEC. 9. *Jurisdiction.* – The Court of Appeals shall exercise:

xxx xxx xxx

(3) **Exclusive appellate jurisdiction** over all final judgments, decisions, resolutions, orders or awards of Regional Trial Courts and **quasi-judicial agencies, instrumentalities, boards or commissions**, including the Securities and Exchange Commission, the Social Security Commission, the Employees Compensation Commission and the Civil Service Commission, **except** those falling within the appellate jurisdiction of the Supreme Court in accordance with the Constitution, the Labor Code of the Philippines under Presidential Decree No. 442, as amended, the provisions of this Act, and of subparagraph (1) of the third paragraph and subparagraph 4 of the fourth paragraph of Section 17 of the Judiciary Act of 1948. (Emphasis ours.)

In accordance with the afore-quoted provision, Rule 43 of the 1997 Revised Rules of Civil Procedure, on Appeals from the Court of Tax Appeals and Quasi-Judicial Agencies to the Court of Appeals, defines its scope as follows:

SECTION 1. *Scope*. – **This Rule shall apply to appeals** from judgments or final orders of the Court of Tax Appeals **and from awards,**

judgments, final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of its quasi-judicial functions. Among these agencies are the Civil Service Commission, Central Board of Assessment Appeals, Securities and Exchange Commission, Office of the President, Land Registration Authority, Social Security Commission, Civil Aeronautics Board, Bureau of Patents, Trademarks and Technology Transfer, National Electrification Administration, Energy Regulatory Board, National Telecommunications Commission, Department of Agrarian Reform under Republic Act 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. (Emphasis ours.)

A perusal of Section 9(3) of Batas Pambansa Blg. 129, as amended, and Section 1, Rule 43 of the 1997 Revised Rules of Civil Procedure reveals that the BSP Monetary Board is not included among the quasi-judicial agencies explicitly named therein, whose final judgments, orders, resolutions or awards are appealable to the Court of Appeals. Such omission, however, does not necessarily mean that the Court of Appeals has no appellate jurisdiction over the judgments, orders, resolutions or awards of the BSP Monetary Board.

It bears stressing that Section 9(3) of Batas Pambansa Blg. 129, as amended, on the appellate jurisdiction of the Court of Appeals, generally refers to quasi-judicial agencies, instrumentalities, boards, or commissions. The use of the word "including" in the said provision, prior to the naming of several quasi-judicial agencies, necessarily conveys the very idea of non-exclusivity of the enumeration. The principle of *expressio unius est exclusio alterius* does not apply where other circumstances indicate that the enumeration was not intended to be exclusive, or where the enumeration is by way of example only.[28]

Similarly, Section 1, Rule 43 of the 1997 Revised Rules of Civil Procedure merely mentions several quasi-judicial agencies

[28] *Binay v. Sandiganbayan*, 374 Phil. 413, 440-441 (1999).

without exclusivity in its phraseology.[29] The enumeration of the agencies therein mentioned is **not exclusive**.[30] The introductory phrase "[a]mong these agencies are" preceding the enumeration of specific quasi-judicial agencies only highlights the fact that the list is not meant to be exclusive or conclusive. Further, the overture stresses and acknowledges the **existence of other quasi-judicial agencies not included in the enumeration but should be deemed included**.[31]

A quasi-judicial agency or body is an organ of government other than a court and other than a legislature, which affects the rights of private parties through either adjudication or rule-making.[32] The very definition of an administrative agency includes its being vested with quasi-judicial powers. The ever increasing variety of powers and functions given to administrative agencies recognizes the need for the active intervention of administrative agencies in matters calling for technical knowledge and speed in countless controversies which cannot possibly be handled by regular courts.[33] A "quasi-judicial function" is a term which applies to the action, discretion, *etc*., of public administrative officers or bodies, who are required to investigate facts, or ascertain the existence of facts, hold hearings, and draw conclusions from them, as a basis for their official action and to exercise discretion of a judicial nature.[34]

Undoubtedly, the BSP Monetary Board is a quasi-judicial agency exercising quasi-judicial powers or functions. As aptly observed by the Court of Appeals, the BSP Monetary Board

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[29] *Land Bank of the Philippines v. De Leon*, 437 Phil. 347, 357 (2002).

[30] *Sy v. Commission on Settlement of Land Problems*, 417 Phil. 378, 393-394 (2001).

[31] *Metro Construction, Inc. v. Chatham Properties, Inc.*, 418 Phil. 176, 203 (2001).

[32] *The Presidential Anti-Dollar Salting Task Force v. Court of Appeals*, G.R. No. 83578, 16 March 1989, 171 SCRA 348, 360.

[33] *Tropical Homes, Inc. v. National Housing Authority*, G.R. No. L-48672, 31 July 1987, 152 SCRA 540, 548-549.

[34] *Villarosa v. Commission on Elections*, 377 Phil. 497, 506-507 (1999).

is an independent central monetary authority and a body corporate with fiscal and administrative autonomy, mandated to provide policy directions in the areas of money, banking and credit.[35] It has power to issue subpoena, to sue for contempt those refusing to obey the subpoena without justifiable reason,[36] to administer oaths and compel presentation of books, records and others, needed in its examination,[37] to impose fines and other sanctions and to issue cease and desist order.[38] Section 37 of Republic Act No. 7653,[39] in particular, explicitly provides that the BSP

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[35] Section 3, Chapter 1, Article 1, Republic Act No. 7653.

[36] Section 23, Chapter 1, Article IV, Republic Act No. 7653.

[37] Section 25, Chapter 1, Article IV, Republic Act No. 7653.

[38] Sections 36 and 37, Chapter 1, Article IV, Republic Act No. 7653.

[39] **Section 37**. *Administrative Sanctions on Banks and Quasi-banks*. — Without prejudice to the criminal sanctions against the culpable persons provided in Sections 34, 35, and 36 of this Act, the Monetary Board may, at its discretion, impose upon any bank or quasi-bank, their directors and/or officers, for any willful violation of its charter or by-laws, willful delay in the submission of reports or publications thereof as required by law, rules and regulations; any refusal to permit examination into the affairs of the institution; any willful making of a false or misleading statement to the Board or the appropriate supervising and examining department or its examiners; any willful failure or refusal to comply with, or violation of, any banking law or any order, instruction or regulation issued by the Monetary Board, or any order, instruction or ruling by the Governor; or any commission of irregularities, and/or conducting business in an unsafe or unsound manner as may be determined by the Monetary Board, the following administrative sanctions, whenever applicable: (a) fines in amounts as may be determined by the Monetary Board to be appropriate, but in no case to exceed Thirty thousand pesos (₱30,000) a day for each violation, taking into consideration the attendant circumstances, such as the nature and gravity of the violation or irregularity and the size of the bank or quasi-bank;

(b) suspension of rediscounting privileges or access to Bangko Sentral credit facilities;

(c) suspension of lending or foreign exchange operations or authority to accept new deposits or make new investments;

(d) suspension of interbank clearing privileges; and/or

(e) revocation of quasi-banking license.

Monetary Board shall exercise its discretion in determining whether administrative sanctions should be imposed on banks and quasi-banks, which necessarily implies that the BSP Monetary Board must conduct some form of investigation or hearing regarding the same.

Resignation or termination from office shall not exempt such director or officer from administrative or criminal sanctions.

The Monetary Board may, whenever warranted by circumstances, preventively suspend any director or officer of a bank or quasi-bank pending an investigation: Provided, That should the case be not finally decided by the Bangko Sentral within a period of one hundred twenty (120) days after the date of suspension, said director or officer shall be reinstated in his position: Provided, further, That when the delay in the disposition of the case is due to the fault, negligence or petition of the director or officer, the period of delay shall not be counted in computing the period of suspension herein provided.

The above administrative sanctions need not be applied in the order of their severity.

Whether or not there is an administrative proceeding, if the institution and/or the directors and/or officers concerned continue with or otherwise persist in the commission of the indicated practice or violation, the Monetary Board may issue an order requiring the institution and/or the directors and/or officers concerned to cease and desist from the indicated practice or violation, and may further order that immediate action be taken to correct the conditions resulting from such practice or violation. The cease and desist order shall be immediately effective upon service on the respondents.

The respondents shall be afforded an opportunity to defend their action in a hearing before the Monetary Board or any committee chaired by any Monetary Board member created for the purpose, upon request made by the respondents within five (5) days from their receipt of the order. If no such hearing is requested within said period, the order shall be final. If a hearing is conducted, all issues shall be determined on the basis of records, after which the Monetary Board may either reconsider or make final its order.

The Governor is hereby authorized, at his discretion, to impose upon banking institutions, for any failure to comply with the requirements of law, Monetary Board regulations and policies, and/or instructions issued by the Monetary Board or by the Governor, fines not in excess of Ten thousand pesos (₱10,000) a day for each violation, the imposition of which shall be final and executory until reversed, modified or lifted by the Monetary Board on appeal.

Having established that the BSP Monetary Board is indeed a quasi-judicial body exercising quasi-judicial functions; then as such, it is one of those quasi-judicial agencies, though not specifically mentioned in Section 9(3) of Batas Pambansa Blg. 129, as amended, and Section 1, Rule 43 of the 1997 Revised Rules of Civil Procedure, are deemed included therein. Therefore, the Court of Appeals has appellate jurisdiction over final judgments, orders, resolutions or awards of the BSP Monetary Board on administrative complaints against banks and quasi-banks, which the former acquires through the filing by the aggrieved party of a Petition for Review under Rule 43 of the 1997 Revised Rules of Civil Procedure.

As a futile effort of UCPB, *et al*. to convince this Court that the Court of Appeals has no appellate jurisdiction over the final judgments, orders, resolutions or awards of the BSP Monetary Board, it cited *Salud v. Central Bank of the Philippines*.[40]

The invocation of UCPB, *et al*. of *Salud* is evidently misplaced.

The present case involves a decision of the BSP Monetary Board as regards an administrative complaint against a bank and its corporate officers for the alleged violation of Sections 36 and 37, Article IV of **Republic Act No. 7653**, in relation to Section 55.1(a) of **Republic Act No. 8791**, and for the **commission of irregularity and unsafe or unsound banking practice**. There is **nothing** in the aforesaid laws which state that the final judgments, orders, resolutions or awards of the BSP Monetary Board on administrative complaints against banks or quasi-banks shall be final and executory and beyond the subject of judicial review. Without being explicitly excepted or exempted, the final judgments, orders, resolutions or awards of the BSP Monetary Board are among those appealable to the Court of Appeals by way of Petition for Review, as provided in Section 9(3) of Batas Pambansa Blg. 129, as amended, and Section 1, Rule 43 of the 1997 Revised Rules of Civil Procedure.

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[40] 227 Phil. 551 (1986).

Although in *Salud*, this Court declared that the Intermediate Appellate Court (now Court of Appeals) has no appellate jurisdiction over resolutions or orders of the Monetary Board of the Central Bank of the Philippines (CBP, now BSP), because no law prescribes any mode of appeal therefrom, the factual settings of the said case are totally different from the one presently before us. *Salud* involved a resolution issued by the Monetary Board, pursuant to Section 29 of **Republic Act No. 265, otherwise known as the old Central Bank Act**, forbidding banking institutions to do business on account of a "condition of insolvency" or because "its continuance in business would involve probable loss to depositors or creditors;" or appointing a receiver to take charge of the assets and liabilities of the bank; or determining whether the banking institutions should be rehabilitated or liquidated, and if in the latter case, appointing a liquidator towards this end. The said Section 29 of the old Central Bank Act was **explicit** that the determination by the Monetary Board of whether a banking institution is **insolvent**, or should be **rehabilitated** or **liquidated**, is **final and executory**. However, said determination could be set aside by the trial court if there was convincing proof that the Monetary Board acted arbitrarily or in bad faith. **Under the circumstances obtaining in *Salud*, it is apparent that our ruling therein is limited to cases of insolvency, and not to all cases cognizable by the Monetary Board.**

At any rate, under the new law, *i.e.*, Section 30 of Republic Act No. 7653, otherwise known as The New Central Bank Act, which took effect on 3 July 1993, the order of the BSP Monetary Board, even regarding the liquidation of a bank, can be questioned *via* a Petition for *Certiorari* before a court when the same was issued in excess of jurisdiction or with such grave abuse of discretion as to amount to lack or excess of jurisdiction. The court referred to therein can be construed to mean the Court of Appeals because it is in the said court where a Petition for *Certiorari* can be filed following the hierarchy of courts.

Moreover, the appellate jurisdiction of the Court of Appeals over the final judgments, orders, resolutions or awards of the

BSP Monetary Board in administrative cases involving directors and officers of banks, quasi-banks, and trust entities, is affirmed in BSP Circular No. 477, Series of 2005. The said BSP Circular expressly provides that the resolution rendered by the BSP Monetary Board in administrative cases may be appealed to the Court of Appeals within the period and the manner provided under Rule 43 of the 1997 Revised Rules of Civil Procedure.

With all the foregoing, it cannot now be questioned that the Court of Appeals has appellate jurisdiction over the final judgments, orders, resolutions or awards rendered by the BSP Monetary Board in administrative cases against banks and their directors and officers, such as UCPB, *et al.*

The Court then proceeds to resolve the issue of whether the Court of Appeals erred in holding that the BSP Monetary Board summarily dismissed the administrative complaint of EGI against UCPB, *et al*.

After a meticulous scrutiny of the 16 September 2003 letter-decision of the BSP Monetary Board, this Court rules in the negative and affirms the finding of the Court of Appeals that the BSP Monetary Board did, indeed, summarily dismiss administrative complaint of EGI against UCPB, *et al*., for violation of Sections 36 and 37, Article IV of Republic Act No. 7653, in relation to Section 55.1(a) of Republic Act No. 8791, and for the commission of irregularity and unsafe or unsound banking practice.

Given the gravity and seriousness of the charges of EGI against UCPB, *et al*., the sweeping statement of the BSP Monetary Board that it was inclined to dismiss the complaint of EGI based on the evaluation made by its Supervision and Examination Department I and Office of the General Counsel and Legal Services, is simply insufficient and unsatisfactory. Worse, the BSP Monetary Board merely presented the following conclusions without bothering to explain its bases for the same: (1) UCPB computed interest on loans based on BSP rules and regulations which prohibit banks from accruing interest on loans that have become non-performing (BSP Circular No. 202); (2)

fair market value of assets to be foreclosed is different from the bid price submitted during foreclosure and there is no statutory obligation for the latter to be equivalent to the former; (3) regarding the alleged ₱145,163,000.00 fabricated loan, the documents showed that there were the EGI Board resolution to borrow, promissory note signed by Mr. Eulalio Ganzon, and Loan Agreement stating the proceeds shall be used to pay outstanding availments and interest servicing; and (4) there is no finding by Supervision and Examination Department I on the alleged double charging and/or padding of transaction costs.

Further, in resolving the matter before it, the BSP Monetary Board never considered the UCPB Internal Memorandum dated 22 February 2001, which was the heart of the administrative complaint of EGI against UCPB, *et al*. The BSP Monetary Board did not even attempt to establish whether it was regular or sound practice for a bank to keep a record of its borrower's loan obligations with two different sets of figures, one higher than the other; and to disclose to the borrower only the higher figures. The explanation of UCPB, *et al.*, adopted by the BSP Monetary Board – that the figures in the "ACTUAL" column were lower than those in the "DISCLOSED TO EGI" column because the former was computed in accordance with BSP rules and regulations prohibiting the accrual of interest on loans that have become non-performing – gives rise to more questions than answers. Examples of some of these questions would be whether the loan obligations of EGI have become non-performing; whether the differences between the figures in the "ACTUAL" and "DISCLOSED TO EGI" columns indeed corresponded to the interest that should be excluded from the figures in the first column per BSP rules and regulations; and whether the computations of the figures in both columns should have been freely disclosed and sufficiently explained to EGI in the name of transparency.

The BSP Monetary Board similarly failed to clarify whether UCPB can foreclose the mortgaged properties of EGI in amounts that were less than the values of the said properties as determined and stipulated by EGI and UCPB in their amended MOA. The

Court once more agrees in the ruling of the Court of Appeals that the MOA entered into by EGI and UCPB serves as a contract between them, and it is the law that should govern their relationship, which neither of the parties can simply abrogate, violate, or disregard. Unfortunately, the BSP Monetary Board never even referred to the MOA executed by the parties in its letter-decision dated 16 September 2003.

Moreover, the BSP Monetary Board found that the ₱145,163,000.00 loan of EGI from UCPB was not fabricated based on several documents. However, there is absolute lack of explanation by the BSP Monetary Board as to why said documents deserved more weight *vis-à-vis* evidence of EGI of suspicious circumstances surrounding the said loan, such as UCPB granting EGI said loan even when the latter was already in default on its prior loan obligations, and without requiring additional security, detailed business plan, and financial projections from EGI.

The disregard by BSP Monetary Board of all the foregoing facts and issues in its letter-decision dated 16 September 2003 leads this Court to declare that it summarily dismissed the administrative complaint of EGI against UCPB, *et al*. There can be no complete resolution of the administrative complaint of EGI without consideration of these facts and judgment on said issues.

Finally, there is no merit in the assertion of UCPB, *et al*. that the Court of Appeals erred in disregarding the findings of fact of the BSP Monetary Board in the absence of grave abuse of discretion or lack of basis for the same.

Although, as a general rule, findings of facts of an administrative agency, which has acquired expertise in the particular field of its endeavor, are accorded great weight on appeal, such rule cannot be applied with respect to the assailed findings of the BSP Monetary Board in this case. Rather, what applies is the recognized exception that if such findings are not supported by

substantial evidence, the Court can make its own independent evaluation of the facts.[41]

The standard of substantial evidence required in administrative proceedings is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. While rules of evidence prevailing in courts of law and equity shall not be controlling, the obvious purpose being to free administrative boards from the compulsion of technical rules so that the mere admission of matter which would be deemed incompetent in judicial proceedings would not invalidate the administrative order, this assurance of a desirable flexibility in administrative procedure does not go so far as to justify orders without basis in evidence having rational probative force.[42]

It cannot be convincingly said herein that the factual findings of the BSP Monetary Board in its letter-decision dated 16 September 2003 was supported by substantial evidence since (1) most of the findings were not supported by references to specific evidence; and (2) the findings were made without consideration of the primary evidence presented by EGI (*i.e.*, the MOA and its amendments and the UCPB Internal Memorandum dated 22 February 2001).

Even then, the Court of Appeals stopped short of categorically ruling that UCPB, *et al*. committed irregularities, or unsound or unsafe banking practice in its transactions with EGI. What the Court of Appeals positively pronounced was that the BSP Monetary Board failed to give the necessary consideration to the administrative complaint of EGI, summarily dismissing the same in its 16 September 2003 letter-decision. The 14 October 2004 Decision of the Court of Appeals clearly remanded the case to the BSP for further proceedings since the BSP, with its specialized knowledge and expertise on banking matters, is

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[41] *Pepsi-Cola Distributors of the Philippines, Inc. v. National Labor Relations Commission*, 338 Phil. 773, 780-781 (1997).

[42] *Spouses Boyboy v. Atty. Yabut, Jr.*, 449 Phil. 664, 670 (2003).

more up to task to receive evidence, hold hearings, and thereafter resolve the issues based on its findings of fact and law.

G.R. No. 168897

Also unsatisfied with the Decision dated 14 October 2004 and Resolution dated 7 July 2005 of the Court of Appeals, EGI filed with this Court its own Petition for Review on *Certiorari* under Rule 45 of the 1997 Revised Rules of Civil Procedure, raising the following issues:

I. The Honorable Court of Appeals does have appellate jurisdiction over decisions, orders, and resolutions of the BSP/Monetary Board.

II. The Honorable Court of Appeals was correct in FINDING that the [BSP] summarily dismissed the complaint of EGI.

III. Whether or not the Honorable Court of Appeals committed patent, grave, and reversible error when it remanded the case to the [BSP] for further proceedings instead of acting upon its findings as narrated in its Decision.

IV. Whether or not the Honorable Court of Appeals committed patent, grave, and reversible error in not directing the [BSP] to impose the appropriate penalties against [UCPB, *et al*.].[43]

The Petition is docketed as G.R. No. 168897.

Since the first two "issues" have already been addressed by this Court in its previous discussion herein on G.R. No. 168859, we now proceed to resolve the next two issues raised by EGI in its Petition in G.R. No. 168897.

EGI avers that the Court of Appeals committed reversible error when it remanded the case to the BSP for further proceedings instead of directing the BSP to impose the applicable sanctions on UCPB, *et al*. EGI reasons that the appellate court, in its Decision dated 14 October 2004, already found that UCPB had committed several acts of serious irregularity and conducted

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[43] *Rollo* (G.R. No. 168897), p. 1013.

business in an unsafe and unsound manner. By reason thereof, there was no more need for the Court of Appeals to remand this case to the BSP for a further determination of whether there were irregular and unsound practices by UCPB, *et al.* in its dealings with EGI. Should this case be remanded to the BSP, there would be nothing to prevent the BSP from ruling again that UCPB, *et al*., did not commit any irregularity and unsafe or unsound business practice. To require that this case be reviewed by the BSP would only lead to multiplicity of suits, promote unnecessary delay and negate the constitutional rights of all persons to a speedy disposition of their cases before all judicial, quasi-judicial or administrative bodies.

The Court reiterates that the Court of Appeals did not yet make conclusive findings in its Decision dated 14 October 2004, that UCPB, *et al*., committed irregularities and unsound or unsafe banking practices in their business dealings with EGI. The appellate court only adjudged that the BSP Monetary Board summarily dismissed the administrative complaint of EGI, without fully appreciating the facts and evidence presented by the latter. Given the seriousness of the charges of EGI against UCPB, *et al.*, the BSP Monetary Board should have conducted a more intensive inquiry and rendered a more comprehensive decision.

By remanding the case to the BSP Monetary Board, the Court of Appeals only acted in accordance with Republic Act No. 7653 and Republic Act No. 8791, which tasked the BSP, through the Monetary Board, to determine whether a particular act or omission, which is not otherwise prohibited by any law, rule or regulation affecting banks, quasi-banks or trust entities, may be deemed as conducting business in an unsafe or unsound manner. Also, the BSP Monetary Board is the proper body to impose the necessary administrative sanctions for the erring bank and its directors or officers.

The Court of Appeals did not deem it appropriate, on appeal, to outright reverse the judgment of the BSP Monetary Board. The Court of Appeals held that the BSP Monetary Board did not have sufficient basis for dismissing the administrative complaint

of EGI in its 16 September 2003 letter-decision; yet, the appellate court likewise did not find enough evidence on record to already resolve the administrative complaint in favor of EGI and against UCPB, *et al.*, precisely the reason why it still remanded the case to the BSP Monetary Board for further proceedings. The Court of Appeals never meant to give EGI an assurance of a favorable judgment; it only ensured that the BSP Monetary Board shall accord all parties concerned to equal opportunity for presentation and consideration of their allegations, arguments, and evidence. While the speedy disposition of cases is a constitutionally mandated right, the paramount duty of the courts, as well as quasi-judicial bodies, is to render justice by following the basic rules and principles of due process and fair play.

WHEREFORE, premises considered, the Petition for Review on *Certiorari* of United Coconut Planters Bank, Jeronimo U. Kilayko, Lorenzo V. Tan, Enrique L. Gana, Jaime W. Jacinto and Emily R. Lazaro, in G.R. No. 168859; as well as the Petition for Review on *Certiorari* of E. Ganzon, Inc. in G.R. No. 168897, are hereby *DENIED*. The Decision dated 14 October 2004 and Resolution dated 7 July 2005 of the Court of Appeals in CA-G.R. SP No. 81385 are hereby *AFFIRMED in toto*. No costs.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 172547. June 30, 2009]

PRECY BUNYI and MILA BUNYI, *petitioners, vs.* **FE S. FACTOR,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FINDINGS OF FACTS OF LOWER COURTS ARE GENERALLY RECEIVED WITH RESPECT AND CONSIDERED BINDING BY THE SUPREME COURT.— The resolution of the first issue by petitioners requires us to inquire into the sufficiency of the evidence presented below, a course of action which this Court will not do, consistent with our repeated holding that the Supreme Court is not a trier of facts. The resolution of factual issues is the function of lower courts, whose findings on these matters are received with respect and considered binding by the Supreme Court subject only to certain exceptions.

2. ID.; SPECIAL CIVIL ACTIONS; EJECTMENT; ONLY ISSUE FOR RESOLUTION IS WHO IS ENTITLED TO THE PHYSICAL OR MATERIAL POSSESSION OF THE PROPERTY INVOLVED.— In ejectment cases, the only issue for resolution is who is entitled to the physical or material possession of the property involved, independent of any claim of ownership set forth by any of the party-litigants. The one who can prove prior possession *de facto* may recover such possession even from the owner himself. Possession *de facto* is the physical possession of real property. Possession *de facto* and not possession *de jure* is the only issue in a forcible entry case. This rule holds true regardless of the character of a party's possession, provided, that he has in his favor priority of time which entitles him to stay on the property until he is lawfully ejected by a person having a better right by either *accion publiciana* or *accion reivindicatoria*.

3. CIVIL LAW; PROPERTY; POSSESSION; THE LAW DOES NOT REQUIRE ONE IN POSSESSION OF A HOUSE TO RESIDE IN THE HOUSE TO MAINTAIN HIS POSSESSION.— For one to be considered in possession, one need not have actual or

physical occupation of every square inch of the property at all times. Possession can be acquired not only by material occupation, but also by the fact that a thing is subject to the action of one's will or by the proper acts and legal formalities established for acquiring such right. Possession can be acquired by juridical acts. These are acts to which the law gives the force of acts of possession. Examples of these are donations, **succession**, execution and registration of public instruments, and the inscription of possessory information titles. The law does not require one in possession of a house to reside in the house to maintain his possession. For, again, possession in the eyes of the law does not mean that a man has to have his feet on every square meter of the ground before he is deemed in possession. There is no cogent reason to deviate from this doctrine.

4. REMEDIAL LAW; CIVIL PROCEDURE; EJECTMENT; MEANS OF DEPRIVING POSSESSION; IT IS NOT NECESSARY TO DEMONSTRATE THAT THE TAKING WAS DONE WITH FORCE, INTIMIDATION, THREAT, STRATEGY OR STEALTH CASE AT BAR.— As regards the means upon which the deprivation took effect, it is not necessary that the respondent must demonstrate that the taking was done with force, intimidation threat, strategy or stealth. The Supreme Court, in *Bañes v. Lutheran Church in the Philippines*, explained: In order to constitute *force* that would justify a forcible entry case, the trespasser does not have to institute a state of war. The act of going to the property and excluding the lawful possessor therefrom necessarily implies the exertion of force over the property which is all that is necessary and sufficient to show that the action is based on the provisions of Section 1, Rule 70 of the Rules of Court.

5. ID.; ID.; ID.; RENT; THE REASONABLE AMOUNT OF RENT COULD NOT BE DETERMINED BY MERE JUDICIAL NOTICE BUT BY SUPPORTING EVIDENCE.— We have previously ruled that while the courts may fix the reasonable amount of rent for the use and occupation of a disputed property, they could not simply rely on their own appreciation of land values without considering any evidence. The reasonable amount of any rent could not be determined by mere judicial notice but by supporting evidence.

APPEARANCES OF COUNSEL

Mauricio Law Office for petitioners.
Mendoza Arzaga-Mendoza Law Firm for respondent.

D E C I S I O N

QUISUMBING, *J.*:

For review on *certiorari* are the Decision[1] dated January 16, 2006 and Resolution[2] dated April 26, 2006 of the Court of Appeals in CA-G.R. SP No. 90397, which had affirmed the Decision[3] dated March 7, 2005 of the Regional Trial Court (RTC) of Las Piñas City, Branch 198 in Civil Case No. LP-04-0160.

The antecedent facts are as follows:

Respondent Fe S. Factor is one of the co-owners of an 18-hectare piece of land located in Almanza, Las Piñas City. The ownership of the land originated from respondent's paternal grandparents Constantino Factor and Maura Mayuga-Factor who had been in actual, continuous, peaceful, public, adverse and exclusive possession and occupation of the land even before 1906.[4]

On December 9, 1975, the children of Constantino Factor and Maura Mayuga-Factor filed a Petition for Original Registration and Confirmation of Imperfect Title to the said parcel of land, or Lots 1, 2, 3 and 4 of Psu-253567, before the RTC of Pasig City, Branch 71.[5] On December 8, 1994, the

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[1] *Rollo*, pp. 59-67. Penned by Associate Justice Juan Q. Enriquez, Jr., with Associate Justices Godardo A. Jacinto and Vicente Q. Roxas concurring.

[2] *Id.* at 68.

[3] *Id.* at 278-284. Penned by Judge Erlinda Nicolas-Alvaro.

[4] *Id.* at 279.

[5] *Id*.

trial court granted the petition in LRC Case No. N-9049 and declared the children of Constantino Factor and Maura Mayuga-Factor as co-owners of the property. [6] The children of Constantino Factor and Maura Mayuga-Factor thereafter sold seven (7) hectares of the Factor family property during the same year. The siblings, except Enrique Factor, respondent's father, shared and divided the proceeds of the sale among themselves, with the agreement that Enrique would have as his share the portion of the property located in Antioch Street, Pilar Executive Village, Almanza I, Las Piñas City, known as the Factor compound.

Following his acquisition thereof, Enrique caused the construction of several houses in the compound including the subject property, a rest house, where members of the Factor family stayed during get-togethers and visits.[7] Petitioners Precy Bunyi and her mother, Mila Bunyi, were tenants in one of the houses inside the compound, particularly in No. 8 Antioch St., Pilar Village, Almanza, Las Piñas City since 1999.[8]

When Enrique Factor died on August 7, 1993, the administration of the Factor compound including the subject rest house and other residential houses for lease was transferred and entrusted to Enrique's eldest child, Gloria Factor-Labao.

Gloria Factor-Labao, together with her husband Ruben Labao and their son Reggie F. Labao, lived in Tipaz, Taguig, Metro Manila but visited and sometimes stayed in the rest house because Gloria collected the rentals of the residential houses and oversaw the Factor compound. When Gloria died on January 15, 2001, the administration and management of the Factor compound including the subject rest house, passed on to respondent Fe S. Factor as co-owner of the property. As an act of goodwill and compassion, considering that Ruben Labao was sickly and had no means of income, respondent allowed him to stay at the rest house for brief, transient and intermittent visits as a guest of the Factor family.

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[6] CA *rollo*, pp. 210-217. Penned by Judge Celso D. Laviña.

[7] *Rollo*, p. 279.

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

On May 31, 2002, Ruben Labao married petitioner Precy Bunyi. On November 10, 2002, Ruben Labao died.

At about this time, respondent discovered that petitioners forcibly opened the doors of the rest house and stole all the personal properties owned by the Factor family and then audaciously occupied the premises. Respondent alleged that petitioners unlawfully deprived her and the Factor family of the subject property's lawful use and possession. Respondent also added that when she tried to enter the rest house on December 1, 2002, an unidentified person who claimed to have been authorized by petitioners to occupy the premises, barred, threatened and chased her with a jungle bolo. Thus, on September 12, 2003, respondent Fe S. Factor filed a complaint[9] for forcible entry against herein petitioners Precy Bunyi and Mila Bunyi.

Petitioners, for their part, questioned Fe's claim of ownership of the subject property and the alleged prior ownership of her father Enrique Factor. They asserted that the subject property was owned by Ruben Labao, and that petitioner Precy with her husband moved into the subject property, while petitioner Mila Bunyi, mother of Precy, remained in No. 8 Antioch St.

On July 13, 2004, the Metropolitan Trial Court (MeTC) of Las Piñas City, Branch 79 ruled in favor of Fe S. Factor. The dispositive portion of the decision reads:

> WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendants ordering the latter and all persons claiming rights under them to:
>
> 1. To immediately vacate the subject premises and surrender possession thereof to the plaintiff.
>
> 2. To pay the monthly rental of ₱2,000.00 from December 1, 2002 up to the time they finally vacate the premises.
>
> 3. To pay attorney's fee of Php 10,000.00.
>
> The counter-claim is dismissed for lack of merit.

[9] *Rollo*, pp. 69-74.

SO ORDERED.[10]

Petitioners appealed the decision to the RTC of Las Piñas City, Branch 198, which, however, affirmed *in toto* the decision of the MeTC and later denied their motion for reconsideration.[11] Undaunted, petitioners filed a petition for review before the Court of Appeals but it was denied also. Hence, the instant petition before us.

Petitioners submit the following issues for the Court's consideration:

I.

[WHETHER] THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN LAW AND JURISPRUDENCE WHEN IT AFFIRMED THE DECISION OF THE REGIONAL TRIAL COURT THAT FORCE, THREAT, INTIMIDATION AND STEALTH HAD BEEN COMMITTED BY THE PETITIONERS IN OCCUPYING THE SUBJECT RESIDENTIAL HOUSE;

II.

[WHETHER] THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED WHEN IT MISAPPRECIATED THE FACT THAT THE RESPONDENT HAS A BETTER RIGHT OF PHYSICAL AND MATERIAL POSSESSION OF THE SUBJECT PROPERTY;

III.

[WHETHER] THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN AFFIRMING THE FINDING OF THE REGIONAL [TRIAL] COURT HOLDING PETITIONERS LIABLE TO PAY THE MONTHLY RENTAL OF ₱2,000.00 FROM DECEMBER 1, 2002 UP TO THE TIME THEY FINALLY VACATE PREMISES.[12]

The resolution of the first issue raised by petitioners requires us to inquire into the sufficiency of the evidence presented below, a course of action which this Court will not do, consistent

[10] *Id.* at 126.

[11] *Id.* at 278-284, 310.

[12] *Id.* at 21-22.

with our repeated holding that the Supreme Court is not a trier of facts.[13] The resolution of factual issues is the function of lower courts, whose findings on these matters are received with respect and considered binding by the Supreme Court subject only to certain exceptions, none of which is present in the instant petition.[14] Noteworthy, in this case, the cited findings of the RTC have been affirmed by the Court of Appeals.

As to the second issue, the resolution thereof boils down to a determination of who, between petitioners and respondent, would be entitled to the physical possession of the subject property.

Both parties anchor their right of material possession of the disputed property on their respective claims of ownership. Petitioners insist that petitioner Precy has a better right of possession over the subject property since she inherited the subject property as the surviving spouse and sole heir of Ruben Labao, who owned the property before his death.

Respondent, on the other hand, hinges her claim of possession on the fact that her predecessor-in-interest had prior possession of the property as early as 1975.

After careful consideration, we find in favor of the respondent.

In ejectment cases, the only issue for resolution is who is entitled to the physical or material possession of the property involved, independent of any claim of ownership set forth by any of the party-litigants. The one who can prove prior possession *de facto* may recover such possession even from the owner himself.[15] Possession *de facto* is the physical possession of real property. Possession *de facto* and not possession *de jure* is the only issue in a forcible entry case.[16] This rule holds true

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[13] *Far East Bank & Trust Co. v. Court of Appeals*, G.R. No. 123569, April 1, 1996, 256 SCRA 15, 18.

[14] *Id*.

[15] *Somodio v. Court of Appeals*, G.R. No. 82680, August 15, 1994, 235 SCRA 307, 311.

[16] See *Reyes v. Sta. Maria*, No. L-33213, June 29, 1979, 91 SCRA 164, 168.

regardless of the character of a party's possession, provided, that he has in his favor priority of time which entitles him to stay on the property until he is lawfully ejected by a person having a better right by either *accion publiciana* or *accion reivindicatoria*.[17]

Petitioners argue that respondent was never in possession of the subject property since the latter never occupied the same. They claim that they have been in actual possession of the disputed property from the time petitioner Precy married Ruben Labao in 2002.

In this instance, however, petitioners' contention is inconvincing.

For one to be considered in possession, one need not have actual or physical occupation of every square inch of the property at all times.[18] Possession can be acquired not only by material occupation, but also by the fact that a thing is subject to the action of one's will or by the proper acts and legal formalities established for acquiring such right.[19] Possession can be acquired by juridical acts. These are acts to which the law gives the force of acts of possession. Examples of these are donations, **succession**, execution and registration of public instruments, and the inscription of possessory information titles.[20]

While petitioners claim that respondent never physically occupied the subject property, they failed to prove that they had prior possession of the subject property. On record, petitioner Precy Bunyi admitted that Gloria Factor-Labao and Ruben Labao, as spouses, resided in Tipaz, Taguig, Metro Manila and used the subject property whenever they visit the same.[21] Likewise,

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[17] *Somodio v. Court of Appeals, supra* at 311-312.

[18] *Habagat Grill v. DMC-Urban Property Developer, Inc.*, G.R. No. 155110, March 31, 2005, 454 SCRA 653, 671; *Quizon v. Juan*, G.R. No. 171442, June 17, 2008, 554 SCRA 601, 612.

[19] *Habagat Grill v. DMC-Urban Property Developer, Inc.*, *supra* at 671, citing *Spouses Benitez v. Court of Appeals*, 334 Phil. 216, 222 (1997); *Quizon v. Juan, supra* at 612.

[20] *Quizon v. Juan, supra* at 612.

[21] *Rollo*, pp. 29-30.

as pointed out by the MeTC and the RTC, Ruben and petitioner Precy's marriage certificate revealed that at the time of their marriage, Ruben was residing at 123 A. Lake St., San Juan, Metro Manila. Even Ruben's death certificate showed that his place of death and residence was at #4 Labao St., Tipaz, Taguig, Metro Manila. Considering that her husband was never a resident of the subject property, petitioner Precy failed to explain convincingly how she was able to move in with Ruben Labao in the subject property during their marriage.

On the other hand, it was established that respondent's grandparents, Constantino Factor and Maura Mayuga-Factor, had been the occupants and in possession of various agricultural parcel of lands situated in Almanza, Las Piñas City, in the concept of owners, for more than thirty years prior to 1975. In fact, the RTC in its Decision dated December 8, 1994 in LRC Case No. N-9049 has confirmed the rights of respondent's predecessors over the subject property and ordered the issuance of the corresponding certificate of title in their favor.[22]

The right of respondent's predecessors over the subject property is more than sufficient to uphold respondent's right to possession over the same. Respondent's right to the property was vested in her along with her siblings from the moment of their father's death.[23] As heir, respondent had the right to the possession of the property, which is one of the attributes of ownership. Such rights are enforced and protected from encroachments made or attempted before the judicial declaration since respondent acquired hereditary rights even before judicial declaration in testate or intestate proceedings.[24]

After the death of Enrique Factor, it was his eldest child, Gloria Factor-Labao who took over the administration of the subject property. And as a consequence of co-ownership,[25]

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[22] CA *rollo*, pp. 215-217.

[23] See *Morales, et al. v. Yañez*, 98 Phil. 677, 678-679 (1956).

[24] *Id*.

[25] CIVIL CODE,

Art. 484. There is co-ownership whenever the ownership of an undivided thing or right belongs to different persons.

x x x x x x x x x

soon after the death of Gloria, respondent, as one of the surviving co-owners, may be subrogated to the rights of the deceased co-owner, which includes the right to the administration and management of the subject property.

As found by the Court of Appeals, petitioners' unsupported claim of possession must yield to that of the respondent who traces her possession of the subject property to her predecessors-in-interest who have always been in possession of the subject property. Even assuming that respondent was never a resident of the subject property, she could legally continue possessing the property. Visiting the property on weekends and holidays is evidence of actual or physical possession.[26] The fact of her residence somewhere else, by itself, does not result in loss of possession of the subject property. The law does not require one in possession of a house to reside in the house to maintain his possession.[27] For, again, possession in the eyes of the law does not mean that a man has to have his feet on every square meter of the ground before he is deemed in possession.[28] There is no cogent reason to deviate from this doctrine.

All things considered, this Court finds that respondent Fe S. Factor successfully proved the extent and character of her possession over the disputed property. As a consequence of her ownership thereof, respondent is entitled to its possession, considering petitioners' failure to prove prior possession. The Court stresses, however, that its determination of ownership in the instant case is not final. It is only a provisional determination for the sole purpose of resolving the issue of possession. It would not bar or prejudice a separate action between the same parties involving the quieting of title to the subject property.[29]

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[26] *Dela Rosa v. Carlos*, G.R. No. 147549, October 23, 2003, 414 SCRA 226, 234.

[27] *Id*.

[28] *Id.* at 235. See also *Roales v. Director of Lands*, 51 Phil. 302, 304 (1927).

[29] *Booc v. Five Star Marketing Co., Inc.*, G.R. No. 157806, November 22, 2007, 538 SCRA 42, 55.

As regards the means upon which the deprivation took effect, it is not necessary that the respondent must demonstrate that the taking was done with force, intimidation threat, strategy or stealth. The Supreme Court, in *Bañes v. Lutheran Church in the Philippines*,[30] explained:

> In order to constitute *force* that would justify a forcible entry case, the trespasser does not have to institute a state of war. The act of going to the property and excluding the lawful possessor therefrom necessarily implies the exertion of force over the property which is all that is necessary and sufficient to show that the action is based on the provisions of Section 1, Rule 70 of the Rules of Court.[31]

As expressly stated in *David v. Cordova*:[32]

> The words 'by force, intimidation, threat, strategy or stealth' include every situation or condition under which one person can wrongfully enter upon real property and exclude another, who has had prior possession therefrom. If a trespasser enters upon land in open daylight, under the very eyes of the person already clothed with lawful possession, but without the consent of the latter, and there plants himself and excludes such prior possessor from the property, the action of forcible entry and detainer can unquestionably be maintained, even though no force is used by the trespasser other than such as is necessarily implied from the mere acts of planting himself on the ground and excluding the other party.[33]

Respondent, as co-owner, has the control of the subject property even if she does not stay in it. So when petitioners entered said property without the consent and permission of the respondent and the other co-owners, the latter were deprived of its possession. Moreover, the presence of an unidentified man forbidding respondent from entering the subject property constitutes force contemplated by Section 1,[34] Rule 70 of the Rules of Court.

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[30] G.R. No. 142308, November 15, 2005, 475 SCRA 13.

[31] *Id.* at 34.

[32] G.R. No. 152992, July 28, 2005, 464 SCRA 384.

[33] *Id.* at 399-400.

[34] SECTION 1. *Who may institute proceedings, and when.*— Subject to the provisions of the next succeeding section, a person deprived of the

As to the last issue, we have previously ruled that while the courts may fix the reasonable amount of rent for the use and occupation of a disputed property, they could not simply rely on their own appreciation of land values without considering any evidence. The reasonable amount of any rent could not be determined by mere judicial notice but by supporting evidence.[35] In the instant case, we find no evidence on record to support the MeTC's award of rent.

On the matter of attorney's fees awarded to the respondent, we are in agreement to delete it. It is a well-settled rule that where attorney's fees are granted, the court must explicitly state in the body of the decision, and not only in the dispositive portion thereof, the legal reason for the award.[36] Again, nothing in the body of both decisions of RTC and MeTC explicitly stated the reasons for the award of attorney's fees.

WHEREFORE, the instant petition is *DENIED*. The challenged Decision dated January 16, 2006 and Resolution dated April 26, 2006 of the Court of Appeals in CA-G.R. SP No. 90397 are *AFFIRMED with MODIFICATION* that the award of rentals and attorney's fees are *DELETED*.

No pronouncement as to costs.

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possession of any land or building by force, intimidation, threat, strategy, or stealth, or a lessor, vendor, vendee, or other person against whom the possession of any land or building is unlawfully withheld after the expiration or termination of the right to hold possession, by virtue of any contract, express or implied, or the legal representatives or assigns of any such lessor, vendor, vendee, or other person may at any time within one (1) year after such unlawful deprivation or withholding of possession, bring an action in the proper Municipal Trial Court against the person or persons unlawfully withholding or depriving of possession, or any person or persons claiming under them, for the restitution of such possession, together with damages and costs.

[35] See *Badillo v. Tayag*, G.R. Nos. 143976 and 145846, April 3, 2003, 400 SCRA 494, 507, citing *Herrera v. Bollos*, G.R. No. 138258, January 18, 2002, 374 SCRA 107, 113.

[36] *Del Rosario v. Court of Appeals*, G.R. No. 118325, January 29, 1997, 267 SCRA 158, 175, citing *Scott Consultants & Resource Development Corporation, Inc. v. Court of Appeals*, G.R. No. 112916, March 16, 1995, 242 SCRA 393, 406.

SO ORDERED.

Ynares-Santiago,[*] *Chico-Nazario,*[**] *Brion*, and *Peralta,*[***] *JJ.*, concur.

THIRD DIVISION

[G.R. No. 175788. June 30, 2009]

ENRIQUITA ANGAT and the LEGAL HEIRS OF FEDERICO ANGAT, *petitioners, vs.* **REPUBLIC OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; SERVICE OF JUDGMENTS, FINAL ORDERS OR RESOLUTIONS.— Under Section 2, Rule 13 of the Revised Rules of Court on the service of pleadings, judgments and other papers, it is provided that if any party appeared by counsel, service upon him shall be made upon his counsel, or one of them, unless service upon the party himself is ordered by the court. The court may order service upon the party himself when the attorney of record cannot be located, either because he gave no address or changed his given address. According to Section 9, Rule 13 of the Revised Rules of Court, service of judgments, final orders or resolutions may be done either personally, by registered mail, or by publication.

2. ID.; EVIDENCE; PRESUMPTIONS; PROCEEDINGS OF A JUDICIAL TRIBUNAL ARE REGULAR AND VALID.— It is a legal presumption, borne of wisdom and experience, that official

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[*] Designated member of the Second Division per Special Order No. 645.

[**] Designated member of the Second Division per Special Order No. 658.

[***] Designated member of the Second Division per Raffle of June 17, 2009.

duty has been regularly performed; that the proceedings of a judicial tribunal are regular and valid, and that judicial acts and duties have been and will be duly and properly performed.

3. ID.; CIVIL PROCEDURE; MOTIONS OR RECONSIDERATION; PERIOD TO FILE; CASE AT BAR.— Section 1, Rule 52 of the Revised Rules of Court provides that a party may file a motion for reconsideration of a judgment or final resolution within 15 days from notice thereof, with proof of service on the adverse party. Evidently, the filing of the Motion for Reconsideration of the 5 December 2005 Decision only on **6 September 2006** was way beyond the reglementary period for the same. The 15-day reglementary period for filing a motion for reconsideration is non-extendible. Provisions of the Rules of Court prescribing the time within which certain acts must be done or certain proceedings taken are considered absolutely indispensable to the prevention of needless delays and to the orderly and speedy discharge of judicial business. Strict compliance with such rules is mandatory and imperative.

4. ID.; ID.; ID.; ID.; THE FAILURE TO INTERPOSE TIMELY MOTION FOR RECONSIDERATION RENDERS THE ASSAILED DECISION FINAL AND EXECUTORY.— We recognized the well-settled rule that the perfection of an appeal within the statutory or reglementary period is not only mandatory, but jurisdictional. The failure to interpose a timely appeal (or a motion for reconsideration) renders the assailed decision, order or award final and executory that deprives the appellate body of any jurisdiction to alter the final judgment. The rule is applicable indiscriminately to one and all since the rule is grounded on fundamental consideration of public policy and sound practice that at the risk of occasional error, the judgment of courts and award of quasi-judicial agencies must become final at some definite date fixed by law.

5. ID.; ID.; ID.; ID.; ID.; EXCEPTIONS; NOT PRESENT IN CASE AT BAR.— Although in few instances, we have disregarded procedural lapses so as to give due course to appeals filed beyond the reglementary period, we did so on the basis of strong and compelling reasons, such as serving the ends of justice and preventing a miscarriage thereof. We do not find such reasons extant in this case, especially considering that petitioners herein do not admit that the Motion for

Reconsideration before the Court of Appeals was filed out of time and even attempt to mislead this Court on the true date the notice of the 5 December 2005 Decision of the Court of Appeals was received.

6. CIVIL LAW; LAND TITLES AND DEEDS; RECONSTITUTION OF A LOST AND DESTROYED CERTIFICATE OF TITLE.— Section 110 of Presidential Decree No. 1529, otherwise known as the Property Registration Decree, as amended by Republic Act No. 6732, allows the reconstitution of lost or destroyed original Torrens titles, to wit: SEC. 110. Reconstitution of lost or destroyed original of Torrens title.— Original copies of certificates of titles lost or destroyed in the offices of Register of Deeds as well as liens and encumbrances affecting the lands covered by such titles shall be reconstituted judicially in accordance with the procedure prescribed in Republic Act No. 26 insofar as not inconsistent with this Decree. The procedure relative to administrative reconstitution of lost or destroyed certificate prescribed in said Act may be availed of only in case of substantial loss or destruction of the land titles due to fire, flood or other *force majeure* as determined by the Administrator of the Land Registration Authority: *Provided*, That the number of certificates of titles lost or damaged should be at least ten percent (10%) of the total number in the possession of the Office of the Register of Deeds: *Provided, further,* that in no case shall the number of certificates of titles lost or damaged be less than five hundred (500). Based on the foregoing, reconstitution of a lost or destroyed certificate of title may be done judicially, in accordance with the special procedure laid down in Republic Act No. 26; or administratively, in accordance with the provisions of Republic Act No. 6732.

7. ID.; ID.; ID.; RECONSTITUTION UNDER R.A. NO. 26.— The nature of the action for reconstitution of a certificate of title under Republic Act No. 26, entitled "An Act Providing a Special Procedure for the Reconstitution of Torrens Certificate of Title Lost or Destroyed," denotes a restoration of the instrument, which is supposed to have been lost or destroyed, in its original form and condition. The purpose of such an action is merely to have the certificate of title reproduced, after proper proceedings, in the same form it was in when its loss or destruction occurred. The same Republic Act No. 26 specifies the requisites to be met for the trial court to acquire jurisdiction

over a petition for reconstitution of a certificate of title. As we held in *Ortigas & Co. Ltd. Partnership v. Velasco*, failure to comply with any of these jurisdictional requirements for a petition for reconstitution renders the proceedings null and void. Thus, in obtaining a new title in lieu of the lost or destroyed one, Republic Act No. 26 laid down procedures which must be strictly followed in view of the danger that reconstitution could be the source of anomalous titles or unscrupulously availed of as an easy substitute for original registration of title proceedings.

8. ID.; ID.; ID.; ID.; SOURCES FOR RECONSTITUION OF OCTS AND TCTS.— Sections 2 and 3 of Republic Act No. 26 identify the sources for reconstitution of title. Section 2 enumerates the sources for reconstitution of OCTs: Section 2. Original Certificates of Title shall be reconstituted from such of the sources hereunder enumerated as may be available, in the following order: (a) The owner's duplicate of the certificate of title; (b) The co-owner's, mortgagee's, or lessee's duplicate of the certificate of title; (c) A certified copy of the certificate of title, previously issued by the register of deeds or by a legal custodian thereof; (d) An authenticated copy of the decree of registration or patent, as the case may be, pursuant to which the original certificate of title was issued; (e) A document, on file in the registry of deeds, by which the property, the description of which is given in said document, is mortgaged, leased or encumbered, or an authenticated copy of said document showing that its original had been registered; and (f) Any other document which, in the judgment of the court, is sufficient and proper basis for reconstituting the lost or destroyed certificate of title. TCTs, on the other hand, may be reconstituted from the sources recognized under Section 3, as may be available, and in the order they are presented: Sec. 3. Transfer certificates of title shall be reconstituted from such of the sources hereunder enumerated as may be available, in the following order: (a) The owner's duplicate of the certificate of title; (b)The co-owner's, mortgagee's, or lessee's duplicate of the certificate of title; (c) A certified copy of the certificate of title, previously issued by the register of deeds or by a legal custodian thereof; (d) The deed of transfer or other document, on file in the registry of deeds, containing the description of the property, or an authenticated copy thereof, showing that

its original had been registered, and pursuant to which the lost or destroyed transfer certificate of title was issued; (e)A document, on file in the registry of deeds, by which the property, the description of which is given in said document, is mortgaged, leased or encumbered, or an authenticated copy of said document showing that its original had been registered; and (f) Any other document which, in the judgment of the court, is sufficient and proper basis for reconstituting the lost or destroyed certificate of title.

9. ID.; ID.; ID.; ID.; FOR TCTs TO BE RECONSTITUTED BASED ON THE OWNERS DUPLICATE, NOTICE TO ADJOINING OWNERS IS NOT JURISDICTIONAL.— Based on the owner's duplicate of said TCT, a source named under **Section 3(a) of Republic Act No. 26** the publication, posting and notice requirements for such a petition are governed by Section 10 in relation to Section 9 of Republic Act No. 26. Section 10 provides: Sec. 10. Nothing hereinbefore provided shall prevent any registered owner or person in interest from filing the petition mentioned in section five of this Act directly with the proper Court of First Instance, based on sources enumerated in **Section 2 (a), 2(b), 3(a), 3(b), and /or 4(a)** of this Act; *Provided, however*, That the Court shall cause a **notice of the petition, before hearing and granting the same, to be published in the manner stated in section nine hereof:** *and, provided, further*, That certificates of title reconstituted pursuant to this section shall not be subject to the encumbrances referred to in section seven of this Act. In relation to the foregoing, the provisions of Section 9 on the publication of the notice of the Petition for Reconstitution reads: Section 9. x x x Thereupon, the court shall cause a notice of the petition to be published, at the expense of the petitioner, twice in the successive issues of the Official Gazette, and to be posted on the main entrance of the provincial building and of the municipal building of the municipality or city in which the land lies, at least thirty days prior to the date of hearing, and after hearing, shall determine the petition and render such judgment as justice and equity may require. The notice shall specify, among other things, the number of the certificate of title, the name of the registered owner, the names of the interested parties appearing in the reconstituted certificate of title, the location of the property, and the date on which all persons having an interest in the property must appear and

file such claim as they may have. x x x. It is evident from a perusal of Section 10 of Republic Act No. 26, as quoted above, that it does not mandate that notice be specifically sent to adjoining property owners; it only necessitated publication and posting of the notice of the Petition for Reconstitution in accordance with Section 9 of the same Act. In *Puzon*, we explained that when the reconstitution is based on an extant owner's duplicate TCT, the main concern is the authenticity and genuineness of the certificate, which could best be determined or contested by the government agencies or offices concerned. The adjoining owners or actual occupants of the property covered by the TCT are hardly in a position to determine the genuineness of the certificate; hence, their participation in the reconstitution proceedings is not indispensable and notice to them is not jurisdictional.

10. CIVIL LAW; LACHES; DEFINED.— *Laches* is the negligence or omission to assert a right within a reasonable time, warranting the presumption that the party entitled to assert it either has abandoned or declined to assert it. In *Heirs of Eulalio Ragua v. Court of Appeals*, we denied, on the ground of *laches*, therein petitioners' petition for reconstitution of title, which was filed only **19 years** after the original of said title was allegedly lost or destroyed.

11. ID.; PROPERTY OWNERSHIP; REALTY TAX PAYMENTS, NOT CONCLUSIVE EVIDENCE OF OWNERSHIP.— Realty tax payments are not conclusive evidence of ownership but are mere indicia of possession in the concept of owners. Neither are realty tax payment receipts sufficient to warrant reconstitution.

APPEARANCES OF COUNSEL

Dominguez & Associates Law Office for petitioners.
The Solicitor General 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 Revised Rules of Court filed by petitioners Enriquita

Angat (Enriquita) and the legal heirs of Federico Angat (Federico) against the respondent Republic of the Philippines (Republic), assailing the Decision[1] dated 5 December 2005 and Resolution[2] dated 4 December 2006 of the Court of Appeals in CA-G.R. CV No. 72740. In its assailed Decision, the Court of Appeals reversed the Order[3] dated 27 November 2000 of the Regional Trial Court (RTC), Branch XV, Naic, Cavite, in LRC Case No. 1331, which granted the Petition for Reconstitution of the original copy of Transfer Certificate of Title (TCT) No. T-4399 allegedly issued by the Register of Deeds of Cavite in the names of Federico[4] and Enriquita. The Court of Appeals denied petitioners' Motion for Reconsideration in its assailed Resolution dated 4 December 2006. Petitioners are also invoking in this Petition the power of this Court to issue a writ of *certiorari* under Rule 65 of the Revised Rules of Court, averring that the Court of Appeals acted without or in excess of jurisdiction or with grave abuse of discretion in dismissing the Petition for Reconstitution in LRC Case No. 1331.

The facts show that sometime in February 1999, Federico and Enriquita (sister of Federico) instituted LRC Case No. 1331 by filing before the RTC a verified Petition[5] for the reconstitution of the original copy of TCT No. T-4399 covering a 3,033,846-square meter parcel of land located in Sapang, Ternate, Cavite (subject property), presenting the owners' duplicate copy of said TCT in their possession. Federico and Enriquita claimed that since 6 October 1955, the subject property has been registered with the Registry of Deeds of Cavite in their names, as the true and absolute owners thereof, under TCT No. T-4399, covered by a certain plan PSU-91002. On 7 June 1959, the old

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[1] Penned by Associate Justice Santiago Javier Ranada with Associate Justices Roberto A. Barrios and Mario L. Guarina III, concurring; *rollo,* pp. 131-140.

[2] *Rollo,* p. 152.

[3] Issued by Judge Napoleon V. Dilag; *rollo,* pp. 67-81.

[4] Now deceased.

[5] Annex A; *rollo,* pp. 29-31.

Provincial Capitol Building housing the former office of the Register of Deeds of Cavite was burned to ashes, totally destroying all the titles and documents kept inside the office, including the original copy of TCT No. T-4399.

According to Federico and Enriquita, the owners' duplicate copy of TCT No. T-4399 was intact and has been in their possession since the time of its issuance and up to the present. The owners' duplicate copy of TCT No. T-4399 has not been delivered to any other person or entity to secure payment or performance of any obligation nor was any transaction or agreement relative to said TCT presented or pending before the Registry of Deeds of Cavite when its former office was burned. No other lien or encumbrance affecting TCT No. T-4399 exists, except the right of Federico and Enriquita therein.

Federico and Enriquita attached to their Petition for Reconstitution a photocopy of their owners' duplicate certificate of TCT No. T-4399.[6] They also appended to the Petition, however, a Certification[7] dated 25 March 1998 issued by the Register of Deeds of Cavite stating that:

> This is to certify that per records on file in this registry, Transfer Certificate of Title No. T-4399, registered in the names of Federico A. Angat and Enriquita A. Angat, located in the Municipality of Ternate, Cavite, containing an area of THREE MILLION THIRTY THREE THOUSAND AND EIGHT HUNDRED FORTY SIX SQUARE METERS (3,033,846), more or less, issued on October 6, 1955 is not existing and does not form part of our records. Based on the fact that all records and titles were burned during the June 7, 1959 fire which razed to the ground the Old Capitol Building of Cavite City housing the Office of the Register of Deeds we could not now find OCT No. 391 and TCT No. T-4399 or any trace thereof and their supporting papers for its issuance including the Entry Book on which the pertinent documents were inscribed.

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[6] Annex A of the Petition for Reconstitution; *id.* at 32.

[7] Issued by Vicente A. Garcia, Registrar of Deeds, Cavite Province; *id.* at 33.

This certificate is issued upon the request of Federico A. Angat and Enriquita A. Angat of Bo. Sapang, Municipality of Ternate, Cavite.

Finding the Petition to be sufficient in form and substance, the RTC issued an Order dated 16 February 1999, setting the initial hearing in LRC Case No. 1331 on 10 June 1999 at 8:30 in the morning.[8]

In compliance with the publication and posting requirements, the RTC Order dated 16 February 1999 was published in the 3 May 1999 and 10 May 1999 issues of the Official Gazette. The said Order was also posted on the bulletin boards of the Provincial Capitol Building in Trece Martires City; the Municipal Building of Ternate, Cavite; and the *Barangay* Hall where the subject property is located.

Copies of the Petition and the RTC Order dated 16 February 1999 in LRC Case No. 1331 were served by registered mail on the Office of the Solicitor General (OSG), the provincial prosecutor, the Director of Lands, the Register of Deeds of Cavite, as well as the adjoining lot owners, namely, Ambrocio Arca, heirs of Mariano Angat, Santiago de Guia, and the Office of the Provincial Governor, Cavite, representing Palikpikan Creek. However, all the notices to the adjoining owners were returned unserved for the following reasons: Ambrocio Arca: unlocated, no such name; heirs of Mariano Angat: deceased; Santiago de Guia: unlocated, no such name; and the Office of the Provincial Governor, representing Palikpikan Creek: refused to receive.

On 9 June 1999, the OSG entered its appearance and deputized the Public Prosecutor of Naic, Cavite, to represent the Republic.

To establish the jurisdiction of the RTC over their Petition in LRC Case No. 1331, Enriquita and Federico presented and marked the following exhibits at the hearing held on 14 July 1999:

Exhibit A	-	verified petition dated 3 February 1999
Exhibit A-1	-	Page 2 of Exhibit A
Exhibit A-2	-	Page 3 of Exhibit A;
Exhibit B	-	Order of the Court dated 16 February 1999

[8] Annex B of the Petition for Reconstitution; *id.* at 34.

Exhibit B-1	-	Return Card from the LRA
Exhibit B-2	-	Return Card from the Register of Deeds of Cavite
Exhibit B-3	-	Return Card from the Provincial Prosecutor
Exhibit B-4	-	Return Card from the Solicitor General
Exhibit C	-	Certificate of Publication dated 17 May 1999 issued by the Director of Bureau of Printing
Exhibit C-1	-	Issue of the Official Gazette for 19 May 1999
Exhibit C-2	-	Portion where Order was published
Exhibit C-3	-	Issue of the Official Gazette for 10 May 1999
Exhibit C-4	-	Portion where the Order was published
Exhibit D	-	Certification dated 7 June 1999 by Michael R. Antonio, adjoining owner
Exhibit D-1	-	Registry receipt showing notice to Ambrosio Arca, adjoining owner
Exhibit D-2	-	Registry receipt showing notice to Mariano Angat
Exhibit D-3	-	Registry receipt showing notice to Santiago de Guia
Exhibit D-4	-	Registry receipt showing notice to Palikpikan Creek
Exhibit E	-	Certificate of Posting issued by the Sheriff
Exhibit F	-	Notice of Appearance from the Solicitor General
Exhibit F-1	-	Letter to Public Prosecutor in Naic, Cavite[9]

On 26 August 1999, Federico and Enriquita, in compliance with the provisions of Land Registration Authority (LRA) Circular No. 35, submitted to the LRA the survey plan of the subject property, PSU-91002, the tracing cloth plan with two blueprint copies thereof; the technical description of the subject property; and the Certification dated 25 March 1998 of the Register of Deeds of Cavite.[10] The blueprint of the survey plan, PSU-91002, dated 27 May 1930,

[9] *Id.* at 69-70.

[10] Petitioners forwarded the following documents:

(a) Signed copy of the Petition for Reconstitution of the original copy of TCT No. T-4399 in the names of petitioners (plus annexes A and B);

submitted by Federico and Enriquita to the LRA in accordance with LRA Circular No. 35, identifies the adjoining property owners as Ambrocio Arca, heirs of Mariano Angat, Santiago de Guia, and the Palikpikan Creek, to whom Federico and Enriquita sent notices, *via* registered mail, of the initial hearing of LRC Case No. 1331 set for 10 June 1999.

At the 9 September 1999 hearing, Enriquita and Federico presented and marked additional documentary exhibits to establish the jurisdiction of the RTC, namely:

Exhibit G	-	Compliance dated 26 August 1999 showing submission of copy of the Petition, tracing cloth plan of land subject of registration, copies of the technical description and proof of burning the original records
Exhibit G-1	-	Letter to the Administrator, LRA
Exhibit G-2	-	Copy of Petition for Reconstitution
Exhibit G-3	-	Blue print copy of the Plan Psu-91002
Exhibit G-4	-	Technical description of the property
Exhibit G-4-a	-	Technical description
Exhibit G-5	-	Certification issued by the Register of Deeds of Cavite
Exhibit H	-	Certification dated 5 June 1998 issued by the Administrator, LRA[11]

On 28 October 1999, the LRA submitted a Report[12] to the RTC, relaying the following information:

COMES NOW the Land Registration Authority and the Honorable Court, respectfully reports that:

(b) Tracing cloth plan of plan PSU-91002, plus two blueprint copies of plan PSU-91002, duly approved by the Director of Lands;

(c) Original and two photocopies of the technical description of the land covered by plan PSU-91002 and TCT No. T-4399 of the Registry of Deeds of Cavite; and

(d) Certification issued by the Register of Deeds of Cavite, regarding the burning of its former office, including the original copy of TCT No. T-4399 in the names of Federico and Enriquita.

[11] *Rollo,* p. 71.

[12] *Id.* at 41.

(1) The present petition seeks the reconstitution of the original Copy of Transfer Certificate of Title No. T-4399, allegedly lost or destroyed and supposedly covering plan PSU-91002, situated in the barrio of Sapang, Municipality of Ternate, Province of Cavite.

(2) From our "Record Book of Decrees" GLRO Record No. 51767 in which plan PSU-91002 was applied, Decree No. 642113 was issued on July 27, 1937.

(3) The technical description of plan PSU-91002, were verified correct by this Authority pursuant to the provisions of Section 3(a) of Republic Act No. 26.

WHEREFORE, the foregoing information anent the property in question is respectfully submitted for consideration in the resolution of the instant petition, and in (sic) the Honorable Court, after notice and hearing, finds justification pursuant to Section 3(a) of Republic Act No. 26 to grant the same. Provided, however, that no certificate of title covering the same parcel of land exist (sic) in the office of the Register of Deeds Concerned.

On motion of the counsel of Federico and Enriquita, there being no oppositor nor written opposition, the RTC declared a general default against the public.

During the *ex parte* hearing held on 19 January 2000, Federico testified that he was 78 years old, married, a real estate broker, and was one of the petitioners in LRC Case No. 1331. He further testified that he had in his possession the owners' duplicate certificate of TCT No. T-4399 in his and his sister Enriquita's names. The subject property covered by TCT No. T-4399 was previously owned by his grandfather, Mariano Angat (Mariano), to whom was issued Original Certificate of Title (OCT) No. 391. After Mariano's death, the subject property was inherited by his father, Gregorio Angat (Gregorio). Sometime in 1955, under unexplained circumstances, Gregorio[13] delivered to Federico (determined to be 34 years old at that time) and Enriquita TCT No. T-4399, already registered in their names. The original copy of TCT No. T-4399 was burned during the fire on 7 June

[13] Gregorio eventually passed away in 1967.

1959 at the old Provincial Capitol Building of Cavite, housing the Registry of Deeds. He referred to the LRA Report dated 28 October 1999 which affirmed the existence and accuracy of the technical description of PSU-91002. He also presented the Certification dated 18 November 1998 of the Municipal Treasurer of Ternate, Cavite, showing that the real property taxes on the subject property for 1998 were paid in the name of his grandfather, Mariano, under Tax Declaration No. 97-03524. Enriquita no longer took the witness stand.

On 6 July 2000, Ternate Development Corporation (TDC) filed a Motion for Leave to Intervene and a Complaint-in-Intervention, questioning the authenticity and genuineness of TCT No. T-4399. It claimed that a portion of the subject property covered by TCT No. T-4399, with an area of 1,783,084 square meters, is owned by and already registered in the name of TDC under TCT No. (T-97541) RT-19915 of the Registry of Deeds of Cavite.[14]

Federico and Enriquita opposed the Motion for Leave to Intervene of TDC.

The RTC, in an Order dated 10 November 2000, denied the Motion for Leave to Intervene of TDC reasoning that TDC could not challenge the validity of TCT No. T-4399 in the reconstitution proceedings since it would constitute a collateral attack on the title of Federico and Enriquita. The RTC declared that the reconstitution proceedings in LRC Case No. 1331 was not the proper forum to resolve the issue of authenticity/genuineness of title sought to be reconstituted, nor a remedy to confirm or adjudicate ownership.[15] It concluded that a separate civil action must be instituted to assail the validity of or seek the annulment of the certificate of title since the same cannot be done in the reconstitution proceedings where the issuance of the reconstituted title is ministerial on the part of the court after a factual finding that the original was indeed existing but was lost or destroyed.

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[14] CA *rollo,* pp. 65-72.

[15] Order dated 10 November 2000; *rollo,* pp. 62-66.

After trial and consideration of the oral and documentary evidence submitted by Federico and Enriquita, the RTC proceeded to rule on the merits of the Petition for Reconstitution in LRC Case No. 1331. In an Order dated 27 November 2000, the RTC granted the Petition and decreed thus:

> WHEREFORE, this Court, finding the petition to be well-taken, hereby grants the same and orders the Register of Deeds of Cavite Province to reconstitute the original copy of Transfer Certificate of Title No. T-4399 as shown on plan Psu-91002 in the name of Federico A. Angat and Enriquita A. Angat, both of legal age, Filipino citizens, both single, and both with residence and postal address at Sapang, Ternate, Cavite, subject to existing liens and encumbrances with the annotation at the back thereof and that said title was reconstituted and issued in lieu of the lost one which is hereby declared null and void for all legal intents and purposes.[16]

The Republic appealed the RTC Order dated 27 November 2000 to the Court of Appeals, claiming that the RTC did not acquire jurisdiction over the reconstitution proceedings on the following grounds: (a) no showing that the owners of the adjacent properties were duly notified according to Sections 12 and 13 of Republic Act No. 26; and (b) failure of Federico and Enriquita to prove their valid interest in the subject property covered by TCT No. T-4399. The appeal was docketed as CA-G.R. CV No. 72740.

On 5 December 2005, the Court of Appeals issued a Decision granting the appeal of the Republic and reversing the RTC Order dated 27 November 2000. The *fallo* of the Decision of the appellate court reads:

> WHEREFORE, the decision appealed from is REVERSED and SET ASIDE. The petition for reconstitution of Federico A. Angat and Enriquita A. Angat, is DISMISSED.[17]

The Court of Appeals sustained the arguments raised by the OSG, and held that the RTC did not acquire jurisdiction over

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[16] *Id.* at 80-81.

[17] *Id.* at 139.

the Petition for Reconstitution because the notices of the 10 June 1999 hearing sent to the owners of the adjoining properties *via* registered mail were returned without having been served on them. The names of the owners of the adjoining properties were taken from the survey plan made in 1930, and it was not surprising that by the time the notices were sent in 1999, 69 years later, these persons could no longer be located. If it were true that Federico regularly visited the subject property, he would know the present owners of the adjoining properties and accordingly sent notices to them. The Court of Appeals also found that Federico and Enriquita failed to prove that at the time the original copy of TCT No. T-4399 was lost, they were the only lawful owners of the subject property.

In a Resolution dated 3 July 2006, the Court of Appeals declared the Decision dated 5 December 2005 final and executory for the reason that no motion for reconsideration thereof had been filed. The appellate court pronounced:

> Considering the Judicial Records Division verification report that as of May 10, 2006, no Motion for Reconsideration nor Supreme Court Petition was filed, the decision promulgated on December 5, 2005 has attained finality on December 30, 2005. Said decision may now be ordered entered in the Book of Entries of Judgments.[18]

Only after the Court of Appeals issued the aforementioned Resolution did Federico and Enriquita file a Motion for Reconsideration dated 6 September 2006, asserting that a copy of the Decision dated 5 December 2005 "was secured" by their counsel through his clerk only on 5 September 2006. They argued in their Motion that based on Sections 2 and 3 of Republic Act No. 26, there is no requirement that the adjoining property owners be notified in a petition for reconstitution of the original copy of the TCT, where the reconstitution is based on an existing owners' duplicate thereof.

The Court of Appeals, in a Resolution dated 4 December 2006, denied the Motion for Reconsideration of Federico and Enriquita since its Decision dated 5 December 2005 had become final and executory.

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[18] CA *rollo*, p. 130.

Hence, the instant Petition, where petitioners Enriquita and the heirs of Federico[19] raise the following issues:

I.

WHETHER OR NOT THE RESPONDENT COURT OF APPEALS ERRED IN DISMISSING THE PETITION FOR RECONSTITUTION OF PETITIONERS FEDERICO A. ANGAT AND ENRIQUITA A. ANGAT ON THE GROUNDS RAISED BY THE OFFICE OF THE SOLICITOR GENERAL IN ITS APPEAL.

II.

WHETHER OR NOT THE RESPONDENT COURT OF APPEALS ALSO ERRED IN REQUIRING THE PETITIONERS TO NOTIFY THE ADJOINING OWNERS, ALTHOUGH THE PETITIONERS ALSO SUBSTANTIALLY COMPLIED WITH THE ADDITIONAL REQUIREMENTS IMPOSED BY THE TRIAL COURT.

III.

FINALLY, WHETHER OR NOT THE RESPONDENT COURT OF APPEALS ACTED IN EXCESS OF ITS JURISDICTION WHEN THE RESPONDENT COURT DID NOT APPLY THE CORRECT LAW IN THE PRESENT CASE WHICH IS R.A. 26, SECTIONS 2 AND 3.

Petitioners insist that the Petition for Reconstitution of the original copy of TCT No. T-4399 filed by Federico and Enriquita complied with all the legal requirements therefor. They claim that the Court of Appeals committed serious error in requiring notice to adjoining property owners. Petitioners cite *Puzon v. Sta. Lucia Realty and Development, Inc.*,[20] in which the Court ruled that notice to adjoining property owners is not necessary where the basis for reconstitution is the owner's duplicate, following Section 10, in relation to Section 9, of Republic Act No. 26. Assuming *arguendo* that such notice is mandatory, petitioners contend that they were able to substantially comply

[19] Federico passed away prior to the filing of the Petition at bar, but the records do not reveal the exact date of his death.

[20] 406 Phil. 263 (2001).

with the same, only that the notices they sent to the adjoining property owners were returned unserved.

The Republic, represented by the OSG, reiterates in its Comment the arguments it earlier raised before the Court of Appeals. According to the OSG, the RTC gravely erred when it assumed jurisdiction over the Petition for Reconstitution despite failure by Federico and Enriquita to comply with the notice requirements under Section 13 of Republic Act No. 26. It should be recalled that notices to the adjoining property owners were returned unserved for various reasons. The OSG is adamant in its stance that nothing but strict compliance with the requirements of the law will do, and failure to do the same prevents the RTC from acquiring jurisdiction over the Petition for Reconstitution and voids the whole reconstitution proceedings. Likewise, the OSG maintains that Federico and Enriquita were not able to show that they were the only owners of the subject property at the time of the loss of TCT No. T-4399. Finally, the OSG asserts that the Petition at bar deserves outright dismissal considering that the appealed Decision of the Court of Appeals had already become final and executory.

We find that there is no merit in the present Petition.

At the outset, we note that the assailed Decision of the Court of Appeals dismissing the Petition for Reconstitution of Federico and Enriquita is already final and executory. The Court of Appeals promulgated its Decision on **5 December 2005**. However, petitioners insist that the counsel of Enriquita and Federico received a copy thereof only on **5 September 2006**.[21] A simple examination of the records of the case would belie petitioners' claim, for the Registry Receipt[22] and Certification[23] from the Post Office indicate that a copy of the said Decision was received on behalf of Federico and Enriquita by one Melanie Angat on **14 December 2005**.

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[21] *Rollo,* p. 12.

[22] CA *rollo,* p. 125.

[23] *Id.* at 127.

Under Section 2, Rule 13 of the Revised Rules of Court on the service of pleadings, judgments and other papers, it is provided that if any party appeared by counsel, service upon him shall be made upon his counsel, or one of them, unless service upon the party himself is ordered by the court. The court may order service upon the party himself when the attorney of record cannot be located, either because he gave no address or changed his given address. According to Section 9, Rule 13 of the Revised Rules of Court, service of judgments, final orders or resolutions may be done either personally, by registered mail, or by publication.

The records clearly indicate that the notice and copy of the 5 December 2005 Decision, originally sent to Federico and Enriquita's counsel of record, had to be sent, instead, to Federico and Enriquita's address by registered mail, when the attorney of record could not be located because of a change in his given address without notifying the Court of Appeals. The appellate court ordered that the notice and copy of its Decision be sent to said address wherein they were received on 14 December 2005 by Melanie Angat – a person of suitable age and discretion, who undeniably bears the same surname and resided at the same address as petitioners. In addition, the registry return receipt stated that "a registered article must not be delivered to anyone but the addressee, or upon the addressee's written order." Thus, Melanie Angat, who received the notice and copy of the 5 December 2005 Decision of the Court of Appeals, was presumably able to present a written authorization to receive the same and we can assume that the said documents were duly received in the ordinary course of events. It is a legal presumption, borne of wisdom and experience, that official duty has been regularly performed; that the proceedings of a judicial tribunal are regular and valid, and that judicial acts and duties have been and will be duly and properly performed. The burden of proving the irregularity in official conduct, if any, is on the part of petitioners who in this case clearly failed to discharge the same.[24]

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[24] *Masagana Concrete Products v. National Labor Relations Commission*, 372 Phil. 459, 471-472 (1999) .

Section 1, Rule 52 of the Revised Rules of Court provides that a party may file a motion for reconsideration of a judgment or final resolution within 15 days from notice thereof, with proof of service on the adverse party. Evidently, the filing of the Motion for Reconsideration of the 5 December 2005 Decision only on **6 September 2006** was way beyond the reglementary period for the same.

The 15-day reglementary period for filing a motion for reconsideration is non-extendible.[25] Provisions of the Rules of Court prescribing the time within which certain acts must be done or certain proceedings taken are considered absolutely indispensable to the prevention of needless delays and to the orderly and speedy discharge of judicial businesses. Strict compliance with such rules is mandatory and imperative.[26]

Without a motion for reconsideration of the 5 September 2005 Decision having been timely filed with the Court of Appeals, Enriquita and Federico, who was later on substituted by his heirs, had also lost their right to appeal the said Decision to us. For purposes of determining its timeliness, a motion for reconsideration may properly be treated as an appeal. As a step to allow an inferior court to correct itself before review by a higher court, a motion for reconsideration must necessarily be filed within the period to appeal. When filed beyond such period, the motion for reconsideration *ipso facto* forecloses the right to appeal.[27]

Thus, the Motion for Reconsideration, being filed beyond the reglementary period, did not toll the Decision dated 5 December 2005 of the Court of Appeals from becoming final and executory. As such, the Decision is past appellate review

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[25] *Philippine Coconut Authority v. Garrido*, 424 Phil. 904, 902 (2002).

[26] *Tan v. Tan*, G.R. No. 133805, 29 June 2004, 433 SCRA 44, 49, citing *Basco v. Court of Appeals*, 383 Phil. 671, 685 (2000). See also *Macabingkil v. People's Homesite and Housing Corp.*, 164 Phil. 328, 339-340 (1976).

[27] *Insular Life Assurance Co., Ltd v. National Labor Relations Commission*, G.R. No. 74191, 21 December 1987, 156 SCRA 740, 746.

and constitutes *res judicata* as to every matter offered and received in the proceedings below as well as to any other matter admissible therein and which might have been offered for that purpose.[28]

We are without jurisdiction to modify, much less reverse, a final and executory judgment. In *Paramount Vinyl Products Corporation v. National Labor Relations Commission*,[29] we recognized the well-settled rule that the perfection of an appeal within the statutory or reglementary period is not only mandatory, but jurisdictional. The failure to interpose a timely appeal (or a motion for reconsideration) renders the assailed decision, order or award final and executory that deprives the appellate body of any jurisdiction to alter the final judgment. The rule is applicable indiscriminately to one and all since the rule is grounded on fundamental consideration of public policy and sound practice that at the risk of occasional error, the judgment of courts and award of quasi-judicial agencies must become final at some definite date fixed by law.

Although in few instances, we have disregarded procedural lapses so as to give due course to appeals filed beyond the reglementary period, we did so on the basis of strong and compelling reasons, such as serving the ends of justice and preventing a miscarriage thereof. We do not find such reasons extant in this case, especially considering that petitioners herein do not admit that the Motion for Reconsideration before the Court of Appeals was filed out of time and even attempt to mislead this Court on the true date the notice of the 5 December 2005 Decision of the Court of Appeals was received.

Clearly, we could no longer overturn the dismissal by the Court of Appeals of the Petition for Reconstitution of Federico and Enriquita, its Decision dated 5 December 2005, decreeing the same, being already final and executory. However, we do find it necessary to clarify one problematic pronouncement made

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[28] *Melotindos v. Tobias*, 439 Phil. 910, 915 (2002).

[29] G.R. No. 81200, 17 October 1990, 190 SCRA 525.

by the appellate court in its Decision in order to prevent a similar confusion on the matter in the future.

One of the reasons why the Court of Appeals ordered the dismissal of the Petition for Reconstitution of Federico and Enriquita was the lack of notice to the adjoining property owners, which supposedly deprived the RTC of jurisdiction over the said Petition.

Section 110 of Presidential Decree No. 1529, otherwise known as the Property Registration Decree, as amended by Republic Act No. 6732, allows the reconstitution of lost or destroyed original Torrens title, to wit:

> SEC. 110. Reconstitution of lost or destroyed original of Torrens title. — Original copies of certificates of titles lost or destroyed in the offices of Register of Deeds as well as liens and encumbrances affecting the lands covered by such titles shall be reconstituted judicially in accordance with the procedure prescribed in Republic Act No. 26 insofar as not inconsistent with this Decree. The procedure relative to administrative reconstitution of lost or destroyed certificate prescribed in said Act may be availed of only in case of substantial loss or destruction of land titles due to fire, flood or other *force majeure* as determined by the Administrator of the Land Registration Authority: *Provided*, That the number of certificates of titles lost or damaged should be at least ten percent (10%) of the total number in the possession of the Office of the Register of Deeds: *Provided, further*, that in no case shall the number of certificates of titles lost or damaged be less than five hundred (500).

Based on the foregoing, reconstitution of a lost or destroyed certificate of title may be done judicially, in accordance with the special procedure laid down in Republic Act No. 26; or administratively, in accordance with the provisions of Republic Act No. 6732. By filing the Petition for Reconstitution with the RTC, docketed as LRC Case No. 1331, Federico and Enriquita sought judicial reconstitution of TCT No. T-4399, governed by Republic Act No. 26.

The nature of the action for reconstitution of a certificate of title under Republic Act No. 26, entitled "An Act Providing

a Special Procedure for the Reconstitution of Torrens Certificate of Title Lost or Destroyed," denotes a restoration of the instrument, which is supposed to have been lost or destroyed, in its original form and condition.[30] The purpose of such an action is merely to have the certificate of title reproduced, after proper proceedings, in the same form it was in when its loss or destruction occurred.[31] The same Republic Act No. 26 specifies the requisites to be met for the trial court to acquire jurisdiction over a petition for reconstitution of a certificate of title. As we held in *Ortigas & Co. Ltd. Partnership v. Velasco*,[32] failure to comply with any of these jurisdictional requirements for a petition for reconstitution renders the proceedings null and void. Thus, in obtaining a new title in lieu of the lost or destroyed one, Republic Act No. 26 laid down procedures which must be strictly followed in view of the danger that reconstitution could be the source of anomalous titles or unscrupulously availed of as an easy substitute for original registration of title proceedings.

Sections 2 and 3 of Republic Act No. 26 identify the sources for reconstitution of title. Section 2 enumerates the sources for reconstitution of OCTs:

Section 2. Original Certificates of Title shall be reconstituted from such of the sources hereunder enumerated as may be available, in the following order:

(a) The owner's duplicate of the certificate of title;

(b) The co-owner's, mortgagee's, or lessee's duplicate of the certificate of title;

(c) A certified copy of the certificate of title, previously issued by the register of deeds or by a legal custodian thereof;

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[30] *Strait Times, Inc. v. Court of Appeals*, 356 Phil. 217, 230 (1998).

[31] *Republic of the Philippines v. Holazo*, 480 Phil. 828, 838 (2004).

[32] 343 Phil. 115 (1997).

(d) An authenticated copy of the decree of registration or patent, as the case may be, pursuant to which the original certificate of title was issued;

(e) A document, on file in the registry of deeds, by which the property, the description of which is given in said document, is mortgaged, leased or encumbered, or an authenticated copy of said document showing that its original had been registered; and

(f) Any other document which, in the judgment of the court, is sufficient and proper basis for reconstituting the lost or destroyed certificate of title.

TCTs, on the other hand, may be reconstituted from the sources recognized under Section 3, as may be available, and in the order they are presented:

Sec. 3. Transfer certificates of title shall be reconstituted from such of the sources hereunder enumerated as may be available, in the following order:

(a) The owner's duplicate of the certificate of title;

(b) The co-owner's, mortgagee's, or lessee's duplicate of the certificate of title;

(c) A certified copy of the certificate of title, previously issued by the register of deeds or by a legal custodian thereof;

(d) The deed of transfer or other document, on file in the registry of deeds, containing the description of the property, or an authenticated copy thereof, showing that its original had been registered, and pursuant to which the lost or destroyed transfer certificate of title was issued;

(e) A document, on file in the registry of deeds, by which the property, the description of which is given in said document, is mortgaged, leased or encumbered, or an authenticated copy of said document showing that its original had been registered; and

(f) Any other document which, in the judgment of the court, is sufficient and proper basis for reconstituting the lost or destroyed certificate of title.

It is worth stressing that Federico and Enriquita sought the reconstitution of the original copy of TCT No. T-4399 based on the owner's duplicate of said TCT, a source named under **Section 3(a) of Republic Act No. 26**. The publication, posting and notice requirements for such a petition are governed by Section 10 in relation to Section 9 of Republic Act No. 26. Section 10 provides:

> Sec.10. Nothing hereinbefore provided shall prevent any registered owner or person in interest from filing the petition mentioned in section five of this Act directly with the proper Court of First Instance, based on sources enumerated in **Sections 2(a), 2(b), 3(a), 3(b), and/or 4(a)** of this Act: *Provided, however,* That the Court shall cause a **notice of the petition, before hearing and granting the same, to be published in the manner stated in section nine hereof**: *and, provided, further,* That certificates of title reconstituted pursuant to this section shall not be subject to the encumbrance referred to in section seven of this Act. (Emphasis ours.)

In relation to the foregoing, the provisions of Section 9 on the publication of the notice of the Petition for Reconstitution reads:

> Section 9. x x x Thereupon, the court shall cause a notice of the petition to be published, at the expense of the petitioner, twice in successive issues of the Official Gazette, and to be posted on the main entrance of the provincial building and of the municipal building of the municipality or city in which the land lies, at least thirty days prior to the date of hearing, and after hearing, shall determine the petition and render such judgment as justice and equity may require. The notice shall specify, among other things, the number of the certificate of title, the name of the registered owner, the names of the interested parties appearing in the reconstituted certificate of title, the location of the property, and the date on which all persons having an interest in the property must appear and file such claim as they may have. x x x.

It is evident from a perusal of Section 10 of Republic Act No. 26, as quoted above, that it does not mandate that notice be specifically sent to adjoining property owners; it only necessitated publication and posting of the notice of the Petition

for Reconstitution in accordance with Section 9 of the same Act.

Sections 12 and 13 of Republic Act No. 26,[33] requiring notice to adjoining property owners, are actually irrelevant to the Petition

[33] SEC. 12. Petitions for reconstitution from sources enumerated in Sections 2(c), 2(d), 2(e), 2(f), 3(c), 3(d), 3(e), and/or 3(f) of this Act, shall be filed with the proper Court of First Instance, by the registered owner, his assigns, or any person having an interest in the property. The petition shall state or contain, among other things, the following: (a) that the owner's duplicate of the certificate of title had been lost or destroyed; (b) that no co-owner's, mortgagee's, or lessee's duplicate had been issued, or, if any had been issued, the same had been lost or destroyed; (c) the location, area and boundaries of the property; (d) the nature and description of the buildings or improvements, if any, which do not belong to the owner of the land, and the names and addresses of the owners of such buildings or improvements; (e) the names and addresses of the occupants or persons in possession of the property, of the owners of the adjoining properties and of all persons who may have any interest in the property; (f) a detailed description of the encumbrances, if any, affecting the property; and (g) a statement that no deeds or other instruments affecting the property have been presented for registration, or, if there be any, the registration thereof has not been accomplished, as yet. All the documents, or authenticated copies thereof, to be introduced in evidence in support to the petition for reconstitution shall be attached thereto and filed with the same: Provided, That in case the reconstitution is to be made exclusively from sources enumerated in Section 2(f) or 3(f) of this Act, the petition shall be further accompanied with a plan and technical description of the property duly approved by the Chief of the General Land Registration Office, [now Commission of Land Registration] or with a certified copy of the description taken from a prior certificate of title covering the same property.

SEC. 13. The court shall cause a notice of the petition, filed under the preceding section, to be published, at the expense of the petitioner, twice in successive issues of the Official Gazette, and to be posted on the main entrance of the provincial building and of the municipal building of the municipality or city in which the land is situated, at least thirty days prior to the date of hearing. The court shall likewise cause a copy of the notice to be sent, by registered mail or otherwise, at the expense of the petitioner, to every person named therein whose address is known, at least thirty days prior to the date of hearing. Said notice shall state, among other things, the number of the lost or destroyed Certificate of Title, if known, the name of the registered owner, the names of the occupants or persons in possession of the property, the owners of the adjoining properties and all other interested parties, the location, area and boundaries of the property, and the date on which all persons having any interest therein must appear

for Reconstitution filed by Federico and Enriquita considering that these provisions apply particularly to petitions for reconstitution from sources enumerated under Sections 2(c), 2(d), 2(e), 2(f), 3(c), 3(d), 3(e) and/or 3(f) of Republic Act No. 26.

In *Puzon*, we explained that when the reconstitution is based on an extant owner's duplicate TCT, the main concern is the authenticity and genuineness of the certificate, which could best be determined or contested by the government agencies or offices concerned. The adjoining owners or actual occupants of the property covered by the TCT are hardly in a position to determine the genuineness of the certificate; hence, their participation in the reconstitution proceedings is not indispensable and notice to them is not jurisdictional.

The foregoing discourse notwithstanding, the 5 December 2005 Decision of the Court of Appeals is already final and executory, and absolutely binds this Court, despite any errors therein. And even if it were otherwise, the error committed by the appellate court as regards the notice requirement would not necessarily result in a judgment favorable to petitioners.

We find that Federico and Enriquita were not able to prove that at the time the title was lost, he and his sister were the only lawful owners of the subject property. Federico and Enriquita claimed that the subject property was originally owned by their grandfather, Mariano. Federico and Enriquita, however, failed to establish the chain of transfers of the subject property from Mariano to their father, Gregorio; and finally to them. That the transmittal of rights through succession takes effect by operation of law, without any need for the testator or the heirs to perform any positive act, did not necessarily exempt Federico and Enriquita from having to prove that they became the owners of the subject property by legal succession, to the exclusion of all others. Mariano had several children, and so

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and file their claim or objections to the petition. The petitioner shall, at the hearing, submit proof of the publication, posting and service of the notice as directed by the court.

did Gregorio; hence, Mariano, as well as Gregorio, had several legal heirs who would have likewise succeeded to the subject property.

Federico and Enriquita further alleged that they had been in possession of the subject property since 1955. However, at the time they instituted the reconstitution proceedings in 1999, or 44 years later, no improvements or permanent structures could be found on the entire 300-hectare property. It is but contrary to common human experience that a real estate broker such as Federico would let 44 years pass by without introducing any improvements on this very vast tract of land, which he claimed to co-own with his sister Enriquita. Incidentally, if it were true that Federico regularly visited the 300-hectare property, then he would have been aware who the current adjoining property owners were.

We also observe that Federico and Enriquita failed to provide any explanation why it took them **40 years** from the burning of the Office of the Register of Deeds of Cavite on 7 June 1959, before instituting the reconstitution proceedings. The failure of Federico and Enriquita to immediately seek the reconstitution of TCT No. T-4399, and their procrastination for four decades before actually filing their Petition, had allowed *laches* to attach. *Laches* is the negligence or omission to assert a right within a reasonable time, warranting the presumption that the party entitled to assert it either has abandoned or declined to assert it.[34] In *Heirs of Eulalio Ragua v. Court of Appeals*, we denied, on the ground of *laches*, therein petitioners' petition for reconstitution of title, which was filed only **19 years** after the original of said title was allegedly lost or destroyed. [35]

The real property tax receipts in the name of Federico for the years 1989 to 1998 deserve little probative value. There is no showing that real property taxes were paid by Federico

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[34] *Catholic Bishop of Balanga v. Court of Appeals*, 332 Phil. 206, 218-219 (1996); *Heirs of Eulalio Ragua and Regalado v. Court of Appeals*, 381 Phil. 7, 22-23 (2000).

[35] *Id*.

and/or Enriquita, or their alleged predecessors-in-interest prior to 1989. Despite Federico and Enriquita's claim of possession of the subject property since 1955, Federico himself admitted that he first paid the real estate taxes on the subject property only in 1989. Realty tax payments are not conclusive evidence of ownership but are mere indicia of possession in the concept of owners.[36] Neither are realty tax payment receipts sufficient to warrant reconstitution.

The foregoing circumstances raise doubt as to the authenticity and genuineness of the owner's duplicate of TCT No. T-4399, the basis for the Petition for Reconstitution of Federico and Enriquita. Our suspicions were, in fact, confirmed by a Manifestation by the Acting Register of Deeds of the Province of Cavite, that the LRA report dated 28 October 1999 allegedly signed by Benjamin M. Bustos, Reconstitution Officer and Chief, Reconstitution Division, and marked as Exhibit "K", was not the true, genuine and official report of the LRA in this case but the one dated 14 December 1999, which was duly signed by Benjamin M. Bustos. The Certification[37] issued by the LRA on 14 December 1999 stated, to wit:

The Land Registration Authority to the Honorable Court respectfully reports that:

(1) The present petition seeks the reconstitution of Transfer Certificate of Title No. T-4399, allegedly lost or destroyed, and supposedly covering a parcel of land (Plan Psu-91002), situated in the Barrio of Sapang, Municipality of Ternate, Province of Cavite, on the basis of the owner's duplicate thereof. A mere reproduction of what purports be a copy of Transfer Certificate of Title No. T-4399, not certified by the Clerk of Court, as required under LRC Circular 35, Series of 1983, was submitted to this Authority.

(2) In the 1st Indorsement of Engr. Alberto H. Lingao, Acting Chief, Ordinary and Cadastral Decree Division, this Authority, dated November 26, 1999, it is stated therein, that upon examination

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[36] *Republic v. Holazo*, 480 Phil. 828, 842 (2004).

[37] Records, pp. 165-166.

and verification of the above-entitled petition and its enclosures, the following information were found, to wit:

1. As per "Book of Surveys" on file at the Plan Examination Section, Psu-9002, (sic) situated in the Province of Cavite was applied for registration under Record No. 51767;

2. As per "Decree Book" on file at the Ordinary Decree Section, Record No. 51767, Cavite, was issued Decree No. 642113 on July 7, 1937; however, copy of the said decree is not among the salvaged records of this Authority;

3. The technical description of Psu-91002 inscribed on the submitted xerox copy of TCT No. T-4399 was found to be an open polygon and when plotted on MIS 9009, 1621, 9017, 9619, 6121 and 15212, several parcels of land applied under Record Nos. N-63140, N-63142 and N-63143 were found to be inside this case. No decree of registration have as yet been issued to the aforesaid applications."

4.

WHEREFORE, the foregoing Report is respectfully submitted for the information and guidance of the Honorable Court, with the recommendation that the Lands Management Sector, be required to submit the Report relative to the status of the subject parcel of land, in the instant petition.

Quezon City, Philippines, December 14, 1999.

Alfredo R. Enriquez
Administrator

By:

Benjamin M. Bustos
Chief, Reconstitution Division

The Manifestation finds support in the Certification dated 20 March 2001, issued by the Acting Chief of the Reconstitution Division of the LRA indicating the following:

This is to certify that a perusal from the records of this Authority, a Report dated December 14, 1999 has been submitted to the Regional Trial Court, Branch XV, Naic, Cavite relative to the above-entitled petition, a certified copy of which is hereto attached for ready reference.

Furthermore, a Report dated October 28, 1999, purportedly signed by Atty. Benjamin M. Bustos, Chief, Reconstitution Division, xerox copy hereto attached, was presented to this Authority by Atty. Antonio L. Leachon III, Acting Register of Deeds, Trece Martires, Province of Cavite, which upon verification from our records, it appears that the same is spurious and not prepared/issued by this Office.[38]

We are not persuaded that the pieces of evidence presented by Federico and Enriquita warrant the reconstitution of TCT No. T-4399. The purpose of reconstitution of title is to have the original title reproduced in the same form it was in when it was lost or destroyed. It is the duty of the court to scrutinize and verify carefully all supporting documents, deeds and certifications.

Once again, we caution the courts against the hasty and reckless grant of petitions for reconstitution, especially when they involve vast properties, such as in this case. And, should a petition for reconstitution be denied for lack of sufficient basis, the petitioner is not entirely left without a remedy. He may still file an application for confirmation of his title under the provisions of the Land Registration Act, if he is, in fact, the lawful owner.[39]

WHEREFORE, premises considered, the instant Petition for Review on *Certiorari* is hereby *DENIED*. The Decision dated 5 December 2005 of the Court of Appeals in CA-G.R. CV No. 72740 dismissing the Petition for Reconstitution of TCT No. T-4399, filed by Federico A. Angat and Enriquita A. Angat, is hereby *AFFIRMED*. Costs against petitioners.

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[38] Records, p. 167.

[39] *Republic v. Santua*, G.R. No. 155703, 8 September 2008, 564 SCRA 331, 340-341.

SO ORDERED.

Ynares-Santiago (Chairperson), Velasco, Jr., Nachura, and *Brion,*[*] *JJ.,* concur.

SECOND DIVISION

[G.R. No. 177148. June 30, 2009]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **RAUL NUÑEZ *y* REVILLEZA,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; SPECIAL CRIMES; DANGEROUS DRUGS ACT (R.A. NO. 6425); POSSESSION OF REGULATED DRUGS; ELEMENTS.— An indictment for possession of regulated drugs is made under Section 16 of Rep. Act No. 6425 as amended, which provides: SEC. 16. *Possession or Use of Regulated Drugs.* – The penalty of *reclusion perpetua* to death and a fine ranging from five hundred thousand pesos to ten million pesos shall be imposed upon any person who shall possess or use any regulated drug without the corresponding license or prescription, subject to the provisions of Section 20 hereof. To be liable for the crime, the following elements must concur: (a) the accused is found in possession of a regulated drug; (b) the person is not authorized by law or by duly constituted authorities; and (c) the accused has knowledge that the said drug is a regulated drug.

2. REMEDIAL LAW; EVIDENCE; DEFENSE; FRAME-UP; EASILY FABRICATED.— Regarding the defense of frame-up, we view such claim with disfavor as it can easily be fabricated and is commonly used as a facile refuge in drug cases. In cases

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[*] Associate Justice Arturo D. Brion was designated to sit as additional member replacing Associate Justice Diosdado M. Peralta per Raffle dated 22 June 2009.

involving violations of the Dangerous Drugs Act, credence is given to the narration of the incident by the prosecution witnesses especially when they are police officers who are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary.

3. ID.; CRIMINAL PROCEDURE; DISCRETION BELONGS TO THE PROSECUTOR AS TO HOW THE STATE SHOULD PRESENT ITS CASE.— The matter of presentation of witnesses, however, is neither for accused nor even for the trial court to decide. Discretion belongs to the prosecutor as to how the State should present its case. The prosecutor has the right to choose whom he would present as witness.

4. ID.; ID.; SEARCHES AND SEIZURES; RIGHT TO BE SECURE FROM UNREASONABLE SEARCHES AND SEIZURES MAY BE WAIVED.— For sure, the right to be secure from unreasonable searches and seizures, like any other right, can be waived and the waiver may be made expressly or impliedly.

5. ID.; EVIDENCE; WITNESSES; TESTIMONIES; NEED ONLY CORROBORATE ONE ANOTHER ON MATERIAL DETAILS.— After all, the witnesses' testimonies need only corroborate one another on material details surrounding the actual commission of the crime.

6. ID.; ID.; ID.; ID.; AFFIRMATIVE TESTIMONY STRONGER THAN NEGATIVE TESTIMONY.— It has been ruled that an affirmative testimony coming from credible witnesses without motive to perjure is far stronger than a negative testimony.

7. ID.; CRIMINAL PROCEDURE; SEARCHES AND SEIZURES; ONLY PERSONAL PROPERTIES DESCRIBED IN THE SEARCH WARRANT MAY BE SEIZED BY THE AUTHORITIES.— Turning to the objects which may be confiscated during the search, Section 3, Rule 126 of the Rules of Court is pertinent: SEC. 3. *Personal property to be seized.* – A search warrant may be issued for the search and seizure of personal property: (a) Subject of the offense; (b) Stolen or embezzled and other proceeds, or fruits of the offense; or (c) Used or intended to be used as the means of committing an offense. As a rule, only the personal properties described in the search warrant may be seized by the authorities.

8. ID.; ID.; ID.; ID.; RATIONALE.— The purpose of the constitutional requirement that the articles to be seized be particularly described in the warrant is to limit the things to be taken to those, and only those particularly described in the search warrant – *to leave the officers of the law with no discretion regarding what articles they should seize*. A search warrant is not a sweeping authority empowering a raiding party to undertake a fishing expedition to confiscate any and all kinds of evidence or articles relating to a crime.

9. CRIMINAL LAW; SPECIAL CRIMES; POSSESSION OF 200 GRAMS OR MORE OF *SHABU*; ACCUSED IS LIABLE TO SUFFER MAXIMUM PENALTY WHICH IS *RECLUSION PERPETUA* TO DEATH.— Under Section 20(3) of Rep. Act No. 6425 as amended by Rep. Act No. 7659, possession of 200 grams or more of *shabu* (methamphetamine hydrochloride) renders the accused liable to suffer the maximum penalty under Section 16 of Rep. Act No. 6425, which is *reclusion perpetua* to death and a fine ranging from ₱500,000 to ₱10,000,000.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for appellant.

D E C I S I O N

QUISUMBING, *J.*:

This petition for *certiorari* seeks the reversal of the Decision[1] dated January 19, 2007 of the Court of Appeals in CA G.R. CR H.C. No. 02420. The appellate court affirmed the Decision[2] dated February 11, 2002 of the Regional Trial Court (RTC) of Calamba, Laguna, Branch 36, which convicted appellant in Criminal Case No. 8614-01-C for violation of Section 16, Article

[1] *Rollo*, pp. 3-12. Penned by Associate Justice Sesinando E. Villon, with Associate Justices Andres B. Reyes, Jr. and Noel G. Tijam concurring.
[2] CA *rollo*, pp. 18-23. Penned by Judge Norberto Y. Geraldez.

III of Republic Act No. 6425, also known as the Dangerous Drugs Act of 1972, as amended by Rep. Act No. 7659.[3]

On June 25, 2001, Raul R. Nuñez was formally charged with violation of Section 16, Article III of Rep. Act No. 6425, as amended. The Information reads:

> That at around 6:00 o'clock in the morning of the 24th day of April 2001[4] at Brgy. San Antonio, Municipality of Los Ba[ñ]os, Province of Laguna and within the jurisdiction of the Honorable Court, the above-named accused, without any authority of law, and in a search conducted at his residence as stated above, did then and there willfully, unlawfully and feloniously have in his possession, control and custody thirty[-]one (31) heat sealed transparent plastic sachets containing methamp[h]etamine hydrochloride otherwise known as "*shabu*", a regulated drug, with a total weight of **233.93 grams** in violation of the aforementioned provision of law.
>
> CONTRARY TO LAW.[5]

The facts are as follows:

At 6:00 a.m. on April 26, 2001, operatives of the Sta. Cruz, Laguna Police Detectives in coordination with the Los Baños Police Station (LBPS) and IID Mobile Force conducted a search in the house of Raul R. Nuñez based on reports of drug possession. The group, led by Commanding Officer Arwin Pagkalinawan, included SPO1 Odelon Ilagan, SPO3 Eduardo Paz, PO1 Ronnie Orfano, PO2 Gerry Crisostomo, PO2 Alexander Camantigue, PO2 Joseph Ortega and Senior Inspector Uriquia.

Before proceeding to appellant's residence in Barangay San Antonio, the group summoned Barangay Captain Mario Mundin and Chief *Tanod* Alfredo Joaquin to assist them in serving the search warrant. Upon arriving at appellant's house, Mundin

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[3] AN ACT TO IMPOSE THE DEATH PENALTY ON CERTAIN HEINOUS CRIMES, AMENDING FOR THAT PURPOSE THE REVISED PENAL CODE, AS AMENDED, OTHER SPECIAL PENAL LAWS, AND FOR OTHER PURPOSES, approved on December 13, 1993.

[4] Records, p. 1. In the complaint, the date indicated for the commission of the offense was 26th of April 2001.

[5] *Id.* at 43.

called on appellant to come out. Thereafter, Commanding Officer Pagkalinawan showed Nuñez the warrant. SPO1 Ilagan and PO2 Crisostomo then surveyed appellant's room in his presence while his family, PO2 Ortega and the two *barangay* officials remained in the living room. SPO1 Ilagan found thirty-one (31) packets of *shabu*, lighters, improvised burners, tooters, and aluminum foil with *shabu* residue and a lady's wallet containing ₱4,610 inside appellant's dresser. The group also confiscated a component, camera, electric planer, grinder, drill, jigsaw, electric tester, and assorted carpentry tools on suspicion that they were acquired in exchange for *shabu*. Following the search, SPO1 Ilagan issued a Receipt for Property Seized[6] and a Certification of Orderly Search[7] which appellant signed.

In a Decision dated February 11, 2002, the RTC convicted appellant and sentenced him as follows:

> WHEREFORE, this court finds the accused guilty, beyond reasonable doubt for Violation of Republic Act 6425 as amended and is hereby sentenced to suffer the penalty of *reclusion perpetua* and all its accessory penalties under the law. Accused is ordered to pay the fine of two million pesos.
>
> SO ORDERED.[8]

Appellant elevated the case to this Court on appeal, but the case was transferred to the Court of Appeals on May 2, 2006, pursuant to our ruling in *People v. Mateo*.[9] On January 19, 2007, the Court of Appeals rendered its decision affirming appellant's conviction. The appellate court dismissed appellant's defense of frame-up and upheld the credibility of SPO1 Ilagan and PO2 Ortega. It observed that the inconsistencies in their testimony were minor at best, and did not relate to the elements of the crime.

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[6] *Id.* at 5-6, 29-30.

[7] *Id.* at 7.

[8] CA *rollo* p. 23.

[9] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

The appellate court in its decision decreed as follows:

WHEREFORE, premises considered, the assailed Decision dated February 11, 2002 of the Regional Trial Court, Branch 36, Calamba, Laguna is hereby **AFFIRMED**.

SO ORDERED.[10]

From the appellate court's decision, appellant timely filed a notice of appeal. This Court required the parties to submit supplemental briefs if they so desire. However, both the Office of the Solicitor General (OSG) and the appellant manifested that they are adopting their briefs before the appellate court.

In his brief, appellant contends that

I.

THE TRIAL COURT ERRED IN ACCORDING GREATER WEIGHT TO THE EVIDENCE ADDUCED BY THE PROSECUTION AND DISREGARDING THE DEFENSE OF FRAME-UP INTERPOSED BY [THE] ACCUSED-APPELLANT.

II.

THE TRIAL COURT ERRED IN FINDING ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE IMPUTED CRIME DESPITE THE INHERENT WEAKNESS OF THE PROSECUTION'S EVIDENCE.[11]

Simply, the issue is whether appellant is guilty beyond reasonable doubt of Possession of Regulated Drugs under the Dangerous Drugs Act of 1972.

Appellant insists that the *shabu* found in his room was planted. He points out variances in the testimonies of the prosecution witnesses which cast doubt on his culpability: first, SPO1 Ilagan testified that they picked up the *barangay* officials before going to appellant's house but PO2 Ortega claimed that Chief *Tanod* Joaquin was already with them when they left the police station;

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[10] *Rollo*, p. 12.

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

second, while SPO1 Ilagan confirmed the presence of the accused during the search, PO2 Ortega related otherwise. More importantly, appellant assails the validity of the search warrant as it did not indicate his exact address but only the *barangay* and street of his residence. He maintains that none of the occupants witnessed the search as they were all kept in the living room. Finally, appellant questions why the prosecution did not call the *barangay* officials as witnesses to shed light on the details of the search.

Conversely, the OSG argues that appellant's guilt has been proven beyond reasonable doubt. It agrees with the trial court that appellant failed to overcome the presumption that the law enforcement agents regularly performed their duties. Further, the OSG brands the testimonies of appellant, his wife and their child as self-serving, absent ill-motives ascribed to the search team. It brushes aside appellant's protest, on the validity of the search warrant, for having been belatedly made.

After considering carefully the contentions of the parties and the records of this case, we are in agreement that appellant's petition lacks merit.

Appellant was indicted for possession of regulated drugs under Section 16 of Rep. Act No. 6425 as amended which provides:

> SEC. 16. *Possession or Use of Regulated Drugs.* – The penalty of *reclusion perpetua* to death and a fine ranging from five hundred thousand pesos to ten million pesos shall be imposed upon any person who shall possess or use any regulated drug without the corresponding license or prescription, subject to the provisions of Section 20 hereof.

To be liable for the crime, the following elements must concur: (a) the accused is found in possession of a regulated drug; (b) the person is not authorized by law or by duly constituted authorities; and (c) the accused has knowledge that the said drug is a regulated drug.[12] All these were found present in the instant case.

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[12] *People v. Torres*, G.R. No. 170837, September 12, 2006, 501 SCRA 591, 610.

While appellant interposes the defense of frame-up, we view such claim with disfavor as it can easily be fabricated and is commonly used as a facile refuge in drug cases.[13] In cases involving violations of the Dangerous Drugs Act, credence is given to the narration of the incident by the prosecution witnesses especially when they are police officers who are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary.[14]

In this case, SPO1 Ilagan found *shabu* in appellant's room; but appellant retorts that it was planted. The latter's daughter, Liezel Nuñez, testified on the alleged planting of evidence as follows:

xxx xxx xxx

Q: While you were walking towards the direction of your bath room at that time have you notice anything which catches your attention?

A: I saw a man inside the room taking a plastic from his bag, sir.

Q: Did you also notice, what did that man do with that plastic in the bag?

A: He put **under the bed** fronting the door, sir.

xxx xxx xxx

Q: Can you describe to this Honorable Court what was that something that the man took out from his bag and placed the same underneath your parents' bed?

A: It is a plastic containing like a *tawas*, sir.

Q: Have you noticed Miss Witness about how many plastic bag (sic) did the man take from his bag?

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[13] *People v. Cabugatan*, G.R. No. 172019, February 12, 2007, 515 SCRA 537, 551.

[14] *Dimacuha v. People*, G.R. No. 143705, February 23, 2007, 516 SCRA 513, 522.

A: **Only one**, sir.[15] [Emphasis supplied.]

xxx xxx xxx

Assuming *arguendo* that an officer placed a sachet of *shabu* under appellant's bed, appellant had not advanced any reason to account for the thirty-one (31) packets of *shabu* and drug paraphernalia collected from the dresser in his room. Instead, he readily signed the Receipt for Property Seized and the Certification of Orderly Search. Neither did appellant's daughter identify the police officer who allegedly planted evidence. Absent any compelling proof why SPO1 Ilagan would falsely testify against appellant, the presumption of regularity in the performance of official duty stands and we agree that his testimony is worthy of full faith and credit.[16]

In a further effort to impeach the credibility of the policemen, appellant questions the non-presentation of the *barangay* officials who purportedly observed the search. The matter of presentation of witnesses, however, is neither for accused nor even for the trial court to decide. Discretion belongs to the prosecutor as to how the State should present its case. The prosecutor has the right to choose whom he would present as witness.[17] It bears stressing that by no means did the *barangay* officials become part of the prosecution when they were asked to witness the search. Hence, even the accused could have presented them to testify thereon.

Appellant alleges that SPO1 Ilagan verified his presence inside the room during the search in contrast to PO2 Ortega's account. The records, however, disclose otherwise. On direct examination, PO2 Ortega recounted:

FISCAL:
Q: What did you do next?

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[15] TSN, November 15, 2001, pp. 4-5.

[16] *Dimacuha v. People*, *supra* at 525.

[17] *Id.* at 524.

WITNESS:

A: Capt. Mundin together with Raul and then the three of us went to the room of Raul Nuñez, sir.

x x x xxx xxx

Q: So, among the group that went to the room of Raul Nuñez who went inside?

A: It was **Raul Nuñez**, Sgt. Ilagan, Crisostomo who are inside the room. I stayed near the door along with Brgy. Capt. Mundin and Chief Tanod who were looking at what was going on, sir.[18] [Emphasis supplied.]

On cross-examination, PO2 Ortega did not falter:

xxx xxx xxx

Q: Who among you went inside the room of Raul Nuñez?

A: Sgt. Ilagan, Crisostomo, **Raul Nuñez**, myself, Chief Tanod Alfredo and Capt. Mundin, sir.[19] [Emphasis supplied.]

Besides, any objection to the legality of the search warrant and the admissibility of the evidence obtained thereby was deemed waived when no objection was raised by appellant during trial. For sure, the right to be secure from unreasonable searches and seizures, like any other right, can be waived and the waiver may be made expressly or impliedly.[20]

As regards the contradiction in the testimonies of SPO1 Ilagan and PO2 Ortega as to whether they picked up Chief *Tanod* Joaquin at the *barangay* hall, the same is inconsequential. After all, the witnesses' testimonies need only corroborate one another on material details surrounding the actual commission of the crime.[21]

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[18] TSN, September 11, 2001, p. 6.

[19] *Id.* at 12.

[20] *People v. Torres*, *supra* note 12, at 608.

[21] *People v. Razul*, G.R. No. 146470, November 22, 2002, 392 SCRA 553, 570.

Here, we find the testimonies of SPO1 Ilagan and PO2 Ortega believable and consistent on material points: appellant was shown the search warrant; the search was conducted in the latter's presence; and SPO1 Ilagan found *shabu* in appellant's dresser. It has been ruled that an affirmative testimony coming from credible witnesses without motive to perjure is far stronger than a negative testimony. Records show that appellant and the police officers were strangers to each other. Hence, there is no reason to suggest that the police officers were ill-motivated in apprehending appellant.[22]

Turning to the objects which may be confiscated during the search, Section 3, Rule 126 of the Rules of Court is pertinent:

SEC. 3. *Personal property to be seized.* – A search warrant may be issued for the search and seizure of personal property:

(a) Subject of the offense;

(b) Stolen or embezzled and other proceeds, or fruits of the offense; or

(c) Used or intended to be used as the means of committing an offense.

As a rule, only the personal properties described in the search warrant may be seized by the authorities.[23] In the case at bar, Search Warrant No. 42[24] specifically authorized the taking of methamphetamine hydrochloride (*shabu*) and paraphernalia(s) only. By the principle of *ejusdem generis*, where a statute describes things of a particular class or kind accompanied by words of a generic character, the generic word will usually be limited to things of a similar nature with those particularly enumerated, unless there be something in the context of the statement which would repel such inference.[25]

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[22] *People v. Dilao*, G.R. No. 170359, July 27, 2007, 528 SCRA 427, 441.

[23] *People v. Go*, G.R. No. 144639, September 12, 2003, 411 SCRA 81, 112-113.

[24] Records, p. 4.

[25] *Kapisanan ng mga Manggagawa sa Government Service Insurance System (KMG) v. Commission on Audit*, G.R. No. 150769, August 31, 2004, 437 SCRA 371, 381.

Thus, we are here constrained to point out an irregularity in the search conducted. Certainly, the lady's wallet, cash, grinder, camera, component, speakers, electric planer, jigsaw, electric tester, saws, hammer, drill, and bolo were not encompassed by the word paraphernalia as they bear no relation to the use or manufacture of drugs. In seizing the said items then, the police officers exercised their own discretion and determined for themselves which items in appellant's residence they believed were "proceeds of the crime" or "means of committing the offense." This is, in our view, absolutely impermissible.[26]

The purpose of the constitutional requirement that the articles to be seized be particularly described in the warrant is to limit the things to be taken to those, and only those particularly described in the search warrant — *to leave the officers of the law with no discretion regarding what articles they should seize.* A search warrant is not a sweeping authority empowering a raiding party to undertake a fishing expedition to confiscate any and all kinds of evidence or articles relating to a crime.[27] Accordingly, the objects taken which were not specified in the search warrant should be restored to appellant.

Lastly, we find the penalty imposed by the trial court as affirmed by the appellate court proper. Under Section 20(3)[28] of Rep. Act No. 6425 as amended by Rep. Act No. 7659, possession of 200 grams or more of *shabu* (methamphetamine hydrochloride) renders the accused liable to suffer the maximum penalty under Section 16 of Rep. Act No. 6425, which is *reclusion*

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[26] *People v. Go, supra* at 114.

[27] *Id.* at 114-115.

[28] SEC. 20. *Application of Penalties, Confiscation and Forfeiture of the Proceeds or Instrument 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:

x x x x x x x x x

3. 200 grams or more of *shabu* or methylamphetamine hydrochloride; [Emphasis supplied.]

x x x x x x x x x

perpetua to death and a fine ranging from ₱500,000 to ₱10,000,000.

In the case at bar, appellant was found in possession of 233.93 grams of *shabu*. Hence there being no modifying circumstance proven, the penalty of *reclusion perpetua* with its accessory penalties, and ₱2,000,000 fine which the Court of Appeals meted on appellant is in order.

WHEREFORE, the Decision dated January 19, 2007 of the Court of Appeals in CA G.R. CR. H.C. No. 02420 is *AFFIRMED,* with the *MODIFICATION* that the official custodian of the objects taken during the search which are not otherwise regulated drugs or drug paraphernalia, is *ORDERED* to return them to appellant.

SO ORDERED.

Ynares-Santiago,[*] *Chico-Nazario,*[**] *Leonardo-de Castro,*[***] and *Brion, JJ.,* concur.

SECOND DIVISION

[G.R. No. 177164. June 30, 2009]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **RAMON FRONDOZO *y* DALIDA,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; SPECIAL CRIMES; VIOLATION OF DANGEROUS DRUGS ACT; ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS TO BE ESTABLISHED.— Jurisprudence clearly sets the essential elements to be established in the

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[*] Designated member of the Second Division per Special Order No. 645.

[**] Designated member of the Second Division per Special Order No. 658.

[***] Designated member of the Second Division per Special Order No. 635.

prosecution for illegal sale of dangerous drugs, *viz*.: (1) the transaction or sale took place, (2) the *corpus delicti* or the illicit drug was presented as evidence, and (3) the buyer and seller were identified.

2. ID.; ID.; ID.; ID.; ID.; ESSENTIAL THAT IDENTITY OF THE PROHIBITED DRUG BE ESTABLISHED BEYOND DOUBT.— What is material in the prosecution for illegal sale of dangerous drugs is proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of *corpus delicti*. Prosecutions for illegal sale of prohibited drugs necessitate that the elemental act of possession of prohibited substance be established with moral certainty, together with the fact that the same is not authorized by law. The dangerous drug itself constitutes the very *corpus delicti* of the offense and the fact of its existence is vital to a judgment of conviction. Therefore, it is essential that the identity of the prohibited drug be established beyond doubt.

3. ID.; ID.; ID.; ID.; ID.; ID.; POST-SEIZURE PROCEDURE IN TAKING CUSTODY OF SEIZED DRUGS.— Section 21 of the Implementing Rules and Regulations of Rep. Act No. 9165 clearly outlines the post-seizure procedure in taking custody of seized drugs. It states: (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 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.

4. REMEDIAL LAW; EVIDENCE; ADMISSIBILITY OF EVIDENCE DIFFERENTIATED FROM WEIGHT OF EVIDENCE.— The admissibility of the seized dangerous drugs in evidence should not be equated with its probative value in proving the *corpus delicti*. The admissibility of evidence depends on its relevance and competence while the weight of evidence pertains to evidence already admitted and its tendency to convince and persuade.

5. ID.; ID.; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF DUTIES; WHEN PRESUMPTION DESTROYED; CASE AT BAR.— Finally, the presumption of regularity in the performance of official duty relied upon by

the lower courts cannot by itself overcome the presumption of innocence nor constitute proof of guilt beyond reasonable doubt. As a rule, the testimony of police officers who apprehended Frondozo is accorded full faith and credit because of the presumption that they have performed their duties regularly. However, when the performance of their duties is tainted with irregularities, such presumption is effectively destroyed.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for appellant.

D E C I S I O N

QUISUMBING, *J.*:

On appeal is the Decision[1] dated January 31, 2007 of the Court of Appeals in CA-G.R. CR-H.C. No. 01582, affirming the Decision[2] dated August 3, 2005 of the Regional Trial Court (RTC) of Caloocan City, Branch 120 in Criminal Case No. C-67810. The trial court found appellant Ramon Frondozo *y* Dalida guilty of violation of Section 5,[3] Article II of Republic

[1] *Rollo*, pp. 2-12. Penned by Associate Justice Andres B. Reyes, Jr., with Associate Justices Noel G. Tijam and Sesinando E. Villon, concurring.

[2] CA *rollo*, pp. 14-24. Penned by Judge Victorino S. Alvaro.

[3] 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.

The penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years and a fine ranging from One hundred thousand pesos (₱100,000.00) to Five hundred thousand pesos (₱500,000.00) shall

Act No. 9165 or the Comprehensive Dangerous Drugs Act of 2002.[4]

The information charging Frondozo with violation of Section 5, Article II of Rep. Act No. 9165, reads:

xxx xx x xxx

That on or about the 27th day of March, 2003 in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused without authority of law, did then and there wilfully, unlawfully and feloniously sell and deliver to PO1 ABNER BUTAY who posed, as buyer [of] METHAMPHETAMINE

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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 controlled precursor and essential chemical, or shall act as a broker in such transactions.

If the sale, trading, administration, dispensation, delivery, distribution or transportation of any dangerous drug and/or controlled precursor and essential chemical transpires within one hundred (100) meters from the school, the maximum penalty shall be imposed in every case.

For drug pushers who use minors or mentally incapacitated individuals as runners, couriers and messengers, or in any other capacity directly connected to the dangerous drugs and/or controlled precursors and essential chemical trade, the maximum penalty shall be imposed in every case.

If the victim of the offense is a minor or a mentally incapacitated individual, or should a dangerous drug and/or a controlled precursor and essential chemical involved in any offense herein provided be the proximate cause of death of a victim thereof, the maximum penalty provided for under this Section shall be imposed.

The maximum penalty provided for under this Section shall be imposed upon any person who organizes, manages or acts as a "financier" of any of the illegal activities prescribed in this Section.

The penalty of twelve (12) years and one (1) day to twenty (20) years of imprisonment and a fine ranging from One hundred thousand pesos (₱100,000.00) to Five hundred thousand pesos (₱500,000.00) shall be imposed upon any person, who acts as a "protector/coddler" of any violator of the provisions under this Section.

[4] AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES, approved on June 7, 2002.

HYDROCHLORIDE (*SHABU*) weighing 0.02 gram drug, without the corresponding license or prescription therefore, knowing the same to be [s]uch.

CONTRARY TO LAW.[5]

xxx xxx xxx

On his arraignment, Frondozo pleaded not guilty.

As found by the RTC and confirmed by the Court of Appeals, the testimonies of (1) PO1 Abner Butay, police operative of Caloocan City Hall North Detachment who acted as poseur-buyer; (2) P/Insp. Albert Arturo, forensic chemist of NPD Crime Laboratory; and (3) P/Insp. Richard Ang, then police investigator of the Caloocan City Hall North Detachment, establish the following facts:

On March 27, 2003, acting on information from a police asset about the drug activities of Frondozo, a team was organized by Major Mario M. Dapilloza, composed of PO2 Hector Ortencio, PO2 Michael Conrad Martin Miranda, PO1 Roderick Medrano and PO1 Abner Butay to conduct surveillance and buy-bust operation to entrap Frondozo. PO1 Butay testified that he came late during the briefing so it was PO1 Medrano who relayed to him that he was designated as poseur-buyer and the ₱100 buy-bust money was given to him. They agreed that he will remove his cap as a signal to indicate that their mission was accomplished.[6]

Guided by the informant's sketch of Frondozo's house and a tip that he is the only male residing there,[7] the team proceeded to the site of operation before midnight of the same day. They positioned themselves strategically in different positions where they could see PO1 Butay. Thereafter, PO1 Butay approached Frondozo's house and knocked at the door several times. When a man came out, PO1 Butay told him "*pakuha*." The man asked, "*magkano?*" and he replied "*piso lang*." The man said,

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[5] Records, p. 1.

[6] TSN, April 20, 2004, pp. 3-7.

[7] *Id.* at 9-10.

"*sandali lang*" then went back inside the house. Moments later, the man returned and handed a plastic sachet to PO1 Butay. PO1 Butay examined its content and was satisfied that the plastic sachet contained *shabu*. PO1 Butay then handed the man the ₱100 buy-bust money and put the plastic sachet of *shabu* inside his pocket. PO1 Butay then removed his baseball cap as pre-arranged to signal to his teammates that the sale was already consummated. He introduced himself to the man and stated "*pulis ako pare*" and showed him his badge. He frisked the man's body and found two arrows with sling, one fan knife (*balisong*) and the ₱100 buy-bust money from the man's hand. PO1 Butay testified that his teammates never went inside the house.[8]

Together with the members of the team, PO1 Butay brought the man, who was later on identified as Frondozo, to the police station. The specimen and the items seized from Frondozo's body were turned over to P/Insp. Richard Ang who marked the specimen "RFD-01" and prepared the request for laboratory examination.

P/Insp. Albert Arturo made a laboratory examination of the contents of the plastic sachet. Based on the physical, chemical and chromatographic examinations he conducted, it was found that the specimen yielded positive results for the presence of methamphetamine hydrochloride or *shabu*.[9]

During trial, PO1 Butay positively identified Frondozo as the man who sold him the prohibited drug. He also identified Exhibit "D-4" marked as "RFD-01" as the *shabu* he bought from Frondozo.[10]

Thereafter, P/Insp. Ang presented in court the ₱100 bill used in the buy-bust operation against Frondozo. He also testified that he entered the serial number of the buy-bust money in their logbook at their station. He said he attached the referral

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[8] *Id.* at 37.

[9] Records, p. 76.

[10] TSN, April 20, 2004, pp. 16-19.

slip, pre-operational report and the booking sheet arrest report to the case envelope but he no longer has access to it since he is now assigned in Malabon. P/Insp. Ang further testified that there was a coordination sheet faxed to the Philippine Drug Enforcement Agency (PDEA). However, he was not able to present the documents in court since he did not receive any subpoena and the scheduled hearing was relayed to him only through a text message.[11]

In his defense, Frondozo denied the accusations against him. He testified that on March 27, 2003 at about 10:00 p.m., a group of police officers arrived at his residence in Brgy. Pag-asa, Camarin, Caloocan City. He was then washing clothes while his wife was inside the house since the latter could not do the chore due to her menstruation. He asked the police officers what they wanted and was in turn asked by PO2 Miranda if he knew a certain *alias* "Monching." When he admitted that he was "Monching," he said that he was instructed to face the wall and was frisked. According to Frondozo, he was ordered to turn over the *shabu* which they accused him of keeping. Despite his denial of the accusation, he was still handcuffed, arrested and made to board a vehicle. Frondozo further averred that PO1 Butay, PO2 Ortencio and PO1 Medrano entered and searched his house. He claimed that the police officers found the fan knife on the table and the two arrows with sling under the sink.[12]

Frondozo further narrated that he was thereafter brought to the Mini City Hall Annex Police Station. While in the detention cell, PO1 Butay confronted and accused him of stealing his 13 fighting cocks.[13] He denied stealing the fighting cocks but PO1 Butay refused to believe him. He claimed that PO1 Butay laughed when he told him "*tarantado ka*" and insisted even more that he stole the fighting cocks. Frondozo admitted knowing

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[11] TSN, July 5, 2004, pp. 3-7.

[12] TSN, January 27, 2005, pp. 15-17; TSN, March 3, 2005, pp. 2-4, 6-7.

[13] TSN, March 3, 2005, pp. 8 & 17.

PO1 Butay's caretaker, *alias* "July," who lives about 50 meters away from his house, but maintained that prior to his arrest he never knew PO1 Butay or any of the police officers who apprehended him. He came to know their names only at the precinct.[14]

Moreover, Frondozo claimed that PO1 Butay extorted money from him. While in the detention cell, PO1 Butay told him to pay ₱50,000 for his release but the amount was later reduced to ₱20,000.[15] He said he was unable to pay since he has not yet received his salary. He further claimed that he only learned of the case filed against him after he was transferred to the City Jail. He also claimed he has never seen *shabu* in his entire life.[16]

On August 3, 2005, the court *a quo* convicted Frondozo. The dispositive portion of the decision reads:

WHEREFORE, from the foregoing, this Court finds accused **RAMON FRONDOZO *Y* DALIDA, GUILTY** beyond reasonable doubt for Violation of Section 5, Article II of RA 9165 and hereby imposes upon him the penalty of **Life Imprisonment and a fine of Five Hundred Thousand Pesos without subsidiary imprisonment.**

SO ORDERED.[17]

On January 31, 2007, the appellate court affirmed *in toto* the court *a quo's* decision. The dispositive portion of the Court of Appeals' decision reads:

WHEREFORE, premises considered, appeal is hereby **DISMISSED** for lack of merit and RAMON FRONDOZO *y* DALIDA should be made to suffer the penalty correctly imposed by the trial court.

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[14] TSN, January 27, 2005, pp. 13-15, 17-18; TSN, March 3, 2005, pp. 8, 17-19.

[15] TSN, March 3, 2005, pp. 10-11, 23-25 & 27.

[16] *Id.* at 15-16.

[17] CA *rollo*, p. 24.

SO ORDERED.[18]

Aggrieved, Frondozo filed the instant appeal.

On July 4, 2007, we accepted the appeal and required Frondozo and the Office of the Solicitor General (OSG) to file their respective supplemental briefs if they so desire.

Both parties, however, opted to file Manifestations in lieu of Supplemental Briefs, and adopted their respective briefs filed before the Court of Appeals.[19]

In his brief, Frondozo alleges that:

I.

THE COURT *A QUO* GRAVELY ERRED IN GIVING WEIGHT AND CREDENCE TO THE TESTIMONIES OF THE PROSECUTION WITNESSES.

II.

THE TRIAL COURT ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT FOR VIOLATION OF SECTION 5, ARTICLE II, R.A. NO. 9165.[20]

This appeal hangs mainly on the alleged lack of credibility of the prosecution's witnesses and the frame-up theory.

Frondozo insists that no buy-bust operation was conducted and instead, he was a victim of a frame-up. He claims that PO1 Butay framed him because PO1 Butay suspected him of stealing his fighting cocks three months before his arrest. He also accuses PO1 Butay of extorting ₱50,000 from him for his liberty.[21]

Furthermore, Frondozo assails the credibility of PO1 Butay (poseur-buyer). He contends that the following details cast doubt on the veracity of the alleged buy-bust operation: (1)

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[18] *Rollo*, p. 12.

[19] *Id.* at 19-20, 22-23.

[20] CA *rollo*, p. 42.

[21] TSN, March 3, 2005, pp. 17 & 25.

PO1 Butay claimed to have no knowledge whether the buy-bust money had been dusted with fluorescent powder;[22] (2) he cannot recall whether the plastic sachet of *shabu* was properly marked;[23] and (3) he cannot recall the serial number of the buy-bust money.[24] Frondozo also asserts that the prosecution not only failed to present as evidence the dispatch book where the serial number of the buy-bust money was supposedly entered,[25] the prosecution also failed to present evidence showing that the police officers previously coordinated with PDEA regarding the buy-bust operation launched against him.[26] Further, he doubts the identity of the *shabu* because it was marked only after it was turned over to P/Insp. Ang and not immediately after seizure as a standard procedure in anti-narcotics operation.[27]

Given these circumstances, Frondozo insists that the presumption of regularity in the performance of official duty, by itself, could not sustain his conviction, let alone prevail over the constitutionally guaranteed presumption of innocence in his favor.[28]

The OSG, on the other hand, submits that Frondozo's guilt had been proven beyond reasonable doubt. The OSG insists that the evidence on record shows that Frondozo was caught *in flagrante delicto*. They maintain that Frondozo's defense of frame-up and extortion deserves scant consideration since it was unsubstantiated by any evidence other than his self-serving testimony. The OSG further asserts that while the specimen was marked only after it was turned-over to P/Insp. Ang, such fact did not vitiate the identity and chain of custody of the specimen sold by Frondozo. Likewise, the OSG insists

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[22] CA *rollo*, p. 43.

[23] *Id.* at 44.

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

[25] *Id.* at 43.

[26] *Id.* at 45.

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

[28] *Id.* at 46.

that the lack of documents showing that there was prior coordination with PDEA is immaterial because what is more important is that Frondozo was arrested in a valid buy-bust operation.[29]

Finally, the OSG maintains that in the absence of proof to the contrary, the police officers enjoy the presumption of regularity in the performance of their official duties.[30]

The appeal is meritorious.

Jurisprudence clearly sets the essential elements to be established in the prosecution for illegal sale of dangerous drugs, *viz*.: (1) the transaction or sale took place, (2) the *corpus delicti* or the illicit drug was presented as evidence, and (3) the buyer and seller were identified.[31]

What is material in the prosecution for illegal sale of dangerous drugs is proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of *corpus delicti*.[32] Prosecutions for illegal sale of prohibited drugs necessitate that the elemental act of possession of prohibited substance be established with moral certainty, together with the fact that the same is not authorized by law. The dangerous drug itself constitutes the very *corpus delicti* of the offense and the fact of its existence is vital to a judgment of conviction. Therefore, it is essential that the identity of the prohibited drug be established beyond doubt.[33]

To establish the identity of the *shabu* seized from Frondozo, the procedures laid down in Rep. Act No. 9165 should be complied with. Section 21 of the Implementing Rules and Regulations of

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[29] *Id.* at 73, 79-80.

[30] *Id.* at 80.

[31] *People v. Bandang*, G.R. No. 151314, June 3, 2004, 430 SCRA 570, 579.

[32] *People v. Dela Cruz*, G.R. No. 181545, October 8, 2008, p. 8.

[33] *Malillin v. People*, G.R. No. 172953, April 30, 2008, 553 SCRA 619, 631-632.

Rep. Act No. 9165 clearly outlines the post-seizure procedure in taking custody of seized drugs. It states:

> (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. [Emphasis supplied.]

In this case, the arresting officers failed to strictly comply with the procedures for the custody and disposition of confiscated dangerous drugs as prescribed by Rep. Act No. 9165. The arresting officers did not mark the *shabu* immediately after they arrested Frondozo. Further, while there was testimony regarding the marking of the *shabu* after it was turned over to the police investigator, no evidence was presented to prove that the marking thereof was done in the presence of Frondozo.

Also, fatal in the prosecution's case is the failure of the arresting officers to take a photograph and make an inventory of the confiscated materials in the presence of Frondozo. Likewise, there was no mention that any representative from the media, DOJ or any elected public official had been present during the inventory or that any of these persons had been required to sign the copies of the inventory.

Clearly, none of the statutory safeguards mandated by Rep. Act No. 9165 was observed. Hence, the failure of the buy-bust team to comply with the procedure in the custody of the seized drugs raises doubt as to its origins.

Nevertheless, while the seized drugs may be admitted in evidence, it does not necessarily follow that the same should be given evidentiary weight if the procedures provided by Rep. Act No. 9165 were not complied with. The admissibility of the seized dangerous drugs in evidence should not be equated with its probative value in proving the *corpus delicti*. The admissibility of evidence depends on its relevance and competence while

the weight of evidence pertains to evidence already admitted and its tendency to convince and persuade.[34]

Finally, the presumption of regularity in the performance of official duty relied upon by the lower courts cannot by itself overcome the presumption of innocence nor constitute proof of guilt beyond reasonable doubt. As a rule, the testimony of police officers who apprehended Frondozo is accorded full faith and credit because of the presumption that they have performed their duties regularly. However, when the performance of their duties is tainted with irregularities, such presumption is effectively destroyed.[35]

All told, the *corpus delicti* in this case does not exist.

WHEREFORE, the assailed Decision dated January 31, 2007 of the Court of Appeals in CA-G.R. CR-H.C. No. 01582 is *REVERSED* and *SET ASIDE*. Appellant RAMON FRONDOZO y DALIDA is *ACQUITTED* of the crime charged on the ground of reasonable doubt and ordered immediately *RELEASED* from custody, unless he is being held for some other lawful cause.

The Director of the Bureau of Corrections is *ORDERED* to implement this decision forthwith and to *INFORM* this Court, within five (5) days from receipt thereof, of the date appellant was actually released from confinement.

SO ORDERED.

Ynares-Santiago,[*] *Chico-Nazario,*[**] *Leonardo-de Castro,*[***] and *Brion, JJ.,* concur.

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[34] *People v. Magat,* G.R. No. 179939, September 29, 2008, pp. 12-13.

[35] *People v. Dela Cruz, supra* note 32, at 13.

[*] Designated member of the Second Division per Special Order No. 645.

[**] Designated member of the Second Division per Special Order No. 658.

[***] Designated member of the Second Division per Special Order No. 635.

EN BANC

[G.R. No. 178624. June 30, 2009]

JOSE CONCEPCION, JR., *petitioner, vs.* **COMMISSION ON ELECTIONS,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; PETITION FOR *CERTIORARI* UNDER RULE 65 OF THE RULES OF COURT; ONLY AN AGGRIEVED PARTY MAY FILE A PETITION FOR *CERTIORARI;* PERSONALITY OR INTEREST REQUIRED TO CHALLENGE DECISIONS OF CONSTITUTIONAL COMMISSIONS.— The requirement of personality or interest is sanctioned no less by Section 7, Article IX of the Constitution which provides that *a decision, order, or ruling of a constitutional commission may be brought to this Court on certiorari by the* ***aggrieved party*** *within thirty days from receipt of a copy thereof.* This requirement is repeated in Section 1, Rule 65 of the Rules of Court, which applies to petitions for *certiorari* under Rule 64 of decisions, orders or rulings of the constitutional commissions pursuant to Section 2, Rule 64. Section 1, Rule 65 essentially provides that a **person aggrieved** by any act of a tribunal, board or officer exercising judicial or quasi-judicial functions rendered without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction may file a petition for *certiorari*.

2. ID.; ID.; ID.; ID.; ID.; AN AGGRIEVED PARTY MUST HAVE BEEN A PARTY TO THE ORIGINAL PROCEEDINGS THAT GAVE RISE TO THE ORIGINAL ACTION FOR *CERTIORARI.*— An aggrieved party under Section 1, Rule 65 is one who was a party to the original proceedings that gave rise to the original action for *certiorari* under Rule 65. We had occasion to clarify and explain the "aggrieved party" requirement in *Tang v. Court of Appeals* where we said: Although Section 1 of Rule 65 provides that the special civil action of *certiorari* may be availed of by a "person aggrieved" by the orders or decisions of a tribunal, the term "person aggrieved" is not to be construed to mean that any person who feels injured by the lower court's order or decision can question the said court's disposition via

certiorari. To sanction a contrary interpretation would open the floodgates to numerous and endless litigations which would undeniably lead to the clogging of court dockets and, more importantly, the harassment of the party who prevailed in the lower court. In a situation wherein the order or decision being questioned underwent adversarial proceedings before a trial court, the **"person aggrieved" referred to under Section 1 of Rule 65 who can avail of the special civil action of *certiorari* pertains to one who was a party in the proceedings before the lower court.** The correctness of this interpretation can be gleaned from the fact that a special civil action for *certiorari* may be dismissed *motu proprio* if the party elevating the case failed to file a motion for reconsideration of the questioned order or decision before the lower court. Obviously, only one who was a party in the case before the lower court can file a motion for reconsideration since a stranger to the litigation would not have the legal standing to interfere in the orders or decisions of the said court. In relation to this, if a non-party in the proceedings before the lower court has no standing to file a motion for reconsideration, logic would lead us to the conclusion that he would likewise have no standing to question the said order or decision before the appellate court via *certiorari*.

3. ID.; ID.; ID.; ID.; ID.; LIBERAL APPROACH IN APPLYING PROCEDURAL RULES SHOULD NOT BE ABUSED; CASE AT BAR.— The petitioner's unusual approaches and use of Rule 65 of the Rules of Court do not appear to us to be the result of any error in reading Rule 65, given the way the petition was crafted. Rather, it was a backdoor approach to achieve what the petitioner could not directly do in his individual capacity under Rule 65. It was, at the very least, an attempted bypass of other available, albeit lengthier, modes of review that the Rules of Court provide. While we stop short of concluding that the petitioner's approaches constitute an abuse of process through a manipulative reading and application of the Rules of Court, we nevertheless resolve that the petition should be dismissed for its blatant violation of the Rules. The transgressions alleged in a petition, however weighty they may sound, cannot be justifications for blatantly disregarding the rules of procedure, particularly when remedial measures were available under these same rules to achieve the petitioner's objectives. For our part, we cannot and should not – in the

name of liberality and the "transcendental importance" doctrine – entertain these types of petitions. As we held in the very recent case of *Lozano, et al. vs. Nograles*, albeit from a different perspective, our liberal approach has its limits and should not be abused.

APPEARANCES OF COUNSEL

Bernas Law Offices for petitioner.
The Solicitor General for respondent.

D E C I S I O N

BRION, *J.*:

Before us is the petition for *certiorari*[1] filed by Jose Concepcion, Jr. (*petitioner*) "seeking to set aside the ***En Banc Resolution* dated 02 April 2007** and ***Order* dated 8 May 2007**" of respondent Commission on Elections (*COMELEC*).[2]

The petition cites and quotes the assailed rulings, then recites that on January 5, 2007, the National Citizen's Movement for Free Elections (*NAMFREL*) filed a Petition for Accreditation to Conduct the Operation Quick Count with the COMELEC, docketed as SSP No. 07-001.[3] The present petitioner – then the incumbent *Punong Barangay* of *Barangay* Forbes Park, Makati City – was one of the signatories of the NAMFREL petition in his capacity as the National Chairman of NAMFREL.

On the same date, COMELEC promulgated **Resolution No. 7798**[4] (*Resolution 7798*) that reads in full –

WHEREAS, Section 3 of Executive Order [*EO*] No. 94 dated March 2, 1987, provides as follows:

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

[2] *Rollo*, p. 4.

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

[4] *Id.*, pp. 67-69.

> Sec. 3. Prohibition on *barangay* officials. – No *barangay* official shall be appointed as member of the Board of Election Inspectors or as official watcher of each duly registered major political party or any socio-civic, religious, professional or any similar organization of which they may be members.

WHEREAS, the *barangay* is the smallest political unit of government and it is a widely accepted fact that *barangay* officials wield tremendous influence on their constituents or the residents in the *barangay*;

WHEREAS, the Boards of Election Inspectors [*BEIs*] are charged with the duty of maintaining the regularity and orderliness of the election proceedings in each precinct to the end that elections will be honest, orderly, peaceful and credible:

WHEREAS, records of past political exercises show that on election day, the Commission on Elections usually receive numerous complaints against *barangay* officials entering polling places and interfering in proceedings of the BEIs thereby causing not only delay in the proceedings, but also political tension among the BEIs, the voters and the watchers in the polling place;

NOW THEREFORE, to insure that elections are peaceful, orderly, regular and credible, the Commission on Elections, by virtue of the powers vested in it by the Constitution, the Omnibus Election Code [*OEC*], EO No. 94, and other election laws RESOLVED to prohibit, as it hereby RESOLVES to prohibit:

1. The appointment of *barangay* officials which includes the *Punong Barangay*, *Barangay Kagawad*, *Barangay* Secretary, *Barangay* Treasurer, and *Barangay Tanod*, as Chairman/person and/or Member of the BEIs or as official watcher of any candidate, duly registered major political party, or any similar organization, or any socio-civic, religious, professional [*sic*], in the May 14, 2007 National and Local Elections**. The prohibition extends to *barangay* officials, employees and *tanods*, who are members of accredited citizens' arms**.

2. The *barangay* officials, employees and *tanods* from staying inside any polling place, except to cast their vote. Accordingly, they should leave the polling place immediately after casting their vote.

This Resolution shall take effect on the seventh day after the publication in two (2) newspapers of general circulation in the Philippines.

The Education and Information Department shall cause the publication of this Resolution in two (2) daily newspapers of general circulation and shall furnish copies thereof to all field officers of the Commission and the Department of Interior and Local Government, other deputies and heads of accredited political parties.

SO ORDERED. [Emphasis supplied.]

The COMELEC ruled on NAMFREL's petition for accreditation on April 2, 2007 in the assailed Resolution (*April 2, 2007 Resolution*), ***conditionally*** granting NAMFREL's petition in the following tenor:[5]

Having already discussed above the reasons, both factual and legal, for the dismissal of the Verified Opposition, we find the instant petition for accreditation as the citizen's arm of the petitioner NAMFREL meritorious. Pursuant to Section 2(5), Article IX (C) of the 1987 Philippine Constitution and Section 52(k) of the Omnibus Election Code, as amended, this Commission *en banc* hereby resolves to accredit petitioner NAMFREL as its citizens' arm in the 14 May 2007 national and local elections, subject to its direct and immediate control and supervision.

There is, however, one important condition that must be fulfilled by the petitioner before its accreditation as citizens' arm could legally take effect. Accordingly, Mr. Jose S. Concepcion, Jr., the National Chairman of NAMFREL, must first be removed both as a member and overall Chairman of said organization. As correctly pointed out by the oppositor, Mr. Concepcion, being the Barangay Chairman of Barangay Forbes Park, Makati City, cannot be a member much more the overall chairman of the citizens' arm such as NAMFREL. *This is explicitly provided for in COMELEC Resolution No. 7798 promulgated on 5 January 2007,* pertinent of which we quote:

> WHEREAS, Section 3 of Executive Order No. 94 dated March 2, 1987 provides as follows:
>
> Sec. 3. Prohibition on *Barangay* officials – No *barangay* official shall be appointed as member of the Board of Election Inspectors or as watcher of each duly registered major political party or any socio-civic, religious, professional or any similar organization of which they may be members.

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[5] *Id.*, pp. 4-5.

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NOW THEREFORE, to insure that the elections are peaceful, orderly, regular and credible, the Commission on Elections, by virtue of the powers vested in it by the Constitution, the OEC, EO No. 94, and other election laws, RESOLVED to prohibit, as it is hereby RESOLVES to prohibit:

1. The appointment of *barangay* officials which include the Punong *Barangay, Kagawad, Barangay* Secretary, *Barangay* Treasurer, and *Barangay Tanod*, as Chairman / person and/or Members of the BEIs or as official watcher of any candidate, duly registered major political party, or any similar organization, or any socio-civic, religious, professional, in the May 14, 2007 National and Local Elections. The prohibition extends to the barangay officials, employees and *tanods*, who are members of the accredited citizens' arms.

x x x x x x x x x

WHEREFORE, premises considered, this Commission *en banc* RESOLVED as it hereby RESOLVES, to grant the instant petition for accreditation finding it imbued with merit.

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The ACCREDITATION herein GRANTED is further SUBJECT TO THE FOLLOWING CONDITIONS:

1. The petitioner is hereby enjoined and encouraged by the Commission *to re-organize in accordance with its own internal rules and procedures as an independent organization, and to submit before election day a list of its responsible officers and members, deleting therefrom the names of any previous officer or member similarly situated with Mr. Jose S. Concepcion, Jr. who are disqualified to be part of the citizens' arm in view of the passage of COMELEC Resolution No. 7798 on 5 January 2007*;

x x x x x x x x x

9. This accreditation shall be deemed automatically revoked in case petitioner violates any of the provisions and conditions set forth herein. [Italics supplied.]

Soon thereafter, NAMFREL filed a "*Manifestation and Request for Re-Examination*" that: (1) contains information regarding NAMFREL's reorganization and its new set of officers

showing that the petitioner had stepped down as National Chair and had been replaced by a new Chair; (2) manifests NAMFREL's acceptance of the conditional grant of its petition for accreditation; and (3) includes NAMFREL's request for a re-examination without further arguments of the April 2, 2007 Resolution as it specifically affected the petitioner's membership with NAMFREL. In this Manifestation and Request for Re-examination, NAMFREL outlined its various objections and concerns on the legality or validity of Resolution 7798.

The COMELEC, in its Order of May 8, 2007, noted the information relating to NAMFREL's current officers, and denied the request to examine its (COMELEC's) interpretation of the April 2, 2007 Resolution prohibiting petitioner's direct participation as member and National Chairman of NAMFREL. The COMELEC reasoned out that the April 2, 2007 Resolution is clear, and NAMFREL had not presented any convincing argument to warrant the requested examination.

NAMFREL did not question the COMELEC's ruling.

THE PETITION

Instead of a direct reaction from NAMFREL, the petitioner filed the present petition, ostensibly questioning the COMELEC's April 2, 2007 Resolution, but actually raising issues with respect to Resolution 7798. To illustrate this point, the headings of the petitioner's cited grounds were as follows:

COMELEC HAS ACTED WITHOUT JURISDICTION OR IN EXCESS OF ITS JURISDICTION WHEN IT ISSUED COMELEC RESOLUTION NO. 7798 WHICH HAS NO STATUTORY BASIS.[6]

COMELEC SERIOUSLY ERRED AND GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OF JURISDICTION OR IN EXCESS OF ITS JURISDICTION WHEN IT RETROACTIVELY APPLIED COMELEC RESOLUTION NO. 7798 TO NAMFREL'S PETITION.[7]

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

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

NAMFREL CHAIRMAN JOSE CONCEPCION WAS NOT ACCORDED DUE PROCESS WHEN HE WAS NEITHER GIVEN THE OPPORTUNITY TO QUESTION COMELEC RESOLUTION NO. 7798 NOR THE OPPORTUNITY TO PRESENT HIS SIDE REGARDING THE PROHIBITION.[8]

The petitioner expounded on the invalidity of Resolution 7798 with the following arguments which, for brevity and ease of presentation, we summarize below:

1. EO No. 94 – issued by then President Corazon Aquino on December 17, 1986 – prohibits ***the appointment of barangay officials as members of the BEI or as official watchers of each duly registered major political party or any socio-civic, religious, professional or any similar organization of which they may be members***. This law, according to the petitioner, could not however be the statutory basis of Resolution 7798 because:

   a. the prohibition under EO No. 94 applies only to the February 2, 1987 plebiscite. The restrictive application is evident from a reading of the EO's title[9] and of one of its *whereas clauses.*[10]

   b. nothing in EO No. 94 prohibits the petitioner's membership with NAMFREL or the petitioner's appointment as Chair or member of a duly accredited COMELEC's citizen arm. The petitioner, who then chaired NAMFREL, was never appointed as BEI member or as poll watcher.

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[8] *Id.*, p. 15.

[9] Amending Certain Provisions of the Omnibus Election Code of the Philippines for Purposes of the February 2, 1987 Plebiscite and For Other Purposes.

[10] WHEREAS, in the interest of free, orderly and honest conduct of the plebiscite, there is an immediate necessity to amend Section 52, paragraph (c) of the Omnibus Election Code of the Philippines, so as to empower the Commission on Elections to promulgate expeditiously rules and regulations for the plebiscite on February 2, 1987, considering the time element involved.

c. the underlying purpose of Resolution 7798 is to prevent *barangay* officials from wielding their influence during the voting and canvassing stages by entering polling places under the pretext of acting as poll watchers. The petitioner was not a poll watcher; the COMELEC could have therefore simply prohibited the appointment of *barangay* chairmen as BEI members or poll watchers, and would have already achieved its purpose.

d. the COMELEC cannot, in the guise of regulation, go beyond or expand the mandate of a law because the COMELEC has no law-making powers.

e. Resolution 7798 cannot be applied retroactively. Its effectivity clause provides that it shall be effective on the 7th day after its publication in a newspaper of general circulation, that is, only on January 14, 2007. Since NAMREL's petition was filed on January 5, 2007 (or before Resolution 7798's effectivity), it could not have applied to NAMFREL's petition.

2. Resolution 7798 is an invalid implementing regulation, as it failed to comply with the following requisites for the validity of implementing rules and regulations:

a. the rules and regulations must have been issued on the authority of law;

b. the rules and regulations must be within the scope and purview of the law;

c. the rules and regulations must be reasonable;

d. the rules and regulations must not be contrary to laws or to the Constitution.

3. On constitutional grounds, the petitioner objected to Resolution 7798 because:

a. the Resolution is unreasonable, as it bears no relation to the very purpose of the law; its prohibition is harsh, oppressive, and serves no purpose at all.

b. Resolution 7798 violates the petitioner's right to association through its enforced removal of the petitioner as member and Chair of NAMFREL.

c. the COMELEC denied him of his right to procedural due process; he was not afforded the cardinal administrative due process right to a hearing,[11] as *he was not given the opportunity to be heard or at least to comment on Resolution 7798 upon which his removal as National Chair and member of NAMFREL was based.* He should have been heard since he was not a party to the petition for accreditation in his personal capacity. Thus, the April 2, 2007 Resolution conditionally granting NAMFREL's petition for accreditation should be nullified insofar as it required the petitioner's resignation from NAMFREL as a pre-condition for the effectivity of its accreditation.

THE OSG RESPONSE

The Office of the Solicitor General (*OSG*) defends the validity of Resolution 7798 with the following arguments:

1. Resolution 7798 was issued by the COMELEC as a valid exercise of its quasi-legislative power to implement elections laws. Hence, notice and hearing are not required for its validity. The OSG cites Section 52 (c) of the OEC empowering the COMELEC to "*promulgate rules and regulations implementing the provisions of this Code* (the OEC) *or other laws which the Commission is required to enforce and administer…*" in relation with the settled principle [citing *Central Bank v. Cloribel* (44 SCRA 307 [1972])] that notice and hearing are not required when an administrative agency exercises its

[11] Citing the cardinal due process rights under *Ang Tibay v. Court of Industrial Relations*, 69 Phil. 635 (1940).

quasi-legislative power,[12] as opposed to quasi-judicial power which requires notice and hearing;[13] and

2. EO No. 94 applies to the May 14, 2007 national and local elections. While EO No. 94 may have been issued primarily for the February 2, 1987 plebsicite, its spirit and intent find applicability and relevance to future elections. Thus, the COMELEC's reliance on EO No. 94 when it issued Resolution 7798 is certainly valid and proper;

3. While the petitioner is not appointed as member of the BEI or as watcher, he nonetheless labors under a conflict of interest, given that a COMELEC-accredited citizens' arm is also entitled, under Section 180 of the OEC to appoint a watcher in every polling place. Additionally, the fact that the petitioner is a *barangay* chairman and at the same time the NAMFREL Chair clearly raises questions on his neutrality and non-partisanship; COMELEC non-partisanship may at the same time be compromised, as it is the COMELEC which accredits its citizens' arm.

The OSG – in arguing that Resolution 7798 was issued pursuant to the COMELEC's mandate and is not, therefore, tainted with grave abuse of discretion – also harks back at the extent of the power of the COMELEC under Section 2(1) of Article IX(C) of the Constitution that gives COMELEC the broad power to administer the conduct of an election, plebiscite, initiative, referendum and recall[14]; there can hardly be any doubt that the text and intent of the constitutional provision is to give COMELEC *all the necessary and incidental powers for it to achieve the objective of holding free, orderly, honest, peaceful, and credible elections*.

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[12] An action in the form of a general rule for the future to govern the public at large.

[13] An action which results from investigation, declaration and enforcement of liabilities as they stand on present or past facts and under existing laws.

[14] *Pangandaman v. Comelec*, G.R. No. 134340, November 25, 1999, 319 SCRA 283.

THE COURT'S RULING

We resolve to DISMISS the petition for blatant misuse of Rule 65 of the Rules of Court.

A primary consideration for us in looking at the petition is its thrust or focus. The petition mentions three legal instruments related with the case, namely: (1) **EO No. 94** issued by then President Aquino; (2) **COMELEC's April 2, 2007 Resolution** conditionally granting NAMFREL's accreditation, subject to the conditions that the petitioner and similarly situated *barangay* officials shall not be included as members or officials of NAMFREL; and (3) **COMELEC Resolution 7798**, issued pursuant to EO No. 94 and which in turn is the basis for the April 2, 2007 Resolution.

We reiterate that the present petition, by its express terms, seeks to "***set aside the En Banc Resolution dated 02 April 2007 and the Order dated 8 May 2007 of Respondent Comelec*** who, in grave abuse of discretion and in gross violation of Petitioner's right to due process of law, denied Petitioner's right to associate when the Respondent Comelec, as a condition of NAMFREL's accreditation as citizen arm, directed the removal of Petitioner as overall Chairman and member." In arguing for this objective, *the petitioner directs his attention at Resolution 7798, not at the April 2, 2007 Resolution,* as can be seen from the grounds summarized above. In the process, he likewise raises issues that call for the interpretation of Resolution 7798's underlying basis – EO No. 94.

Expressed in procedural terms, the petitioner now seeks to assail, *in his individual capacity*, a COMELEC **adjudicatory resolution** (*i.e.*, the April 2, 2007 Resolution) for its adverse effects on him when he was not a party to that case. NAMFREL (the direct party to the case and who had accepted the COMELEC accreditation ruling), on the other hand, is not a party to the present petition. Its non-participation is apparently explained by the position it took with respect to the April 2, 2007 Resolution; in its Manifestation and Request for Examination, it asked for

a re-examination of the April 2, 2007 Resolution, but interestingly stated that –

> 21. NAMFREL **accepts the terms of the accreditation** and further manifests that it **has commenced full efforts into preparing for the performance of its duties and obligations as the Commission's citizen arm.** [Emphasis supplied.]

Thus, the present petition is clearly the petitioner's own initiative, and NAMFREL, the direct party in the COMELEC's April 2, 2007 Resolution, has absolutely no participation.

Another unusual feature of this case is the focus of the petition. While its expressed intent is to assail the COMELEC's April 2, 2007 Resolution (an exercise of the COMELEC's quasi-judicial functions), its focus is on the alleged defects of Resolution 7798, a regulation issued by the COMELEC in the exercise of its rulemaking power.

The above features of the petition render it fatally defective. The **first defect** lies in the petitioner's personality to file a petition for *certiorari* to address an adjudicatory resolution of the COMELEC in which he was not a party to, and where the direct party, NAMFREL, does not even question the assailed resolution. It would have been another matter if NAMFREL had filed the present petition with the petitioner as intervenor because of his personal interest in the COMELEC ruling. He could have intervened, too, before the COMELEC as an affected party in NAMFREL's Manifestation and Request for Examination. As a last recourse, the petitioner could have expressly stated before this Court the procedural problems he faced and asked that we suspend the rules based on the unusual circumstances he could have pointed out. None of these actions, however, took place. Instead, the petitioner simply questioned the COMELEC's April 2, 2007 Resolution without explaining to this Court his reason for using Rule 65 as his medium, and from there, proceeded to attack the validity of COMELEC Resolution 7798. Under these questionable circumstances, we cannot now recognize the petitioner as a party-in-interest who

can directly assail the COMELEC's April 2, 2007 Resolution in an original Rule 65 petition before this Court.

The requirement of personality or interest is sanctioned no less by Section 7, Article IX of the Constitution which provides that *a decision, order, or ruling of a constitutional commission may be brought to this Court on certiorari by the* ***aggrieved party*** *within thirty days from receipt of a copy thereof.*[15] This requirement is repeated in Section 1, Rule 65 of the Rules of Court, which applies to petitions for *certiorari* under Rule 64 of decisions, orders or rulings of the constitutional commissions pursuant to Section 2, Rule 64.[16] Section 1, Rule 65 essentially provides that a **person aggrieved** by any act of a tribunal, board or officer exercising judicial or quasi-judicial functions rendered without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction may file a petition for *certiorari*.

An aggrieved party under Section 1, Rule 65 is one who was a party to the original proceedings that gave rise to the original action for *certiorari* under Rule 65. We had occasion to clarify and explain the "aggrieved party" requirement in *Tang v. Court of Appeals*[17] where we said:

Although Section 1 of Rule 65 provides that the special civil action of *certiorari* may be availed of by a "person aggrieved" by the orders or decisions of a tribunal, the term "person aggrieved" is not to be

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[15] **Section 7.** Each Commission shall decide by a majority vote of all its Members, any case or matter brought before it within sixty days from the date of its submission for decision or resolution. A case or matter is deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the rules of the Commission or by the Commission itself. Unless otherwise provided by this Constitution or by law, any decision, order, or ruling of each Commission may be brought to the Supreme Court on *certiorari* by the aggrieved party within thirty days from receipt of a copy thereof.

[16] SEC 2. *Mode of review*. – A judgment or final order or resolution of the Commission on Elections and the Commission on Audit may be brought by the aggrieved party to the Supreme Court on *certiorari* under Rule 65, except as hereinafter provided.

[17] G.R. No. 117204, February 11, 2000, 325 SCRA 394, 402-403.

construed to mean that any person who feels injured by the lower court's order or decision can question the said court's disposition via *certiorari*. To sanction a contrary interpretation would open the floodgates to numerous and endless litigations which would undeniably lead to the clogging of court dockets and, more importantly, the harassment of the party who prevailed in the lower court.

In a situation wherein the order or decision being questioned underwent adversarial proceedings before a trial court, the "**person aggrieved**" **referred to under Section 1 of Rule 65 who can avail of the special civil action of *certiorari* pertains to one who was a party in the proceedings before the lower court.** The correctness of this interpretation can be gleaned from the fact that a special civil action for *certiorari* may be dismissed *motu proprio* if the party elevating the case failed to file a motion for reconsideration of the questioned order or decision before the lower court. Obviously, only one who was a party in the case before the lower court can file a motion for reconsideration since a stranger to the litigation would not have the legal standing to interfere in the orders or decisions of the said court. In relation to this, if a non-party in the proceedings before the lower court has no standing to file a motion for reconsideration, logic would lead us to the conclusion that he would likewise have no standing to question the said order or decision before the appellate court via *certiorari*. (emphasis supplied)

More importantly, we had this to say in *Development Bank of the Philippines v. Commission on Audit*[18] – a case that involves a *certiorari* petition, under Rule 64 in relation with Rule 65, of a ruling of the Commission on Audit (a constitutional commission like COMELEC):

The novel theory advanced by the OSG would necessarily require persons not parties to the present case – the DBP employees who are members of the Plan or the trustees of the Fund – to avail of *certiorari* under Rule 65. **The petition for *certiorari* under Rule 65, however, is not available to any person who feels injured by the decision of a tribunal, board or officer exercising judicial or quasi-judicial functions**. **The "person aggrieved" under Section 1 of Rule 65** who can avail of the special civil action of *certiorari* **pertains**

[18] G.R. No. 144516, February 11, 2004, 422 SCRA 459.

only to one who was a party in the proceedings before the court *a quo*, or in this case, before the COA. To hold otherwise would open the courts to numerous and endless litigations. Since DBP was the sole party in the proceedings before the COA, DBP is the proper party to avail of the remedy of *certiorari*.

The real party in interest who stands to benefit or suffer from the judgment in the suit must prosecute or defend an action. We have held that "interest" means material interest, an interest in issue that the decision will affect, as distinguished from mere interest in the question involved, or a mere incidental interest.

The second fatal defect lies in the petition's thrust; it opened with and professed to be an express challenge to the COMELEC's adjudicatory April 2, 2007 Resolution, but in its arguments solely attacks and prays for the partial nullity of COMELEC Resolution 7798 issued in the exercise of the COMELEC's rule making power. This approach is fatally defective because the petition thereby converts an express challenge of an adjudicatory resolution – made without the requisite standing – into a challenge for the nullity of a regulation through an original Rule 65 petition for *certiorari*.

To be sure, a COMELEC adjudicatory action can be challenged on the basis of the invalidity of the law or regulation that underlies the action. But to do this, a valid challenge to the adjudicatory action must exist; at the very least, the petitioner must have the requisite personality to mount the legal challenge to the COMELEC adjudicatory action.[19] Where this basic condition is absent, the challenge is unmasked for what it really is – a direct challenge to the underlying law or regulation masquerading as a challenge to a COMELEC adjudicatory action.

What is significant in appreciating this defect in the petition is the legal reality that the petitioner was not without any viable remedy to directly challenge Resolution 7798. A stand-alone challenge to the regulation could have been made through appropriate mediums, particularly through a petition for declaratory relief with the appropriate Regional Trial Court

[19] See discussions on personality, at pages 11-14, this Decision.

under the terms of Rule 63 of the Rules of Court, or through a petition for prohibition under Rule 65 to prevent the implementation of the regulation, as the petitioner might have found appropriate to his situation. As already mentioned, a challenge can likewise be made in the course of *validly* contesting an adjudicatory order of the COMELEC. Such challenge, however, cannot be made in an ***original*** petition for *certiorari* under Rule 65 dissociated from any COMELEC action made in the exercise of its quasi-judicial functions.

The petitioner's unusual approaches and use of Rule 65 of the Rules of Court do not appear to us to be the result of any error in reading Rule 65, given the way the petition was crafted. Rather, it was a backdoor approach to achieve what the petitioner could not directly do in his individual capacity under Rule 65. It was, at the very least, an attempted bypass of other available, albeit lengthier, modes of review that the Rules of Court provide. While we stop short of concluding that the petitioner's approaches constitute an abuse of process through a manipulative reading and application of the Rules of Court, we nevertheless resolve that the petition should be dismissed for its blatant violation of the Rules. The transgressions alleged in a petition, however weighty they may sound, cannot be justifications for blatantly disregarding the rules of procedure, particularly when remedial measures were available under these same rules to achieve the petitioner's objectives. For our part, we cannot and should not – in the name of liberality and the "transcendental importance" doctrine – entertain these types of petitions. As we held in the very recent case of *Lozano, et al. vs. Nograles*,[20] albeit from a different perspective, our liberal approach has its limits and should not be abused.

WHEREFORE, premises considered, the petition is *DISMISSED*.

Cost against the petitioner.

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[20] G.R. Nos. 187883/187910, June 16. 2009.

SO ORDERED.

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

Carpio Morales, J., on leave.

THIRD DIVISION

[G.R. No. 180067. June 30, 2009]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **IGLESIA NI CRISTO, Trustee and APPLICANT, with its Executive Minister ERAÑO MANALO as Corporate Sole,** *respondent.*

SYLLABUS

1. CIVIL LAW; LAND TITLES AND DEEDS; THE PROPERTY SOUGHT TO BE REGISTERED MUST BE ALIENABLE AND DISPOSABLE AT THE TIME THE APPLICATION FOR REGISTRATION OF TITLE IS FILED.— In *Heirs of Mario Malabanan v. Republic* (*Malabanan*), the Court upheld *Naguit* and abandoned the stringent ruling in *Herbieto*. Sec. 14(1) of PD 1529 pertinently provides: SEC. 14. *Who may apply*.—The following persons may file in the proper Court of First Instance [now Regional Trial Court] 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. In declaring that the correct interpretation of Sec. 14(1) of PD 1529 is that which was adopted in *Naguit*, the Court ruled that **"the more reasonable interpretation of Sec. 14(1) of PD 1529 is that it merely requires the property sought to be registered as already**

alienable and disposable at the time the application for registration of title is filed."

2. ID.; ID.; ID.; MORE IN KEEPING WITH THE SPIRIT OF THE PUBLIC LAND ACT AND PD 1529.— Moreover, we wish to emphasize that our affirmation of *Naguit* in *Malabanan*—as regards the correct interpretation of Sec. 14(1) of PD 1529 relative to the reckoning of possession *vis-à-vis* the declaration of the property of the public domain as alienable and disposable—is indeed more in keeping with the spirit of the Public Land Act, as amended, and of PD 1529. These statutes were enacted to conform to the State's policy of encouraging and promoting the distribution of alienable public lands to spur economic growth and remain true to the ideal of social justice. The statutes' requirements, as couched and amended, are stringent enough to safeguard against fraudulent applications for registration of title over alienable and disposable public land. The application of the more stringent pronouncement in *Herbieto* would indeed stifle and repress the State's policy.

3. ID.; ID.; THE POSSESSION REQUIRED IS NOT RECORDED FROM THE TIME OF THE DECLARATION OF THE PROPERTY AS ALIENABLE AND DISPOSABLE.— Finally, the Court in *Malabanan* aptly synthesized the doctrine that the period of possession required under Sec. 14(1) of PD 1529 is not reckoned from the time of the declaration of the property as alienable and disposable, thus: We synthesize the doctrines laid down in this case, as follows: (1) In connection with Section 14(1) of the Property Registration Decree, Section 48(b) of the Public Land Act recognizes and confirms that "those who by themselves or through their predecessors in interest have been in open, continuous, exclusive, and notorious possession and occupation of alienable and disposable lands of the public domain, under a bona fide claim of acquisition of ownership, since June 12, 1945" have acquired ownership of, and registrable title to, such lands based on the length and quality of their possession. (a) Since Section 48(b) merely requires possession since 12 June 1945 and does not require that the lands should have been alienable and disposable during the entire period of possession, the possessor is entitled to secure judicial confirmation of his title thereto as soon as it is declared alienable and disposable, subject to the timeframe imposed by Section 47 of the Public Land Act. (b) The right to register granted

under Section 48(b) of the Public Land Act is further confirmed by Section 14(1) of the Property Registration Decree.

4. REMEDIAL LAW; APPEALS; FINDINGS OF FACTS OF THE TRIAL COURT WHEN AFFIRMED BY THE CA ARE FINAL AND CONCLUSIVE ON THE COURT.— As a rule, the findings of fact of the trial court when affirmed by the CA are final and conclusive on, and cannot be reviewed on appeal by, this Court as long as they are borne out by the record or are based on substantial evidence. The Court is not a trier of facts, its jurisdiction being limited to reviewing only errors of law that may have been committed by the lower courts.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.

Lazaro Tuazon Santos and Associates Law Offices for respondent.

D E C I S I O N

VELASCO, JR., *J.*:

The Case

In this Petition for Review on *Certiorari* under Rule 45, the Republic of the Philippines assails the October 11, 2007 Decision[1] of the Court of Appeals (CA) in CA-G.R. CV No. 85348, which affirmed the April 26, 2005 Decision[2] of the Municipal Circuit Trial Court (MCTC) in Paoay-Currimao, Ilocos Norte, in Land Registration Case No. 762-C for Application for Registration of Title, entitled *Iglesia Ni Cristo, Trustee and Applicant with its Executive Minister Eraño Manalo as Corporate Sole v. Republic of the Philippines as oppositor*.

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[1] *Rollo*, pp. 24-32. Penned by Associate Justice Josefina Guevara-Salonga and concurred in by Associate Justices Vicente Q. Roxas and Ramon R. Garcia.

[2] *Id.* at 55-56. Penned by Judge Designate Felix C. Salvador.

The Facts

Subject of the instant controversy is Lot No. 3946 of the Currimao Cadastre, particularly described as follows:

> A parcel of land (Plan Swo-I-001047, L.R.C. Rec. No. _____) situated in the Barrio of Baramban, Municipality of Currimao, Province of Ilocos Norte, Island of Luzon. Bounded on the SE., along line 1-2 by the National Road (20.00 m. wide); on the SW. & NW., along lines 2-3-4 by lot 3946, Cads-562-D, Currimao Cadastral Sketching, Bernardo Badanguio; on the NE., along line 4-1 by lot 3947, portion, Cads-562-D; (Pacita B. Lazaro) and lot 3948, Pacita B. Lazaro, Cads-562-D, Currimao Cadastral Sketching x x x containing an area of FOUR THOUSAND TWO HUNDRED AND ONE (4201) SQUARE METERS. x x x

On November 19, 1998, Iglesia Ni Cristo (INC), represented by Eraño G. Manalo, as corporate sole, filed its Application for Registration of Title before the MCTC in Paoay-Currimao. Appended to the application were the *sepia* or tracing cloth of plan Swo-1-001047, the technical description of subject lot,[3] the Geodetic Engineer's Certificate,[4] Tax Declaration No. (TD) 508026[5] covering the subject lot, and the September 7, 1970 Deed of Sale[6] executed by Bernardo Bandaguio in favor of INC.

The Republic, through the Office of the Solicitor General (OSG), entered its appearance and deputized the Provincial Prosecutor of Laoag City to appear on its behalf. It also filed an Opposition to INC's application.

The Ruling of the Cadastral Court

After the required jurisdictional publication, notification, and posting, hearing ensued where the INC presented three

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[3] *Id.* at 41, dated March 12, 1979.

[4] *Id.* at 42, dated March 15, 1979.

[5] *Id.* at 44.

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

testimonial witnesses,[7] the MCTC, acting as cadastral court, rendered its Decision on April 26, 2005, granting INC's application. The decretal portion reads:

> Wherefore, the application for registration is hereby granted. Upon finality of this decision, let an Order be issued directing the Land Registration Authority to register and issue an Original Certificate of Title to the applicant Iglesia Ni Cristo, as Corporation Sole, with official address at No. 1 Central Avenue, New Era, Diliman Quezon City.
>
> SO ORDERED.

The cadastral court held that based on documentary and testimonial evidence, the essential requisites for judicial confirmation of an imperfect title over the subject lot have been complied with.

It was established during trial that the subject lot formed part of a bigger lot owned by one Dionisio Sabuco. On February 23, 1952, Sabuco sold a small portion of the bigger lot to INC which built a chapel on the lot. Saturnino Sacayanan, who was born in 1941 and became a member of INC in 1948, testified to the sale by Sabuco and the erection of the small chapel by INC in 1952. Subsequently, Sabuco sold the bigger lot to Bernardo Badanguio less the small portion where the INC chapel was built.

Badanguio in 1954 then declared the entire bigger lot he purchased from Sabuco for tax purposes and was issued TD 006114.[8] In 1959, Badanguio also sold a small portion of the bigger lot to INC for which a Deed of Absolute Sale[9] was executed on January 8, 1959. Jaime Alcantara, the property custodian of INC, testified to the purchases constituting the subject lot and the issuance of TDs covering it as declared by

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[7] (1) Teofilo Tulali, a tenant of Lot No. 3946; (2) Saturnino Sacayanan, a member of INC since 1948; and (3) Jaime Alcantara, the property custodian of Lot No. 3946 and Minister of INC since 1965.

[8] Records, p. 439.

[9] *Id.* at 356-357.

INC for tax purposes. Thus, these two purchases by INC of a small portion of the bigger lot originally owned by Sabuco, who inherited it from his parents and later sold it to Badanguio, constituted the subject lot.

On September 7, 1970, a Deed of Sale was executed by Badanguio in favor of INC formally ceding and conveying to INC the subject lot which still formed part of the TD of the bigger lot under his name. This was testified to by Teofilo Tulali who became a tenant of the bigger lot in 1965 and continued to be its tenant under Badanguio. Tulali testified further that the ownership and possession of Sabuco and Badanguio of the bigger lot were never disturbed.

Subsequently, TD 6485[10] was issued in 1970 in the name of INC pursuant to the September 7, 1970 Deed of Sale. This was subsequently replaced by TD No. 406056[11] in 1974, TD 508026 in 1980, and TD 605153 in 1985.

For the processing of its application for judicial confirmation of title, subject Lot No. 3946 of the Currimao Cadastre was surveyed and consisted of 4,201 square meters. With the presentation of the requisite *sepia* or tracing cloth of plan Swo-1-001047, technical description of the subject lot, Geodetic Engineer's Certificate, and Report given by the City Environment and Natural Resources Office special investigator showing that the subject lot is within alienable and disposable public zone, the MCTC found and appreciated the continuous possession by INC of the subject lot for over 40 years after its acquisition of the lot. Besides, it noted that Badanguio and Sabuco, the predecessors-in-interest of INC, were never disturbed in their possession of the portions they sold to INC constituting the subject lot.

Aggrieved, the Republic seasonably interposed its appeal before the CA, docketed as CA-G.R. CV No. 85348.

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[10] *Rollo*, p. 46.

[11] *Id.* at 45.

The Ruling of the CA

On October 11, 2007, the appellate court rendered the assailed Decision affirming the April 26, 2005 MCTC Decision. The *fallo* reads:

> WHEREFORE, the foregoing considered, the instant appeal is hereby DENIED and the assailed decision AFFIRMED *in toto*.
>
> SO ORDERED.

In denying the Republic's appeal, the CA found that the documentary and testimonial evidence on record sufficiently established the continuous, open, and peaceful possession and occupation of the subject lot in the concept of an owner by INC of more than 40 years and by its predecessors-in-interest prior to the conveyance of the lot to INC.

Hence, we have this petition.

The Issue

THE COURT OF APPEALS ERRED ON A QUESTION OF LAW IN AFFIRMING THE [MCTC] DECISION GRANTING THE APPLICATION FOR LAND REGISTRATION DESPITE EVIDENCE THAT THE LAND WAS DECLARED ALIENABLE AND DISPOSABLE LAND OF THE PUBLIC DOMAIN ONLY ON MAY 16, 1993, OR FIVE (5) YEARS BEFORE THE FILING OF THE APPLICATION FOR REGISTRATION ON NOVEMBER 19, 1998.[12]

The Court's Ruling

May a judicial confirmation of imperfect title prosper when the subject property has been declared as alienable only after June 12, 1945? This is the sole issue to be resolved.

The petition is bereft of merit. The sole issue raised is not novel.

The Republic's Contention

The Republic contends that subject Lot No. 3946 was certified as alienable and disposable land of the public domain only on

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[12] *Id.* at 13.

May 16, 1993. Relying on *Republic v. Herbieto*,[13] it argues that prior to said date, the subject lot remained to be of the public dominion or *res publicae* in nature incapable of private appropriation, and, consequently, INC and its predecessors-in-interest's possession and occupation cannot confer ownership or possessory rights and "any period of possession prior to the date when the lot was classified as alienable and disposable is inconsequential and should be excluded in the computation of the period of possession."[14]

The Republic maintains further that since the application was filed only on November 19, 1998 or a scant five years from the declaration of the subject lot to be alienable and disposable land on May 16, 1993, INC's possession fell short of the 30-year period required under Section 48(b) of Commonwealth Act No. (CA) 141, otherwise known as the Public Land Act.

The Argument of INC

Respondent INC counters that the Court has already clarified this issue in *Republic v. Court of Appeals* (*Naguit* case), in which we held that what is merely required by Sec. 14(1) of Presidential Decree No. (PD) 1529, otherwise known as the Property Registration Decree, is that the "property sought to be registered [is] already **alienable and disposable at the time of the application for registration of title is filed**."[15] Moreover, INC asserts that the *Herbieto* pronouncement quoted by the Republic cannot be considered doctrinal in that it is merely an *obiter dictum*, stated only after the case was dismissed for the applicant's failure to comply with the jurisdictional requirement of publication.

Necessity of declaration of public agricultural land as alienable and disposable

It is well-settled that no public land can be acquired by private persons without any grant, express or implied, from the

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[13] G.R. No. 156117, May 26, 2005, 459 SCRA 183.

[14] *Id.* at 201-202.

[15] G.R. No. 144057, January 17, 2005, 448 SCRA 442, 448-449.

government, and it is indispensable that the persons claiming title to a public land should show that their title was acquired from the State or any other mode of acquisition recognized by law.[16] In the instant case, it is undisputed that the subject lot has already been declared alienable and disposable by the government on May 16, 1993 or a little over five years before the application for registration was filed by INC.

Conflicting rulings in *Herbieto* and *Naguit*

It must be noted that this Court had conflicting rulings in *Naguit* and *Herbieto*, relied on by the parties' contradictory positions.

Herbieto essentially ruled that reckoning of the possession of an applicant for judicial confirmation of imperfect title is counted from the date when the lot was classified as alienable and disposable, and possession before such date is inconsequential and must be excluded in the computation of the period of possession. nThis ruling is very stringent and restrictive, for there can be no perfection of title when the declaration of public agricultural land as alienable and disposable is made after June 12, 1945, since the reckoning of the period of possession cannot comply with the mandatory period under Sec. 14(1) of PD 1529.

In *Naguit*, this Court held a less stringent requirement in the application of Sec. 14(1) of PD 1529 in that the reckoning for the period of possession is the actual possession of the property and it is sufficient for the property sought to be registered to be already alienable and disposable at the time of the application for registration of title is filed.

A review of subsequent and recent rulings by this Court shows that the pronouncement in *Herbieto* has been applied to *Buenaventura v. Republic*,[17] *Republic v. Diloy*,[18] *Ponciano,*

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[16] *Republic v. Sarmiento*, G.R. No. 169397, March 13, 2007, 518 SCRA 250, 257; citing *Herbieto, supra* note 13, at 199-200.

[17] G.R. No. 166865, March 2, 2007, 517 SCRA 271.

[18] G.R. No. 174633, August 26, 2008.

Jr. v. Laguna Lake Development Authority,[19] and *Preciosa v. Pascual*.[20] This Court's ruling in *Naguit*, on the other hand, has been applied to *Republic v. Bibonia*.[21]

Core issue laid to rest in *Heirs of Mario Malabanan v. Republic*

In *Heirs of Mario Malabanan v. Republic* (*Malabanan*),[22] the Court upheld *Naguit* and abandoned the stringent ruling in *Herbieto*.

Sec. 14(1) of PD 1529 pertinently provides:

> SEC. 14. *Who may apply*.—The following persons may file in the proper Court of First Instance [now Regional Trial Court] 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.

In declaring that the correct interpretation of Sec. 14(1) of PD 1529 is that which was adopted in *Naguit*, the Court ruled that "**the more reasonable interpretation of Sec. 14(1) of PD 1529 is that it merely requires the property sought to be registered as already alienable and disposable at the time the application for registration of title is filed**."

The Court in *Malabanan* traced the rights of a citizen to own alienable and disposable lands of the public domain as granted under CA 141, otherwise known as the Public Land Act, as amended by PD 1073, and PD 1529. The Court observed that Sec. 48(b) of CA 141 and Sec. 14(1) of PD 1529 are virtually the same, with the latter law specifically operationalizing

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[19] G.R. No. 174536, October 29, 2008.

[20] G.R. No. 168819, November 27, 2008.

[21] G.R. No. 157466, June 21, 2007, 525 SCRA 268.

[22] G.R. No. 179987, April 29, 2009.

the registration of lands of the public domain and codifying the various laws relative to the registration of property. We cited *Naguit* and ratiocinated:

> Despite the clear text of Section 48(b) of the Public Land Act, as amended and Section 14(a) of the Property Registration Decree, the OSG has adopted the position that for one to acquire the right to seek registration of an alienable and disposable land of the public domain, it is not enough that the applicant and his/her predecessors-in-interest be in possession under a *bona fide* claim of ownership since 12 June 1945; the alienable and disposable character of the property must have been declared also as of 12 June 1945. Following the OSG's approach, all lands certified as alienable and disposable after 12 June 1945 cannot be registered either under Section 14(1) of the Property Registration Decree or Section 48(b) of the Public Land Act as amended. The absurdity of such an implication was discussed in *Naguit*.
>
> Petitioner suggests an interpretation that the alienable and disposable character of the land should have already been established since June 12, 1945 or earlier. This is not borne out by the plain meaning of Section 14(1). "Since June 12, 1945," as used in the provision, qualifies its antecedent phrase "under a bonafide claim of ownership." Generally speaking, qualifying words restrict or modify only the words or phrases to which they are immediately associated, and not those distantly or remotely located. *Ad proximum antecedents fiat relation nisi impediatur sentencia*.
>
> Besides, we are mindful of the absurdity that would result if we adopt petitioner's position. Absent a legislative amendment, the rule would be, adopting the OSG's view, that all lands of the public domain which were not declared alienable or disposable before June 12, 1945 would not be susceptible to original registration, no matter the length of unchallenged possession by the occupant. Such interpretation renders paragraph (1) of Section 14 virtually inoperative and even precludes the government from giving it effect even as it decides to reclassify public agricultural lands as alienable and disposable. The unreasonableness of the situation would even be aggravated considering that before June 12, 1945, the Philippines was not yet even considered an independent state.

Accordingly, the Court in *Naguit* explained:

> [T]he more reasonable interpretation of Section 14(1) is that it merely requires the property sought to be registered as already

> alienable and disposable at the time the application for registration of title is filed. If the State, at the time the application is made, has not yet deemed it proper to release the property for alienation or disposition, the presumption is that the government is still reserving the right to utilize the property; hence, the need to preserve its ownership in the State irrespective of the length of adverse possession even if in good faith. However, if the property has already been classified as alienable and disposable, as it is in this case, then there is already an intention on the part of the State to abdicate its exclusive prerogative over the property.

The Court declares that the correct interpretation of Section 14(1) is that which was adopted in *Naguit*. The contrary pronouncement in *Herbieto*, as pointed out in *Naguit*, absurdly limits the application of the provision to the point of virtual inutility since it would only cover lands actually declared alienable and disposable prior to 12 June 1945, even if the current possessor is able to establish open, continuous, exclusive and notorious possession under a *bona fide* claim of ownership long before that date.

Moreover, the *Naguit* interpretation allows more possessors under a *bona fide* claim of ownership to avail of judicial confirmation of their imperfect titles than what would be feasible under *Herbieto*. This balancing fact is significant, especially considering our forthcoming discussion on the scope and reach of Section 14(2) of the Property Registration Decree.

Petitioners make the salient observation that the contradictory passages from *Herbieto* are *obiter dicta* since the land registration proceedings therein is void *ab initio* in the first place due to lack of the requisite publication of the notice of initial hearing. There is no need to explicitly overturn *Herbieto*, as it suffices that the Court's acknowledgment that the particular line of argument used therein concerning Section 14(1) is indeed *obiter*.

Naguit as affirmed in *Malabanan* more in accord with the State's policy

Moreover, we wish to emphasize that our affirmation of *Naguit* in *Malabanan*—as regards the correct interpretation of Sec. 14(1) of PD 1529 relative to the reckoning of possession *vis-à-vis* the declaration of the property of the public domain as alienable and disposable—is indeed more in keeping with the spirit of the

Public Land Act, as amended, and of PD 1529. These statutes were enacted to conform to the State's policy of encouraging and promoting the distribution of alienable public lands to spur economic growth and remain true to the ideal of social justice.[23] The statutes' requirements, as couched and amended, are stringent enough to safeguard against fraudulent applications for registration of title over alienable and disposable public land. The application of the more stringent pronouncement in *Herbieto* would indeed stifle and repress the State's policy.

Finally, the Court in *Malabanan* aptly synthesized the doctrine that the period of possession required under Sec. 14(1) of PD 1529 is not reckoned from the time of the declaration of the property as alienable and disposable, thus:

> We synthesize the doctrines laid down in this case, as follows:
>
> (1) In connection with Section 14(1) of the Property Registration Decree, Section 48(b) of the Public Land Act recognizes and confirms that "those who by themselves or through their predecessors in interest have been in open, continuous, exclusive, and notorious possession and occupation of alienable and disposable lands of the public domain, under a bona fide claim of acquisition of ownership, since June 12, 1945" have acquired ownership of, and registrable title to, such lands based on the length and quality of their possession.
>
> (a) Since Section 48(b) merely requires possession since 12 June 1945 and does not require that the lands should have been alienable and disposable during the entire period of possession, the possessor is entitled to secure judicial confirmation of his title thereto as soon as it is declared alienable and disposable, subject to the timeframe imposed by Section 47 of the Public Land Act.
>
> (b) The right to register granted under Section 48(b) of the Public Land Act is further confirmed by Section 14(1) of the Property Registration Decree.

INC entitled to registrable right over subject lot

With the resolution of the core issue, we find no error in the findings of the courts *a quo* that INC had indeed sufficiently

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[23] *Bibonia*, *supra* note 21, at 277; citing *Menguito v. Republic*, G.R. No. 134308, December 14, 2000, 348 SCRA 128, 141.

established its possession and occupation of the subject lot in accordance with the Public Land Act and Sec. 14(1) of PD 1529, and had duly proved its right to judicial confirmation of imperfect title over subject lot.

As a rule, the findings of fact of the trial court when affirmed by the CA are final and conclusive on, and cannot be reviewed on appeal by, this Court as long as they are borne out by the record or are based on substantial evidence. The Court is not a trier of facts, its jurisdiction being limited to reviewing only errors of law that may have been committed by the lower courts.[24] This is applicable to the instant case.

The possession of INC has been established not only from 1952 and 1959 when it purchased the respective halves of the subject lot, but is also tacked on to the possession of its predecessors-in-interest, Badanguio and Sabuco, the latter possessing the subject lot way before June 12, 1945, as he inherited the bigger lot, of which the subject lot is a portion, from his parents. These possessions and occupation—from Sabuco, including those of his parents, to INC; and from Sabuco to Badanguio to INC—had been in the concept of owners: open, continuous, exclusive, and notorious possession and occupation under a *bona fide* claim of acquisition of property. These had not been disturbed as attested to by respondent's witnesses.

WHEREFORE, this petition is hereby *DENIED*. Accordingly, the October 11, 2007 CA Decision in CA-G.R. CV No. 85348 is hereby *AFFIRMED IN TOTO*.

No costs.

SO ORDERED.

Ynares-Santiago (Chairperson), Chico-Nazario, Nachura, and Peralta, JJ., concur.

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[24] *Prudential Bank v. Lim*, G.R. No. 136371, November 11, 2005, 474 SCRA 485, 491; citing *Swagman Hotels and Travel, Inc. v. Court of Appeals*, G.R. No. 161135, April 8, 2005, 455 SCRA 175 (other citations omitted).

THIRD DIVISION

[G.R. No. 184704. June 30, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **LEODEGARIO BASCUGIN[1] *Y* AGQUIZ,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; JUDICIAL CONFESSION; CONSTITUTES AN ADMISSION OF GUILT TO THE CRIME; CASE AT BAR.— The decisive factor in Bascugin's conviction was his admission to the crime when he was examined by his lawyer in court. x x x Bascugin's confession was freely, intelligently, and deliberately given. Judicial confession constitutes evidence of a high order. The presumption is that no sane person would deliberately confess to the commission of a crime unless prompted to do so by truth and conscience. Admission of guilt constitutes evidence against the accused pursuant to the following provisions of the Rules of Court: SEC. 4. *Judicial admissions.* – An admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made. [Rule 129] SEC. 26. *Admission of a party.* — The act, declaration or omission of a party as to a relevant fact may be given in evidence against him. [Rule 130] SEC. 33. *Confession.*— The declaration of an accused acknowledging his guilt of the offense charged, or of any offense necessarily included therein, may be given in evidence against him. [Rule 130]

2. ID.; ID.; CIRCUMSTANTIAL EVIDENCE; ELEMENTS SUFFICIENT FOR CONVICTION; CASE AT BAR.— Bascugin's confession is consistent with the evidence. We agree with the trial and appellate court's finding that the chain of events constitutes circumstantial evidence that is sufficient to support a conviction. From the testimonies of witnesses and the physical evidence

[1] Bascuguin in some parts of the records.

gathered, it was established that the victim was last seen with Bascugin in his tricycle; his tricycle was seen parked near a waiting shed in the premises of which the victim's personal belongings were later found; his pieces of clothing were found positive for human blood that matches the victim's; and the medico-legal report states that Bascugin had sexual intercourse with the victim. Circumstantial evidence is that evidence which proves a fact or series of facts from which the facts in issue may be established by inference. According to Rule 133, Section 4 of the Rules, circumstantial evidence is sufficient for conviction if: (1) there is more than one circumstance; (2) the inference is based on proven facts; and (3) the combination of all circumstances produces a conviction beyond reasonable doubt of the guilt of the accused.

3. CIVIL LAW; EXEMPLARY DAMAGES; RATIONALE FOR AWARD THEREOF.— Article 2229 of the Civil Code grants the award of exemplary or correction damages in order to deter the commission of similar acts in the future and to allow the courts to mould behaviour that can have grave and deleterious consequences to society.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

VELASCO, JR., *J.*:

This is an appeal from the January 16, 2008 Decision[2] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 01855 which affirmed the August 15, 2005 Decision[3] in Criminal Case No.

[2] *Rollo*, pp. 1-19. Penned by Associate Justice Marina L. Buzon and concurred in by Associate Justices Rosmari D. Carandang and Mariflor P. Punzalan Castillo.

[3] CA *rollo*, pp. 13-20. Penned by Judge Cristino E. Judit.

4371 of the Regional Trial Court (RTC), Branch 10 in Balayan, Batangas. The RTC found accused-appellant Leodegario Bascugin guilty of rape with homicide.

The Facts

In an information dated June 21, 1999, Bascugin was charged with rape with homicide committed as follows:

> That on or about the 4th day of June, 1999 at about 7:45 o'clock in the evening, at Barangay [XXX], Municipality of Balayan, Province of Batangas, Philippines and within the Jurisdiction of this Honorable Court, the above-named accused, armed with a bladed instrument and a hard object, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of [AAA],[4] against her will and consent and by reason or on the occasion of the said rape, accused with intent to kill, willfully, unlawfully and feloniously stabbed and hit the said AAA, thereby inflicting upon the latter multiple stab wounds and other injuries on the different parts of her body, which caused her instantaneous death.
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> CONTRARY TO LAW.[5]

With the assistance of his counsel *de oficio*, Bascugin pleaded guilty upon arraignment on August 5, 1999. Since he was facing a charge for a capital offense, the trial court asked him if his plea was voluntarily given and whether he understood the consequences of his plea. The case then proceeded to trial. The prosecution presented testimonial, object, and documentary evidence, while the defense offered no contest. On June 15, 2000, the trial court adjudged him guilty of the charge beyond reasonable doubt and sentenced him to death.

In the automatic review by the Supreme Court, the Office of the Solicitor General (OSG) and Bascugin challenged the

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[4] The real name of the victim and her immediate family members are withheld to protect her privacy, in accordance with Republic Act No. 9262, otherwise known as the "Anti-Violence Against Women and Their Children Act of 2004" and its implementing rules; and *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

[5] CA *rollo*, p. 13.

proceedings in the trial court, specifically the invalid arraignment of Bascugin. They contended that the consultation made by the counsel *de oficio* was hasty; and Bascugin was not sufficiently apprised of the nature of his case and the consequences of his plea. We found merit in appeal; hence, we annulled the trial court's judgment and remanded the case to the court *a quo* for appropriate proceedings.[6]

On May 6, 2002, Bascugin was once again arraigned. With assistance from his counsel *de oficio*, he pleaded not guilty. The prosecution asked the court to adopt the testimonies previously given in the first trial by some witnesses, namely: PO3 Menandro de Castro, Pet Byron T. Buan, Dr. Antonio Vertido, Rolando de Mesa, Domingo Liwanag, and BBB, AAA's father. The defense did not object to said motion; thus, it was granted by the trial court. The prosecution additionally presented the testimonies of CCC, mother of AAA; Aida R. Villoria-Magsipok, NBI forensic chemist; and further direct examination of Dr. Vertido.[7]

According to the prosecution, AAA was last seen on June 4, 1999 around 7:00 p.m. by de Mesa, a tricycle driver. AAA was on board the tricycle driven by Bascugin. De Mesa saw Bascugin again at around 8:30 p.m. going towards Balayan town proper, but de Mesa did not notice if Bascugin had a passenger on board. On the same night, Liwanag, an employee of Steel Corporation located in Balayan, was on his way home from work via his motorcycle when he passed by Bascugin's tricycle parked near a waiting shed in Brgy. XXX, Balayan. Liwanag testified that he heard a girl shout but he ignored the same because the area was allegedly haunted.[8]

Around 11:50 p.m., AAA was reported missing. The police officers in Balayan conducted an investigation. PO3 de Castro received information that a patient was being treated at the

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[6] *People v. Bascuguin*, G.R. 144404, September 24, 2001, 365 SCRA 729.

[7] CA *rollo*, p. 14.

[8] *Bascuguin*, *supra* note 6, at 731.

Don Manuel Lopez Memorial District Hospital for tongue injury. Police officers rushed to the hospital and found the patient to be Bascugin. Bascugin told the police that AAA was his passenger that night but as he was about to leave the tricycle terminal, a man and a woman boarded. The man sat behind him while the woman sad beside AAA. While Bascugin was driving, he was hit by a hard object on his nape causing him to lose consciousness. When he woke up, his tongue was already injured and his three passengers were gone. Bascugin was then invited to the police station for further investigation.[9]

Around 1:30 a.m. of June 5, 1999, based on the information from Liwanag, police officers and AAA's relatives went to the waiting shed where Bascugin's tricycle was parked. They found a muddled portion of the sugarcane plantation with visible tricycle marks, and a hairclip belonging to AAA. Police officers returned to the site at around 6 a.m. to further investigate. On the way back to the police station, they discovered AAA's body in the canal along the national road, naked from the waist down and with 13 stab wounds.[10] They also recovered a pair of *maong* pants and two panties both belonging to the victim.[11]

On September 8, 2003, before the prosecution could rest its case, the defense manifested that Bascugin wishes to change his plea of "not guilty" to "guilty." The trial court set his re-arraignment to September 29, 2003 to allow him more time to consider his plea. He was then arraigned on September 29, 2003, and he pleaded guilty to the charge. Upon motion of the prosecution, Bascugin was placed on the witness stand. He affirmed that he understood the consequences of his voluntary plea, and admitted that AAA rode his tricycle on June 4, 1999 and that he brought AAA to Brgy. XXX where he raped and killed her.[12]

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[9] *Id.* at 732.

[10] *Id*.

[11] *Rollo*, p. 5.

[12] *Id.* at 6.

On November 12, 2003, Bascugin moved to withdraw his plea of guilty. This was granted by the trial court in an order dated November 17, 2003. He was re-arraigned on December 1, 2003 and he pleaded "not guilty."[13]

Bascugin testified that on June 4, 1999, around 5:00 p.m., he and AAA's cousin, DDD, had three bottles of gin to celebrate the latter's birthday. Around 7:00 p.m., Bascugin's cousin, Christopher de Mesa, requested Bascugin to wait for AAA and bring her home because Christopher had to be with his wife who was about to give birth. AAA arrived around 7:30 p.m.; Bascugin told her that Christopher asked him to bring her home. AAA then rode Bascugin's tricycle. Due to the heavy rain, they stopped at a waiting shed in a *barangay* for a long time. Bascugin stated that something happened which he could not tell but after that incident, he started the engine of his tricycle to bring AAA home but AAA ran away. He said that he pursued her but he could only remember that he drove the lifeless body of AAA to Bagong Daan. Assuming responsibility for his passenger, he went to the house of AAA's parents. Thereafter, he went home; his father saw his bloodied shirt so he was brought to Don Manuel Lopez Memorial District Hospital. Police officers arrived at the hospital and invited him to the police station. He voluntarily went with the investigators. On cross-examination, Bascugin admitted that he raped and killed AAA.[14]

The trial court appreciated the following circumstantial evidence as incriminatory:

1. the victim boarded the tricycle being driven by the accused at around 7:00 o'clock in the evening of June 4, 1999;

2. at about 8:30 o'clock of the same night, the accused was seen driving his tricycle without any person on board going towards the direction of Balayan town proper from Brgy. [XXX];

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[13] *Id*.

[14] *Id.* at 7.

3. the tricycle then being driven by the accused was seen parked near the waiting shed at Brgy. [XXX] which was the place discovered by the police officers where the incident took place and the hairclip belonging to the victim was found;

4. the abaca rope found by the police inside the tricycle of the accused, the pair of *maong* pants belonging to the victim was found near the body of the latter, a white panty and yellow panty also belonging to the victim, a Hanford brief, a sleeveless undershirt, a blue T-shirt and a pair of corduroy pants, all belonging to the accused were all found to be positive for human blood reactions of Group 'A' which was the same grouping as that of fresh blood taken from the victim;

5. the yellow panty belonging to the victim was found to be positive to seminal stains;

6. the findings of the medico-legal officer who examined the body of the victim which shows that the latter bore multiple stab wounds and complete fresh hymenal lacerations;

7. the complete matching of the bucal swab taken from the accused with the vaginal smear sample taken from the victim which sufficiently established that the accused had sexual intercourse with the victim before killing her; and

8. the admission of the accused that he raped and killed AAA when asked by the Court and the prosecutor.[15]

On August 15, 2005, the trial court found Bascugin guilty. The *fallo* of its decision reads:

WHEREFORE, premises considered, the Court finds accused Leodagario Bascugin *y* [Agquiz] GUILTY beyond reasonable doubt of the crime of rape with homicide, defined and penalized under Art. 266-A and 266-B of the Revised Penal Code, as amended by Republic Act No. 8353, in relation to Republic Act No. 7659 and without considering any mitigating and/or aggravating circumstances, hereby

[15] CA *rollo*, pp. 19-20.

imposes upon him the supreme penalty of DEATH. He is further ordered to indemnify the heirs of [AAA] the sum of ₱100,000.00, to pay the same heirs the amount of ₱50,000.00 by way of moral damages and to pay the costs.

In view of the imposition of the death penalty, the case was forwarded to the CA for review.

The Ruling of the CA

On appeal, Bascugin argued that there was no evidence of force, threat, or intimidation during sexual intercourse; thus, there was no rape. The human blood from his clothes which matched the blood type of AAA does not prove that he killed the latter. Also, he asserted that his confession when he pleaded guilty should have been expunged from the records since he withdrew said plea and substituted it with a plea of "not guilty."

The CA upheld Bascugin's conviction. The appellate court concurred with the trial court's finding that there was sufficient circumstantial evidence pointing to him as the culprit. Moreover, he admitted in open court that he raped and killed AAA. This judicial admission constitutes evidence of high order, not only because it is presumed that a deliberate confession to a crime is prompted by truth, but also because such admission was supported by medical findings of sexual intercourse between the accused and the victim, and resistance by the victim.[16]

The appellate court, however, modified the ruling by ordering imprisonment and adding temperate damages and increasing the amount of moral damages, as follows:

It having been established beyond any shadow of a doubt that appellant raped [AAA] and killed her on the occasion thereof, the mandatory penalty of death is inescapable. However, with the effectivity of Republic Act No. 9346 which prohibits the imposition of the death penalty, the penalty of *reclusion perpetua*, without eligibility for parole, should instead be imposed on accused-appellant.

The trial court correctly awarded ₱100,000.00 as civil indemnity to the heirs of [AAA] commensurate with the seriousness of the

[16] *Rollo*, pp. 15-17.

said complex crime. Likewise, the heirs of [AAA] are entitled to temperate damages in the amount of ₱25,000.00, despite the paucity of evidence as to actual damages, inasmuch as it is reasonable to expect that they incurred expenses for the coffin, burial and food during the wake. Moreover, in line with prevailing jurisprudence, the award of moral damages in the amount of ₱50,000.00 should be increased to ₱75,000.00.

WHEREFORE, the Decision appealed from is ***AFFIRMED*** with ***MODIFICATION*** by imposing on accused-appellant Leodegario Bascuguin *y* Agquiz the penalty of *reclusion perpetua*, without eligibility for parole, and ***ORDERING*** him to further indemnify the heirs of [AAA] in the increased amount of ₱75,000.00 as moral damages, and ₱25,000.00 as temperate damages.

Assignment of Error

THE COURT *A QUO* GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE CRIME OF RAPE WITH HOMICIDE DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

The Court's Ruling

The appeal lacks merit.

The decisive factor in Bascugin's conviction was his admission to the crime when he was examined by his lawyer in court. He testified as follows:

Q: At that point, did you come to know the cause of your physical injury?
A: Yes, sir.

Q: What may be the reason?
A: According to the doctor, the injury I sustained was a result of a person's bite, sir.

Q: For how long did you stay at that hospital?
A: Less than an hour, sir.

Q: After one (1) hour of staying in that hospital, what happened next?
A: While on our way out at the hospital, I was invited by police investigators to go with them to the police station and I

voluntarily went with them to face the consequences of what I did, sir.

Q: Could you tell to this Honorable Court what do you mean by the consequences of what you did?
A: That if I did something wrong on that time, I should pay for it, sir.

Q: So you mean to say that you have this thinking that you have committed something wrong?
A: Yes, sir.

Q: And you are willing to confront the same, freely, voluntarily and without offering any resistance?
A: Yes, sir.

COURT:
Q: Are you thinking of this case against you?
A: Yes, Your Honor.

Q: Meaning to say you might have committed the same?
A: Yes, Your Honor.

ATTY. CHAVEZ:
Q: You said that you were being brought to the police station. What happened there, Mr. Witness?
A: The investigator incarcerated me, sir.

Q: And at that time, do you know the reason why you were incarcerated by the police?
A: No, sir.

Q: What was the date when you were being detained at the police station?
A: June 4 already, sir.

Q: Are you sure of that, Mr. Witness?
A: Yes, sir, because it was already early morning.

Q: At the police station, Mr. Witness, what happened?
A: At around 7:00 o'clock in the morning, [AAA] arrived, sir.

Q: Who were with [AAA]?
A: [Her] parents and the police officers, sir.

Q: Was she still alive during that time?
A: No longer, sir.

Q: What was your reaction upon seeing [AAA]?
A: During that moment I was so sorry and I cannot explain and I cannot understand what happened, sir.

Q: Do you mean to tell us that you have this feeling at that time that you were responsible for the killing and raping of this [AAA]?
A: Yes, sir.

Q: Did you feel any remorse or resentment to what happened with you and [AAA]?
A: Yes, sir.

Q: I noticed also, Mr. Witness, that at the course of the proceedings of this case you are always changing your plea of not guilty/to guilty. Why is it so, Mr. Witness?
A: Because I am bothered by my conscience and I was always changing my plea but I feel responsible for what I did, sir.

Q: Do you know fully the consequences of your testimony, Mr. Witness?
A: Yes, sir.

ATTY. CHAVEZ: I have no more questions, Your Honor.

COURT: Cross?

PROS. ALIX: Yes, Your Honor.

Q: By your own testimony you are not admitting that you are responsible for the death of [AAA] and that you did have carnal knowledge of that? Before you do that, may the Court remind this witness that he has the right to answer or not the question.

COURT: The Court would like to remind you that you have the right to choose whether to answer or not to answer the question. You can remain silent so before you answer the question, think of the question carefully.

WITNESS:
A: Yes, sir.

COURT:
Q: Meaning to say that you not only admit that you killed her but you also raped her?
A: Yes, Your Honor.[17]

Bascugin's confession was freely, intelligently, and deliberately given. Judicial confession constitutes evidence of a high order. The presumption is that no sane person would deliberately confess to the commission of a crime unless prompted to do so by truth and conscience.[18] Admission of guilt constitutes evidence against the accused pursuant to the following provisions of the Rules of Court:

SEC. 4. *Judicial admissions.*—An admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made. [Rule 129]

SEC. 26. *Admissions of a party*.—The act, declaration or omission of a party as to a relevant fact may be given in evidence against him. [Rule 130]

SEC. 33. *Confession*.—The declaration of an accused acknowledging his guilt of the offense charged, or of any offense necessarily included therein, may be given in evidence against him. [Rule 130]

Furthermore, Bascugin's confession is consistent with the evidence. We agree with the trial and appellate courts' finding

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[17] TSN, November 8, 2004, pp. 3-6.

[18] *People v. Samolde*, G.R. No. 128551, July 31, 2000, 336 SCRA 632, 651.

that the chain of events constitutes circumstantial evidence that is sufficient to support a conviction. From the testimonies of witnesses and the physical evidence gathered, it was established that the victim was last seen with Bascugin in his tricycle; his tricycle was seen parked near a waiting shed in the premises of which the victim's personal belongings were later found; his pieces of clothing were found positive for human blood that matches the victim's; and the medico-legal report states that Bascugin had sexual intercourse with the victim.

Circumstantial evidence is that evidence which proves a fact or series of facts from which the facts in issue may be established by inference.[19] According to Rule 133, Section 4 of the Rules, circumstantial evidence is sufficient for conviction if: (1) there is more than one circumstance; (2) the inference is based on proven facts; and (3) the combination of all circumstances produces a conviction beyond reasonable doubt of the guilt of the accused. In the case at bar, the circumstantial pieces of evidence enumerated by the trial court all point to Bascugin as the perpetrator beyond reasonable doubt.

As regards damages, we agree with the appellate court's award of PhP 100,000 as civil indemnity; PhP 75,000 as moral damages; and temperate damages amounting to PhP 25,000 in lieu of actual damages, all consistent with prevailing jurisprudence for rape with homicide.[20] The Court also awards exemplary damages in the amount of PhP 50,000. Article 2229 of the Civil Code grants the award of exemplary or correction damages in order to deter the commission of similar acts in the future and to allow the courts to mould behaviour that can have grave and deleterious consequences to society.[21]

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[19] *People v. Padua*, G.R. No. 169075, February 23, 2007, 516 SCRA 590, 600-601.

[20] *People v. Notarion*, G.R. No. 181493, August 28, 2008, 536 SCRA 618, 631.

[21] *People v. Rayos*, G.R. No. 133823, February 7, 2001, 351 SCRA 336, 350.

WHEREFORE, the CA Decision dated January 16, 2008 in CA-G.R. CR-H.C. No. 01855 is *AFFIRMED* with *MODIFICATION* that accused-appellant is ordered to pay additional exemplary damages of PhP 50,000 to the heirs of the victim. No costs.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 184861. June 30, 2009]

DREAMWORK CONSTRUCTION, INC., *petitioner, vs.* **CLEOFE S. JANIOLA and HON. ARTHUR A. FAMINI,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PREJUDICIAL QUESTION; RELATIONSHIP OF CIVIL AND CRIMINAL ACTIONS INVOLVED IN A PREJUDICIAL QUESTION, QUALIFIED; CASE AT BAR.— Under the 1985 Rules on Criminal Procedure, as amended by Supreme Court Resolutions dated June 17, 1988 and July 7, 1988, the elements of a prejudicial question are contained in Rule 111, Sec. 5, which states: SEC. 5. *Elements of prejudicial question.* — The two (2) essential elements of a prejudicial question are: (a) the civil action involves an issue similar or intimately related to the issue raised in the criminal action; and (b) the resolution of such issue determines whether or not the criminal action may proceed. xxx On December 1, 2000, the 2000 Rules on Criminal Procedure, however, became effective and the above provision was amended by Sec. 7 of Rule 111, which applies here and now provides:

SEC. 7. Elements of prejudicial question.—The elements of a prejudicial question are: (a) the **previously instituted civil action** involves an issue similar or intimately related to the issue raised in the **subsequent** criminal action, and (b) the resolution of such issue determines whether or not the criminal action may proceed. x x x It is a basic precept in statutory construction that a "change in phraseology by amendment of a provision of law indicates a legislative intent to change the meaning of the provision from that it originally had." In the instant case, the phrase, "previously instituted," was inserted to qualify the nature of the civil action involved in a prejudicial question in relation to the criminal action. This interpretation is further buttressed by the insertion of "subsequent" directly before the term criminal action. There is no other logical explanation for the amendments except to qualify the relationship of the civil and criminal actions, that the civil action must precede the criminal action [for a prejudicial question to exist].

2. STATUTORY CONSTRUCTION INTERPRETATION OF STATUTES; EVERY STATUTE MUST BE SO CONSTRUED AND HARMONIZED WITH OTHER STATUTES AS TO FORM A UNIFORM SYSTEM OF JURISPRUDENCE.— Additionally, it is a principle in statutory construction that "a statute should be construed not only to be consistent with itself but also to harmonize with other laws on the same subject matter, as to form a complete, coherent and intelligible system." This principle is consistent with the maxim, *interpretare et concordare leges legibus est optimus interpretandi modus* or every statute must be so construed and harmonized with other statutes as to form a uniform system of jurisprudence.

3. REMEDIAL LAW; CRIMINAL PROCEDURE; PREJUDICIAL QUESTION; SCENARIO WHICH SECTION 7, RULE 111 SEEKS TO PREVENT, A CIVIL ACTION INTERPOSED FOR DELAY; CASE AT BAR.— Here, the civil case was filed two (2) years after the institution of the criminal complaint and from the time that private respondent allegedly withdrew its equipment from the job site. Also, it is worth noting that the civil case was instituted more than two and a half (2 ½) years from the time that private respondent allegedly stopped construction of the proposed building for no valid reason. More importantly, the civil case praying for the rescission of the construction agreement for lack of consideration was filed more than three

(3) years from the execution of the construction agreement. Evidently, as in *Sabandal*, the circumstances surrounding the filing of the cases involved here show that the filing of the civil action was a mere afterthought on the part of private respondent and interposed for delay. And as correctly argued by petitioner, it is this scenario that Sec. 7 of Rule 111 of the Rules of Court seeks to prevent.

4. CRIMINAL LAW; SPECIAL CRIMES; VIOLATION OF B.P. Blg. 22; ELEMENTS.— It must be remembered that the elements of the crime punishable under BP. 22 are as follows: (1) the making, drawing, and issuance of any check to apply for account or for value; (2) the knowledge of the maker, drawer, or issuer that at the time of issue there are no sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment; and (3) the subsequent dishonor of the check by the drawee bank for insufficiency of funds or credit, or dishonor for the same reason had not the drawer, without any valid cause, ordered the bank to stop payment.

5. ID.; ID.; ID.; ID.; THE AGREEMENT SURROUNDING THE ISSUANCE OF DISHONORED CHECKS IS IRRELEVANT TO THE PROSECUTION FOR VIOLATION OF B.P. Blg. 22.— Undeniably, the fact that there exists a valid contract or agreement to support the issuance of the check/s or that the checks were issued for valuable consideration does not make up the elements of the crime. Thus, this Court has held in a long line of cases that the agreement surrounding the issuance of dishonored checks is irrelevant to the prosecution for violation of B.P. 22. In *Mejia v. People*, we ruled: It must be emphasized that the gravamen of the offense charge is the issuance of a bad check. The purpose for which the check was issued, the terms and conditions relating to its issuance, or any agreement surrounding such issuance are irrelevant to the prosecution and conviction of petitioner. To determine the reason for which checks are issued, or the terms and conditions for their issuance, will greatly erode the faith the public reposes in the stability and commercial value of checks as currency substitutes, and bring havoc in trade and in banking communities. The clear intention of the framers of B.P. 22 is to make the mere act of issuing a worthless check *malum prohibitum*. x x x Verily, even if the trial court in the civil case

declares that the construction agreement between the parties is void for lack of consideration, this would not affect the prosecution of private respondent in the criminal case. The fact of the matter is that private respondent indeed issued checks which were subsequently dishonored for insufficient funds. It is this fact that is subject of prosecution under B.P. 22.

APPEARANCES OF COUNSEL

J.C. Yrreverre Law Firm for petitioner.
Samuel M. Salas for private respondent.

D E C I S I O N

VELASCO, JR., *J.*:

The Case

Petitioner Dreamwork Construction, Inc. seeks the reversal of the August 26, 2008 Decision[1] in SCA No. 08-0005 of the Regional Trial Court (RTC), Branch 253 in Las Piñas City. The Decision affirmed the Orders dated October 16, 2007[2] and March 12, 2008[3] in Criminal Case Nos. 55554-61 issued by the Metropolitan Trial Court (MTC), Branch 79 in Las Piñas City.

The Facts

On October 18, 2004, petitioner, through its President, Roberto S. Concepcion, and Vice-President for Finance and Marketing, Normandy P. Amora, filed a Complaint Affidavit dated October 5, 2004[4] for violation of *Batas Pambansa Bilang* 22 (B.P. 22) against private respondent Cleofe S. Janiola with the Office of the City Prosecutor of Las Piñas City. The case was docketed as I.S. No. 04-2526-33. Correspondingly, petitioner filed a criminal

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[1] *Rollo,* pp. 88-90. Penned by Judge Salvador V. Timbang.

[2] *Id.* at 65-67.

[3] *Id.* at 75-76.

[4] *Id.* at 23-27.

information for violation of B.P. 22 against private respondent with the MTC on February 2, 2005 docketed as Criminal Case Nos. 55554-61, entitled *People of the Philippines v. Cleofe S. Janiola*.

On September 20, 2006, private respondent, joined by her husband, instituted a civil complaint against petitioner by filing a Complaint dated August 2006[5] for the rescission of an alleged construction agreement between the parties, as well as for damages. The case was filed with the RTC, Branch 197 in Las Piñas City and docketed as Civil Case No. LP-06-0197. Notably, the checks, subject of the criminal cases before the MTC, were issued in consideration of the construction agreement.

Thereafter, on July 25, 2007, private respondent filed a Motion to Suspend Proceedings dated July 24, 2007[6] in Criminal Case Nos. 55554-61, alleging that the civil and criminal cases involved facts and issues similar or intimately related such that in the resolution of the issues in the civil case, the guilt or innocence of the accused would necessarily be determined. In other words, private respondent claimed that the civil case posed a prejudicial question as against the criminal cases.

Petitioner opposed the suspension of the proceedings in the criminal cases in an undated Comment/Opposition to Accused's Motion to Suspend Proceedings based on Prejudicial Question[7] on the grounds that: (1) there is no prejudicial question in this case as the rescission of the contract upon which the bouncing checks were issued is a separate and distinct issue from the issue of whether private respondent violated B.P. 22; and (2) Section 7, Rule 111 of the Rules of Court states that one of the elements of a prejudicial question is that "the **previously** instituted civil action involves an issue similar or intimately related to the issue raised in the **subsequent** criminal action"; thus, this element is missing in this case, the criminal case having preceded the civil case.

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[5] *Id.* at 28-41.

[6] *Id.* at 42-45.

[7] *Id.* at 46-48.

Later, the MTC issued its Order dated October 16, 2007, granting the Motion to Suspend Proceedings, and reasoned that:

> Should the trial court declare the rescission of contract and the nullification of the checks issued as the same are without consideration, then the instant criminal cases for alleged violation of B.P. 22 must be dismissed. The belated filing of the civil case by the herein accused did not detract from the correctness of her cause, since a motion for suspension of a criminal action may be filed at any time before the prosecution rests (Section 6, Rule 111, Revised Rules of Court).[8]

In an Order dated March 12, 2008,[9] the MTC denied petitioner's Motion for Reconsideration dated November 29, 2007.

Petitioner appealed the Orders to the RTC with a Petition dated May 13, 2008. Thereafter, the RTC issued the assailed decision dated August 26, 2008, denying the petition. On the issue of the existence of a prejudicial question, the RTC ruled:

> Additionally, it must be stressed that the requirement of a "previously" filed civil case is intended merely to obviate delays in the conduct of the criminal proceedings. Incidentally, no clear evidence of any intent to delay by private respondent was shown. The criminal proceedings are still in their initial stages when the civil action was instituted. And, the fact that the civil action was filed after the criminal action was instituted does not render the issues in the civil action any less prejudicial in character.[10]

Hence, we have this petition under Rule 45.

The Issue

WHETHER OR NOT THE COURT *A QUO* SERIOUSLY ERRED IN NOT PERCEIVING GRAVE ABUSE OF DISCRETION ON THE PART OF THE INFERIOR COURT, WHEN THE LATTER RULED TO SUSPEND PROCEEDINGS IN CRIM. CASE NOS. 55554-61 ON THE

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[8] *Id.* at 67.

[9] *Id.* at 75-76.

[10] *Id.* at 90.

BASIS OF "PREJUDICIAL QUESTION" IN CIVIL CASE NO. LP-06-0197.[11]

The Court's Ruling

This petition must be granted.

The Civil Action Must Precede the Filing of the Criminal Action for a Prejudicial Question to Exist

Under the 1985 Rules on Criminal Procedure, as amended by Supreme Court Resolutions dated June 17, 1988 and July 7, 1988, the elements of a prejudicial question are contained in Rule 111, Sec. 5, which states:

SEC. 5. *Elements of prejudicial question.* — The two (2) essential elements of a prejudicial question are: (a) the civil action involves an issue similar or intimately related to the issue raised in the criminal action; and (b) the resolution of such issue determines whether or not the criminal action may proceed.

Thus, the Court has held in numerous cases[12] that the elements of a prejudicial question, as stated in the above-quoted provision and in *Beltran v. People*,[13] are:

The rationale behind the principle of prejudicial question is to avoid two conflicting decisions. It has two essential elements: (a) the civil action involves an issue similar or intimately related to the issue raised in the criminal action; and (b) the resolution of such issue determines whether or not the criminal action may proceed.

On December 1, 2000, the 2000 Rules on Criminal Procedure, however, became effective and the above provision was amended by Sec. 7 of Rule 111, which applies here and now provides:

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[11] *Id.* at 11.

[12] *Carlos v. Court of Appeals*, G.R. No. 109887, February 10, 1997, 268 SCRA 25, 33; *Tuanda v. Sandiganbayan*, G.R. No. 110544, October 17, 1995, 249 SCRA 342, 351; *Apa v. Fernandez*, G.R. No. 112381, March 30, 1995, 242 SCRA 509, 512; *Yap v. Paras*, G.R. No.101236, January 30, 1994, 205 SCRA 625, 629; *Umali v. IAC*, G.R. No. 63198, June 21, 1990, 186 SCRA 680, 685.

[13] G.R. No. 137567, June 20, 2000, 334 SCRA 106, 110.

SEC. 7. Elements of prejudicial question.—The elements of a prejudicial question are: (a) the **previously instituted civil action** involves an issue similar or intimately related to the issue raised in the **subsequent** criminal action, and (b) the resolution of such issue determines whether or not the criminal action may proceed. (Emphasis supplied.)

Petitioner interprets Sec. 7(a) to mean that in order for a civil case to create a prejudicial question and, thus, suspend a criminal case, it must first be established that the civil case was filed previous to the filing of the criminal case. This, petitioner argues, is specifically to guard against the situation wherein a party would belatedly file a civil action that is related to a pending criminal action in order to delay the proceedings in the latter.

On the other hand, private respondent cites Article 36 of the Civil Code which provides:

Art. 36. Pre-judicial questions which must be decided **before any criminal prosecution may be instituted or may proceed**, shall be governed by rules of court which the Supreme Court shall promulgate and which shall not be in conflict with the provisions of this Code. (Emphasis supplied.)

Private respondent argues that the phrase "before any criminal prosecution may be instituted or may proceed" must be interpreted to mean that a prejudicial question exists when the civil action is filed either before the institution of the criminal action or during the pendency of the criminal action. Private respondent concludes that there is an apparent conflict in the provisions of the Rules of Court and the Civil Code in that the latter considers a civil case to have presented a prejudicial question even if the criminal case preceded the filing of the civil case.

We cannot agree with private respondent.

First off, it is a basic precept in statutory construction that a "change in phraseology by amendment of a provision of law indicates a legislative intent to change the meaning of the provision from that it originally had."[14] In the instant case, the phrase,

[14] R.E. Agpalo, *STATUTORY CONSTRUCTION* 97 (4th ed., 1998).

"previously instituted," was inserted to qualify the nature of the civil action involved in a prejudicial question in relation to the criminal action. This interpretation is further buttressed by the insertion of "subsequent" directly before the term criminal action. There is no other logical explanation for the amendments except to qualify the relationship of the civil and criminal actions, that the civil action must precede the criminal action.

Thus, this Court ruled in *Torres v. Garchitorena*[15] that:

> Even if we ignored petitioners' procedural lapse and resolved their petition on the merits, we hold that Sandiganbayan did not abuse its discretion amounting to excess or lack of jurisdiction in denying their omnibus motion for the suspension of the proceedings pending final judgment in Civil Case No. 7160. Section 6, Rule lll of the Rules of Criminal Procedure, as amended, reads:
>
> > Sec. 6. Suspension by reason of prejudicial question. — A petition for suspension of the criminal action based upon the pendency of a prejudicial question in a civil action may be filed in the office of the prosecutor or the court conducting the preliminary investigation. When the criminal action has been filed in court for trial, the petition to suspend shall be filed in the same criminal action at any time before the prosecution rests.
> >
> > Sec. 7. Elements of prejudicial question. —The elements of a prejudicial question are: (a) the previously instituted civil action involves an issue similar or intimately related to the issue raised in the subsequent criminal action, and (b) the resolution of such issue determines whether or not the criminal action may proceed.
>
> **Under the amendment, a prejudicial question is understood in law as that which must precede the criminal action and which requires a decision before a final judgment can be rendered in the criminal action with which said question is closely connected. <u>The civil action must be instituted prior to the institution of the criminal action.</u>** In this case, the Information was filed with the Sandiganbayan ahead of the complaint in Civil Case No. 7160 filed by the State with the RTC in Civil Case No. 7160. Thus, no prejudicial question exists. (Emphasis supplied.)

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[15] G.R. No. 153666, December 27, 2002, 394 SCRA 494, 508-509.

Additionally, it is a principle in statutory construction that "a statute should be construed not only to be consistent with itself but also to harmonize with other laws on the same subject matter, as to form a complete, coherent and intelligible system."[16] This principle is consistent with the maxim, *interpretare et concordare leges legibus est optimus interpretandi modus* or every statute must be so construed and harmonized with other statutes as to form a uniform system of jurisprudence.[17]

In other words, every effort must be made to harmonize seemingly conflicting laws. It is only when harmonization is impossible that resort must be made to choosing which law to apply.

In the instant case, Art. 36 of the Civil Code and Sec. 7 of Rule 111 of the Rules of Court are susceptible of an interpretation that would harmonize both provisions of law. The phrase "previously instituted civil action" in Sec. 7 of Rule 111 is plainly worded and is not susceptible of alternative interpretations. The clause "before any criminal prosecution may be instituted or may proceed" in Art. 36 of the Civil Code may, however, be interpreted to mean that the motion to suspend the criminal action may be filed during the preliminary investigation with the public prosecutor or court conducting the investigation, or during the trial with the court hearing the case.

This interpretation would harmonize Art. 36 of the Civil Code with Sec. 7 of Rule 111 of the Rules of Court but also with Sec. 6 of Rule 111 of the Civil Code, which provides for the situations when the motion to suspend the criminal action during

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[16] R.E. Agpalo, *supra* note 14, at 269-270.

[17] *Algura v. The Local Government Unit of the City of Naga*, G.R. No. 150135, October 30, 2006, 506 SCRA 81, 98; *Valencia v. Court of Appeals*, G.R. No. 122363, April 29, 2003, 401 SCRA 666, 680-81; *Bañares v. Balising*, G.R. No. 132624, March 13, 2000, 328 SCRA 36, 49; *Cabada v. Alunan III*, G.R. No. 119645, August 22, 1996, 260 SCRA 838, 848; *Republic v. Asuncion*, G.R. No. 108208, March 11, 1994, 231 SCRA 211; *Corona v. Court of Appeals*, G.R. No. 97356, September 30, 1992, 214 SCRA 378, 392.

the preliminary investigation or during the trial may be filed. Sec. 6 provides:

> SEC. 6. Suspension by reason of prejudicial question.—A petition for suspension of the criminal action based upon the pendency of a prejudicial question in a civil action may be filed in the office of the prosecutor or the court conducting the preliminary investigation. When the criminal action has been filed in court for trial, the petition to suspend shall be filed in the same criminal action at any time before the prosecution rests.

Thus, under the principles of statutory construction, it is this interpretation of Art. 36 of the Civil Code that should govern in order to give effect to all the relevant provisions of law.

It bears pointing out that the circumstances present in the instant case indicate that the filing of the civil action and the subsequent move to suspend the criminal proceedings by reason of the presence of a prejudicial question were a mere afterthought and instituted to delay the criminal proceedings.

In *Sabandal v. Tongco*,[18] we found no prejudicial question existed involving a civil action for specific performance, overpayment, and damages, and a criminal complaint for B.P. 22, as the resolution of the civil action would not determine the guilt or innocence of the accused in the criminal case. In resolving the case, we said:

> Furthermore, the peculiar circumstances of the case clearly indicate that the filing of the civil case was a ploy to delay the resolution of the criminal cases. Petitioner filed the civil case three years after the institution of the criminal charges against him. Apparently, the civil action was instituted as an afterthought to delay the proceedings in the criminal cases.[19]

Here, the civil case was filed two (2) years after the institution of the criminal complaint and from the time that private respondent allegedly withdrew its equipment from the job site. Also, it is

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[18] G.R. No. 124498, October 5, 2001, 366 SCRA 567.

[19] *Id.* at 572.

worth noting that the civil case was instituted more than two and a half (2 ½) years from the time that private respondent allegedly stopped construction of the proposed building for no valid reason. More importantly, the civil case praying for the rescission of the construction agreement for lack of consideration was filed more than three (3) years from the execution of the construction agreement.

Evidently, as in *Sabandal*, the circumstances surrounding the filing of the cases involved here show that the filing of the civil action was a mere afterthought on the part of private respondent and interposed for delay. And as correctly argued by petitioner, it is this scenario that Sec. 7 of Rule 111 of the Rules of Court seeks to prevent. Thus, private respondent's positions cannot be left to stand.

The Resolution of the Civil Case Is Not Determinative of the Prosecution of the Criminal Action

In any event, even if the civil case here was instituted prior to the criminal action, there is, still, no prejudicial question to speak of that would justify the suspension of the proceedings in the criminal case.

To reiterate, the elements of a prejudicial question under Sec. 7 of Rule 111 of the Rules of Court are: (1) the previously instituted civil action involves an issue similar or intimately related to the issue raised in the subsequent criminal action; and (2) the resolution of such issue determines whether or not the criminal action may proceed.

Petitioner argues that the second element of a prejudicial question, as provided in Sec. 7 of Rule 111 of the Rules, is absent in this case. Thus, such rule cannot apply to the present controversy.

Private respondent, on the other hand, claims that if the construction agreement between the parties is declared null and void for want of consideration, the checks issued in

consideration of such contract would become mere scraps of paper and cannot be the basis of a criminal prosecution.

We find for petitioner.

It must be remembered that the elements of the crime punishable under B.P. 22 are as follows:

(1) the making, drawing, and issuance of any check to apply for account or for value;

(2) the knowledge of the maker, drawer, or issuer that at the time of issue there are no sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment; and

(3) the subsequent dishonor of the check by the drawee bank for insufficiency of funds or credit, or dishonor for the same reason had not the drawer, without any valid cause, ordered the bank to stop payment.[20]

Undeniably, the fact that there exists a valid contract or agreement to support the issuance of the check/s or that the checks were issued for valuable consideration does not make up the elements of the crime. Thus, this Court has held in a long line of cases[21] that the agreement surrounding the issuance of dishonored checks is irrelevant to the prosecution for violation of B.P. 22. In *Mejia v. People*,[22] we ruled:

It must be emphasized that the gravamen of the offense charge is the issuance of a bad check. The purpose for which the check was issued, the terms and conditions relating to its issuance, or any agreement surrounding such issuance are irrelevant to the prosecution

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[20] *Mejia v. People*, G.R. No. 149937, June 21, 2007, 525 SCRA 209, 213-214.

[21] *Rigor v. People*, G.R. No. 144887, November 17, 2004, 442 SCRA 451, 461; *Narte v. Court of Appeals*, G.R. No. 132552, July 14, 2004, 434 SCRA 336, 341; *Lazaro v. Court of Appeals*, G.R. No. 105461, November 11, 1993, 227 SCRA 723, 726-727, citing *People v. Nitafan*, G.R. No. 75954, October 22, 1992, 215 SCRA 79, 84-85 and *Que v. People*, Nos. 75217-18, September 21, 1987, 154 SCRA 161, 165.

[22] *Supra* note 20, at 214-215.

and conviction of petitioner. To determine the reason for which checks are issued, or the terms and conditions for their issuance, will greatly erode the faith the public reposes in the stability and commercial value of checks as currency substitutes, and bring havoc in trade and in banking communities. The clear intention of the framers of B.P. 22 is to make the mere act of issuing a worthless check *malum prohibitum*.

Lee v. Court of Appeals[23] is even more poignant. In that case, we ruled that the issue of lack of valuable consideration for the issuance of checks which were later on dishonored for insufficient funds is immaterial to the success of a prosecution for violation of BP 22, to wit:

Third issue. Whether or not the check was issued on account or for value.

Petitioner's claim is not feasible. We have held that upon issuance of a check, in the absence of evidence to the contrary, it is presumed that the same was issued for valuable consideration. Valuable consideration, in turn, may consist either in some right, interest, profit or benefit accruing to the party who makes the contract, or some forbearance, detriment, loss or some responsibility, to act, or labor, or service given, suffered or undertaken by the other side. It is an obligation to do, or not to do in favor of the party who makes the contract, such as the maker or indorser.

In this case, petitioner himself testified that he signed several checks in blank, the subject check included, in exchange for 2.5% interest from the proceeds of loans that will be made from said account. This is a valuable consideration for which the check was issued. That there was neither a pre-existing obligation nor an obligation incurred on the part of petitioner when the subject check was given by Bautista to private complainant on July 24, 1993 because petitioner was no longer connected with Unlad or Bautista starting July 1989, cannot be given merit since, as earlier discussed, petitioner failed to adequately prove that he has severed his relationship with Bautista or Unlad.

At any rate, we have held that what the law punishes is the mere act of issuing a bouncing check, not the purpose for which it was issued nor the terms and conditions relating to its issuance. This

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[23] G.R. No. 145498, January 17, 2005, 448 SCRA 455.

is because the thrust of the law is to prohibit the making of worthless checks and putting them into circulation.[24] (Emphasis supplied.)

Verily, even if the trial court in the civil case declares that the construction agreement between the parties is void for lack of consideration, this would not affect the prosecution of private respondent in the criminal case. The fact of the matter is that private respondent indeed issued checks which were subsequently dishonored for insufficient funds. It is this fact that is subject of prosecution under B.P. 22.

Therefore, it is clear that the second element required for the existence of a prejudicial question, that the resolution of the issue in the civil action would determine whether the criminal action may proceed, is absent in the instant case. Thus, no prejudicial question exists and the rules on it are inapplicable to the case before us.

WHEREFORE, we *GRANT* this petition. We hereby *REVERSE* and *SET ASIDE* the August 26, 2008 Decision in SCA No. 08-0005 of the RTC, Branch 253 in Las Piñas City and the Orders dated October 16, 2007 and March 12, 2008 in Criminal Case Nos. 55554-61 of the MTC, Branch 79 in Las Piñas City. We order the MTC to continue with the proceedings in Criminal Case Nos. 55554-61 with dispatch.

No costs.

SO ORDERED.

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

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[24] *Id.* at 474-475.

EN BANC

[G.R. No. 184915. June 30, 2009]

NILO T. PATES, *petitioner, vs.* **COMMISSION ON ELECTIONS and EMELITA B. ALMIRANTE,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL COMMISSIONS; COMMISSION ON ELECTIONS (COMELEC); MODE OF REVIEW FOR COMELEC DECISIONS TO THE SUPREME COURT IS BY PETITION FOR *CERTIORARI* UNDER RULE 64.— Section 7, Article IX-A of the Constitution provides that unless otherwise provided by the Constitution or by law, any decision, order, or ruling of each Commission may be brought to the Court on *certiorari* by the aggrieved party within 30 days from receipt of a copy thereof. For this reason, the Rules of Court provide for a separate rule (Rule 64) specifically applicable only to decisions of the COMELEC and the Commission on Audit. This Rule expressly refers to the application of Rule 65 in the filing of a petition for *certiorari*, subject to the exception clause – "except as hereinafter provided."

2. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; DIFFERENCES BETWEEN RULE 64 AND RULE 65.— Rule 64, however, cannot simply be equated to Rule 65 even if it expressly refers to the latter rule. They exist as separate rules for substantive reasons as discussed below. Procedurally, the most patent difference between the two – *i.e.*, the exception that Section 2, Rule 64 refers to – is Section 3 which provides for a special period for the filing of petitions for *certiorari* from decisions or rulings of the COMELEC *en banc*. The period is 30 days from notice of the decision or ruling (instead of the 60 days that Rule 65 provides), with the intervening period used for the filing of any motion for reconsideration deductible from the originally-granted 30 days (instead of the fresh period of 60 days that Rule 65 provides). The reason why the period under Section 3, Rule 64 has been retained, is constitutionally-based and is no less

than the importance our Constitution accords to the prompt determination of election results.

3. ID.; ID.; ID.; PLEA FOR LIBERAL CONSTRUCTION OF THE RULES MUST BE ACCOMPANIED BY A JUSTIFICATION FOR EXCEPTIONAL TREATMENT; CASE AT BAR.— A party asking for the suspension of the Rules of Court comes to us with the heavy burden of proving that he deserves to be accorded exceptional treatment. Every plea for a liberal construction of the Rules must at least be accompanied by an explanation of why the party-litigant failed to comply with the rules and by a justification for the requested liberal construction. Significantly, **the petitioner presented no exceptional circumstance or any compelling reason to warrant the non-application of Section 3, Rule 64 to his petition** for *certiorari* of the Comelec ruling to the Supreme Court. He failed to explain *why his filing was late*. Other than his appeal to history, uniformity, and convenience, he did not explain *why we should adopt and apply the fresh period rule to an election case*. To us, the petitioner's omissions are fatal, as his motion does not provide us any reason specific to his case why we should act as he advocates.

4. ID.; ID.; ID.; ID.; RATIONALE.— The Rules of Court are with us for the prompt and orderly administration of justice; litigants cannot, after resorting to a wrong remedy, simply cry for the liberal construction of these rules. Our ruling in *Lapid v. Laurea* succinctly emphasized this point when we said: 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.**

APPEARANCES OF COUNSEL

Wilfredo N. Labuntong for petitioner.
The Solicitor General for public respondent.
Jerry Ma. Pacuribot for private respondent.

R E S O L U T I O N

BRION, *J.*:

Our Resolution of November 11, 2008 dismissed the petition in caption pursuant to Section 3, Rule 64 of the Rules of Court which provides:

> SEC. 3. *Time to file petition.*—The petition shall be filed within thirty (30) days from notice of the judgment or final order or resolution sought to be reviewed. The filing of a motion for new trial or reconsideration of said judgment or final order or resolution, if allowed under the procedural rules of the Commission concerned, shall interrupt the period herein fixed. If the motion is denied, the aggrieved party may file the petition within the remaining period, but which shall not be less than five (5) days in any event, reckoned from notice of denial.

taking into account the following material antecedents:

a. February 1, 2008 – The COMELEC First Division issued its Resolution (assailed in the petition);

b. February 4, 2008 – The counsel for petitioner Nilo T. Pates (*petitioner*) received a copy of the February 1, 2008 Resolution;

c. February 8, 2008 – The petitioner filed his motion for reconsideration (*MR*) of the February 1, 2008 Resolution (**4 days from receipt of the February 1, 2008 Resolution**)

d. September 18, 2008 – The COMELEC *en banc* issued a Resolution denying the petitioner's MR (also assailed in the petition).

e. September 22, 2008 – The petitioner received the COMELEC *en banc* Resolution of September 18, 2008

Under this chronology, the last day for the filing of a petition for *certiorari*, *i.e.*, 30 days from notice of the final COMELEC Resolution, fell on a Saturday (October 18, 2008), as the petitioner only had the remaining period of 26 days to file his petition,

after using up 4 days in preparing and filing his Motion for Reconsideration. Effectively, the last day for filing was October 20, 2008 – the following Monday or the first working day after October 18, 2008. The petitioner filed his petition with us on October 22, 2008 or two days late; hence, our Resolution of dismissal of November 11, 2008.

The Motion for Reconsideration

The petitioner asks us in his "Urgent Motion for Reconsideration with Reiteration for the Issuance of a Temporary Restraining Order" to reverse the dismissal of his petition, arguing that *the petition was seasonably filed under the fresh period rule enunciated by the Supreme Court in a number of cases decided beginning the year 2005*. The **"fresh period"** refers to the original period provided under the Rules of Court counted from notice of the ruling on the motion for reconsideration by the tribunal below, without deducting the period for the preparation and filing of the motion for reconsideration.

He claims that, historically, the fresh period rule was the prevailing rule in filing petitions for *certiorari*. This Court, he continues, changed this rule when it promulgated the 1997 Rules of Civil Procedure and Circular No. 39-98, which both provided for the filing of petitions within the remainder of the original period, the **"remainder"** being the original period less the days used up in preparing and filing a motion for reconsideration. He then points out that on September 1, 2000 or only three years after, this Court promulgated **A.M. No. 00-02-03-SC** bringing back the fresh period rule. According to the petitioner, the reason for the change, which we supposedly articulated in *Narzoles v. National Labor Relations Commission*,[1] was the tremendous confusion generated by Circular No. 39-98.

The fresh period rule, the petitioner further asserts, was subsequently applied by this Court in the following cases:

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[1] G.R. No. 141959, September 29, 2000, 341 SCRA 533.

(1) *Neypes v. Court of Appeals*[2] which thenceforth applied the fresh period rule to ordinary appeals of decisions of the Regional Trial Court to the Court of Appeals;

(2) *Spouses de los Santos v. Vda. de Mangubat*[3] reiterating *Neypes*;

(3) *Active Realty and Development Corporation v. Fernandez*[4] which, following *Neypes*, applied the fresh period rule to ordinary appeals from the decisions of the Municipal Trial Court to the Regional Trial Court; and

(4) *Romero v. Court of Appeals*[5] which emphasized that A.M. No. 00-02-03-SC is a curative statute that may be applied retroactively.

A reading of the ruling in these cases, the petitioner argues, shows that this Court has consistently held that the order or resolution denying the motion for reconsideration or new trial is considered as the final order finally disposing of the case, and the date of its receipt by a party is the correct reckoning point for counting the period for appellate review.

The Respondent's Comment

We asked the respondents to comment on the petitioner's motion for reconsideration. The Office of the Solicitor General (*OSG*), citing Section 5, Rule 65 of the Rules of Court and its related cases, asked *via* a "Manifestation and Motion" that it be excused from filing a separate comment. We granted the OSG's manifestation and motion.

For her part, respondent Emelita B. Almirante (*respondent Almirante*) filed a comment stating that: (1) we are absolutely correct in concluding that the petition was filed out of time; and (2) the petitioner's reliance on Section 4, Rule 65 of the

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[2] G.R. No. 141524, September 15, 2005, 469 SCRA 633.

[3] G.R. No. 149508, October 10, 2007, 535 SCRA 411.

[4] G.R. No. 157186, October 19, 2007, 537 SCRA 116.

[5] G.R. No. 142803, November 20, 2007, 537 SCRA 643.

Rules of Court (as amended by A.M. No. 00-02-03-SC) is totally misplaced, as Rule 64, not Rule 65, is the vehicle for review of judgments and final orders or resolutions of the COMELEC. Respondent Almirante points out that Rule 64 and Rule 65 are different; Rule 65 provides for a 60-day period for filing petitions for *certiorari*, while Rule 64 provides for 30 days.

OUR RULING

We do not find the motion for reconsideration meritorious.

A. As a Matter of Law

Section 7, Article IX-A of the Constitution provides that unless otherwise provided by the Constitution or by law, any decision, order, or ruling of each Commission may be brought to the Court on *certiorari* by the aggrieved party within 30 days from receipt of a copy thereof. For this reason, the Rules of Court provide for a separate rule (Rule 64) specifically applicable only to decisions of the COMELEC and the Commission on Audit. This Rule expressly refers to the application of Rule 65 in the filing of a petition for *certiorari*, subject to the exception clause – "except as hereinafter provided."[6]

Even a superficial reading of the motion for reconsideration shows that the petitioner has not challenged our conclusion that his petition was filed outside the period required by Section 3, Rule 64; he merely insists that the fresh period rule *applicable to a petition for certiorari under Rule 65* should likewise apply to petitions for *certiorari* of COMELEC rulings filed under Rule 64.

Rule 64, however, cannot simply be equated to Rule 65 even if it expressly refers to the latter rule. They exist as separate rules for substantive reasons as discussed below. Procedurally, the most patent difference between the two – *i.e.*, the exception that Section 2, Rule 64 refers to – is Section 3 which provides for a special period for the filing of petitions for *certiorari*

[6] RULES OF COURT, Rules 64, Section 2.

from decisions or rulings of the COMELEC *en banc*. The period is 30 days from notice of the decision or ruling (instead of the 60 days that Rule 65 provides), with the intervening period used for the filing of any motion for reconsideration deductible from the originally-granted 30 days (instead of the fresh period of 60 days that Rule 65 provides).

Thus, **as a matter of law**, our ruling of November 11, 2008 to dismiss the petition for late filing cannot but be correct. This ruling is not without its precedent; we have previously ordered a similar dismissal in the earlier case of *Domingo v. Commission on Elections*.[7] The Court, too, has countless times in the past stressed that the Rules of Court must be followed. Thus, we had this to say in *Fortich v. Corona*:[8]

> Procedural rules, we must stress, should be treated with utmost respect and due regard since they are designed to facilitate the adjudication of cases to remedy the worsening problem of delay in the resolution of rival claims and in the administration of justice. The requirement is in pursuance to the bill of rights inscribed in the Constitution which guarantees that "all persons shall have a right to the speedy disposition of their cases before all judicial, quasi-judicial and administrative bodies," the adjudicatory bodies and the parties to a case are thus enjoined to abide strictly by the rules. While it is true that a litigation is not a game of technicalities, *it is equally true that every case must be prosecuted in accordance with the prescribed procedure to ensure an orderly and speedy administration of justice*. **There have been some instances wherein this Court allowed a relaxation in the application of the rules, but this flexibility was "never intended to forge a bastion for erring litigants to violate the rules with impunity**." **A liberal interpretation and application of the rules of procedure can be resorted to only in proper cases and under justifiable causes and circumstances**. (Emphasis supplied)

As emphasized above, exceptional circumstances or compelling reasons may have existed in the past when we either suspended the operation of the Rules or exempted a particular case from

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[7] G.R. No. 136587, August 30, 1999, 313 SCRA 311.

[8] G.R. No. 131457, November 17, 1998, 298 SCRA 679, 690-691.

their application.[9] **But, these instances were the exceptions rather than the rule,** and we invariably took this course of action only upon a meritorious plea for the liberal construction of the Rules of Court based on attendant exceptional circumstances. These uncommon exceptions allowed us to maintain the stability of our rulings, while allowing for the unusual cases when the dictates of justice demand a correspondingly different treatment.

Under this unique nature of the exceptions, a party asking for the suspension of the Rules of Court comes to us with the heavy burden of proving that he deserves to be accorded exceptional treatment. Every plea for a liberal construction of the Rules must at least be accompanied by an explanation of why the party-litigant failed to comply with the rules and by a justification for the requested liberal construction.[10]

Significantly, **the petitioner presented no exceptional circumstance or any compelling reason to warrant the non-application of Section 3, Rule 64 to his petition**. He failed to explain *why his filing was late*. Other than his appeal to history, uniformity, and convenience, he did not explain *why we should adopt and apply the fresh period rule to an election case*.

To us, the petitioner's omissions are fatal, as his motion does not provide us any reason specific to his case why we should act as he advocates.

B. As a Matter of Policy

In harking back to the history of the fresh period rule, what the petitioner apparently wants – for reasons of uniformity and convenience – is the simultaneous amendment of Section 3, Rule 64 and the application of his proposed new rule to his

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[9] See: *Ponciano v. Laguna Lake Development Authority*, G.R. No. 174536, October 29, 2008 and *Tagle v. Equitable PCI Bank*, G.R. No. 172299, April 22, 2008, 552 SCRA 424.

[10] *Prudential Guarantee and Assurance, Inc. v. Court of Appeals*, G.R. No. 146559, August 13, 2004, 436 SCRA 478, 483.

case. To state the obvious, any amendment of this provision is an exercise in the power of this Court to promulgate rules on practice and procedure as provided by Section 5(5), Article VIII of the Constitution. Our rulemaking, as every lawyer should know, is different from our adjudicatory function. Rulemaking is an act of legislation, directly assigned to us by the Constitution, that requires the formulation of policies rather than the determination of the legal rights and obligations of litigants before us. *As a rule*, rulemaking requires that we consult with our own constituencies, not necessarily with the parties directly affected in their individual cases, in order to ensure that the rule and the policy that it enunciates are the most reasonable that we can promulgate under the circumstances, taking into account the interests of everyone – not the least of which are the constitutional parameters and guidelines for our actions. We point these out as our adjudicatory powers should not be confused with our rulemaking prerogative.

We acknowledge that the avoidance of confusion through the use of uniform standards is not without its merits. We are not unmindful, too, that no less than the Constitution requires that "motions for reconsideration of [division] decisions shall be decided by the Commission *en banc*."[11] Thus, the ruling of the Commission *en banc* on reconsideration is effectively a new ruling rendered separately and independently from that made by a division.

Counterbalanced against these reasons, however, are other considerations no less weighty, the most significant of which is the importance the Constitution and this Court, in obedience to the Constitution, accord to elections and the prompt determination of their results. Section 3, Article IX-C of the Constitution expressly requires that the COMELEC's rules of procedure should expedite the disposition of election cases. This Court labors under the same command, as our proceedings are in fact the constitutional extension of cases that start with the COMELEC.

Based on these considerations, we do not find convenience and uniformity to be reasons sufficiently compelling to modify

[11] CONSTITUTION, Article IX-C, Section 3.

the required period for the filing of petitions for *certiorari* under Rule 64. While the petitioner is correct in his historical data about the Court's treatment of the periods for the filing of the different modes of review, he misses out on the reason why the period under Section 3, Rule 64 has been retained. The reason, as made clear above, is constitutionally-based and is no less than the importance our Constitution accords to the prompt determination of election results. This reason far outweighs convenience and uniformity. *We significantly note that the present petition itself, through its plea for the grant of a restraining order, recognizes the need for haste in deciding election cases.*

C. Our Liberal Approach

Largely for the same reason and as discussed below, we are not inclined to suspend the rules to come to the rescue of a litigant whose counsel has blundered by reading the wrong applicable provision. The Rules of Court are with us for the prompt and orderly administration of justice; litigants cannot, after resorting to a wrong remedy, simply cry for the liberal construction of these rules.[12] Our ruling in *Lapid v. Laurea*[13] succinctly emphasized this point when we said:

> 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.]

We add that even for this Court, liberality does not signify an unbridled exercise of discretion. It has its limits; to serve its purpose and to preserve its true worth, it must be exercised only in the most appropriate cases.[14]

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[12] *Aguila v. Baldovizo,* G.R. No. 163186, February 28, 2007, 517 SCRA 91.

[13] G.R. No. 139607, October 28, 2002, 391 SCRA 277.

[14] See: *Lozano, et al. v. Nograles,* G.R. Nos. 187883 and 187910, June 16, 2009, that, from another perspective, also speaks of the limits of liberality.

WHEREFORE, premises considered, we *DENY* the motion for reconsideration for lack of merit. Our Resolution of November 11, 2008 is hereby declared *FINAL*. Let entry of judgment be made in due course.

SO ORDERED.

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

Carpio Morales, J., on leave.

EN BANC

[G.R. No. 185140. June 30, 2009]

JERRY B. AGUILAR, *petitioner, vs.* **THE COMMISSION ON ELECTIONS and ROMULO R. INSOY,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; CONSTITUTIONAL COMMISSIONS; COMELEC; DECISIONS; SETTLED RULE THAT IT IS DECISION OF COMELEC *EN BANC* WHICH IS BROUGHT TO COURT; EXCEPTION; CASE AT BAR.— Settled is the rule that it is the decision, order or ruling of the COMELEC *en banc* which, in accordance with Article IX-A, Section 7 of the Constitution, may be brought to this Court on *certiorari*. But this rule should not apply when a division of the COMELEC arrogates unto itself, and deprives the *en banc* of the authority to rule on a motion for reconsideration, as in this case. Further, the rule is not ironclad; it admits of exceptions as when the decision or resolution sought to be set aside, even if it were merely a Division action, is an absolutely nullity.

2. ID.; ID.; ID.; ID.; ID.; MOTIONS FOR RECONSIDERATION OF DECISIONS SHALL BE DECIDED BY THE COMELEC *EN BANC*.— The Constitution explicitly establishes, in Article IX-C, Section 3, the procedure for the resolution of election cases by the COMELEC. thus: Sec. 3. The Commission on Elections may sit *en banc* or in two divisions, and shall promulgate its rules of procedure in order to expedite disposition of election cases, including pre-proclamation controversies. All such election cases shall be heard and decided in division, provided that motions for reconsideration of decisions shall be decided by the Commission *en banc.*

3. ID.; ID.; ID.; ID.; ID.; ID.; PROCEDURE FOR FILING OF MOTIONS FOR RECONSIDERATION.— The COMELEC Rules of Procedure, complementing the constitutional provision, also details the course of action to be undertaken in the event motions for reconsideration are filed; thus, Rule 19, Sections 5 and 6 provide that— Sec. 5. **How Motion for Reconsideration Disposed Of**.— Upon the filing of a motion to reconsider a decision, resolution, order or ruling of a Division, the Clerk of Court concerned shall, within twenty-four (24) hours from the filing thereof, notify the Presiding Commissioner. The latter shall within two (2) days thereafter certify the case to the Commission *en banc*. Sec. 6. **Duty of Clerk of Court of Commission to Calendar Motion for Reconsideration.**—The Clerk of Court concerned shall calendar the motion for reconsideration for the resolution of the Commission *en banc* within ten (10) days from the certification thereof.

4. ID.; ID.; ID.; ID.; ID.; ID.; ID.; THIS RULE SHOULD APPLY WHETHER THE MOTION FEE HAS BEEN PAID OR NOT.— This rule should apply whether the motion fee has been paid or not, as what happened in *Olanolan v. Commission on Elections*. Indeed, Rule 40, Section 18 of the COMELEC Rules of Procedure gives discretion to the COMELEC, in this case, to the *en banc* and not to the division, either to refuse to take action until the motion fee is paid, or to dismiss the action or proceeding.

5. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; DEFINED; CASE AT BAR.— Being a violation of the Constitution and the COMELEC Rules of Procedure, the assailed September 4 and October 6,

2008 Orders are null and void. They were issued by the COMELEC First Division with grave abuse of discretion. By grave abuse of discretion is meant such capricious and whimsical exercise of judgment equivalent to lack of jurisdiction. Mere abuse of discretion is not enough. It must be grave, as when it is exercised arbitrarily or despotically by reason of passion or personal hostility. The abuse must be so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law. Clearly, by arrogating unto itself a power constitutionally lodged in the Commission *en banc*, the COMELEC First Division, in this case, exercised judgment in excess of, or without, jurisdiction.

6. ID.; CIVIL PROCEDURE; APPEALS; PROCEDURE IN THE APPEAL TO THE COMELEC OF TRIAL COURT DECISIONS IN ELECTION PROTESTS.— Sections 8 and 9, Rule 14 of A.M. No. 07-4-15- SC provide for the following procedure in the appeal to the COMELEC of trial court decisions in election protests involving elective and *barangay* officials: SEC. 8 *Appeal.* — An aggrieved party may appeal the decision to the Commission on Elections, within five days after promulgation, by filing a notice of appeal with the court that rendered the decision, with copy served on the adverse counsel or party if not represented by counsel. SEC. 9. *Appeal fee.* — The appellant in an election contest shall pay to the court that rendered the decision an appeal fee of One Thousand Pesos (₱1,000.00), simultaneously with the filing of the notice of appeal. Section 8 was derived from Article IX-C, Section 2(2) of the Constitution and Rule 40, Section 3, par.1 and Rule 41, Section 2(a) of the Rules of Court. Section 9 was taken from Rule 141, Sections 7(1) and 8(f) of the Rules of Court.

7. ID.; ID.; ID.; ID.; THE FILING OF THE NOTICE OF APPEAL AND THE PAYMENT OF THE ₱1,000.00 APPEAL FEE PERFECT THE APPEAL.—It should be noted from the afore-quoted sections of the Rule that the appeal fee of ₱1,000.00 is paid not to the COMELEC but to the trial court that rendered the decision. Thus, the filing of the notice of appeal and the payment of the ₱1,000.00 appeal fee perfect the appeal, consonant with Sections 10 and 11 of the same Rule. Upon the perfection of the appeal, the records have to be transmitted to the Electoral Contests Adjudication Department of the

COMELEC within 15 days. The trial court may only exercise its residual jurisdiction to resolve pending incidents if the records have not yet been transmitted and before the expiration of the period to appeal. With the promulgation of A.M. No. 07-4-15-SC, the previous rule that the appeal is perfected only upon the full payment of the appeal fee, now pegged at ₱3,200.00, to the COMELEC Cash Division within the period to appeal, as stated in the COMELEC Rules of Procedure, as amended, no longer applies.

8. ID.; ID.; ID.; ID.; WITH THE PERFECTION OF THE APPEAL, THE COMELEC IS MERELY GIVEN THE DISCRETION TO DISMISS THE APPEAL OR NOT IN THE SITUATION WHERE THE ADDITIONAL APPEAL FEE OF ₱3,200 IS NOT PAID TO THE COMELEC CASH DIVISION.— The appeal to the COMELEC of the trial court's decision in election contests involving municipal and *barangay* officials is perfected upon the filing of the notice of appeal and the payment of the ₱1,000.00 appeal fee to the court that rendered the decision within the five-day reglementary period. The non-payment or the insufficient payment of the additional appeal fee of ₱3,200.00 to the COMELEC Cash Division, in accordance with Rule 40, Section 3 of the COMELEC Rules of Procedure, as amended, does not affect the perfection of the appeal and does not result in outright or *ipso facto* dismissal of the appeal. Following, Rule 22, Section 9(a) of the COMELEC Rules, the appeal *may* be dismissed. And pursuant to Rule 40, Section 18 of the same rules, if the fees are not paid, the COMELEC *may* refuse to take action thereon until they are paid and *may* dismiss the action or the proceeding. In such a situation, the COMELEC is merely given the discretion to dismiss the appeal or not.

9. ID.; ID.; ID.; ID.; ID.; ELECTION LAW AND RULES ARE TO BE INTERPRETED AND APPLIED IN A LIBERAL MANNER SO AS TO GIVE EFFECT, NOT TO FRUSTRATE, THE WILL OF THE ELECTORATE; IN CASE AT BAR, THE COMELEC FIRST DIVISION HASTILY DISMISSED THE APPEAL ON THE STRENGTH OF THE RECENTLY PROMULGATED CLARIFICATORY DECISION.— The Court notes that the notice of appeal and the ₱1,000.00 appeal fee were, respectively, filed and paid with the MTC of Kapatagan, Lanao del Norte on April 21, 2008. On that date, the petitioner's appeal was deemed perfected. COMELEC issued Resolution No.

8486 clarifying the rule on the payment of appeal fees only on July 15, 2008, or almost three months after the appeal was perfected. Yet, on July 31, 2008, or barely two weeks after the issuance of Resolution No. 8486, the COMELEC First Division dismissed petitioner's appeal for non-payment to the COMELEC Cash Division of the additional ₱3,200.00 appeal fee. Considering that petitioner filed his appeal months before the clarificatory resolution on appeal fees, petitioner's appeal should not be unjustly prejudiced by COMELEC Resolution No. 8486. Fairness and prudence dictate that the COMELEC First Division should have first directed petitioner to pay the additional appeal fee in accordance with the clarificatory resolution, and if the latter should refuse to comply, then and only then, dismiss the appeal. Instead, the COMELEC First Division hastily dismissed the appeal on the strength of the recently promulgated clarificatory resolution—which had taken effect only a few days earlier. This unseemly haste is an invitation to outrage. The COMELEC First Division should have been more cautious in dismissing petitioner's appeal on the mere technicality of non-payment of the additional ₱3,200.00 appeal fee given the public interest involved in election cases. This is especially true in this case where only one vote separates the contending parties. The Court stresses once more that election law and rules are to be interpreted and applied in a liberal manner so as to give effect, not to frustrate, the will of the electorate.

APPEARANCES OF COUNSEL

Osop B. Omar for petitioner.
The Solicitor General for public respondent.
Florendo B. Opay for private respondent.

D E C I S I O N

NACHURA, *J.*:

This petition for *certiorari* under Rules 64 and 65, which stems from pertinent facts and proceedings narrated below, assails the issuances of the Commission on Elections (COMELEC) in EAC (BRGY) No. 211-2008.

In the October 2007 *barangay* elections, petitioner Aguilar won the chairmanship of Brgy. Bansarvil 1, Kapatagan, Lanao del Norte, over private respondent Insoy by a margin of one vote. Not conceding his defeat, Insoy timely instituted a protest docketed as Election Case No. 516 in the Municipal Trial Court (MTC) of Kapatagan.[1] On April 17, 2008, the MTC rendered its Decision[2] finding Insoy, who, during the revision garnered 265 votes as against Aguilar's 264 votes, as the duly elected *punong barangay*. The trial court consequently nullified the proclamation of Aguilar and directed him to vacate the office.

Aggrieved, Aguilar filed on April 21, 2008 his notice of appeal[3] and paid to the trial court the appeal fee of ₱1,000.00[4] in accordance with Rule 14, Sections 8 and 9 of the recently promulgated A.M. No. 07-4-15-SC or the Rules of Procedure in Election Contests Before the Courts Involving Elective Municipal and Barangay Officials.[5]

When the COMELEC received the records elevated by the trial court, its First Division issued on July 31, 2008 the first assailed Order[6] which pertinently reads:

> Pursuant to Sections 3 and 4, Rule 40 of the COMELEC Rules of Procedure which provide for the payment of appeal fee in the amount of ₱/3,000.00 within the period to file the notice of appeal, and Section 9(a), Rule 22 of the same Rules, which provides that failure to pay the correct appeal fee is a ground for the dismissal of the appeal, the Commission (First Division) RESOLVED as it hereby RESOLVES to DISMISS the instant appeal for Protestant-Appellant's (sic) failure to pay the appeal fee as prescribed by the Comelec Rules of Procedure within the five-(5)-day reglementary period.

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[1] *Rollo*, p. 15.

[2] *Id.* at 26-40.

[3] *Id.* at 41.

[4] *Id.* at 4.

[5] Promulgated on April 24, 2007, and became effective on May 15, 2007.

[6] *Rollo*, p. 42.

SO ORDERED.[7]

Adversely affected, Aguilar moved for reconsideration, arguing that the newly promulgated A.M. No. 07-4-15-SC only requires the payment of ₱1,000.00 as appeal fee.[8] The COMELEC First Division, however, issued on September 4, 2008 the second assailed Order[9] stating—

> Acting on the "*Motion for Reconsideration*" filed by protestee-appellant Jerry B. Aguilar, through registered mail on 13 August 2008 and received by this Commission on 21 August 2008, seeking reconsideration of this Commission's (First Division) Order dated 31 July 2008, this Commission (First Division) RESOLVES to DENY the instant motion for movants' (sic) failure to pay the complete ₱700.00 motion fee.
>
> SO ORDERED.[10]

Unperturbed, Aguilar filed another motion for reconsideration, contending, among others, that the order was null and void because it was issued in violation of the rule that motions for reconsideration should be resolved by the COMELEC *en banc*. On October 6, 2008, the COMELEC First Division issued the third assailed Order,[11] which reads in part:

> Applying suppletorily Section 2, Rule 52 of the Rules of Court, the second motion for reconsideration filed by protestee-appellant Jerry Aguilar on 25 September 2008 is hereby DENIED for being a prohibited pleading. And considering that the *Motion for Reconsideration* filed by protestee-appellant was denied per Order dated 4 September 2008 by the Commission (First Division) for movant's failure to pay the complete motion fee, the *Order* dated 31 July 2008 is now final and executory.
>
> WHEREFORE, let entry of judgment be issued in the instant case. The Judicial Records Division-ECAD, this Commission, is hereby

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[7] *Id*.

[8] *Id.* at 44-46.

[9] *Id.* at 51.

[10] *Id*.

[11] *Id.* at 59.

directed to remand within three (3) days from receipt hereof the entire records of this case to the court of origin for its proper disposition and return to the protestee-appellant the Postal Money Order representing her motion fee in the amount of one thousand one hundred pesos (₱/1,100.00) pesos.

SO ORDERED.[12]

On October 16, 2008, the COMELEC First Division issued the Entry of Judgment.[13]

Faced with imminent ouster from office, petitioner instituted the instant petition to assail the aforementioned issuances of the COMELEC First Division.

Readily discernable is that the challenged September 4 and October 6, 2008 Orders[14] were issued not by the COMELEC *en banc* but by one of its divisions, the First Division. Settled is the rule that it is the decision, order or ruling of the COMELEC *en banc* which, in accordance with Article IX-A, Section 7[15] of the Constitution, may be brought to this Court on *certiorari*.[16] But this rule should not apply when a division of the COMELEC arrogates unto itself, and deprives the *en banc* of the authority

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[12] *Id*.

[13] *Id.* at 60.

[14] *Supra* notes 9 and 11.

[15] The full text of the provision reads:

Sec. 7. Each Commission shall decide by a majority vote of all its Members any case or matter brought before it within sixty days from the date of its submission for decision or resolution. A case or matter is deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the rules of the Commission or by the Commission itself. Unless otherwise provided by this Constitution or by law, any decision, order, or ruling of each Commission may be brought to the Supreme Court on *certiorari* by the aggrieved party within thirty days from receipt of a copy thereof.

[16] *Reyes v. RTC of Oriental Mindoro*, G.R. No. 108886, May 5, 1995, 313 Phil. 727, 734, citing *Ong, Jr. v. Commission on Elections*, G.R. No. 105717, December 23, 1992, 216 SCRA 806 and *Sarmiento v. Commission on Elections*, G.R. No. 105628, August 6, 1992, 212 SCRA 307.

to rule on a motion for reconsideration, as in this case. Further, the rule is not ironclad; it admits of exceptions as when the decision or resolution sought to be set aside, even if it were merely a Division action, is an absolute nullity.[17]

The invalidity of the September 4 and October 6, 2008 Orders arises from the very fact that they were issued by a division of the COMELEC. The Constitution explicitly establishes, in Article IX-C, Section 3, the procedure for the resolution of election cases by the COMELEC, thus:

> Sec. 3. The Commission on Elections may sit *en banc* or in two divisions, and shall promulgate its rules of procedure in order to expedite disposition of election cases, including pre-proclamation controversies. All such election cases shall be heard and decided in division, provided that motions for reconsideration of decisions shall be decided by the Commission *en banc*.[18]

The COMELEC Rules of Procedure,[19] complementing the constitutional provision, also details the course of action to be undertaken in the event motions for reconsideration are filed; thus, Rule 19, Sections 5 and 6 provide that—

> Sec. 5. **How Motion for Reconsideration Disposed Of**.—Upon the filing of a motion to reconsider a decision, resolution, order or ruling of a Division, the Clerk of Court concerned shall, within twenty-four (24) hours from the filing thereof, notify the Presiding Commissioner. The latter shall within two (2) days thereafter certify the case to the Commission *en banc*.

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[17] *Blanco v. Commission on Elections*, G.R. No. 180164, June 17, 2008, 554 SCRA 755, 761; *Repol v. Commission on Elections*, G.R. No. 161418, April 28, 2004, 428 SCRA 321, 330.

[18] Underscoring supplied. See *Milla v. Balmores-Laxa*, G.R. No. 151216, July 18, 2003, 454 Phil. 452, 462; *Ambil, Jr. v. Commission on Elections*, G.R. No. 143398, October 25, 2000, 398 Phil. 257, 275; and *Soller v. Commission on Elections*, G.R. No. 139853, September 5, 2000, 394 Phil. 197, 205, in which the Court stressed on the COMELEC's compliance to the constitutionally mandated procedure in resolving election cases.

[19] Approved on February 15, 1993.

Sec. 6. **Duty of Clerk of Court of Commission to Calendar Motion for Reconsideration**.—The Clerk of Court concerned shall calendar the motion for reconsideration for the resolution of the Commission *en banc* within ten (10) days from the certification thereof.[20]

In this case, petitioner's motion for reconsideration of the order dismissing his appeal was not resolved by the COMELEC *en banc*, but by the COMELEC First Division, in obvious violation of the provisions of the Constitution and the COMELEC Rules of Procedure. Stated differently, the division, after dismissing petitioner's appeal, arrogated unto itself the *en banc*'s function of resolving petitioner's motion for reconsideration. In *Soriano, Jr. v. Commission on Elections*,[21] we emphasized the rule that a motion to reconsider a decision, resolution, order or ruling of a COMELEC division, except with regard to interlocutory orders, shall be elevated to the COMELEC *en banc*. Here, there is no doubt that the order dismissing the appeal is not merely an interlocutory, but a final order.[22] It was, therefore, incumbent upon the Presiding Commissioner of the COMELEC First Division to certify the case to the COMELEC *en banc* within two days from notification of the filing of the motion.

This rule should apply whether the motion fee has been paid or not, as what happened in *Olanolan v. Commission on Elections*.[23] Indeed, Rule 40,

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[20] Underscoring supplied.

[21] G.R. No. 164496-505, April 2, 2007, 520 SCRA 88, 106.

[22] See *Ang v. Grageda*, G.R. No. 166239, June 8, 2006, 490 SCRA 424, 437. See, however, *Salazar, Jr. v. Commission on Elections*, G.R. No. 85742, April 19, 1990, 184 SCRA 433, 441, in which the Court declared that the resolution dismissing a pre-proclamation petition for lack of interest due to the failure of the petitioner or his counsel to appear for hearing, was not a decision nor of such a nature that a motion for reconsideration thereof would call for resolution by the COMELEC *en banc*. It should be noted, nevertheless, that in *Salazar*, the pre-proclamation petition raised issues that were appropriate for an election contest, and that the pre-proclamation controversy was no longer viable because proclamation had already been made.

[23] G.R. No. 165491, March 31, 2005, 454 SCRA 807, 812.

Section 18[24] of the COMELEC Rules of Procedure gives discretion to the COMELEC, in this case, to the *en banc* and not to the division, either to refuse to take action until the motion fee is paid, or to dismiss the action or proceeding.[25]

The COMELEC First Division's unceremonious departure from this constitutionally mandated procedure in the disposition of election cases must have brought confusion to the parties, so much so, that petitioner filed a second motion for reconsideration raising this issue. Yet, the COMELEC First Division, in the further assailed October 6, 2008 Order, committed another obvious error when it again usurped the *en banc*'s authority to resolve motions for reconsideration.

Being a violation of the Constitution and the COMELEC Rules of Procedure, the assailed September 4 and October 6, 2008 Orders are null and void. They were issued by the COMELEC First Division with grave abuse of discretion. By grave abuse of discretion is meant such capricious and whimsical exercise of judgment equivalent to lack of jurisdiction. Mere abuse of discretion is not enough. It must be grave, as when it is exercised arbitrarily or despotically by reason of passion or personal hostility. The abuse must be so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[26] Clearly, by arrogating unto itself a power constitutionally lodged in the Commission *en banc*, the COMELEC First Division, in this case, exercised judgment in excess of, or without, jurisdiction.

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[24] Rule 40, Sec. 18 of the COMELEC Rules of Procedure provides:

Sec. 18. **Non-payment of Prescribed Fees**.—If the fees above prescribed are not paid, Commission may refuse to take action thereon until they are paid and may dismiss the action or the proceeding.

[25] *Olanolan v. Commission on Elections*, *supra* note 23, at 815-816; *Jaramilla v. Commission on Elections*, G.R. No. 155717, October 23, 2003, 460 Phil. 507, 514; *Rodillas v. Commission on Elections*, G.R. No. 119055, July 10, 1995, 315 Phil. 789, 794-795.

[26] *Cantoria v. Commission on Elections*, G.R. No. 162035, November 26, 2004, 486 Phil. 745, 751.

However, instead of remanding this case to the COMELEC *en banc* for appropriate action on petitioner's motion for reconsideration, we will resolve the propriety of the appeal's dismissal, considering the urgent need for the resolution of election cases, and considering that the issue has, after all, been raised in this petition.

Sections 8 and 9, Rule 14 of A.M. No. 07-4-15-SC[27] provide for the following procedure in the appeal to the COMELEC of trial court decisions in election protests involving elective municipal and *barangay* officials:

SEC. 8. *Appeal.*— An aggrieved party may appeal the decision to the Commission on Elections, within five days after promulgation, by filing a notice of appeal with the court that rendered the decision, with copy served on the adverse counsel or party if not represented by counsel.

SEC. 9. *Appeal fee.*— The appellant in an election contest shall pay to the court that rendered the decision an appeal fee of One Thousand Pesos (₱1,000.00), simultaneously with the filing of the notice of appeal.

Section 8 was derived from Article IX-C, Section 2(2)[28] of the Constitution and Rule 40, Section 3,

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[27] *Supra* note 5.

[28] Article IX-C, Sec. 2(2) reads:

Section 2. The Commission on Elections shall exercise the following powers and functions:

x x x x x x x x x

(2) Exercise exclusive original jurisdiction over all contests relating to the elections, returns, and qualifications of all elective regional, provincial, and city officials, and appellate jurisdiction over all contests involving elective municipal officials decided by trial courts of general jurisdiction, or involving elective *barangay* officials decided by trial courts of limited jurisdiction.

Decisions, final orders, or rulings of the Commission on election contests involving elective municipal and *barangay* offices shall be final, executory, and not appealable.

par. 1[29] and Rule 41, Section 2(a)[30] of the Rules of Court.[31] Section 9 was taken from Rule 141,[32] Sections 7(l)[33] and 8(f)[34] of the Rules of Court.[35]

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[29] Rule 40, Sec. 3, par. 1 of the Rules of Court reads:

Sec. 3. *How to appeal*.—The appeal is taken by filing a notice of appeal with the court that rendered the judgment or final order appealed from. The notice of appeal shall indicate the parties to the appeal, the judgment or final order or part thereof appealed from, and state the material dates showing the timeliness of the appeal.

x x x x x x x x x

[30] Rule 41, Sec. 2(a) reads:

Sec. 2. *Modes of Appeal*.—

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

x x x x x x x x x

[31] Rationale of the Proposed Rules of Procedure in Election Contests Before the Regular Courts Involving Elective Municipal and *Barangay* Officials, April 19, 2007, p. 19.

[32] As revised by A.M. No. 04-2-04-SC effective August 16, 2004.

[33] Rule 141, Sec. 7(l) reads:

Sec. 7. *Clerks of Regional Trial Courts*.—

x x x x x x x x x

(l) For appeals from Regional Trial Courts to Court of Appeals, Sandiganbayan, or Supreme Court—THREE THOUSAND (₱3,000.00) PESOS;

x x x x x x x x x

[34] Rule 141, Sec. 8(f) reads:

Sec. 8. *Clerks of Court of the First Level Courts*.—

x x x x x x x x x

(f) For appeals in all actions or proceedings, including forcible entry and detainer cases, taken from the courts of first level and petitions to the 2nd level courts—ONE THOUSAND (₱1,000.00) PESOS;

x x x x x x x x x

[35] Working Draft of the Rules of Procedure in Election Contests Before the Regular Courts Involving Elective Municipal and *Barangay* Officials, April 20, 2007, p. 32.

It should be noted from the afore-quoted sections of the Rule that the appeal fee of ₱1,000.00 is paid not to the COMELEC but to the trial court that rendered the decision. Thus, the filing of the notice of appeal and the payment of the ₱1,000.00 appeal fee perfect the appeal, consonant with Sections 10 and 11 of the same Rule. Upon the perfection of the appeal, the records have to be transmitted to the Electoral Contests Adjudication Department of the COMELEC within 15 days. The trial court may only exercise its residual jurisdiction to resolve pending incidents if the records have not yet been transmitted and before the expiration of the period to appeal.[36]

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[36] Rule 14, Secs. 10 and 11 of A.M. No. 07-4-15-SC read:

Sec. 10. *Immediate transmittal of records of the case.*—The clerk of court shall, within fifteen days from the filing of the notice of appeal, transmit to the Electoral Contests Adjudication Department, Commission on Elections, the complete records of the case, together with all the evidence, including the original and three copies of the transcript of stenographic notes of the proceedings.

Sec. 11. *Execution pending appeal.*—On motion of the prevailing party with notice to the adverse party, the court, while still in possession of the original records, may, at its discretion, order the execution of the decision in an election contest before the expiration of the period to appeal, subject to the following rules:

a. There must be a motion by the prevailing party with three-day notice to the adverse party. Execution pending appeal shall not issue without prior notice and hearing. There must be good reasons for the execution pending appeal. The court, in a special order, must state the good or special reasons justifying the execution pending appeal. Such reasons must:

1. constitute superior circumstances demanding urgency that will outweigh the injury or damage should the losing party secure a reversal of the judgment on appeal; and

2. be manifest, in the decision sought to be executed, that the defeat of the protestee or the victory of the protestant has been clearly established.

b. If the court grants an execution pending appeal, an aggrieved party shall have twenty working days from notice of the special order within which to secure a restraining order or *status quo order* from the Supreme Court or the Commission on Elections. The corresponding writ of execution shall issue after twenty days, if no restraining order or *status quo* order is issued. During such period, the writ of execution pending appeal shall be stayed.

With the promulgation of A.M. No. 07-4-15-SC, the previous rule that the appeal is perfected only upon the full payment of the appeal fee, now pegged at ₱3,200.00, to the COMELEC Cash Division within the period to appeal, as stated in the COMELEC Rules of Procedure, as amended,[37] no longer applies.

It thus became necessary for the COMELEC to clarify the procedural rules on the payment of appeal fees. For this purpose, the COMELEC issued on July 15, 2008, Resolution No. 8486,[38] which the Court takes judicial notice of. The resolution pertinently reads:

WHEREAS, the Commission on Elections is vested with appellate jurisdiction over all contests involving elective municipal officials decided by trial courts of general jurisdiction, and those involving elective *barangay* officials, decided by trial courts of limited jurisdiction;

WHEREAS, Supreme Court Administrative Order No. 07-4-15 (Rules of Procedure in Election Contests Before the Courts Involving Elective Municipal and *Barangay* Officials) promulgated on May 15, 2007 provides in Sections 8 and 9, Rule 14 thereof the procedure for instituting the appeal and the required appeal fees to be paid for the appeal to be given due course, to wit:

> **Section 8. Appeal.** — *An aggrieved party may appeal the decision to the Commission on Elections, within five days after promulgation, by filing a notice of appeal with the court that rendered the decision, with copy served on the adverse counsel or party if not represented by counsel.*

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[37] *Zamoras v. Commission on Elections*, G.R. No. 158610, November 12, 2004, 442 SCRA 397, 402-405; *Villota v. Commission on Elections*, G.R. No. 146724, August 10, 2001, 415 Phil. 87, 91-94; *Reyes v. RTC of Oriental Mindoro, supra* note 16, at 735-736.

[38] Entitled "In the Matter of Clarifying the Implementation of COMELEC Rules Re: Payment of Filing Fees for Appealed Cases Involving *Barangay* and Municipal Elective Positions From the Municipal Trial Courts, Municipal Circuit Trial Courts, Metropolitan Trial Courts and Regional Trial Courts", http://www.comelec.gov.ph/resolutions/2008armm/res_8486.html (visited: May 21, 2009).

Section 9. Appeal fee. —*The appellant in an election contest shall pay to the court that rendered the decision an appeal fee of One Thousand Pesos (₱1,000.00), simultaneously with the filing of the notice of appeal.*

WHEREAS, payment of appeal fees in appealed election protest cases is also required in Section 3, Rule 40 of the COMELEC Rules of Procedure the amended amount of which was set at ₱3,200.00 in COMELEC Minute Resolution No. 02-0130 made effective on September 18, 2002.

WHEREAS, the requirement of these two appeal fees by two different jurisdictions had caused confusion in the implementation by the Commission on Elections of its procedural rules on payment of appeal fees for the perfection of appeals of cases brought before it from the Courts of General and Limited Jurisdictions.

WHEREAS, there is a need to clarify the rules on compliance with the required appeal fees for the proper and judicious exercise of the Commission's appellate jurisdiction over election protest cases.

WHEREFORE**,** in view of the foregoing, the Commission hereby **RESOLVES** to **DIRECT** as follows:

1. That if the appellant had already paid the amount of ₱1,000.00 before the Regional Trial Court, Metropolitan Trial Court, Municipal Trial Court or lower courts **within the five-day period,** pursuant to Section 9, Rule 14 of the Rules of Procedure in Election Contests Before the Courts Involving Elective Municipal and *Barangay* Officials (Supreme Court Administrative Order No. 07-4-15) and his Appeal was given due course by the Court, said appellant is required to pay the Comelec appeal fee of ₱3,200.00 at the Commission's Cash Division through the Electoral Contests Adjudication Department (ECAD) or by postal money order payable to the Commission on Elections through ECAD, within a period of **fifteen days (15) from the time of the filing of the Notice of Appeal with the lower court.** If no payment is made within the prescribed period, the appeal shall be dismissed pursuant to Section 9(a) of Rule 22 of the COMELEC Rules of Procedure, which provides:

   Sec. 9. Grounds for Dismissal of Appeal. The appeal may be dismissed upon motion of either party or at

the instance of the Commission on any of the following grounds:

(a) Failure of the appellant to pay the correct appeal fee; x x x

2. That if the appellant failed to pay the P1,000.00 - appeal fee with the lower court within the five (5) day period as prescribed by the Supreme Court New Rules of Procedure but the case was nonetheless elevated to the Commission, the appeal shall be dismissed outright by the Commission, in accordance with the aforestated Section 9(a) of Rule 22 of the Comelec Rules of Procedure.

The Education and Information Department is directed to cause the publication of this resolution in two (2) newspapers of general circulation. This resolution shall take effect on the seventh day following its publication.

SO ORDERED.[39]

The foregoing resolution is consistent with A.M. No. 07-4-15-SC and the COMELEC Rules of Procedure, as amended. The appeal to the COMELEC of the trial court's decision in election contests involving municipal and *barangay* officials is perfected upon the filing of the notice of appeal and the payment of the ₱1,000.00 appeal fee to the court that rendered the decision within the five-day reglementary period. The non-payment or the insufficient payment of the additional appeal fee of ₱3,200.00 to the COMELEC Cash Division, in accordance with Rule 40, Section 3 of the COMELEC Rules of Procedure, as amended, does not affect the perfection of the appeal and does not result in outright or *ipso facto* dismissal of the appeal. Following, Rule 22, Section 9(a) of the COMELEC Rules, the appeal *may* be dismissed. And pursuant to Rule 40, Section 18[40] of the same rules, if the fees are not paid, the COMELEC *may* refuse to take action thereon until they are paid and *may* dismiss the action or the proceeding. In such a situation, the

[39] Published on July 17, 2008 in Philippine S tar, Manila Standard, and Today.

[40] *Supra* note 24.

COMELEC is merely given the discretion to dismiss the appeal or not.[41]

Accordingly, in the instant case, the COMELEC First Division, may dismiss petitioner's appeal, as it in fact did, for petitioner's failure to pay the ₱3,200.00 appeal fee.

Be that as it may, the Court still finds that the COMELEC First Division gravely abused its discretion in issuing the order dismissing petitioner's appeal. The Court notes that the notice of appeal and the ₱1,000.00 appeal fee were, respectively, filed and paid with the MTC of Kapatagan, Lanao del Norte on April 21, 2008. On that date, the petitioner's appeal was deemed perfected. COMELEC issued Resolution No. 8486 clarifying the rule on the payment of appeal fees only on July 15, 2008, or almost three months after the appeal was perfected. Yet, on July 31, 2008, or barely two weeks after the issuance of Resolution No. 8486, the COMELEC First Division dismissed petitioner's appeal for non-payment to the COMELEC Cash Division of the additional ₱3,200.00 appeal fee.

Considering that petitioner filed his appeal months before the clarificatory resolution on appeal fees, petitioner's appeal should not be unjustly prejudiced by COMELEC Resolution No. 8486. Fairness and prudence dictate that the COMELEC First Division should have first directed petitioner to pay the additional appeal fee in accordance with the clarificatory resolution, and if the latter should refuse to comply, then, and only then, dismiss the appeal. Instead, the COMELEC First Division hastily dismissed the appeal on the strength of the recently promulgated clarificatory resolution—which had taken effect only a few days earlier. This unseemly haste is an invitation to outrage.

The COMELEC First Division should have been more cautious in dismissing petitioner's appeal on the mere technicality of non-payment of the additional ₱3,200.00 appeal fee given the public interest involved in election cases. This is especially true in this case where only one vote separates the contending parties. The Court stresses once more that election law and

[41] *Jaramilla v. Commission on Elections*, *supra* note 25, at 514.

rules are to be interpreted and applied in a liberal manner so as to give effect, not to frustrate, the will of the electorate.[42]

WHEREFORE, premises considered, the petition for *certiorari* is *GRANTED*. The July 31, September 4 and October 6, 2008 Orders and the October 16, 2008 Entry of Judgment issued by the COMELEC First Division in EAC (BRGY) No. 211-2008 are *ANNULLED* and *SET ASIDE*. The case is *REMANDED* to the COMELEC First Division for disposition in accordance with this Decision.

SO ORDERED.

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

Carpio Morales, J., on leave.

THIRD DIVISION

[G.R. No. 152263. July 3, 2009]

ARTHUR ZARATE, *petitioner, vs.* **REGIONAL TRIAL COURT, BRANCH 43, GINGOOG CITY, MISAMIS ORIENTAL,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; RULES OF ADMISSIBILITY; PART OF THE *RES GESTAE*; ELUCIDATED. — Section 42, Rule 130 of the Rules of Court provides for the exceptions to the Hearsay Rule, which includes statements given as part of the *res gestae*. The pertinent provision reads: SEC. 42. *Part of the res gestae*.— Statements made by a person while a startling

[42] *Rodriguez v. Commission on Elections*, G.R. No. 61545, December 27, 1982, 204 Phil. 784, 796.

occurrence is taking place, or immediately prior or subsequent thereto with respect to the circumstances thereof, may be given in evidence as part of the *res gestae*. So, also, statements accompanying an equivocal act material to the issue, and giving it a legal significance, may be received as part of the *res gestae*. A declaration made spontaneously after a startling occurrence is deemed as part of the *res gestae* when (1) the principal act, the *res gestae* is a startling occurrence; (2) the statements were made before the declarant had time to contrive or devise; and (3) the statements concern the occurrence in question and its immediately attending circumstances.

2. ID.; ID.; ID.; ID.; CASE AT BAR. — In this case, Guiritan lost consciousness when he was brought to the hospital and regained consciousness the following morning after the operation. The hospital records showed that the operation started at 5:00 a.m. and ended at 7:30 a.m. of April 2, 1994. SPO1 Alecha testified that it was also in the morning of April 2, 1994 that he took the statement of Guiritan, who stated that it was petitioner who stabbed him. SPO1 Alecha testified that he had to put his ear near Guiritan's mouth so that he could hear Guiritan's answers as he was catching his breath. The foregoing circumstances reveal that the statement was taken a few hours after the operation when he regained consciousness. His statements were still the reflex product of immediate sensual impressions so that it was the shocking event speaking through him, and he did not have the opportunity to concoct or contrive the story. Thus, his statement is admissible as part of the *res gestae*.

3. ID.; ID.; CREDIBILITY OF WITNESSES; POSITIVE IDENTIFICATION OF ACCUSED AS BASIS OF CONVICTION IN CASE AT BAR. — Petitioner erred in stating that Guiritan's statement, which was admitted as part of the *res gestae*, was the sole basis for his conviction. Apart from the written statement, Guiritan, who survived the stabbing incident, positively identified appellant in open court and testified that petitioner was the one who stabbed him and that he knew petitioner even before the stabbing incident. Conviction of the accused may be had on the basis of the credible and positive testimony of a single witness.

4. ID.; ID.; ID.; ALIBI AND DENIAL; CANNOT PREVAIL OVER POSITIVE TESTIMONY NOT ATTENDED BY ILL MOTIVE.

— The trial court correctly disregarded petitioner's alibi and denial that he was the perpetrator of the crime. For alibi to prosper as a defense, one must not only prove that he was somewhere else when the crime was committed but must also show that it was physically impossible for him to have been at the scene of the crime. It is well settled that positive identification, where categorical and consistent and not attended by any showing of ill motive on the part of the eyewitnesses testifying on the matter, prevails over alibi and denial which, if not substantiated by clear and convincing evidence, are negative and self-serving evidence undeserving weight in law. For this reason, the defense of alibi and denial cannot prosper in the light of the positive identification by complainant Guiritan that it was petitioner who stabbed him.

5. ID.; ID.; ID.; FINDINGS OF TRIAL COURT, RESPECTED. — It is also a well-settled doctrine that findings of trial courts on the credibility of witnesses deserve a high degree of respect. If found positive and credible by the trial court, the testimony of a lone eyewitness, like complainant Guiritan, is sufficient to support a conviction. Having observed the deportment of witnesses during the trial, the trial judge is in a better position to determine the issue of credibility; hence, his findings will not be disturbed on appeal in the absence of any clear showing that he overlooked, misunderstood or misapplied some facts or circumstances of weight and substance that could have altered the conviction of petitioner.

6. CRIMINAL LAW; FRUSTRATED HOMICIDE; PENALTY, APPLYING THE INDETERMINATE SENTENCE LAW. — Under Article 249 of the Revised Penal Code, the crime of homicide is punishable by *reclusion temporal*. Article 50 of the Code states that the penalty next lower in degree than that prescribed by law for the consummated felony shall be imposed upon the principal in a frustrated felony like in this case. The penalty next lower in degree to *reclusion temporal* is *prision mayor*. Under the Indeterminate Sentence Law, the imposable penalty for frustrated homicide, absent any mitigating or aggravating circumstances, ranges from six (6) months and one (1) day to six (6) years of *prision correccional*, as the minimum term, to eight (8) years and one (1) day to ten (10) years of *prision mayor* in the medium period, as the maximum term. Hence, the trial court correctly sentenced petitioner to an indeterminate

prison term of four (4) years, two (2) months and one (1) day of *prision correccional*, as the minimum term, to eight (8) years and one (1) day of *prision mayor*, as the maximum term.

APPEARANCES OF COUNSEL

Pallugna & Boycillo Law Offices for petitioner.
Dioscoro U. Vallejos, Jr. for private respondent.

D E C I S I O N

PERALTA, *J.*:

This is a petition for review on *certiorari* of the Decision[1] of the Court of Appeals in CA-G.R. CR No. 20710 dated September 28, 2001, which affirmed the Decision of the Regional Trial Court of Gingoog City, Misamis Oriental, Branch 43 (trial court), finding petitioner Arthur Zarate guilty beyond reasonable doubt of the crime of frustrated homicide.

The Information[2] dated May 24, 1994 filed against Zarate was for frustrated murder, thus:

That on or about the 1st day of April 1994, at more or less 10:00 o'clock in the evening, at Barangay 9, Gingoog City, Philippines and within the jurisdiction of this HonorabIe Court, the above-named accused, with treachery and evident premeditation, with intent to kill, did then and there, wilfully, unlawfully and feloniously attack, assault and stab one Ernesto A. Guiritan, with the use of an automatic hunting knife with which the accused was conveniently provided, thereby wounding the victim on [the] epigastric area and other parts of his body, thus, performing all the acts of execution which could have produced the crime of murder as a consequence, but nevertheless did not produce it by reason of causes independent of the will of the accused, namely, the timely and able medical assistance rendered the victim which prevented his death.

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[1] Penned by Associate Justice Elvi John S. Asuncion, with Associate Justices Oswaldo D. Agcaoili and Amelita G. Tolentino, concurring; *rollo*, pp. 32-35.

[2] Records, p. 2.

The facts are as follows:

The evidence of the prosecution established that at about 10:00 p.m. of April 1, 1994, Good Friday, Ernesto Guiritan, a homosexual and beautician, was seated alone on a bench outside the Sta. Rita Church. The church was just across the public plaza of Gingoog City separated by Cabilto Street. Arthur Zarate approached Guiritan and asked him for a cigarette. When Guiritan could not produce one, Zarate immediately stabbed Guiritan with a switchblade knife and ran away. Feeling pain and sensing that he was profusely bleeding, Guiritan walked a short distance and called for help. Eduardo Remigoso and Mario Binasbas came to his aid. Guiritan asked them to bring him to the hospital.[3]

Guiritan was brought to the Gingoog District Hospital, where he was admitted at 12:40 a.m. of April 2, 1994. Dr. Ma. Ellen Santua and Dr. Joel Babanto attended to him. According to Dr. Babanto, Zarate's condition was critical because he sustained a 2.5 centimeter stab wound at the epigastric area, penetrating and perforating the proximal third jejunum (upper part of the small intestine) and middle third transverse colon through and through, which would have caused his death if not for the immediate medical intervention. He also sustained a deep laceration on his penis. Blood transfusion was required; otherwise, he would have died of hypovolemic shock.[4]

At 5:00 a.m. of April 2, 1994, Dr. Babanto operated on Guiritan and repaired the affected jejunum and transverse colon, and sutured his penis. The operation ended at 7:30 a.m.[5]

In the morning of April 2, 1994, Senior Police Officer (SPO1) Orlando Alecha went to the hospital to investigate and take the ante-mortem statement of Guiritan, who, at that time, was lying down and feeling weak. The investigation was conducted in the Visayan dialect (Cebuano), and the questions and answers

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[3] RTC Decision, *rollo*, pp. 15-16.

[4] *Id.* at 18-20.

[5] *Id.* at 19; Exhibit "A-3", folder of exhibits, p. 4; Exhibit "A-23", folder of exhibits, p. 24.

were written down by SPO1 Alecha on a piece of paper.[6] When Guiritan was giving his answers, SPO1 Alecha had to put his ear near Guiritan's mouth because Guiritan was catching his breath. Guiritan stated that he felt "as if he would die" from his wound and that "Ating Arthur Zarate" was the one who stabbed him. The inquiry was conducted in the presence of Dr. Babanto. The statement was signed by Guiritan and Dr. Babanto. Guiritan was confined in the hospital for three weeks. He was discharged on April 21, 1994. The medical and hospitalization expenses of Zarate amounted to ₱11,580.50.[7]

Guiritan testified that he recognized Zarate because he used to see him during the town fiestas of Consuelo, Magsaysay, Misamis Oriental playing *hantak*. Guiritan's friend named Maximo, who was a parlor proprietor, told him Zarate's name. Moreover, a month before the incident, Guiritan had an accidental "sexual affair" with Zarate, who thereafter asked him for money, but Guiritan had no money at that time.[8]

Petitioner Zarate put up the defense of alibi. He declared that he came to know Guiritan only in court.

Zarate testified that at 10:00 p.m. of April 1, 1994, he was near his house helping decorate the altar for the Station of the Cross that would be held at dawn the next day. The Station of the Cross was set up at the corner of his house. On the altar's side was the big cross. He asked flowers from neighbors and put the flowers on the altar. The farthest distance he had gone to gather flowers was only about 12 meters from the altar. The task was finished at midnight. He named 41 persons who were present when the Station of the Cross was being prepared. The onlookers stayed watching the altar decoration from 10:00 p.m. to midnight.[9]

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[6] Exhibit "C", folder of exhibits, p. 32.

[7] RTC Decision, *rollo*, pp. 17, 29-30.

[8] *Id.* at 18.

[9] *Id.* at 21-22. TSN, August 7, 1996, p. 13.

Zarate declared that his house at Cabilto Street was 200 meters away from the Sta. Rita Church, which would take less than five minutes by foot.[10]

Zarate testified that he does not smoke. He also did not know of any reason why Guiritan testified that he (Zarate) was the one who stabbed him.[11]

Geronima Cuerdo corroborated Zarate's testimony. She admitted that Zarate's mother was her second degree cousin. She testified that on April 1, 1994, she requested Zarate to help in preparing the Station of the Cross. There were about 20 persons present when the altar was being prepared. She declared that Zarate could not have stabbed Guiritan because from 10:00 p.m. to midnight, she had been keeping a watchful eye on Zarate and he was right there. Nevertheless, she admitted that it was possible for people around the place where the altar was being arranged to have gone somewhere without her observing them.[12]

In the Decision[13] dated April 1, 1997, the trial court did not find Zarate guilty of frustrated murder as charged, absent proof of evident premeditation and/or treachery that was alleged in the Information. Instead, Zarate was found guilty beyond reasonable doubt of the crime of frustrated homicide. The trial court held that Guiritan's positive identification of Zarate as the person who stabbed him prevails over the denial and alibi of Zarate. The dispositive portion of the Decision reads:

> WHEREFORE, the accused is hereby found guilty beyond reasonable doubt of the crime of frustrated homicide and is hereby sentenced to an indeterminate sentence of 4 years, 2 months and 1 day of *prision correccional* maximum, as minimum, to 8 years and 1 day of *prision mayor* medium, as maximum, applying the Indeterminate Sentence Law.

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[10] *Rollo*, p. 21.

[11] *Id.* at 21-22.

[12] *Id.* at 24.

[13] *Id.* at 14-31.

Likewise, he is ordered to indemnify the victim the sum of ₱11,580.50 for medicines and hospital expenses.

SO ORDERED.[14]

Zarate appealed the trial court's decision to the Court of Appeals. In a Decision dated September 28, 2001, the appellate court affirmed the trial court's decision, thus:

WHEREFORE, premises considered, the challenged decision of the Regional Trial Court of Gingoog City, finding the accused-appellant Arthur Zarate guilty beyond reasonable doubt of Frustrated Homicide, is hereby AFFIRMED in its entirety.[15]

Zarate filed before this Court a petition for *certiorari* under Rule 65 of the Rules of Court, which shall be treated as a petition for review on *certiorari* under Rule 45 of the Rules of Court because of the nature of this case.

Zarate raised this lone issue:

THE COURT OF APPEALS ERRED IN FINDING [PETITIONER] GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF FRUSTRATED HOMICIDE ON THE SOLE BASIS OF THE ANTE-MORTEM STATEMENT OF PRIVATE COMPLAINANT, TREATING IT AS PART OF THE *RES GESTAE*.[16]

Petitioner contends that the Court of Appeals erred in upholding the trial court's decision that the ante-mortem statement of Guiritan was part of the *res gestae* since the statement was taken after the operation of Guiritan in the hospital, which operation affected his mental and physical condition. Moreover, there were no witnesses presented to support the claim of Guiritan that petitioner stabbed him.

The contention is without merit.

Section 42, Rule 130 of the Rules of Court provides for the exceptions to the Hearsay Rule, which includes statements given as part of the *res gestae.* The pertinent provision reads:

[14] *Id.* at 30-31.

[15] *Id.* at 35.

[16] *Id.* at 4.

SEC. 42. *Part of the res gestae*. — Statements made by a person while a startling occurrence is taking place, or immediately prior or subsequent thereto with respect to the circumstances thereof, may be given in evidence as part of the *res gestae*. So, also, statements accompanying an equivocal act material to the issue, and giving it a legal significance, may be received as part of the *res gestae*.

A declaration made spontaneously after a startling occurrence is deemed as part of the *res gestae* when (1) the principal act, the *res gestae* is a startling occurrence; (2) the statements were made before the declarant had time to contrive or devise; and (3) the statements concern the occurrence in question and its immediately attending circumstances.[17]

In this case, Guiritan lost consciousness when he was brought to the hospital and regained consciousness the following morning after the operation. The hospital records[18] showed that the operation started at 5:00 a.m. and ended at 7:30 a.m. of April 2, 1994. SPO1 Alecha testified that it was also in the morning of April 2, 1994 that he took the statement[19] of Guiritan, who stated that it was petitioner who stabbed him, thus:

xxx xxx xxx

Q. *Nakaila ka ba kun kinsay nagdunggab nimo?*
(Do you know who stabbed you?)
A. *Ho-o, si Tating Cuerdo Zarate ug aduna siyay kauban.*
(Yes, Tating Cuerdo Zarate and he had a companion.)

xxx xxx xxx

Q. *Ikamatay mo ba kining imong samad?*
(Are you going to die of your wound?)
A. *Morag.*
(As if.)

SPO1 Alecha testified that he had to put his ear near Guiritan's mouth so that he could hear Guiritan's answers as he was

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[17] *People v. Peña*, 427 Phil. 129, 137 (2001).

[18] Exhibit "A-3", folder of exhibits, p. 4; Exhibit "A-23", folder of exhibits, p. 24.

[19] Exhibit "C", folder of exhibits, p. 32.

catching his breath. The foregoing circumstances reveal that the statement was taken a few hours after the operation when he regained consciousness. His statements were still the reflex product of immediate sensual impressions so that it was the shocking event speaking through him, and he did not have the opportunity to concoct or contrive the story. Thus, his statement is admissible as part of the *res gestae*. Contrary to petitioner's contention, the statement was signed by Guiritan and its date was established by SPO1 Alecha.

Petitioner erred in stating that Guiritan's statement, which was admitted as part of the *res gestae*, was the sole basis for his conviction. Apart from the written statement, Guiritan, who survived the stabbing incident, positively identified appellant in open court and testified that petitioner was the one who stabbed him and that he knew petitioner even before the stabbing incident. Conviction of the accused may be had on the basis of the credible and positive testimony of a single witness.[20]

The trial court correctly disregarded petitioner's alibi and denial that he was the perpetrator of the crime. For alibi to prosper as a defense, one must not only prove that he was somewhere else when the crime was committed but must also show that it was physically impossible for him to have been at the scene of the crime.[21]

Petitioner claimed that at the time of the stabbing incident, which occurred at 10:00 p.m. of April 1, 1994, he was near his house helping prepare the Station of the Cross from 10:00 p.m. to midnight. However, as the trial court observed, it was not impossible for petitioner to be at the place of the stabbing incident, which happened outside the Sta. Rita Church. Based on the testimony of petitioner, Sta. Rita Church was only about 200 meters away from his house and could be reached less than five minutes by foot.[22] Hence, petitioner failed to prove

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[20] *People v. Bulan*, G.R. No. 143404, June 8, 2005, 459 SCRA 550, 563.

[21] *People v. Juan*, 379 Phil. 645, 666 (2000).

[22] TSN, August 7, 1996, p. 11.

that it was physically impossible for him to be present at the crime scene.

It is well settled that positive identification, where categorical and consistent and not attended by any showing of ill motive on the part of the eyewitnesses testifying on the matter, prevails over alibi and denial which, if not substantiated by clear and convincing evidence, are negative and self-serving evidence undeserving weight in law.[23] For this reason, the defense of alibi and denial cannot prosper in the light of the positive identification by complainant Guiritan that it was petitioner who stabbed him.[24]

It is also a well-settled doctrine that findings of trial courts on the credibility of witnesses deserve a high degree of respect.[25] If found positive and credible by the trial court, the testimony of a lone eyewitness, like complainant Guiritan, is sufficient to support a conviction.[26] Having observed the deportment of witnesses during the trial, the trial judge is in a better position to determine the issue of credibility; hence, his findings will not be disturbed on appeal in the absence of any clear showing that he overlooked, misunderstood or misapplied some facts or circumstances of weight and substance that could have altered the conviction of petitioner.[27] This Court has carefully reviewed the records of this case and agrees with the findings of the trial court and the Court of Appeals.

Finally, the trial court correctly found petitioner guilty of the crime of frustrated homicide instead of the charge of frustrated murder, absent any proof of treachery or evident premeditation alleged in the Information to qualify the crime to frustrated murder.

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[23] *People v. Aliben*, 446 Phil. 349, 385 (2003).

[24] *Id*.

[25] *Id.* at 376.

[26] *People v. Segobre*, G.R. No. 169877, February 14, 2008, 545 SCRA 341.

[27] *Supra* note 21, at 376.

Under Article 249 of the Revised Penal Code, the crime of homicide is punishable by *reclusion temporal*. Article 50 of the Code states that the penalty next lower in degree than that prescribed by law for the consummated felony shall be imposed upon the principal in a frustrated felony like in this case. The penalty next lower in degree to *reclusion temporal* is *prision mayor*. Under the Indeterminate Sentence Law, the imposable penalty for frustrated homicide, absent any mitigating or aggravating circumstances, ranges from six (6) months and one (1) day to six (6) years of *prision correccional*, as the minimum term, to eight (8) years and one (1) day to ten (10) years of *prision mayor* in the medium period,[28] as the maximum term. Hence, the trial court correctly sentenced petitioner to an indeterminate prison term of four (4) years, two (2) months and one (1) day of *prision correccional*, as the minimum term, to eight (8) years and one (1) day of *prision mayor*, as the maximum term.

WHEREFORE, the petition is *DENIED*. The Decision of the Court of Appeals in CA-G.R. CR No. 20710, dated on September 28, 2001, which upheld the Decision of the Regional Trial Court of Gingoog City, Misamis Oriental, Branch 43, dated April 1, 1997, finding petitioner Arthur Zarate *GUILTY* beyond reasonable doubt of the crime of frustrated homicide and sentencing him to suffer an indeterminate prison term of from four (4) years, two (2) months and one (1) day of *prision correccional*, as the minimum term, to eight (8) years and one (1) day of *prision mayor*, as the maximum term, and ordering Arthur Zarate to indemnify private complainant Ernesto A. Guiritan the amount of ₱11,580.50 for medical and hospitalization expenses, is hereby *AFFIRMED*. Costs *de oficio*.

SO ORDERED.

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

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[28] The maximum penalty is *prision mayor* in the medium period in the absence of any mitigating or aggravating circumstances pursuant to Art. 64(1) of the Revised Penal Code.

FIRST DIVISION

[G.R. No. 161748. July 3, 2009]

Spouses FRANCISCO and BETTY WONG and Spouses JOAQUIN and LOLITA WONG, *petitioners, vs.* **CITY OF ILOILO, ROMEO MANIKAN as City Treasurer of Iloilo, MELANIE UY and the ESTATE OF FELIPE UY,** *respondents.*

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; LOCAL GOVERNMENT CODE ON REAL PROPERTY TAXATION; WHEN REGIONAL TRIAL COURT (RTC) SHALL ENTERTAIN COMPLAINT ASSAILING THE VALIDITY OF TAX SALE OF REAL PROPERTY; REQUIRED DEPOSIT, MANDATORY.— Section 83 of PD 464 states that the RTC shall not entertain any complaint assailing the validity of a tax sale of real property unless the complainant deposits with the court the amount for which the said property was sold plus interest equivalent to 20% per annum from the date of sale until the institution of the complaint. This provision was adopted in Section 267 of the Local Government Code, albeit the increase in the prescribed rate of interest to 2% per month. In this regard, *National Housing Authority v. Iloilo City* holds that the deposit required under Section 267 of the Local Government Code is a **jurisdictional requirement**, the nonpayment of which warrants the dismissal of the action. Because petitioners in this case did not make such deposit, the RTC never acquired jurisdiction over the complaints.

APPEARANCES OF COUNSEL

Torres Ravina & Sy Law Offices for petitioners.

Mae M. Gellecanao-Laserna for Melanie Uy and Estate of the Late Felipe Uy.

City Legal Office for City of Iloilo and City Treasurer.

R E S O L U T I O N

CORONA, *J.*:

At the center of this controversy is a 184-square meter property covered by TCT No. T-7373[1] on Valeria Street, Iloilo City owned by Charles Newton and Jane Linnie Hodges.

On November 3, 1966, the respective estates of the Hodges spouses sold the property to Vicente Chan. For some reason, however, Chan was not able to register the property in his name.

Subsequently, Chan passed away and his estate sold the same property to petitioners Francisco and Joaquin Wong on September 29, 1967. Because the estate of Chan was unable to produce the estate tax clearance and the owner's duplicate of title, petitioners were only allowed to annotate a notice of adverse claim on TCT No. T-7373 stating:[2]

> Entry No. 40286—Notice of Adverse Claim filed by [petitioners] to protect [their] rights and interest in the parcel of land described herein in view that the same [was] acquired by Vicente Chan from C.N. Hodges and the same [was] also acquired by Joaquin Wong from Adelfa Remaylon *vda. de* Chan by purchase for the sum of ₱38,500… .[3]

On January 3, 1991, respondent Iloilo City Treasurer Romeo Manikan issued a general notice of delinquency in the payment of real estate taxes.[4] It was published in the Visayan Tribune

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[1] Annex "C" of the petition. *Rollo,* pp. 37-39.

[2] *Id.*, p. 38.

[3] *Ibid.*

[4] Annex "E" of the petition. *Id.*, p. 46. The notice stated:

> **NOTICE OF DELINQUENCY IN THE PAYMENT OF REAL PROPERTY TAX IN THE CITY OF ILOILO**
>
> Notice is hereby served to all owners of real properties in the City of Iloilo whose real property tax for the year 1990 and/or prior years or any installment thereof, has remained unpaid as of this date that

from January 8 to 14, 1991, January 15 to 21, 1991 and January 22 to 28, 1991.[5]

Because no one contested the said notice or settled the tax delinquency of the subject property, the City Treasurer sent the notice of sale to the last known judicial administrator of the estates of the Hodges. However, the said notice was returned with the annotation "cannot be located."[6]

On September 26, 1991, the property was sold at public auction wherein respondent Melanie Uy was the highest bidder. On November 27, 1992, a final bill of sale was issued to her. Consequently, TCT No. T-7373 was cancelled and TCT No. T-97308 was issued to "Melanie Laserna Uy married to Felipe G. Uy."

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said real properties has become delinquent and that the undersigned City Treasurer who, under the law, is charged to enforce collection of said delinquent taxes will, for that purpose, resort to any of the following remedies to satisfy taxes, penalties, and costs:

a) Seizure of personal property of the taxpayer and the sale thereof at public auction; and/or

b) File civil suit with the proper court; and/or

c) Sell the entire delinquent property at public auction.

At any time however, before any of the above-mentioned remedies is instituted, payment maybe made with penalty at the rate of two per centum per month on the amount of the delinquent tax for each month of delinquency or fraction thereof but not exceeding twenty-four per centum per annum until the delinquent tax shall be fully paid; and further, that unless the delinquent tax and penalties be paid or the tax shall have been judicially set aside, the entire delinquent real property will be sold at public auction to satisfy taxes, penalties and costs, and that thereafter the full title of the property will remain with the purchaser, subject only to the right of the delinquent taxpayer or any other person in his behalf or any person holding lien or claims over the property to redeem the said property within one year from the date of sale.

Iloilo City, January 3, 1991.

(Sgd.) **ROMEO V. MANIKAN**
City Treasurer

[5] Annexes "F", "F-1" and "F-2" of the petition. *Id.*, pp. 47-49.

[6] Annex "G" of the petition. *Id.*, p. 50.

On November 8, 1993, petitioners Francisco and Betty Wong filed a complaint for the annulment of the September 26, 1991 auction sale and TCT No. T-97308 against respondents the City Government of Iloilo, City Treasurer Romeo Manikan and the spouses Felipe and Melanie Uy in the Regional Trial Court (RTC) of Iloilo City, Branch 27.[7] They asserted that the tax sale was void since the City Treasurer failed to inform them of the tax sale as required by Section 73 of PD[8] 464[9] which provided:

Section 73. *Advertisement of sale of real property at public auction.* — After the expiration of the year for which the tax is due, the provincial or city treasurer shall advertise the sale at public auction of the entire delinquent real property, except real property mentioned in subsection (a) of Section forty hereof, to satisfy all the taxes and penalties due and the costs of sale. Such advertisement shall be made by posting a notice for three consecutive weeks at the main entrance of the provincial building and of all municipal buildings in the province, or at the main entrance of the city or municipal hall in the case of cities, and in a public and conspicuous place in barrio or district wherein the property is situated, in English, Spanish and the local dialect commonly used, and by announcement at least three market days at the market by crier, and, in the discretion of the provincial or city treasurer, by publication once a week for three consecutive weeks in a newspaper of general circulation published in the province or city.

The notice, publication, and announcement by crier shall state the amount of the taxes, penalties and costs of sale; the date, hour, and place of sale, the name of the taxpayer against whom the tax was assessed; and the kind or nature of property and, if land, its approximate areas, lot number, and location stating the street and block number, district or barrio, municipality and the province or city where the property to be sold is situated. **Copy of the notice shall forthwith be sent either by registered mail or by messenger, or through the barrio captain, to the delinquent taxpayer, at his address as shown in the tax rolls or property tax record cards of the**

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[7] Docketed as Civil Case No. 21467.

[8] Presidential Decree.

[9] Real Property Tax Code. This has been superseded by the provisions of the 1991 Local Government Code on real property taxation (or Title II thereof).

municipality or city where the property is located, or at his residence, if known to said treasurer or barrio captain: Provided, however, That a return of the proof of service under oath shall be filed by the person making the service with the provincial or city treasurer concerned. (emphasis supplied)

On September 7, 1994, petitioners Joaquin and Lolita Wong filed a similar complaint with the RTC of Iloilo City, Branch 31.[10]

In a decision dated March 6, 1998, the RTC upheld the validity of the tax sale and dismissed the complaints. It reasoned that because petitioners were not the registered owners of the property, they were not real parties-in-interest who could assail the validity of the said sale.

Aggrieved, petitioners moved for reconsideration. In a resolution dated July 24, 1998 the RTC granted the motion and set aside the March 6, 1998 decision.[11] It noted that no notice of sale was sent to petitioners who were the legitimate owners of the property.

Respondents City Government of Iloilo and City Treasurer Manikan moved for reconsideration but it was denied in a resolution dated September 22, 1998.[12]

Thereafter, respondents appealed the July 24, 1998 and September 22, 1998 resolutions of the RTC to the Court of Appeals (CA).[13] They argued that the RTC erred in taking cognizance of the complaints since petitioners failed to observe the requirements of Section 83 of PD 464 which provided:

Section 83. Suits assailing validity of tax sale. — **No court shall entertain any suit assailing the validity of a tax sale of real estate under this Chapter until the taxpayer shall have paid into court the**

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[10] Docketed as Civil Case No. 21969. This complaint was joined with Civil Case No. 21467 inasmuch as it involved the same cause of action.

[11] Penned by Judge Teodulo A. Colada. *Rollo*, pp. 51-61.

[12] *Id.*, pp. 62-66.

[13] Docketed as CA-G.R. CV No. 64903.

amount for which the real property was sold, together with interests of twenty per centum per annum upon that sum from the date of sale to the time of instituting suit. The money so paid into court shall belong to the purchaser at the tax sale if the deed is declared invalid, but shall be returned to the depositor if the action fails.

Neither shall any court declare a sale invalid by reason of irregularities or informalities in the proceedings committed by the officer charged with the duty of making sale, or by reason of failure by him to perform his duties within the time herein specified for their performance, unless it shall have been proven that such irregularities, informalities or failure have impaired the substantial rights of the taxpayer. (emphasis supplied)[14]

In a decision dated October 9, 2002,[15] the CA reversed and set aside the assailed resolutions of the RTC. It reasoned that Section 83 of PD 464 was inapplicable since the complaints did not protest the assessment made by the local government unit. Thus, such failure did not deprive the RTC of jurisdiction. However, the CA upheld the validity of the tax sale. Under the law, only registered owners are entitled to a notice of tax sale. Inasmuch as the property remained registered in the names of

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[14] See LOCAL GOV'T. CODE, Sec. 267 which provides:

Section 267. Action Assailing Validity of Tax Sale. — **No court shall entertain any action assailing the validity or any sale at public auction of real property or rights therein under this Title until the taxpayer shall have deposited with the court the amount for which the real property was sold, together with interest of two percent (2%) per month from the date of sale to the time of the institution of the action.** The amount so deposited shall be paid to the purchaser at the auction sale if the deed is declared invalid but it shall be returned to the depositor if the action fails.

Neither shall any court declare a sale at public auction invalid by reason or irregularities or informalities in the proceedings unless the substantive rights of the delinquent owner of the real property or the person having legal interest therein have been impaired. (emphasis supplied)

[15] Penned by Associate Justice Elvi John S. Asuncion (dismissed from the service) and concurred in by Associate Justices Portia Aliño-Hormachuelos and Juan Q. Enriquez, Jr. of the Tenth Division of the Court of Appeals. *Rollo,* pp. 28-35.

the Hodges spouses in TCT No. T-7373, said spouses were the only ones entitled to such notice.

Petitioners moved for reconsideration but it was denied.[16] Hence, this recourse,[17] petitioners insisting that the CA erred in upholding the validity of the tax sale.

We deny the petition.

Section 83 of PD 464 states that the RTC shall not entertain any complaint assailing the validity of a tax sale of real property unless the complainant deposits with the court the amount for which the said property was sold plus interest equivalent to 20% per annum from the date of sale until the institution of the complaint. This provision was adopted in Section 267 of the Local Government Code, albeit the increase in the prescribed rate of interest to 2% per month.[18]

In this regard, *National Housing Authority v. Iloilo City*[19] holds that the deposit required under Section 267 of the Local Government Code is a **jurisdictional requirement**, the nonpayment of which warrants the dismissal of the action. Because petitioners in this case did not make such deposit, the RTC never acquired jurisdiction over the complaints.

Consequently, inasmuch as the tax sale was never validly challenged, it remains legally binding.

WHEREFORE, the petition is hereby *DENIED*.

Costs against petitioners.

SO ORDERED.

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

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[16] Resolution dated January 12, 2004. *Id.*, p. 36.

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

[18] *Supra* note 16.

[19] G.R. No. 172267, 20 August 2008.

FIRST DIVISION

[G.R. No. 164315. July 3, 2009]

ALCATEL PHILIPPINES, INC., and YOLANDA DELOS REYES, *petitioners, vs.* **RENE R. RELOS,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; PROJECT EMPLOYEE; DETERMINATION THEREOF. — The principal test for determining whether a particular employee is a project employee or a regular employee is whether the project employee was assigned to carry out a specific project or undertaking, the duration and scope of which were specified at the time the employee is engaged for the project. "Project" may refer to a particular job or undertaking that is within the regular or usual business of the employer, but which is distinct and separate and identifiable as such from the undertakings of the company. Such job or undertaking begins and ends at determined or determinable times.

2. ID.; ID.; ID.; PROJECT EMPLOYEE BECOMING A REGULAR EMPLOYEE; THAT PROJECT EMPLOYEE CONTINUOUSLY REHIRED AFTER CESSATION OF PROJECT, NOT APPRECIATED IN CASE AT BAR. — We do not agree with respondent that he became a regular employee because he was continuously rehired by Alcatel every termination of his contract. In *Maraguinot, Jr. v. NLRC*, we said: A project employee or a member of a work pool may acquire the status of a regular employee when the following concur: 1) **There is a continuous rehiring of project employees even after the cessation of a project**; and 2) The tasks performed by the alleged "project employee" are vital, necessary and indispensable to the usual business or trade of the employer. While respondent performed tasks that were clearly vital, necessary and indispensable to the usual business or trade of Alcatel, respondent was not continuously rehired by Alcatel after the cessation of every project. Records show that respondent was hired by Alcatel from 1988 to 1995 for three projects, namely the PLDT X-5 project, the PLDT X-4 IOT project and the PLDT 1342 project. On 30 April 1988, upon the expiration of respondent's contract

for the PLDT X-4 IOT project, Alcatel did not rehire respondent until 1 February 1991, **or after a lapse of 33 months**, for the PLDT 1342 project. Alcatel's continuous rehiring of respondent in various capacities from February 1991 to December 1995 was done entirely within the framework of one and the same project — the PLDT 1342 project. This did not make respondent a regular employee of Alcatel as respondent was not continuously rehired after the cessation of a project. Respondent remained a project employee of Alcatel working on the PLDT 1342 project.

APPEARANCES OF COUNSEL

Castillo Laman Tan Pantaleon & San Jose for petitioners.
Tagle-Chua Cruz & Aquino for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

Before the Court is a petition for review[1] of the 31 March 2004 Decision[2] and 14 June 2004 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 75965. In its 31 March 2004 Decision, the Court of Appeals set aside the 20 February 2002 Decision[4] of the National Labor Relations Commission (NLRC) and reinstated the 24 September 1998 Decision[5] of the Labor Arbiter which declared respondent Rene R. Relos (respondent) a regular employee of petitioner Alcatel Philippines, Inc. (Alcatel). In its 14 June 2004 Resolution, the Court of Appeals

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

[2] *Rollo*, pp. 26-35. Penned by Associate Justice Rodrigo V. Cosico, with Associate Justices Mariano C. Del Castillo and Vicente Q. Roxas, concurring.

[3] *Id.* at 37.

[4] *Id.* at 95-114. Penned by Commissioner Vicente S.E. Veloso (now Associate Justice of the Court of Appeals), with Presiding Commissioner Roy V. Señeres and Commissioner Alberto R. Quimpo concurring.

[5] *Id.* at 72-77. Penned by Labor Arbiter Romulus S. Protacio.

denied the motion for reconsideration of Alcatel and petitioner Yolanda Delos Reyes (petitioner Delos Reyes).

The Facts

Alcatel is a domestic corporation primarily engaged in the business of installation and supply of telecommunications equipment. Petitioner Delos Reyes was a former Administrative Officer of Alcatel.

On 4 January 1988, Alcatel offered respondent "temporary employment as Estimator/Draftsman – Civil Works to assist in the preparation of manholes and conduit design for the proposal preparation for PLDT X-5 project for the period 4 January 1988 to 28 February 1988."[6] On 1 March 1988, Alcatel again offered respondent "temporary employment as Estimator/ Draftsman to assist in the PLDT's X-4 IOT project for the period 1 March 1988 to 30 April 1988."[7]

Subsequently, Alcatel undertook the PLDT 1342 project (project) which involved the installation of microwave antennas and towers in Eastern Visayas and Eastern Mindanao for the Philippine Long Distance Company. On 1 February 1991, Alcatel offered respondent "temporary employment as Civil Works Inspector, to assist in the implementation of the PLDT 1342 Project, for the period 1 February 1991 to 31 March 1991."[8] Upon the expiration of his contract, respondent was again offered temporary employment this time as Civil Works Engineer from 1 April 1991 to 30 September 1991.[9] Respondent was offered temporary employment in the same capacity five more times from 1 October 1991 to 31 July 1992.[10] Then, on 1 August 1992, Alcatel hired respondent as "project employee for the PLDT 1342 project to work as Civil Engineer from the period

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[6] *Id.* at 246-247 (Annex "1".)

[7] *Id.* at 248-249 (Annex "2").

[8] *Id.* at 38 (Annex "C").

[9] *Id.* at 39-40 (Annex "C-1").

[10] *Id.* at 41-50 (Annexes "C-2" to "C-6").

of 1 August 1992 to 31 July 1993."[11] Alcatel renewed respondent's contract twice from 1 August 1993 to 31 December 1993.[12] In a letter dated 22 December 1993,[13] Alcatel informed respondent that the civil works portion of the project was near completion; however, the remaining works encountered certain delays and had not been completed as scheduled. Alcatel then extended respondent's employment for another three months or until 31 March 1994. Thereafter, Alcatel employed respondent as a Site Inspector until 31 December 1995.[14]

On 11 December 1995, Alcatel informed respondent that the project would be completed on 31 December 1995 and that his contract with Alcatel would expire on the same day.[15] Alcatel asked respondent to settle all his accountabilities with the company and advised him that he would be called if it has future projects that require his expertise.

In March 1997, respondent filed a complaint for illegal dismissal, separation pay, unpaid wages, unpaid overtime pay, damages, and attorney's fees against Alcatel. Respondent alleged that he was a regular employee of Alcatel and that he was dismissed during the existence of the project.

In its 24 September 1998 Decision, the Labor Arbiter declared that respondent was a regular employee of Alcatel. The Labor Arbiter also ruled that respondent was illegally dismissed and, therefore, entitled to back wages. The Labor Arbiter's Decision provides:

WHEREFORE, premises considered, judgment is hereby rendered, finding that [sic] complainant to be a regular employee and finding further that [sic] complainant to have been illegally dismissed from employment and ordering respondents, jointly and severally, to pay complainant the following:

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[11] *Id.* at 51-52 (Annex "C-7").

[12] *Id.* at 53-56 (Annexes "C-8" and "C-9").

[13] *Id.* at 57-58 (Annex "C-10").

[14] *Id.* at 59-62 (Annexes "C-11" to "C-14").

[15] *Id.* at 63 (Annex "D").

1. Backwages from the time he was illegally dismissed until his actual reinstatement in the amount of **THREE HUNDRED FORTY EIGHT THOUSAND PESOS (₱348,000.00)**. The award of backwages shall be re-computed once this decision has become final;

2. Money claims in the total amount of **FOURTEEN THOUSAND TWO HUNDRED FORTY PESOS (₱14,240.00)**;

3. Attorney's fees of ten (10%) percent of the total monetary award.

SO ORDERED.[16]

Alcatel appealed to the NLRC.

In its 20 February 2002 Decision, the NLRC reversed the Labor Arbiter's Decision and dismissed respondent's complaint for illegal dismissal. The NLRC declared that respondent was a project employee and that respondent was not illegally dismissed but that his employment contract expired.

Respondent filed a motion for reconsideration. In its 19 December 2002 Order,[17] the NLRC denied respondent's motion.

Respondent appealed to the Court of Appeals.

In its 31 March 2004 Decision, the Court of Appeals set aside the NLRC's Decision and reinstated the Labor Arbiter's Decision.

Alcatel filed a motion for reconsideration. In its 14 June 2004 Resolution, the Court of Appeals denied Alcatel's motion.

Hence, this petition.

The Ruling of the Labor Arbiter

The Labor Arbiter declared that, since respondent was repeatedly hired by Alcatel, respondent performed functions

[16] *Id.* at 76-77.

[17] *Id.* at 141-143.

that were necessary and desirable in the usual business or trade of Alcatel. The Labor Arbiter concluded that respondent belonged to the "work pool of non-project employees" of Alcatel.

As to the project, the Labor Arbiter noted that respondent's employment contracts did not specify the project's completion date. The Labor Arbiter said that a short extension of respondent's employment contract was believable, but an extension up to 1995, when respondent was originally engaged only from 1 February to 31 March 1991, was unbelievable. The Labor Arbiter also said that Alcatel's unsubstantiated claim, that the project was merely extended for "unavoidable causes," was absurd. The Labor Arbiter concluded that there was really no fixed duration of the project and that Alcatel used the periods of employment as a facade to show that respondent was only a project employee.

The Ruling of the NLRC

The NLRC set aside the Labor Arbiter's ruling and declared that respondent was a project employee. The NLRC said respondent was assigned to carry out a specific project or undertaking and the duration of his services was always stated in his employment contracts. The NLRC also pointed out that, by the nature of Alcatel's business, respondent would remain a project employee regardless of the number of projects for which he had been employed. Since respondent was a project employee, the NLRC said he was not illegally dismissed, but that his dismissal was brought about by the expiration of his employment contract.

The Ruling of the Court of Appeals

The Court of Appeals set aside the NLRC's decision and reinstated the Labor Arbiter's ruling. The Court of Appeals declared that respondent was a regular employee of Alcatel because (1) respondent was assigned to positions and performed tasks that were necessary to the main line and business operations of Alcatel; (2) respondent was repeatedly hired and contracted,

continuously and for prolonged periods, with his employment contracts renewed each time they fell due; and (3) Alcatel did not report the termination of the projects with the nearest public employment office. The Court of Appeals also said that, although respondent's employment contracts specified that he was being engaged for a specific period, there was no clear provision on the actual scope of the project for which respondent was engaged or the actual length of time that the project was going to last. The Court of Appeals concluded that Alcatel imposed the periods of employment to preclude respondent from acquiring tenurial security.

The Issues

Alcatel raises the following issues:

1. Whether respondent was a regular employee or a project employee; and
2. Whether respondent was illegally dismissed.

The Ruling of the Court

The petition is meritorious.

Alcatel argues that respondent was a project employee because he worked on distinct projects with the terms of engagement and the specific project made known to him at the time of the engagement. Alcatel clarifies that respondent's employment was coterminous with the project for which he was hired and, therefore, respondent was not illegally dismissed but was validly dismissed upon the expiration of the term of his project employment. Alcatel explains that its business relies mainly on the projects it enters into and thus, it is constrained to hire project employees to meet the demands of specific projects.

On the other hand, respondent insists that he is a regular employee because he was assigned by Alcatel on its various projects since 4 January 1988 performing functions desirable or necessary to Alcatel's business. Respondent adds that his employment contracts were renewed successively by Alcatel for seven years. Respondent contends that, even assuming

that he was a project employee, he became a regular employee because he was re-hired every termination of his employment contract and he performed functions necessary to Alcatel's business. Respondent also claims that he was illegally dismissed because he was dismissed during the existence of the project.

The principal test for determining whether a particular employee is a project employee or a regular employee is whether the project employee was assigned to carry out a specific project or undertaking, the duration and scope of which were specified at the time the employee is engaged for the project.[18] "Project" may refer to a particular job or undertaking that is within the regular or usual business of the employer, but which is distinct and separate and identifiable as such from the undertakings of the company. Such job or undertaking begins and ends at determined or determinable times.[19]

In our review of respondent's employment contracts, we are convinced that respondent was a project employee. The specific projects for which respondent was hired and the periods of employment were specified in his employment contracts. The services he rendered, the duration and scope of each employment are clear indications that respondent was hired as a project employee.

We do not agree with respondent that he became a regular employee because he was continuously rehired by Alcatel every termination of his contract. In *Maraguinot, Jr. v. NLRC*,[20] we said:

A project employee or a member of a work pool may acquire the status of a regular employee when the following concur:

1) **There is a continuous rehiring of project employees even after the cessation of a project**; and

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[18] *Imbuido v. National Labor Relations Commission*, 385 Phil. 999 (2000).

[19] *Tomas Lao Construction v. National Labor Relations Commission*, 344 Phil. 268 (1997).

[20] 348 Phil. 580 (1998).

2) The tasks performed by the alleged "project employee" are vital, necessary and indispensable to the usual business or trade of the employer.[21] (Emphasis ours)

While respondent performed tasks that were clearly vital, necessary and indispensable to the usual business or trade of Alcatel, respondent was not continuously rehired by Alcatel after the cessation of every project. Records show that respondent was hired by Alcatel from 1988 to 1995 for three projects, namely the PLDT X-5 project, the PLDT X-4 IOT project and the PLDT 1342 project. On 30 April 1988, upon the expiration of respondent's contract for the PLDT X-4 IOT project, Alcatel did not rehire respondent until 1 February 1991, **or after a lapse of 33 months**, for the PLDT 1342 project. Alcatel's continuous rehiring of respondent in various capacities from February 1991 to December 1995 was done entirely within the framework of one and the same project the PLDT 1342 project. This did not make respondent a regular employee of Alcatel as respondent was not continuously rehired after the cessation of a project. Respondent remained a project employee of Alcatel working on the PLDT 1342 project.

The employment of a project employee ends on the date specified in the employment contract. Therefore, respondent was not illegally dismissed but his employment terminated upon the expiration of his employment contract. Here, Alcatel employed respondent as a Site Inspector until 31 December 1995.

WHEREFORE, we *GRANT* the petition. We *SET ASIDE* the 31 March 2004 Decision and 14 June 2004 Resolution of the Court of Appeals and *REINSTATE* the 20 February 2002 Decision and 19 December 2002 Order of the National Labor Relations Commission.

SO ORDERED.

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

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[21] *Id.* at 600-601.

THIRD DIVISION

[G.R. No. 164817. July 3, 2009]

DIGNA A. NAJERA, *petitioner, vs.* **EDUARDO J. NAJERA,** *respondent.*

SYLLABUS

1. CIVIL LAW; FAMILY CODE; MARRIAGE; VOID AND VOIDABLE MARRIAGES; PSYCHOLOGICAL INCAPACITY; GUIDELINES; DISCUSSED. — *Republic v. Court of Appeals* laid down the guidelines in the interpretation and application of Article 36 of the Family Code x x x . The guidelines incorporate the three basic requirements earlier mandated by the Court in *Santos v. Court of Appeals*: "psychological incapacity must be characterized by (a) gravity (b) juridical antecedence, and (c) incurability." The guidelines do not require that a physician examine the person to be declared psychologically incapacitated. In fact, the root cause may be "medically or clinically identified." What is important is the presence of evidence that can adequately establish the party's psychological condition. For indeed, if the totality of evidence presented is enough to sustain a finding of psychological incapacity, then actual medical examination of the person concerned need not be resorted to.

2. ID.; ID.; ID.; ID.; ID.; ROOT CAUSE OF ALLEGED PSYCHOLOGICAL INCAPACITY IN CASE AT BAR NOT SUFFICIENTLY PROVEN TO BE CLINICALLY PERMANENT OR INCURABLE. — In this case, the Court agrees with the Court of Appeals that the totality of the evidence submitted by petitioner failed to satisfactorily prove that respondent was psychologically incapacitated to comply with the essential obligations of marriage. The root cause of respondent's alleged psychological incapacity was not sufficiently proven by experts or shown to be medically or clinically permanent or incurable. As found by the Court of Appeals, Psychologist Cristina Gates' conclusion that respondent was psychologically incapacitated was based on facts relayed to her by petitioner and was not based on her personal knowledge and evaluation of respondent; thus, her finding is unscientific and unreliable. Moreover, the trial court correctly found that petitioner failed

to prove with certainty that the alleged personality disorder of respondent was incurable as may be gleaned from Psychologist Cristina Gates' testimony.

3. ID.; ID.; ID.; ID.; PHYSICAL VIOLENCE TOWARD SPOUSE AND ABANDONMENT FOR MORE THAN ONE YEAR WITHOUT JUSTIFIABLE CAUSE ARE GROUNDS FOR LEGAL SEPARATION ONLY. — The Court agrees with the Court of Appeals that the evidence presented by petitioner in regard to the physical violence or grossly abusive conduct of respondent toward petitioner and respondent's abandonment of petitioner without justifiable cause for more than one year are grounds for legal separation only and not for annulment of marriage under Article 36 of the Family Code.

4. ID.; ID.; ID.; ID.; DECLARATION OF NULLITY OF MARRIAGE BY THE NATIONAL APPELLATE MATRIMONIAL TRIBUNAL; NOT FOR PSYCHOLOGICAL INCAPACITY BUT FOR GRAVE LACK OF DISCRETION OF JUDGMENT CONCERNING SHARED ESSENTIAL MATRIMONIAL RIGHTS AND OBLIGATIONS. — *Santos v. Santos* cited the deliberations during the sessions of the Family Code Revision Committee, which drafted the Code, to provide an insight on the import of Article 36 of the Family Code. It stated that a part of the provision is similar to the third paragraph of Canon 1095 of the Code of Canon Law, which reads: Canon 1095. The following are incapable of contracting marriage: 1. those who lack sufficient use of reason; 2. those who suffer from a grave lack of discretion of judgment concerning the essential matrimonial rights and obligations to be mutually given and accepted; 3. *those who, because of causes of a psychological nature, are unable to assume the essential obligations of marriage*. It must be pointed out that in this case, the basis of the declaration of nullity of marriage by the National Appellate Matrimonial Tribunal is not the third paragraph of Canon 1095 which mentions causes of a psychological nature, but the second paragraph of Canon 1095 which refers to those who suffer from a grave lack of discretion of judgment concerning essential matrimonial rights and obligations to be mutually given and accepted. Hence, even if, as contended by petitioner, the factual basis of the decision of the National Appellate Matrimonial Tribunal is similar to the facts established by petitioner before the trial court, the decision of the National

Appellate Matrimonial Tribunal confirming the decree of nullity of marriage by the court *a quo* is not based on the psychological incapacity of respondent. Petitioner, therefore, erred in stating that the conclusion of Psychologist Cristina Gates regarding the psychological incapacity of respondent is supported by the decision of the National Appellate Matrimonial Tribunal.

APPEARANCES OF COUNSEL

Felipe S. Aldana for petitioner.
Nolan R. Evangelista for respondent.

D E C I S I O N

PERALTA, *J.*:

This is a petition for review on *certiorari* of the Decision dated February 23, 2004 of the Court of Appeals in CA-G.R. CV No. 68053 and its Resolution August 5, 2004, denying petitioner's motion for reconsideration. The Decision of the Court of Appeals affirmed the Decision of the Regional Trial Court of Lingayen, Pangasinan, Branch 68 (RTC), which found petitioner Digna A. Najera and respondent Eduardo J. Najera entitled to legal separation, but not annulment of marriage under Article 36 of the Family Code.

The facts are as follows:

On January 27, 1997, petitioner filed with the RTC a verified Petition for Declaration of Nullity of Marriage with Alternative Prayer for Legal Separation, with Application for Designation as Administrator *Pendente Lite* of the Conjugal Partnership of Gains.[1]

Petitioner alleged that she and respondent are residents of Bugallon, Pangasinan, but respondent is presently living in the United States of America (U.S.A). They were married on January 31, 1988 by Rev. Father Isidro Palinar, Jr. at the

[1] Records, p. 1.

Saint Andrew the Apostle Church at Bugallon, Pangasinan.[2] They are childless.

Petitioner claimed that at the time of the celebration of marriage, respondent was psychologically incapacitated to comply with the essential marital obligations of the marriage, and such incapacity became manifest only after marriage as shown by the following facts:

(a) At the time of their marriage, petitioner was already employed with the Special Services Division of the Provincial Government of Pangasinan, while respondent was jobless. He did not exert enough effort to find a job and was dependent on petitioner for support. Only with the help of petitioner's elder brother, who was a seaman, was respondent able to land a job as a seaman in 1988 through the Intercrew Shipping Agency.

(b) While employed as a seaman, respondent did not give petitioner sufficient financial support and she had to rely on her own efforts and the help of her parents in order to live.

(c) As a seaman, respondent was away from home from nine to ten months each year. In May 1989, when he came home from his ship voyage, he started to quarrel with petitioner and falsely accused her of having an affair with another man. He took to smoking marijuana and tried to force petitioner into it. When she refused, he insulted her and uttered "unprintable words" against her. He would go out of the house and when he arrived home, he was always drunk.

(d) When respondent arrived home from his ship voyage in April 1994, as had been happening every year, he quarreled with petitioner. He continued to be jealous, he arrived home drunk and he smoked marijuana. On July 3, 1994, while he was quarreling with petitioner, without provocation, he inflicted physical violence upon her and attempted to kill her with a bolo. She was able to parry his attack with her left arm, yet she sustained physical injuries on different parts of her body.

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[2] Marriage Contract, Exhibit "A", records, p. 192.

She was treated by Dr. Padlan, and the incident was reported at the Bugallon Police Station.

(e) Respondent left the family home, taking along all their personal belongings. He lived with his mother at Banaga, Bugallon, Pangasinan, and he abandoned petitioner.

Petitioner learned later that respondent jumped ship while it was anchored in Los Angeles, California, U.S.A.

Petitioner prayed that upon filing of the petition, an Order be issued appointing her as the sole administrator of their conjugal properties; and that after trial on the merits, judgment be rendered (1) declaring their marriage void *ab initio* in accordance with Article 36 of the Family Code; (2) in the alternative, decreeing legal separation of petitioner and respondent pursuant to Title II of the Family Code; and (3) declaring the dissolution of the conjugal partnership of petitioner and respondent and the forfeiture in favor of petitioner of respondent's share in the said properties pursuant to Articles 42 (2) and 63 (2) of the Family Code; and (4) granting petitioner other just and equitable reliefs.

On March 7, 1997, the RTC issued an Order granting the motion of petitioner to effect service by publication as provided under Section 17, Rule 14 of the Rules of Court.

On April 17, 1997, respondent filed his Answer[3] wherein he denied the material allegations in the petition and averred that petitioner was incurably immature, of dubious integrity, with very low morality, and guilty of infidelity. He claimed that the subject house and lot were acquired through his sole effort and money. As counterclaim, respondent prayed for the award of ₱200,000.00 as moral damages, ₱45,000.00 as attorney's fees, and ₱1,000.00 as appearance fee for every scheduled hearing.

On July 18, 1997, the Office of the Solicitor General filed its Notice of Appearance.

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[3] Records, p. 34.

On June 29, 1998, the RTC issued an Order[4] terminating the pre-trial conference after the parties signed a Formal Manifestation/Motion, which stated that they had agreed to dissolve their conjugal partnership of gains and divide equally their conjugal properties.

On August 3, 1998, Assistant Provincial Prosecutor Ely R. Reintar filed a Compliance manifesting that after conducting an investigation, he found that no collusion existed between the parties.[5] The initial hearing of the case was held on November 23, 1998.

Petitioner testified in court and presented as witnesses the following: her mother, Celedonia Aldana; psychologist Cristina R. Gates; and Senior Police Officer 1 (SPO1) Sonny Dela Cruz, a member of the Philippine National Police (PNP), Bugallon, Pangasinan.

Petitioner testified that she was a commerce graduate and was working as an accounting clerk in a government agency in Manila. She and respondent married on January 31, 1988 as evidenced by their marriage contract.[6] At the time of their marriage, respondent was jobless, while petitioner was employed as Clerk at the Special Services Division of the Provincial Government of Pangasinan with a monthly salary of ₱5,000.00. It was petitioner's brother who helped respondent find a job as a seaman at the Intercrew Shipping Agency in Manila. On July 30, 1988, respondent was employed as a seaman, and he gave petitioner a monthly allotment of ₱1,600.00. After ten months at work, he went home in 1989 and then returned to work after three months. Every time respondent was home, he quarreled with petitioner and accused her of having an affair with another man. Petitioner noticed that respondent also smoked marijuana and every time he went out of the house and returned

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[4] *Id.* at 98.

[5] *Id.* at 125.

[6] Exhibit "A", records, p. 192.

home, he was drunk. However, there was no record in their *barangay* that respondent was involved in drugs.[7]

In 1990, petitioner and respondent were able to purchase a lot out of their earnings. In 1991, they constructed a house on the lot.[8]

On July 3, 1994, petitioner and respondent were invited to a party by the boyfriend of petitioner's sister. Respondent, however, did not allow petitioner to go with him. When respondent arrived home at around midnight, petitioner asked him about the party, the persons who attended it, and the ladies he danced with, but he did not answer her. Instead, respondent went to the kitchen. She asked him again about what happened at the party. Respondent quarreled with her and said that she was the one having an affair and suddenly slapped and boxed her, causing her eyes to be bloodied. When she opened her eyes, she saw respondent holding a bolo, and he attempted to kill her. However, she was able to parry his attack with her left arm, causing her to sustain injuries on different parts of her body. When respondent saw that she was bloodied, he got nervous and went out. After 10 minutes, he turned on the light in the kitchen, but he could not find her because she had gone out and was hiding from him. When she heard respondent start the motorcycle, she left her hiding place and proceeded to Gomez Street toward the highway. At the highway, she boarded a bus and asked the conductor to stop at a clinic or hospital. She alighted in Mangatarem, Pangasinan and proceeded to the clinic of one Dr. Padlan, who sutured her wounds. After a few hours, she went home.[9]

When petitioner arrived home, the house was locked. She called for her parents who were residing about 300 meters away. She then asked her brother to enter the house through the ceiling in order to open the door. She found that their personal

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[7] TSN, November 23, 1998, pp. 4-8, 22.

[8] *Id.* at 9-11.

[9] TSN, November 23, 1998, pp. 12-16.

belongings were gone, including her Automated Teller Machine card and jewelry.[10]

Thereafter, petitioner reported the incident at the police station of Bugallon, Pangasinan.[11]

Since then, respondent never returned home. He stayed with his mother in Banaga, Bugallon, Pangasinan. Petitioner learned that he went abroad again, but she no longer received any allotment from him.[12]

Petitioner testified that her parents were happily married, while respondent's parents were separated. Respondent's brothers were also separated from their respective wives.[13]

Petitioner disclosed that she also filed a petition for the annulment of her marriage with the Matrimonial Tribunal of the Diocese of Alaminos, Pangasinan on the ground of psychological incapacity of respondent.[14]

Psychologist Cristina R. Gates testified that she interviewed petitioner, but not respondent who was abroad. She confirmed her Psychological Report, the conclusion of which reads:

PSYCHOLOGICAL CONCLUSIONS BASED ON THE INTERVIEWS:

It is clear from the interviews that Respondent is afflicted with psychological hang-ups which are rooted in the kind of family background he has. His mother had an extramarital affair and separated from Respondent's father. This turn of events left an irreparable mark upon Respondent, gauging from his alcoholic and marijuana habit. In time, he seemed steep in a kind of a *double bind* where he both deeply loved and resented his mother.

His baseless accusation against his wife and his violent behavior towards her appears to be an offshoot of deep-seated feelings and

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[10] *Id.* at 16-17.

[11] *Id.* at 17-18. See Exhibit "F", records, p. 197.

[12] TSN, November 23, 1998, p. 19.

[13] *Id.* at 19-20.

[14] *Id.* at 20.

recurrent thoughts towards his own mother. Unable to resolve his childhood conflicts and anger, he turned to his wife as the *scapegoat* for all his troubles.

Based on the Diagnostic and Statistical Manual (DSM IV), Respondent is afflicted with a Borderline Personality Disorder as marked by his pattern of instability in his interpersonal relationships, his *marred* self-image and self-destructive tendencies, his uncontrollable impulses. Eduardo Najera's psychological impairment as traced to his parents' separation, aggravated by the continued meddling of his mother in his adult life, antedates his marriage to Petitioner Digna Aldana.

Furthermore, the ingestion of prohibited substances (alcohol and marijuana), known to cause irreparable damage organically, and the manifest worsening of his violent and abusive behavior across time render his impairment grave and irreversible. In the light of these findings, it is recommended that parties' marriage be annulled on grounds of psychological incapacity on the part of Respondent Eduardo Najera to fully assume his marital duties and responsibilities to Digna Aldana-Najera.[15]

Psychologist Cristina Gates testified that the chances of curability of respondent's psychological disorder were nil. Its curability ***depended*** on whether the established organic damage was minimal — referring to the malfunction of the composites of the brain brought about by habitual drinking and marijuana, which ***possibly*** afflicted respondent with borderline personality disorder and uncontrollable impulses.[16]

Further, SPO1 Sonny Dela Cruz, a member of the PNP, Bugallon, Pangasinan, testified that on July 3, 1994, he received a complaint from petitioner that respondent arrived at their house under the influence of liquor and mauled petitioner without provocation on her part, and that respondent tried to kill her. The complaint was entered in the police blotter.[17]

On March 31, 2000, the RTC rendered a Decision that decreed only the legal separation of the petitioner and respondent, but

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[15] Records, p. 201.

[16] TSN, April 14, 1999, pp. 7-8.

[17] Exhibit "F", records, p. 197.

not the annulment of their marriage. The dispositive portion of the Decision reads:

> WHEREFORE, in view of the foregoing, judgment is hereby rendered as follows:
>
> 1. Decreeing legal separation of Petitioner/Plaintiff Digna Najera and respondent/defendant Eduardo Najera;
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> 2. Ordering the dissolution of the conjugal partnership of the petitioner/plaintiff and respondent/defendant, and to divide the same equally between themselves pursuant to their Joint Manifestation/Motion dated April 27, 1998.[18]

Petitioner's motion for reconsideration was denied in a Resolution[19] dated May 2, 2000.

Petitioner appealed the RTC Decision and Resolution to the Court of Appeals.

In a Decision dated February 23, 2004, the Court of Appeals affirmed the Decision of the RTC, the dispositive portion of which reads:

> WHEREFORE, premises considered, appeal is hereby DISMISSED and judgment of the Trial Court is AFFIRMED *in toto*. No costs.[20]

Petitioner's motion for reconsideration was denied by the Court of Appeals in a Resolution dated August 5, 2004.

Hence, this petition raising the following issues:

1. The Court of Appeals failed to take into consideration the Decision of the National Appellate Matrimonial Tribunal, contrary to the guidelines decreed by the Supreme Court in the case of *Republic v. Court of Appeals*, 268 SCRA 198.

2. The evidence of petitioner proved the root cause of the psychological incapacity of respondent Eduardo Najera.

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[18] *Rollo*, p. 65.

[19] *Id.* at 66-67.

[20] *Id.* at 38.

3. The factual basis of the Decision of the National Appellate Matrimonial Tribunal is practically the same set of facts established by petitioner's evidence submitted before the trial court and therefore the same conclusion ought to be rendered by the Court.

4. Credence ought to be given to the conclusion of Psychologist Cristina R. Gates as an expert in Psychology.[21]

The main issue is whether or not the totality of petitioner's evidence was able to prove that respondent is psychologically incapacitated to comply with the essential obligations of marriage warranting the annulment of their marriage under Article 36 of the Family Code.[22]

Petitioner contends that her evidence established the root cause of the psychological incapacity of respondent which is his dysfunctional family background. With such background, respondent could not have known the obligations he was assuming, particularly the duty of complying with the obligations essential to marriage.

The Court is not persuaded.

Republic v. Court of Appeals[23] laid down the guidelines in the interpretation and application of Article 36 of the Family Code, thus:

(1) The burden of proof to show the nullity of the marriage belongs to the plaintiff. Any doubt should be resolved in favor of the existence and continuation of the marriage and against its dissolution and nullity. This is rooted in the fact that both our Constitution and our laws cherish the validity of marriage and unity of the family. Thus, our Constitution devotes an entire Article on the Family, recognizing it "as the foundation of the nation." It decrees marriage

[21] *Id.* at 16, 18, 20, 21.

[22] Art. 36. A marriage contracted by any party who, at the time of the celebration, was psychologically incapacitated to comply with the essential marital obligations of marriage, shall likewise be void even if such incapacity becomes manifest only after its solemnization.

[23] 335 Phil. 664, 676-680 (1997).

as legally "inviolable," thereby protecting it from dissolution at the whim of the parties. Both the family and marriage are to be "protected" by the state.

xxx xxx xxx

(2) The *root cause* of the psychological incapacity must be (a) medically or clinically identified, (b) alleged in the complaint, (c) sufficiently proven by experts and (d) clearly explained in the decision. Article 36 of the Family Code requires that the incapacity must be psychological — not physical, although its manifestations and/or symptoms may be physical. The evidence must convince the court that the parties, or one of them, was mentally or psychically ill to such an extent that the person could not have known the obligations he was assuming, or knowing them, could not have given valid assumption thereof. Although no example of such incapacity need be given here so as not to limit the application of the provision under the principle of *ejusdem generis*, nevertheless such root cause must be identified as a psychological illness and its incapacitating nature fully explained. Expert evidence may be given by qualified psychiatrists and clinical psychologists.

(3) The incapacity must be proven to be existing at "the time of the celebration" of the marriage. The evidence must show that the illness was existing when the parties exchanged their "I do's." The manifestation of the illness need not be perceivable at such time, but the illness itself must have attached at such moment, or prior thereto.

(4) Such incapacity must also be shown to be medically or clinically permanent or *incurable*. Such incurability may be absolute or even relative only in regard to the other spouse, not necessarily absolutely against everyone of the same sex. Furthermore, such incapacity must be relevant to the assumption of marriage obligations, not necessarily to those not related to marriage, like the exercise of a profession or employment in a job. Hence, a pediatrician may be effective in diagnosing illnesses of children and prescribing medicine to cure them but may not be psychologically capacitated to procreate, bear and raise his/her own children as an essential obligation of marriage.

5) Such illness must be *grave* enough to bring about the disability of the party to assume the essential obligations of marriage. Thus, "mild characteriological peculiarities, mood changes, occasional

emotional outbursts" cannot be accepted as root causes. The illness must be shown as downright incapacity or inability, not a refusal, neglect or difficulty, much less ill will. In other words, there is a natal or supervening disabling factor in the person, an adverse integral element in the personality structure that effectively incapacitates the person from really accepting and thereby complying with the obligations essential to marriage.

(6) The essential marital obligations must be those embraced by Articles 68 up to 71 of the Family Code as regards the husband and wife as well as Articles 220, 221 and 225 of the same Code in regard to parents and their children. Such non-complied marital obligation(s) must also be stated in the petition, proven by evidence and included in the text of the decision.

(7) Interpretations given by the National Appellate Matrimonial Tribunal of the Catholic Church in the Philippines, while not controlling or decisive, should be given great respect by our courts. It is clear that Article 36 was taken by the Family Code Revision Committee from Canon 1095 of the New Code of Canon Law, which became effective in 1983 and which provides:

> The following are incapable of contracting marriage: Those who are unable to assume the essential obligations of marriage due to causes of psychological nature.

Since the purpose of including such provision in our Family Code is to harmonize our civil laws with the religious faith of our people, it stands to reason that to achieve such harmonization, great persuasive weight should be given to decisions of such appellate tribunal. Ideally — subject to our law on evidence — what is decreed as canonically invalid should also be decreed civilly void.

This is one instance where, in view of the evident source and purpose of the Family Code provision, contemporaneous religious interpretation is to be given persuasive effect. Here, the State and the Church — while remaining independent, separate and apart from each other — shall walk together in synodal cadence towards the same goal of protecting and cherishing marriage and the family as the inviolable base of the nation.

(8) The trial court must order the prosecuting attorney or fiscal and the Solicitor General to appear as counsel for the state. No decision shall be handed down unless the Solicitor General issues a certification, which will be quoted in the decision, briefly stating therein his reasons for his agreement or opposition, as the case may be, to the petition. The Solicitor General, along with the prosecuting attorney, shall submit to the court such certification within fifteen (15) days from the date the case is deemed submitted for resolution of the court. The Solicitor General shall discharge the equivalent function of the *defensor vinculi* contemplated under Canon 1095.

The guidelines incorporate the three basic requirements earlier mandated by the Court in *Santos v. Court of Appeals*: "psychological incapacity must be characterized by (a) gravity (b) juridical antecedence, and (c) incurability."[24] The foregoing guidelines do not require that a physician examine the person to be declared psychologically incapacitated.[25] In fact, the root cause may be "medically or clinically identified."[26] What is important is the presence of evidence that can adequately establish the party's psychological condition. For indeed, if the totality of evidence presented is enough to sustain a finding of psychological incapacity, then actual medical examination of the person concerned need not be resorted to.[27]

In this case, the Court agrees with the Court of Appeals that the totality of the evidence submitted by petitioner failed to satisfactorily prove that respondent was psychologically incapacitated to comply with the essential obligations of marriage. The root cause of respondent's alleged psychological incapacity was not sufficiently proven by experts or shown to be medically or clinically permanent or incurable.

As found by the Court of Appeals, Psychologist Cristina Gates' conclusion that respondent was psychologically incapacitated was based on facts relayed to her by petitioner

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[24] *Marcos v. Marcos*, 397 Phil. 840, 850 (2000).

[25] *Id*.

[26] *Id*.

[27] *Id*.

and was not based on her personal knowledge and evaluation of respondent; thus, her finding is unscientific and unreliable.[28] Moreover, the trial court correctly found that petitioner failed to prove with certainty that the alleged personality disorder of respondent was incurable as may be gleaned from Psychologist Cristina Gates' testimony:

Q You mentioned in your report that respondent is afflicted with a borderline personality disorder. [D]id you find any organic cause?
A No, sir.

Q Do you think that this cause you mentioned existed at the time of the marriage of the respondent?
A I believe so, sir. Physically, if you examined the [respondent's family] background, there was strong basis that respondent developed mal-adoptive pattern.

Q Did you interview the respondent's family?
A No, sir, but on the disclosure of petitioner (sic).

xxx xxx xxx

Q Have you [seen] the respondent?
A He is not in the country, sir.

Q Madam Witness, this disorder that you stated in your report which the respondent is allegedly affected, is this curable?
A The chances are nil.

Q But it is curable?
A It depends actually <u>if</u> the established organic damage is minimal.

Q What is this organic damage?
A Composites of the brain is malfunctioning.

Q How did you find out the malfunctioning since you have not seen him (respondent)?

[28] See *Choa v. Choa*, 441 Phil. 175, 191 (2002).

A His habitual drinking and marijuana habit possibly afflicted the respondent with borderline personality disorder. This [is] based on his interpersonal relationships, his marred self-image and self-destructive tendencies, and his uncontrollable impulses.

Q Did you interview the respondent in this regard?
A I take the words of the petitioner in this regard.[29]

The Court agrees with the Court of Appeals that the evidence presented by petitioner in regard to the physical violence or grossly abusive conduct of respondent toward petitioner and respondent's abandonment of petitioner without justifiable cause for more than one year are grounds for legal separation[30] only and not for annulment of marriage under Article 36 of the Family Code.

Petitioner argued that the Court of Appeals failed to consider the Decision of the National Appellate Matrimonial Tribunal

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[29] TSN, April 14, 1999, pp. 6-8. (Emphasis supplied.)

[30] The Family Code, Art. 55. A petition for legal separation may be filed on any of the following grounds:

(1) Repeated physical violence or grossly abusive conduct directed against the petitioner, a common child, or a child of the petitioner;

(2) Physical violence or moral pressure to compel the petitioner to change religious or political affiliation;

(3) Attempt of respondent to corrupt or induce the petitioner, a common child, or a child of the petitioner, to engage in prostitution, or connivance in such corruption or inducement;

(4) Final judgment sentencing the respondent to imprisonment of more than six years, even if pardoned;

(5) Drug addiction or habitual alcoholism of the respondent;

(6) Lesbianism or homosexuality of the respondent;

(7) Contracting by the respondent of a subsequent bigamous marriage, whether in the Philippines or abroad;

(8) Sexual infidelity or perversion;

(9) Attempt by the respondent against the life of the petitioner; or

(10) Abandonment of petitioner by respondent without justifiable cause for more than one year.

which her counsel sought to be admitted by the Court of Appeals on February 11, 2004, twelve days before the decision was promulgated on February 23, 2004. She contended that the Court of Appeals failed to follow Guideline No. 7 in *Republic v. Court of Appeals*, thus:

> (7) Interpretations given by the National Appellate Matrimonial Tribunal of the Catholic Church in the Philippines, while not controlling or decisive, should be given great respect by our courts. It is clear that Article 36 was taken by the Family Code Revision Committee from Canon 1095 of the New Code of Canon law, which became effective in 1983 and which provides:
>
> The following are incapable of contracting marriage: Those who are unable to assume the essential obligations of marriage due to causes of psychological nature.
>
> Since the purpose of including such provision in our Family Code is to harmonize our civil laws with the religious faith of our people, it stands to reason that to achieve such harmonization, great persuasive weight should be given to decisions of such appellate tribunal. Ideally – subject to our law on evidence – what is decreed as canonically invalid should also be decreed civilly void.
>
> This is one instance where, in view of the evident source and purpose of the Family Code provision, contemporaneous religious interpretation is to be given persuasive effect. Here, the State and the Church – while remaining independent, separate and apart from each other – shall walk together in synodal cadence towards the same goal of protecting and cherishing marriage and the family as the inviolable base of the nation.

Petitioner's argument is without merit.

In its Decision dated February 23, 2004, the Court of Appeals apparently did not have the opportunity to consider the decision of the National Appellate Matrimonial Tribunal. Nevertheless, it is clear that the Court of Appeals considered the Matrimonial Tribunal's decision in its Resolution dated August 5, 2004 when it resolved petitioner's motion for reconsideration. In the said Resolution, the Court of Appeals took cognizance of the very same issues now raised before this Court and correctly held

that petitioner's motion for reconsideration was devoid of merit. It stated:

> The Decision of the National Appellate Matrimonial Tribunal dated July 2, 2002, which was forwarded to this Court only on February 11, 2004, reads as follows:
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> > x x x The **FACTS** collated from party complainant and reliable witnesses which include a sister-in-law of Respondent (despite summons from the Court dated June 14, 1999, he did not appear before the Court, in effect waiving his right to be heard, hence, trial in *absentia* followed) corroborate and lead this Collegiate Court to believe with moral certainty required by law and conclude that **the husband-respondent upon contracting marriage suffered from grave lack of due discretion of judgment, thereby rendering nugatory his marital contract**: First, his family was dysfunctional in that as a child, he saw the break-up of the marriage of his own parents; his own two siblings have broken marriages; Second, he therefore grew up with a domineering mother with whom [he] identified and on whom he depended for advice; Third, he was according to his friends, already into drugs and alcohol before marriage; this affected his conduct of bipolar kind: he could be very quiet but later very talkative, peaceful but later hotheaded even violent, he also was aware of the infidelity of his mother who now lives with her paramour, also married and a policeman; Finally, into marriage, he continued with his drugs and alcohol abuse until one time he came home very drunk and beat up his wife and attacked her with a bolo that wounded her; this led to final separation.
> >
> > WHEREFORE, premises considered, this Court of Second Instance, having invoked the Divine Name and having considered the pertinent Law and relevant Jurisprudence to the Facts of the Case hereby proclaims, declares and **decrees the confirmation of the sentence from the Court *a quo* in favor of the nullity of marriage on the ground contemplated under Canon 1095, 2 of the 1983 Code of Canon Law**.

However, records of the proceedings before the Trial Court show that, other than herself, petitioner-appellant offered the testimonies of the following persons only, to wit: Aldana Celedonia (petitioner-appellant's mother), Sonny de la Cruz (member, PNP, Bugallon,

Pangasinan), and Ma. Cristina R. Gates (psychologist). Said witnesses testified, in particular, to the unfaithful night of July 1, 1994 wherein the respondent allegedly made an attempt on the life of the petitioner. But unlike the hearing and finding before the Matrimonial Tribunal, petitioner-appellant's sister-in-law and friends of the opposing parties were never presented before said Court. As to the contents and veracity of the latter's testimonies, this Court is without any clue.

True, in the case of *Republic v. Court of Appeals, et al.* (268 SCRA 198), the Supreme Court held that the interpretations given by the National Appellate Matrimonial Tribunal of the Catholic Church in the Philippines, while not controlling or decisive, should be given great respect by our courts. However, the Highest Tribunal expounded as follows:

> Since the purpose of including such provision in our Family Code is to harmonize our civil laws with the religious faith of our people, it stands to reason that to achieve such harmonization, great persuasive weight should be given to decisions of such appellate tribunal. Ideally – ***subject to our law on evidence*** – what is decreed as [canonically] invalid should be decreed civilly void x x x.

And in relation thereto, Rule 132, Sec. 34 of the Rules of Evidence states:

> The court shall consider no evidence which has not been formally offered. The purpose of which the evidence is offered must be specified.

Given the preceding disquisitions, petitioner-appellant should not expect us to give credence to the Decision of the National Appellate Matrimonial Tribunal when, apparently, it was made on a different set of evidence of which We have no way of ascertaining their truthfulness.

Furthermore, it is an elementary rule that judgments must be based on the evidence presented before the court (*Manzano vs. Perez*, 362 SCRA 430 [2001]). And based on the evidence on record, We find no ample reason to reverse or modify the judgment of the Trial Court.[31]

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[31] *Rollo*, pp. 41-43. (Emphasis supplied.)

Santos v. Santos[32] cited the deliberations during the sessions of the Family Code Revision Committee, which drafted the Code, to provide an insight on the import of Article 36 of the Family Code. It stated that a part of the provision is similar to the third paragraph of Canon 1095 of the Code of Canon Law, which reads:

> Canon 1095. The following are incapable of contracting marriage:
>
> 1. those who lack sufficient use of reason;
>
> 2. those who suffer from a grave lack of discretion of judgment concerning the essential matrimonial rights and obligations to be mutually given and accepted;
>
> 3. *those who, because of causes of a psychological nature, are unable to assume the essential obligations of marriage.*

It must be pointed out that in this case, the basis of the declaration of nullity of marriage by the National Appellate Matrimonial Tribunal is not the third paragraph of Canon 1095 which mentions causes of a psychological nature, but the second paragraph of Canon 1095 which refers to those who suffer from a grave lack of discretion of judgment concerning essential matrimonial rights and obligations to be mutually given and accepted. For clarity, the pertinent portion of the decision of the National Appellate Matrimonial Tribunal reads:

> The **FACTS** collated from party complainant and reliable witnesses which include a sister-in-law of Respondent (despite summons from the Court dated June 14, 1999, he did not appear before the Court, in effect waiving his right to be heard, hence, trial in *absentia* followed) corroborate and lead this Collegiate Court to believe with moral certainty required by law and conclude that **the husband-respondent upon contacting marriage suffered from grave lack of due discretion of judgment, thereby rendering nugatory his marital contract x x x.**
>
> WHEREFORE, premises considered, this Court of Second Instance, having invoked the Divine Name and having considered the pertinent Law and relevant Jurisprudence to the Facts of the Case hereby

[32] G.R. No. 112019, January 4, 1995, 240 SCRA 20.

proclaims, declares and **decrees the confirmation of the sentence from the Court *a quo* in favor of the nullity of marriage on the ground contemplated under Canon 1095, 2 of the 1983 Code of Canon Law**.
xxx

Hence, even if, as contended by petitioner, the factual basis of the decision of the National Appellate Matrimonial Tribunal is similar to the facts established by petitioner before the trial court, the decision of the National Appellate Matrimonial Tribunal confirming the decree of nullity of marriage by the court *a quo* is not based on the psychological incapacity of respondent. Petitioner, therefore, erred in stating that the conclusion of Psychologist Cristina Gates regarding the psychological incapacity of respondent is supported by the decision of the National Appellate Matrimonial Tribunal.

In fine, the Court of Appeals did not err in affirming the Decision of the RTC.

WHEREFORE, the petition is *DENIED*. The Decision of the Court of Appeals in CA-G.R. CV No. 68053, dated February 23, 2004, and its Resolution dated August 5, 2004, are hereby *AFFIRMED*.

No costs.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 164968. July 3, 2009]

GLORIA OCAMPO and TERESITA TAN, *petitioners, vs.* **LAND BANK OF THE PHILIPPINES, URDANETA, PANGASINAN BRANCH and *EX OFFICIO* PROVINCIAL SHERIFF OF PANGASINAN,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ONLY QUESTIONS OF LAW ALLOWED; EXCEPTIONS ARE WHEN THERE IS CONFLICT IN THE FACTUAL FINDINGS AND WHEN THE FINDINGS OF FACT OF THE COURT OF APPEALS ARE CONTRARY TO THOSE OF THE TRIAL COURT. — The resolution of the first issue is factual in nature and calls for a review of the evidence already considered in the proceedings below. As a general rule, the Court is not a trier of facts and does not normally undertake the re-examination of the evidence presented by the contending parties during the trial of the case. Only errors of law are reviewable by the Supreme Court on petitions for review. However, this rule admits of several exceptions, wherein We disregarded the aforesaid tenet and proceeded to review the findings of facts of the lower courts. Two exceptions are present in this case, namely: (1) when the findings of facts are conflicting; and (2) when the findings of fact of the Court of Appeals are contrary to those of the trial court.

2. ID.; EVIDENCE; FORGERY; NOT AN ISSUE IN CASE AT BAR. — Ocampo and Tan filed the complaint invoking the nullity of the real estate mortgage on the ground of forgery. To bolster their claim, they averred that a physical examination of Ocampo's signature showed that the typewritten name "Gloria Ocampo" was superimposed, or it overlapped the signature "Gloria Ocampo." They argued that this indicated that the signature "Gloria Ocampo" was affixed to the printed form of the deed before the typewritten "Gloria Ocampo" was typed thereon. Such also confirmed the testimony of Ocampo that she was made to

sign a blank form before the typewritten parts thereof were typed. Forgery is present when any writing is counterfeited by the signing of another's name with intent to defraud. Here, Ocampo admitted that she had affixed her signature to a Deed of Real Estate Mortgage purportedly as a prefatory act to a ₱5,000,000.00 loan application. Corollarily, Ocampo's signature in the Deed of Real Estate Mortgage was not forged. We agree with the CA when it held that there is really no reason to discuss forgery. Notably, Ocampo and Tan failed to present any evidence to disprove the genuineness or authenticity of their signatures.

3. ID.; EVIDENCE; RULES OF ADMISSIBILITY; DOCUMENTARY EVIDENCE; DOCUMENT ACKNOWLEDGED BEFORE A NOTARY PUBLIC IS A PUBLIC DOCUMENT THAT ENJOYS THE PRESUMPTION OF REGULARITY. — It is well settled that a document acknowledged before a notary public is a public document that enjoys the presumption of regularity. It is a *prima facie* evidence of the truth of the facts stated therein and a conclusive presumption of its existence and due execution. To overcome this presumption, there must be presented evidence that is clear and convincing. Absent such evidence, the presumption must be upheld. In addition, one who denies the due execution of a deed where one's signature appears has the burden of proving that contrary to the recital in the *jurat*, one never appeared before the notary public and acknowledged the deed to be a voluntary act. We have also held that a notarized instrument is admissible in evidence without further proof of its due execution and is conclusive as to the truthfulness of its contents, and has in its favor the presumption of regularity.

4. CIVIL LAW; OBLIGATIONS AND CONTRACTS; REQUISITES; CONSENT; FRAUD. — The real issue here is not so much on forgery, but on the fact that the Land Bank allegedly used the genuine signature of Ocampo in order to make it appear that she had executed a real estate mortgage to secure a ₱2,000,000.00 loan. Ocampo maintained that when she signed the blank form, she was led to believe by the Land Bank that such would be used to process her ₱5,000,000.00 loan application. She was, therefore, surprised when she received a notice from the sheriff regarding the foreclosure of a mortgage over her properties.

Article 1338 of the Civil Code provides: ART. 1338. There is fraud when, through insidious words or machinations of one of the contracting parties, the other is induced to enter into a contract which, without them, he would not have agreed to. Verily, fraud refers to all kinds of deception — whether through insidious machination, manipulation, concealment or misrepresentation — that would lead an ordinarily prudent person into error after taking the circumstances into account. The deceit employed must be serious. It must be sufficient to impress or lead an ordinarily prudent person into error, taking into account the circumstances of each case.

5. CIVIL LAW; CONTRACTS; CONTRACT OF MORTGAGE INDEBTEDNESS; ESSENCE THEREOF. — The essence of a contract of mortgage indebtedness is that a property has been identified or set apart from the mass of the property of the debtor-mortgagor as security for the payment of money or the fulfillment of an obligation to answer the amount of indebtedness, in case of default of payment.

6. ID.; CIVIL LAW; OBLIGATIONS AND CONTRACTS; EXTINGUISHMENT OF OBLIGATIONS; NOVATION; *DACION EN PAGO*; ELUCIDATED; CONSENT IS AN ESSENTIAL PREREQUISITE. — In the case of *Vda. De Jayme v. Court of Appeals*, We held that *dacion en pago* is the delivery and transmission of ownership of a thing by the debtor to the creditor as an accepted equivalent of the performance of the obligation. Thus, it is a special mode of payment where the debtor offers another thing to the creditor, who accepts it as equivalent of payment of an outstanding debt, which undertaking, in one sense, amounts to a sale. As such, the essential elements are consent, object certain, and cause or consideration. In its modern concept, what actually takes place in *dacion en pago* is an objective novation of the obligation where the thing offered as an accepted equivalent of the performance of an obligation is considered as the object of the contract of sale, while the debt is considered as the purchase price. In any case, common consent is an essential prerequisite, be it sale or novation, to have the effect of totally extinguishing the debt or obligation.

7. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY; PREPONDERANCE OF EVIDENCE; BURDEN OF PROOF IN

CIVIL CASES. — In a civil case, the burden of proof is on the plaintiff to establish his case through a preponderance of evidence. If he claims a right granted or created by law, he must prove his claim by competent evidence.

8. ID.; IMPARTIALITY OF THE COURT, MAINTAINED. — The Court has always maintained its impartiality as early as in the case of *Vales v. Villa*, and has warned litigants that: x x x The law furnishes no protection to the inferior simply because he *is* inferior any more than it protects the strong because he *is* strong. The law furnishes protection to both alike – to one no more or less than the other. It makes no distinction between the wise and the foolish, the great and the small, the strong and the weak. The foolish may lose all they have to the wise; but that does not mean that the law will give it back to them again. Courts cannot follow one every step of his life and extricate him from bad bargains, protect him from unwise investments, relieve him from one-sided contracts, or annul the effects of foolish acts. x x x

APPEARANCES OF COUNSEL

Tanopo, Serafica & Cosme for petitioners.
Caguioa & Gatmaytan for SPV.
Legal Services Group for Land Bank of the Phils.

D E C I S I O N

PERALTA, *J.*:

This Petition for Review on *Certiorari* assails the Court of Appeals Decision[1] dated July 21, 2004, in CA-G.R. CV No. 77683, which reversed and set aside the March 18, 2002 Decision[2] of the Regional Trial Court, Branch 45, Urdaneta City, Pangasinan, in Civil Case No. U-7095.

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[1] Penned by Associate Justice Eugenio S. Labitoria, with Associate Justices Bienvenido L. Reyes and Rosalinda Asuncion-Vicente, concurring, *rollo*, pp. 25-32.

[2] Penned by Judge Joven F. Costales; *rollo*, pp. 83-98.

The facts, as culled from the records, follow.

In 1991, Gloria Ocampo and her daughter, Teresita Tan, obtained from the Land Bank of the Philippines a ₱10,000,000.00[3] loan (herein referred to as quedan loan), which was released to them on the following dates: ₱3,996,000.00 on January 31, 1991, upon the issuance of promissory note (PN) Nos. 91-038 and 98-039,[4] to mature on July 30, 1991; ₱6,000,000.00, on April 5, 1991, upon the issuance of PN Nos. 91-054, 91-055 and 91-056,[5] to mature on October 2, 1991.

Ocampo and Tan availed of the Quedan Financing Program for Grain Stocks of the Quedan and Rural Credit Guarantee Corporation[6] (Quedancor), whereby the latter guaranteed to pay the Land Bank their loan, upon maturity, in case of non-payment. Pursuant thereto, they delivered to the Land Bank several grains warehouse receipts (quedans), and executed a Deed of Assignment/Contract of Pledge covering 41,690 cavans of palay.[7]

The liability of Quedancor, however, was limited to eighty percent (80%) of the outstanding loan plus interests at the time of maturity.[8] Corollarily, the quedans delivered by Ocampo and Tan, as security, turned out to be insufficient. To address the matter, the Land Bank wrote Ocampo a letter[9] dated August 15, 1991, requiring her and Tan to give an additional security with respect to the (20%) percent unsecured portion of the quedan loan.

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[3] Based on the five (5) promissory notes, the total amount released was ₱9,996,000.00.

[4] Records, pp. 202-203.

[5] *Id.* at 204-206.

[6] Then Quedan Guarantee Fund Board.

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

[8] *Id.*

[9] Records, p. 208.

Accordingly, Ocampo and Tan constituted a real estate mortgage[10] over two parcels of unregistered land owned by Ocampo, as evidenced by Tax Declaration (TD) Nos. 6958 and 6959[11] (subsequently cancelled and replaced by TD No. 317-A).[12] The mortgage was executed on September 6, 1991 and delivered by Ocampo and Tan to the Land Bank, together with the TDs and survey plan of the properties. Land Bank, in turn, registered the mortgage with the Register of Deeds of Lingayen, Pangasinan.

Meanwhile, Ocampo filed with the RTC, Branch 49, Urdaneta, Pangasinan, a case for the registration of the subject properties, docketed as Land Registration Case No. U-1116. Land Bank filed therein a Motion,[13] praying for the RTC to take into consideration the mortgage over the properties, and to register the same in Ocampo's name bearing the said encumbrance.

On August 15, 1991, Ocampo signed debit advices amounting to ₱100,000.00 as partial payment of the quedan loan.[14] After the maturity of the remaining three (3) promissory notes on October 2, 1991, Ocampo failed to pay the balance for her quedan loan. Thus, the Land Bank filed with Quedancor a claim for guarantee payment. It also filed with the RTC, Branch 46, Urdaneta, Pangasinan, a criminal case for estafa[15] against Ocampo for disposing the stocks of palay covered by the grains warehouse receipts, docketed as Criminal Case No. U-7373.

As regards the 20% portion of the quedan loan, Land Bank filed on March 27, 2000 a petition[16] for extrajudicial foreclosure

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[10] *Id.* at 10.

[11] *Id.* at 209-210.

[12] *Id.* at 7.

[13] *Id.* at 8.

[14] TSN, August 29, 2001, p. 5.

[15] Records, pp. 131-133. Judge Modesto C. Juanson acquitted Ocampo of the crime charged under Article 315, paragraph 1(b) of the Revised Penal Code.

[16] Entitled, "*Extrajudicial Foreclosure Proceeding No. U-*1464"; records, pp. 23-24.

of real estate mortgage pursuant to Act No. 3135, as amended. On April 4, 2000, the *Ex Officio* Provincial Sheriff of Pangasinan issued a Notice of Extrajudicial Sale,[17] setting the sale at public auction on May 30, 2000, a copy of which was furnished to, and received by, Ocampo.

On May 25, 2000, Ocampo and Tan filed with the RTC a Complaint[18] for *Declaration of Nullity and Damages with Application for a Writ of Preliminary Injunction* against the Land Bank of the Philippines and the *Ex Officio* Provincial Sheriff of Pangasinan, praying[19] that after due notice and hearing on the merits, the RTC: (1) declare the deed of real estate mortgage null and void; (2) declare the extrajudicial foreclosure proceedings and notice of extrajudicial sale, null and void; (3) make the writ of preliminary injunction permanent; and (4) order the defendants to pay, jointly and severally, moral damages in an amount to be fixed by the RTC, plus attorney's fees, expenses of litigation, among others.

In their Complaint, Ocampo and Tan claimed that the real estate mortgage is a forgery, because Land Bank did not inform them that the properties would be used to secure the payment of a ₱2,000,000.00 loan, which they never applied for, much less received its proceeds. They also claimed that Tan could not have mortgaged the properties since she does not own the same.

During the trial,[20] Ocampo narrated that, on August 29, 1991, she went to the Land Bank to apply for another loan amounting to ₱5,000,000.00, but only ₱1,000,000.00 was approved. Not amenable to the said amount, she decided not to pursue her loan application. She further narrated that, in order to facilitate her ₱5,000,000.00 loan application, she signed a document denominated as Real Estate Mortgage. She insisted, however,

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[17] *Id.* at 11.

[18] *Id.* at 2-6.

[19] *Id.* at 5.

[20] TSN, June 27, 2001, pp. 6-8.

that when she affixed her signature thereon, some portions were still in blank.[21] As for the quedan loan, she contended that she had fully paid the same when she executed a Deed of Absolute Assignment[22] dated July 3, 1991 in favor of Quedancor.[23] Such payment she made known to Land Bank through a letter[24] dated August 30, 1991.

In its Answer,[25] Land Bank contended that Ocampo and Tan executed a Deed of Real Estate Mortgage dated September 6, 1991, knowing fully well that the same would secure the 20% portion of their quedan loan, which was not guaranteed by Quedancor. They even submitted the TDs covering the properties as well as the survey plan. Tan, on the other hand, signed, not as a co-owner of the properties, but in her capacity as a co-borrower of the quedan loan.

Land Bank presented as its witness, Zenaida Dasig, the assigned account officer of Ocampo. Dasig testified[26] that Ocampo and Tan obtained a ₱10,000,000.00 quedan loan from the Land Bank, 80% of which was secured by quedan receipts. She stated that Ocampo was required to submit an additional collateral for the 20% unsecured portion, which she did through the mortgage contract. As for Ocampo's claim of full payment of the quedan loan, Land Bank insisted otherwise. It argued that the quedan loan was still not fully satisfied because it was not made a party to the Deed of Absolute Assignment between Ocampo and Quedancor. Land Bank relayed its position on the matter through a letter[27] dated September 17, 1991 to Ocampo, wherein it acknowledged receipt of her August 30, 1991 letter and informed her of the subsisting balance in the quedan loan.

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[21] *Id.* at 5.

[22] Records, p. 219.

[23] TSN, October 10, 2001, p. 3.

[24] *Id.* at 4; records, p. 221.

[25] *Id.* at 41-42.

[26] TSN, August 15, 2001, pp. 18-19.

[27] Records, p. 211.

On May 29, 2000, the RTC issued a Writ of Temporary Restraining Order,[28] effective for seventy-two (72) hours, to enjoin the *Ex Officio* Provincial Sheriff from proceeding with the scheduled May 30, 2000 sale at public auction.

After the trial, the RTC rendered a Decision[29] in favor of Ocampo and Tan, to wit:

> WHEREFORE, in view of the foregoing, the Court renders judgment declaring the Real Estate Mortgage between the Plaintiffs and Defendant [Land] Bank of the Philippines and signed by the Plaintiffs on September 6, 1991, null and void.[30]

Land Bank moved for reconsideration,[31] but the RTC denied the same in its Order[32] dated July 12, 2002.

Land Bank filed an appeal with the CA, which granted the same. Accordingly, it reversed the RTC and ordered the dismissal of the complaint. The dispositive portion of the decision reads:

> WHEREFORE, premises considered, the instant appeal is hereby **GRANTED** and the Decision dated March 18, 2002 of the Regional Trial Court, Branch 45 of Urdaneta City, Pangasinan, is hereby **REVERSED** and **SET ASIDE**. The complaint is ordered DISMISSED.
>
> SO ORDERED.[33]

Ocampo and Tan did not file a motion for reconsideration of the CA decision. Instead, they elevated the matter before the Court *via* the present petition,[34] which involves the following issues: (1) whether or not the deed of real estate mortgage was void; and (2) assuming that it was valid, whether or not the loan was already extinguished.

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[28] *Id.* at 14.

[29] *Supra* note 2.

[30] *Rollo*, p. 98.

[31] Records, pp. 262-263.

[32] *Id.* at 276.

[33] *Rollo*, p. 32.

[34] *Id.* at 9-22.

The resolution of the first issue is factual in nature and calls for a review of the evidence already considered in the proceedings below. As a general rule, the Court is not a trier of facts and does not normally undertake the re-examination of the evidence presented by the contending parties during the trial of the case.[35] Only errors of law are reviewable by the Supreme Court on petitions for review.[36] However, this rule admits of several exceptions, wherein We disregarded the aforesaid tenet and proceeded to review the findings of facts of the lower courts.[37] Two exceptions are present in this case, namely: (1) when the findings of facts are conflicting; and (2) when the findings of fact of the Court of Appeals are contrary to those of the trial court.

Ocampo and Tan filed the complaint invoking the nullity of the real estate mortgage on the ground of forgery. To bolster their claim, they averred that a physical examination of Ocampo's signature showed that the typewritten name "Gloria Ocampo" was superimposed, or it overlapped the signature "Gloria Ocampo." They argued that this indicated that the signature "Gloria Ocampo" was affixed to the printed form of the deed before the typewritten "Gloria Ocampo" was typed thereon. Such also confirmed the testimony of Ocampo that she was made to sign a blank form before the typewritten parts thereof were typed.[38]

Forgery is present when any writing is counterfeited by the signing of another's name with intent to defraud.[39] Here, Ocampo admitted that she had affixed her signature to a Deed of Real

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[35] *China Banking Corporation, Inc. v. Court of Appeals*, G.R. No. 155299, July 24, 2007, 528 SCRA 103, 109.

[36] *Sering v. Court of Appeals*, 422 Phil., 467, 471 (2001).

[37] *Espino v. Vicente*, G.R. No. 168396, June 22, 2006, 492 SCRA 330, 336.

[38] Memorandum for the Plaintiffs, records, pp. 237-244, 240.

[39] *Bank of the Philippine Islands v. Casa Montessori Internationale*, G.R. No. 149454, May 28, 2004, 430 SCRA 261, 275, citing Agbayani, *Commentaries and Jurisprudence on the Commercial Laws of the Philippines*, Vol I (1989 ed.), p. 191

Estate Mortgage purportedly as a prefatory act to a ₱5,000,000.00 loan application. In her direct examination,[40] she testified as follows:

ATTY. TANOPO: DIRECT EXAMINATION

Q. Mrs. Ocampo, I show you here a Deed of Real Estate Mortgage purportedly executed by you and the Land Bank of the Philippines, which has already been marked for purposes of identification as Exhibit "6" for the defendants, and I point to you a signature which overlapped (sic) the typewritten name Gloria Ocampo, will you inform this Honorable Court, **whose signature is that which overlaps the typewritten name Gloria Ocampo?**
A. **That is my signature, sir**.

ATTY. TANOPO:

Q. Now, in your complaint, you claim or alleged that this mortgage is a forgery, notwithstanding the fact that you admitted that the signature overlapped the typewritten Gloria Ocampo is your signature. Kindly inform the court why is this a forgery?
A. Because they made me sign a blank form, sir.

Q. Why were you made to sign a blank form by the bank?
A. Because that was the procedure of the bank, letting them sign blank forms for the loan.

xxx xxx xxx

COURT:

Q. Madam Witness, what do you mean by blank form? It would seem that the exhibit is not blank?
A. They showed us blank instrument for us to sign before we can obtain the loan, your Honor.

Q. **You mean to say in blank form, the form is not filled up although there are printed statements, is that correct?**
A. **Yes, sir.**

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[40] TSN, June 27, 2001, p. 4.

Corollarily, Ocampo's signature in the Deed of Real Estate Mortgage was not forged. We agree with the CA when it held that there is really no reason to discuss forgery.[41] Notably, Ocampo and Tan failed to present any evidence to disprove the genuineness or authenticity of their signatures.[42] A perusal of the Deed of Real Estate Mortgage dated September 6, 1991 revealed the signatures of Gloria Ocampo and Teresita Tan as well as that of Zenaida Dasig and Julita Orpiano. On the acknowledgment portion were the names of Gloria Ocampo and Teresita Tan, alongside their respective residence certificate numbers and the places and dates of issue, together with the name of Atty. Elmer Veloria, the notary public.

It is well settled that a document acknowledged before a notary public is a public document that enjoys the presumption of regularity. It is a *prima facie* evidence of the truth of the facts stated therein and a conclusive presumption of its existence and due execution. To overcome this presumption, there must be presented evidence that is clear and convincing. Absent such evidence, the presumption must be upheld. In addition, one who denies the due execution of a deed where one's signature appears has the burden of proving that contrary to the recital in the *jurat*, one never appeared before the notary public and acknowledged the deed to be a voluntary act.[43] We have also held that a notarized instrument is admissible in evidence without further proof of its due execution and is conclusive as to the truthfulness of its contents, and has in its favor the presumption of regularity.[44]

Ocampo denied having appeared before the notary public.[45] When asked further by the RTC if she was certain, she replied

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[41] CA Decision, *rollo*, p. 30.

[42] *Id*.

[43] *Santos v. Lumbao*, G.R. No. 169129, March 28, 2007, 519 SCRA 408, 426-427.

[44] *China Banking Corporation v. Lagon*, G.R. No. 160843, July 11, 2006, 494 SCRA 560, 567.

[45] TSN, June 27, 2001, p. 20.

that she cannot remember if she had indeed appeared before the notary public.[46] She also denied knowing Zenaida Dasig but she knew Julita Orpiano, who, according to her, was in-charge of the loan in Land Bank.[47] Contrary to Ocampo's claims, Dasig narrated that Ocampo signed the real estate mortgage in the presence of the notary public[48] because she was also present during that time.[49] As Land Bank's account officer, Dasig was tasked to evaluate loan applications and projects related thereto, for proposal as to viability and profitability, including the renewal of credit lines for management approval. As such, she was not only vested with knowledge of banking procedures and practices, she was also acquainted with the individuals who transact business with the Land Bank.

The real issue here is not so much on forgery, but on the fact that the Land Bank allegedly used the genuine signature of Ocampo in order to make it appear that she had executed a real estate mortgage to secure a ₱2,000,000.00 loan. Ocampo maintained that when she signed the blank form, she was led to believe by the Land Bank that such would be used to process her ₱5,000,000.00 loan application. She was, therefore, surprised when she received a notice from the sheriff regarding the foreclosure of a mortgage over her properties.

Article 1338 of the Civil Code provides:

> ART. 1338. There is fraud when, through insidious words or machinations of one of the contracting parties, the other is induced to enter into a contract which, without them, he would not have agreed to.

Verily, fraud refers to all kinds of deception — whether through insidious machination, manipulation, concealment or misrepresentation — that would lead an ordinarily prudent person

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[46] *Id.* at 21.

[47] *Id*.

[48] TSN, September 3, 2001, p. 14.

[49] TSN, August 15, 2001, pp. 15-16.

into error after taking the circumstances into account.[50] The deceit employed must be serious. It must be sufficient to impress or lead an ordinarily prudent person into error, taking into account the circumstances of each case.[51]

Unfortunately, Ocampo was unable to establish clearly and precisely how the Land Bank committed the alleged fraud. She failed to convince Us that she was deceived, through misrepresentations and/or insidious actions, into signing a blank form for use as security to her previous loan. Quite the contrary, circumstances indicate the weakness of her submissions. The Court of Appeals aptly held that:

> Granting, for the sake of argument, that appellant bank did not apprise the appellees of the real nature of the real estate mortgage, such stratagem, deceit or misrepresentations employed by defendant bank are facts constitutive of fraud which is defined in Article 1338 of the Civil Code as that insidious words or machinations of one of the contracting parties, by which the other is induced to enter into a contract which without them, he would not have agreed to. When fraud is employed to obtain the consent of the other party to enter into a contract, the resulting contract is merely a voidable contract, that is a valid and subsisting contract until annulled or set aside by a competent court. It must be remembered that an action to declare a contract null and void on the ground of fraud must be instituted within four years from the date of discovery of fraud. In this case, it is presumed that the appellees must have discovered the alleged fraud since 1991 at the time when the real estate mortgage was registered with the Register of Deeds of Lingayen, Pangasinan. The appellees cannot now feign ignorance about the execution of the real estate mortgage.[52]

In fine, We hold that the Deed of Real Estate Mortgage was valid.

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[50] *Solidbank Corporation v. Mindanao Ferroalloy Corporation,* G.R. No. 153535, July 28, 2005, 464 SCRA 409, 425.

[51] *Mayor v. Belen*, G.R. No. 151035, June 3, 2004, 430 SCRA 561, 565.

[52] *Rollo,* pp. 30-31.

Anent the second issue, We also resolve the same against Ocampo and Tan and, consequently, hold that the loan obligation was not yet extinguished.

Ocampo claimed that she had already paid the quedan loan when she assigned parcels of land covered by three (3) transfer certificates of title in favor of Quedancor, as evidenced by the Deed of Absolute Assignment,[53] to wit:

> WHEREAS, the ASSIGNOR acknowledges to be justly indebted to the ASSIGNEE in the total sum of NINE MILLION NINE HUNDRED NINETY-SIX THOUSAND ₱9,996,000.00 exclusive of interest charges.
>
> WHEREAS, the ASSIGNOR, in full settlement thereof has voluntarily offered to assign and convey certain properties belonging to her and the ASSIGNEE indicated his willingness to accept the same;
>
> NOW, THEREFORE, for and in consideration of the sum of NINE MILLION NINE HUNDRED NINETY-SIX THOUSAND representing the total obligation owing to the ASSIGNEE by the ASSIGNOR does hereby sede (sic), assign, transfer and convey in a manner absolute and irrevocable in favor of the said ASSIGNEE the following property/ies free and clear of all liens and encumbrances, x x x

The essence of a contract of mortgage indebtedness is that a property has been identified or set apart from the mass of the property of the debtor-mortgagor as security for the payment of money or the fulfillment of an obligation to answer the amount of indebtedness, in case of default of payment.[54] In the case before Us, the loan amount was established. It was also admitted that 80% was guaranteed by Quedancor, while the remaining 20%, by the Deed of Real Estate Mortgage. Finally, the records show that Ocampo and Tan obtained the loan from the Land Bank and it was the latter which released the loan proceeds.

We cannot countenance Ocampo's actions in order to justify her alleged full payment of the quedan loan. The loan was between her and the Land Bank; yet, she did not include the

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[53] *Supra* note 22.

[54] *China Banking Corporation v. Court of Appeals*, G.R. No. 121158, December 5, 1996, 265 SCRA 327, 340-341.

latter as party to the Deed of Absolute Assignment, for the following reasons: that it was Quedancor which collected from her and that, once, when she went to the Land Bank to pay her loan, the person she approached merely smiled at her.[55] Her justifications were flimsy and incredulous. Moreover, there are other evidence on record which she chose to ignore, showing her indebtedness to the Land Bank, and not to Quedancor, to wit: (1) she delivered the TDs on her properties as well as the survey plan to the Land Bank; (2) the mortgage was annotated on TD Nos. 6958 and 6959, and subsequently, on TD 317-A; (3) the Land Bank registered the mortgage with the Register of Deeds of Lingayen, Pangasinan; (4) she used TD No. 317-A in her application for the registration of her properties before the cadastral court; (5) the Land Bank even filed a motion in the land registration case so that the mortgage will be considered and noted as encumbrance on the properties; and (6) she paid Land Bank, by way of debit advices, in the amount of ₱100,000.00.

All the above circumstances, notwithstanding, Ocampo hastily executed the Deed of Absolute Assignment and conveyed some of her properties to Quedancor without prior notice to the Land Bank.

In the case of *Vda. De Jayme v. Court of Appeals*,[56] We held that *dacion en pago* is the delivery and transmission of ownership of a thing by the debtor to the creditor as an accepted equivalent of the performance of the obligation. Thus, it is a special mode of payment where the debtor offers another thing to the creditor, who accepts it as equivalent of payment of an outstanding debt, which undertaking, in one sense, amounts to a sale. As such, the essential elements are consent, object certain, and cause or consideration. In its modern concept, what actually takes place in *dacion en pago* is an objective novation of the obligation where the thing offered as an accepted equivalent

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[55] TSN, October 10, 2001, p. 8.

[56] G.R. No. 128669, October 4, 2002, 390 SCRA 380, 392-393, citing Tolentino, *CIVIL CODE OF THE PHILIPPINES* Vol. IV (1991), citing 2 Castan, 525; 8 Manresa 324; *Filinvest Credit Corporation v. Philippine Acetylene Co., Inc.*, 111 SCRA 421 (1982).

of the performance of an obligation is considered as the object of the contract of sale, while the debt is considered as the purchase price. In any case, common consent is an essential prerequisite, be it sale or novation, to have the effect of totally extinguishing the debt or obligation.

The requisite consent is not present in this case, for as explained by the Court of Appeals:

> x x x True, the plaintiffs-appellees executed a Deed of Assignment. But what does the said deed guarantee? The Deed of Assignment referred to was entered into between Quedan [Guarantee] Fund Board and the plaintiffs-appellees. The appellant creditor bank, however, had no participation, or much less, consented to the execution of the said deed of assignment. Hence, the deed of assignment cannot have the valid effect of extinguishing the real estate mortgage or much less the quedan loan insofar as the creditor bank is concerned. Basic is the rule that in order to have a valid payment, the payment shall be made to the person in whose favor the obligation is constituted, or his successor-in-interest, or any person authorized to receive it. Why then did the plaintiff Gloria Ocampo assigned (sic) her properties to a guarantor and not directly to the creditor bank? The pre-trial order will readily disclose that the Quedan [Guarantee] Fund Board is a mere guarantor or surety of 80% of the quedan loan. Thus, even if the deed of assignment has the effect of a valid payment, we may reasonably conclude that the extinguishment is only up to the extent of 80% of the quedan loan. Thus, it leaves the balance of 20% of the quedan loan which can be fully satisfied by the foreclosure of the real estate mortgage.[57]

In a civil case, the burden of proof is on the plaintiff to establish his case through a preponderance of evidence. If he claims a right granted or created by law, he must prove his claim by competent evidence.[58] After considering the evidence presented by the parties, as well as their arguments in their respective pleadings, We hold that petitioners Ocampo and Tan failed to sufficiently establish their cause of action. Consequently, their complaint should have been dismissed by the RTC.

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[57] *Rollo*, p. 32.

[58] *Rizal Commercial Banking Corporation v. Marcopper Mining Corporation*, G.R. No. 170738, September 12, 2008.

One more thing. Ocampo is a businesswoman and she had testified that she had availed of loans from other banks. The amount involved was not a measly amount. Verily, she is expected to be acquainted with the banking procedures as regards to loan applications. With this premise, she ought to have read the terms and conditions of the document that she was signing, especially so when, as claimed by her, there were still blank spaces at that time when she affixed her signature thereon. Finally, We believe that she must also be familiar with the manner by which the loans should be paid and settled; yet, that was not what happened here. The Court has always maintained its impartiality as early as in the case of *Vales v. Villa*,[59] and has warned litigants that:

> x x x The law furnishes no protection to the inferior simply because he *is* inferior any more than it protects the strong because he *is* strong. The law furnishes protection to both alike – to one no more or less than the other. It makes no distinction between the wise and the foolish, the great and the small, the strong and the weak. The foolish may lose all they have to the wise; but that does not mean that the law will give it back to them again. Courts cannot follow one every step of his life and extricate him from bad bargains, protect him from unwise investments, relieve him from one-sided contracts, or annul the effects of foolish acts. x x x[60]

WHEREFORE, the Petition is *DENIED*. The Court of Appeals Decision dated July 21, 2004 in CA-G.R. CV No. 77683 is hereby *AFFIRMED*. Costs against the petitioners.

SO ORDERED.

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

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[59] 35 Phil. 769 (1916).

[60] *Id.* at 787-788.

THIRD DIVISION

[G.R. No. 166734. July 3, 2009]

MANDY COMMODITIES CO., INC., *petitioner, vs.* **THE INTERNATIONAL COMMERCIAL BANK OF CHINA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PETITION FOR ANNULMENT OF JUDGMENT; APPLICABILITY AND VALID GROUNDS THEREFOR; LACK OF JURISDICTION, DISCUSSED. — We agree with the Court of Appeals that the remedy of annulment was not the proper remedy to set aside the orders of the trial court. To start with, the remedy of petition for annulment of judgment, final order or resolution under Rule 47 of the Rules of Court is an extraordinary one inasmuch as it is available only where the ordinary remedies of new trial, appeal, petition for relief or other remedies can no longer be availed of through no fault of the petitioner. The relief it affords is equitable in character as it strikes at the core of finality of such judgments and orders. The grounds for a petition for annulment are in themselves specific in the same way that the relief itself is. The Rules restrict the grounds only to lack of jurisdiction and extrinsic fraud to prevent the remedy from being used by a losing party in making a complete farce of a duly promulgated decision or a duly issued order or resolution that has long attained finality. This certainly is based on sound public policy for litigations and, despite occasional risks of error, must be brought to a definite end and the issues that go with them must one way or other be laid to rest. In turn, lack of jurisdiction — the ground relied upon by petitioner — is confined only to either lack of jurisdiction over the person of the defending party or over the subject matter of the claim. A valid invocation of this ground rests exclusively on absolute lack of jurisdiction as opposed to a mere abuse of jurisdictional discretion or mere errors in judgment committed in the exercise of jurisdiction inasmuch as jurisdiction is distinct from the exercise thereof. Hence, where the facts demonstrate that the court has validly acquired jurisdiction over the respondent and over the subject

matter of the case, its decision or order cannot be validly voided via a petition for annulment on the ground of absence or lack of jurisdiction.

2. ID.; ID.; APPEALS; PROPER REMEDY TO ASSAIL AN ORDER GRANTING A PETITION FOR WRIT OF POSSESSION. — It is also unmistakable that the trial court, in which jurisdiction over applications for writs of possession is by law vested, had acquired jurisdiction over the subject matter of respondent's application merely upon its filing. And since it had so acquired jurisdiction over the incidents of the application, it was then bound to act on it and issue the writ prayed for inasmuch as that duty is essentially ministerial. The purported errors that it may have incidentally committed do not negate the fact that it had, in the first place, acquired the authority to dispose of the application and that it had since retained such authority until the assailed orders were issued. Such errors, if indeed there were, are nevertheless mere errors of judgment which are correctible by an ordinary appeal before the Court of Appeals, a remedy that was then available to petitioner, and not by a petition for annulment under Rule 47. Furthermore, the order granting a petition for a writ of possession is a final order from which an appeal would be the proper and viable remedy.

3. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; PROPRIETY THEREOF. — In *Alba v. Court of Appeals* and *Linzag v. Court of Appeals*, it was held that a party aggrieved by the decision of the Court of Appeals in a petition filed with it for annulment of judgment, final order or resolution is not a petition for *certiorari* under Rule 65, but rather an ordinary appeal under Rule 45 where only questions of law may be raised. A petition for *certiorari* is, like a petition for annulment, a remedy of last resort and must be availed of only when an appeal or any other adequate, plain or speedy remedy may no longer be pursued in the ordinary course of law. A remedy is said to be plain, speedy and adequate when it will promptly relieve the petitioner from the injurious effects of the judgment and the acts of the lower court or agency. To warrant the issuance of a writ of *certiorari*, the tribunal must be shown to have capriciously and whimsically exercised its judgment in a way equivalent to lack or excess of jurisdiction; or, in other words, that the power was exercised in an arbitrary manner by reason of passion, prejudice, or personal hostility as to amount to an evasion of

a positive duty or to a virtual refusal either to perform the duty enjoined or to act at all in contemplation of law. A bare allegation of grave abuse of discretion is not enough.

4. ID.; ID.; ID.; NOT A SUBSTITUTE FOR A LOST APPEAL. — An appeal could have been taken within the prescribed period of fifteen days but petitioner did not avail of the same. Perhaps realizing that it could no longer make use of that remedy, it instead filed the instant petition in an effort to secure a favorable ruling. It can only be surmised that the present recourse is a mere attempt, futile as it is, to substitute a lost right to appeal. On this score, *Tagle v. Equitable PCI Bank* is instructive, to wit: The remedies of appeal in the ordinary course of law and that of *certiorari* under Rule 65 of the Revised Rules of Court are mutually exclusive and not alternative or cumulative. Time and again this Court has reminded members of the bench and bar that the special civil action of *Certiorari* cannot be used as a substitute for a lost appeal where the latter remedy is available; especially if such loss or lapse was occasioned by one's own negligence or error in the choice of remedies.

APPEARANCES OF COUNSEL

Albano Sevilla Yap and Associates Law Office for petitioner.
R.S. Reyes Law Offices for respondent.

D E C I S I O N

PERALTA, *J.*:

Assailed in this petition for *certiorari*[1] is the August 30, 2002 Decision[2] of the Court of Appeals in CA-G.R. SP No. 68382 as well as its September 3, 2004 Resolution[3] which denied reconsideration. The assailed decision affirmed the September

[1] Under Rule 65 of the Rules of Court.

[2] Penned by Associate Justice Portia Aliño-Hormachuelos, with Associate Justices Elvi John S. Asuncion and Edgardo F. Sundiam, concurring; *rollo*, pp. 29-44.

[3] *Id.* at 46-47.

7, 1999 Order[4] issued by the Regional Trial Court of Manila, Branch 4 in LRC Case entitled "In the Matter of the Petition for the Issuance of a Writ of Possession Pending Redemption" which directed the issuance of a writ of possession following the extrajudicial foreclosure of the mortgages constituted by petitioner Mandy Commodities Co., Inc. in favor of respondent The International Commercial Bank of China.

The facts follow.

On July 17 and December 17, 1996, petitioner Mandy Commodities Co., Inc., through its authorized representative, William Mandy, obtained a total of ₱20,000,000.00 loan from respondent The International Commercial Bank of China. The loan was secured by two deeds of chattel mortgage in favor of respondent over twenty-five (25) units of two-storey concrete buildings all found in Binondo, Manila. These buildings were owned by petitioner, but the land on which they stood was merely being leased to it by PNB-Management and Development Corporation.[5]

On the day of the execution of the first deed, petitioner and respondent entered into an agreement whereby they specifically stipulated to consider the buildings "as chattels, and as such, they can be the subject of a Chattel Mortgage under the law."[6] The deeds of chattel mortgage and the agreement were registered with the Chattel Mortgage Registry of Manila.[7]

When petitioner defaulted in the payment of its obligation, respondent, on February 26, 1999, applied before a notary public for the notarial sale of the mortgaged buildings, pursuant to paragraph 18 of the chattel mortgage agreements which practically gave the mortgagee full and irrevocable power as attorney-in-fact to sell and dispose of the mortgaged properties in a public

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[4] Penned by Acting Presiding Judge Antonio I. De Castro; *rollo*, pp. 64-65.

[5] CA *rollo*, p. 202.

[6] See Agreement, *rollo*, p. 73.

[7] CA *rollo*, p. 203.

or private sale should the mortgagor default in the payment of its obligation.[8] Alleging that petitioner as mortgagor despite repeated demands failed to make good its commitment, respondent mortgagee prayed that the subject buildings be sold to satisfy the total money obligation of ₱26,825,770.83 inclusive of interest, but exclusive of charges and penalties.[9]

The sale was scheduled on March 26, 1999. On March 1, 1999, the notary public caused the posting of the Notice of Extrajudicial Sale[10] at the Office of the Register of Deeds of Manila, the Office of the *Ex Officio* Sheriff and the Regional Trial Court of Manila.[11] The notice was likewise published in *The Philippine Recorder*, a national weekly newspaper, in its March 1, 8 and 15, 1999 issues.[12]

At the sale, respondent placed the highest bid at ₱25,435,716.89, and so on April 12, 1999, the notary public issued a Certificate of Sale in its name with the notation that the sale was "subject to petitioner's right of redemption."[13]

It appears that the controversy arose when, on May 17, 1999, respondent filed with the Regional Trial Court of

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[8] *Id.* at 39, 44. Paragraph 18 provides:

18. THE MORTGAGOR(S) hereby irrevocably appoint(s) the MORTGAGEE as attorney-in-fact for the mortgagors with full power and authority after any condition of this mortgage has been broken to… seize and take actual possession [of the properties] without any order or any other power or permission than herein granted; to sell, assign, transfer and deliver the whole of the properties mortgaged… at the option of the MORTGAGEE, without either demand, advertisement or notice of any kind which are hereby expressly waived, at public or private sale x x x.

[9] *Id.* at 45.

[10] *Id.* at 59. The notice indicates that ICBC, William Mandy, Mandy Commodities and PNB-Management and Development Corp. were all furnished with a copy thereof.

[11] *Id.* at 203. See Affidavit of Posting of Notice of Sale, *id.* at 60.

[12] See Affidavit of Publication executed by Jose B. Cabiling, Chief Editor of *The Philippine Recorder, id.* at 58. See also CA *rollo*, p. 203.

[13] *Id.* at 42.

Manila, Branch 4, an *Ex Parte* Petition for the Issuance of a Writ of Possession Pending Redemption.[14] In said petition, respondent stated that the extrajudicial foreclosure of the mortgage proceeded from the provisions of Act No. 3135 (The Real Estate Mortgage Law) which entitles it, under Section 7 thereof, to take possession of the subject properties pending redemption upon approval of the bond.[15]

In its Order[16] dated September 7, 1999, the trial court, after an *ex parte* hearing, approved respondent's bond of ₱600,000.00, granted the petition, and directed the issuance of a writ of possession supposedly in pursuant to Act No. 3135.

Petitioner immediately filed a Motion for Reconsideration[17] in which it pointed out that, in accordance with its agreement with respondent, the buildings covered by the mortgage were in fact chattels and not real properties, and the fact that the parties agreed to that effect, should bar either of them from claiming the contrary. Asserting that the governing law is Act No. 1508 (The Chattel Mortgage Law) and not Act No. 3135, petitioner advanced that the foreclosure sale was null and void as it did not follow the specific procedure laid down by the applicable law, particularly the requirement of a 10-day personal notice to the mortgagor of the date and time of the sale.

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[14] *Id.* at 47-52.

[15] *Id.* at 49-50.

[16] *Id.* at 29-30. The Order, signed by Acting Presiding Judge Antonio I. De Castro, disposed of the petition as follows:

WHEREFORE, let the corresponding writ of possession be issued directing the Sheriff of this Branch to place the herein petitioner in actual physical possession of the foreclosed property consisting of twenty-five (25) units of two-storey buildings located at Numencia St., Binondo, Manila, (Lot 1, Block 1862, Manila Cadastre No. 13) covered by Tax Declaration Nos. 97-0006, 97-00007; 97-00008; 97-00009; 97-00010; and 97-00011; and to eject therefrom the herein respondent Mandy Commodities Co., Inc., its agents and some other persons claiming rights under it.

SO ORDERED.

[17] *Id.* at 51-55.

In the meantime, as an offshoot of the September 7, 1999 Order, the trial court issued a Writ of Possession dated December 10, 2001, directing the sheriff to place respondent in possession of the subject buildings.[18] The sheriff complied and served a notice to vacate on petitioner.[19]

Subsequently, the motion for reconsideration was denied in the trial court's January 16, 2001 Order,[20] thus, urging petitioner to seek redress from the said Order as well as from the September 7, 1999 Order directly to this Court via a Rule 45 petition, docketed as G.R. No. 146929.[21] In this recourse, petitioner claimed that it was error for the trial court to affirm the validity of the foreclosure sale which was conducted under the provisions of Act No. 3135 considering that the parties had agreed to be bound by Act No. 1508, and that the writ of possession pending redemption should not have been issued in view of the irregularities that marked the foreclosure sale.[22] The petition, however, was dismissed in the Court's March 12, 2001 Resolution[23] for being violative of the principle of hierarchy of courts. Petitioner moved for reconsideration, but it was also denied in the Court's June 18, 2001 Resolution.[24]

Unrelenting, petitioner then sought the annulment of the twin orders of the trial court this time through a Rule 47 petition[25] before the Court of Appeals. There, it specified the errors supposedly committed by the trial court in the issuance of the

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[18] *Id.* at 33-34.

[19] *Id.* at 32.

[20] *Id.* at 31-32. The Order denying the motion for reconsideration was signed by Presiding Judge Socorro B. Inting.

[21] *Id.* at 92-105.

[22] *Id.* at 95-96.

[23] *Id.* at 108.

[24] *Id.* at 115.

[25] *Id.* at 2-21. The petition named as respondents herein respondent ICBC, together with the Regional Trial Court of Manila, Branch 4, and Deputy Sheriff Cezar Javier.

challenged orders which allegedly were made without jurisdiction since the trial court had no power to issue writs of possession under Act No. 1508. It invoked denial of due process when it was deprived of its properties without respondent complying with the 10-day notice requirement in Act No. 1508.

The Court of Appeals gave due course to the petition and issued a temporary restraining order to enjoin the sheriff from enforcing the notice to vacate. At the ensuing hearing, no settlement materialized, but the parties, admitting that there were no factual issues to be resolved anyway, agreed not to have a writ of preliminary injunction issued in the case. Instead, petitioner committed to deposit the corresponding monthly rentals on the subject buildings to an account it owned jointly with respondent.[26]

On August 30, 2002, the Court of Appeals rendered the assailed Decision[27] in favor of respondent. It conceded that, as could be derived from the terms of the deeds of chattel mortgage and the July 17, 1999 agreement, the unmistakable intent of the parties was to consider the buildings as chattels and, hence, covered by the provisions of Act No. 1508. It pointed out, however, that while respondent indeed did not comply with the personal notice requirement under the said law and later on filed an *ex parte* petition for a writ of possession pending redemption which again, was supposedly not authorized by law, the petition nevertheless must be dismissed because the remedy of annulment of order was not the proper remedy under the premises. Accordingly, it affirmed the September 7, 1999 Order of the trial court.[28] Petitioner moved for reconsideration, but it was denied.[29]

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[26] *Id.* at 196-197.

[27] *Id.* at 201-216. The Court of Appeals disposed of the case as follows:

WHEREFORE, all the foregoing premises considered, the petition is DENIED. The RTC Order dated 7 September 1999 STANDS. No costs.

SO ORDERED.

[28] *Id.* at 29-44.

[29] *Id.* at 287-288.

In its bid to once again avert the implementation of the writ of possession, petitioner, in this petition for review under Rule 65,[30] insists on the nullity of the September 7, 1999 Order. It raises two points of argument: first, that nothing in the chattel mortgage agreement states that the same would be enforceable under Act No. 3135; and, second, that no provision relating to possession pending redemption can be found in the chattel mortgage law—not like in the real estate mortgage law—which means that a creditor may not, under the former law, have a writ of possession issued in his favor but that he must resort to an action for recovery of possession. Petitioner theorizes that because the foreclosure sale was null and void, the trial court was then devoid of jurisdiction to act on the petition for a writ of possession and, more so, issue the said writ. It concludes that when the Court of Appeals did not annul the said Orders and instead affirmed the same, it likewise abused its discretion which amounted to lack or excess of jurisdiction on its part.[31]

Respondent was told to comment,[32] but instead, ROP Investments, Limited - Philippine Branch (ROP Philippines)[33] moved that it be substituted as the respondent in this case, because in September 2003, it had acquired by assignment all the rights, titles and interest of respondent.[34] The Court allowed the substitution.[35]

ROP Philippines posits that the filing of the petition was a mere after-thought in the hope of curing the wrong remedy availed of by petitioner in the first instance, which resulted in the dismissal of its petition in G.R. No. 146929 for violation of the rule on hierarchy of courts. It maintains that the Court of

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[30] *Rollo,* pp. 3-23.

[31] *Id.* at 13-21; 151-153.

[32] Resolution dated March 9, 2005, *id.* at 104.

[33] ROP Investments, Limited-Philippine Branch is a corporation organized and existing under the laws of Cayman Islands.

[34] *Rollo,* pp. 105-106.

[35] Resolution dated June 15, 2005, *id.* at 112.

Appeals did not abuse its discretion in dismissing the petition which was, to begin with, procedurally infirm as the grounds invoked by petitioner are not apt for a Rule 47 petition.[36] Finally, it asserts that the issuance of the writ of possession is a ministerial duty of the trial court under Act No. 3135, and that since petitioner did not pursue any of the proper remedies against the orders of the trial court, then with more reason that the said writ be issued in the case.[37]

Prefatorily, we find no need to delve further and deeper into the facts and issues raised by both petitioner and respondent because at the outset it is clear that the instant petition must be dismissed in any event, first, for being the wrong remedy under the premises, and second, for failure of petitioner to demonstrate grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the Court of Appeals in rendering the assailed Decision and Resolution.

We agree with the Court of Appeals that the remedy of annulment was not the proper remedy to set aside the orders of the trial court. To start with, the remedy of petition for annulment of judgment, final order or resolution under Rule 47 of the Rules of Court is an extraordinary one inasmuch as it is available only where the ordinary remedies of new trial, appeal, petition for relief or other remedies can no longer be availed of through no fault of the petitioner.[38] The relief it affords is equitable in character[39] as it strikes at the core of finality of such judgments and orders.

The grounds for a petition for annulment are in themselves specific in the same way that the relief itself is. The Rules restrict the grounds only to lack of jurisdiction and extrinsic

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[36] *Id.* at 121-122, 126.

[37] *Id.* at 127.

[38] *Morales v. Subic Shipyard & Engineering, Inc.*, G.R. No. 148206, August 24, 2007, 531 SCRA 66; *Ramirez-Jongco v. Veloso III*, 435 Phil. 782 (2002). See Rules of Court, Rule 74, Sec. 1.

[39] *Ramos v. Hon. Judge Combong Jr.*, G.R. No. 144273, October 20, 2005, 473 SCRA 499.

fraud[40] to prevent the remedy from being used by a losing party in making a complete farce of a duly promulgated decision or a duly issued order or resolution that has long attained finality.[41] This certainly is based on sound public policy for litigations and, despite occasional risks of error, must be brought to a definite end and the issues that go with them must one way or other be laid to rest.[42] In turn, lack of jurisdiction — the ground relied upon by petitioner — is confined only to either lack of jurisdiction over the person of the defending party or over the subject matter of the claim.[43] A valid invocation of this ground rests exclusively on absolute lack of jurisdiction as opposed to a mere abuse of jurisdictional discretion[44] or mere errors in judgment committed in the exercise of jurisdiction[45] inasmuch as jurisdiction is distinct from the exercise thereof.[46] Hence, where the facts demonstrate that the court has validly acquired jurisdiction over the respondent and over the subject matter of the case, its decision or order cannot be validly voided via a petition for annulment on the ground of absence or lack of jurisdiction.[47]

It must be noted that in its petition for annulment of the assailed orders on the ground of lack of jurisdiction, petitioner kept alluding to several errors supposedly committed by the trial court which tend to show that said tribunal had no jurisdiction

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[40] *Id.* See Rules of Court, Rule 47, Sec. 2.

[41] *Morales v. Subic Shipyard & Engineering, Inc., supra* note 38.

[42] See *Ramos v. Hon. Judge Combong, Jr., supra* note 39 and *Barco v. Court of Appeals*, 465 Phil. 39, 54 (2004).

[43] *Republic of the Philippines v. Heirs of Antonio Carag, et al.*, G.R. No. 155450, August 6, 2008; *Morales v. Subic Shipyard & Engineering, Inc., supra* note 38.

[44] *Republic v. "G" Holdings, Inc.*, G.R. No. 141241, November 22, 2005, 475 SCRA 608.

[45] *Tolentino v. Leviste*, G.R. No. 156118, November 19, 2004, 443 SCRA 274.

[46] *Id*.

[47] *Morales v. Subic Shipyard & Engineering, Inc., supra* note 38.

to issue the orders. In this light, inasmuch as the petition questioned the manner by which the trial court arrived at the issuance of its orders, it is unmistakable that petitioner, in effect, acknowledged that the trial court possessed jurisdiction to take cognizance of respondent's application for a writ of possession.

It is also unmistakable that the trial court, in which jurisdiction over applications for writs of possession is by law vested, had acquired jurisdiction over the subject matter of respondent's application merely upon its filing. And since it had so acquired jurisdiction over the incidents of the application, it was then bound to act on it and issue the writ prayed for inasmuch as that duty is essentially ministerial.[48] The purported errors that it may have incidentally committed do not negate the fact that it had, in the first place, acquired the authority to dispose of the application and that it had since retained such authority until the assailed orders were issued. Such errors, if indeed there were, are nevertheless mere errors of judgment which are correctible by an ordinary appeal before the Court of Appeals,[49] a remedy that was then available to petitioner, and not by a petition for annulment under Rule 47. Furthermore, the order granting a petition for a writ of possession is a final order from which an appeal would be the proper and viable remedy.[50]

We, therefore, find no grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the Court of Appeals, because it had every good and valid reason to dismiss the petition for annulment filed with it.

Moreover, we cannot help but observe that the instant petition is bound to meet a certain failure because for yet a third time

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[48] *Oliveros v. Presiding Judge*, G.R. No. 165963, September 3, 2007, 532 SCRA 109, 118; *Alarilla v. Ocampo*, 463 Phil. 158, 166 (2003); *Chailease Finance Corp. v. Ma*, 456 Phil. 498, 503 (2003); *Samson v. Rivera*, G.R. No. 154355, May 20, 2004, 428 SCRA 759, 768.

[49] *Tolentino v. Leviste*, *supra* note 45.

[50] See *San Fernando Rural Bank, Inc. v. Pampanga Omnibus Development Corporation*, G.R. No. 168088, April 4, 2007, 520 SCRA 564, 591.

since the petition in G.R. No. 146929, petitioner had sought to evade the consequences of the foreclosure sale by resorting to another wrong remedy.

In *Alba v. Court of Appeals*[51] and *Linzag v. Court of Appeals*,[52] it was held that a party aggrieved by the decision of the Court of Appeals in a petition filed with it for annulment of judgment, final order or resolution is not a petition for *certiorari* under Rule 65, but rather an ordinary appeal under Rule 45 where only questions of law may be raised. A petition for *certiorari* is, like a petition for annulment, a remedy of last resort and must be availed of only when an appeal or any other adequate, plain or speedy remedy may no longer be pursued in the ordinary course of law.[53] A remedy is said to be plain, speedy and adequate when it will promptly relieve the petitioner from the injurious effects of the judgment and the acts of the lower court or agency.[54]

To warrant the issuance of a writ of *certiorari*, the tribunal must be shown to have capriciously and whimsically exercised its judgment in a way equivalent to lack or excess of jurisdiction; or, in other words, that the power was exercised in an arbitrary manner by reason of passion, prejudice, or personal hostility as to amount to an evasion of a positive duty or to a virtual refusal either to perform the duty enjoined or to act at all in contemplation of law.[55] A bare allegation of grave abuse of discretion is not enough. *San Fernando Rural Bank, Inc. v. Pampanga Omnibus Development Corporation*[56] supplies the reason behind this rule, to wit:

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[51] G.R. No. 164041, July 29, 2005, 465 SCRA 495.

[52] G.R. No. 122181, June 26, 1998, 291 SCRA 304.

[53] Rules of Court, Rule 65, Sec. 1.

[54] *Tagle v. Equitable PCI Bank*, G.R. No. 172299, April 22, 2008, 552 SCRA 424, 439.

[55] *San Fernando Rural Bank, Inc. v. Pampanga Omnibus Development Corporation*, G.R. No. 168088, April 4, 2007, 520 SCRA 565, 592.

[56] *Id.* at 592-593.

x x x when a court exercises its jurisdiction, an error committed while so engaged does not deprive it of the jurisdiction being exercised when the error was committed. If it did, every error committed by a court would deprive it of its jurisdiction and every erroneous judgment would be a void judgment. In such a situation, the administration of justice would not survive. Hence, where the issue or question involved affects the wisdom or legal soundness of the decision—not the jurisdiction of the court to render the said decision—the same is beyond the province of a special civil action for *certiorari*.

In the case at bar, not only was an appeal available to petitioner as a remedy from the assailed Decision of the Court of Appeals; petitioner also failed to sufficiently show the circumstances that would otherwise justify such a departure from the rule as to make available to him the remedy of a petition for *certiorari* in lieu of an appeal.

Be that as it may, while an appeal would have been the proper remedy under the premises, it is nevertheless glaring from the records that such remedy was no longer viable. Petitioner has conceded that, as shown by the records, it received the Resolution of the Court of Appeals denying its motion for reconsideration on September 21, 2004.[57] An appeal could have been taken within the prescribed period of fifteen days thereafter, but petitioner did not avail of the same. Perhaps realizing that it could no longer make use of that remedy, it instead filed the instant petition in an effort to secure a favorable ruling. It can only be surmised that the present recourse is a mere attempt, futile as it is, to substitute a lost right to appeal. On this score, *Tagle v. Equitable PCI Bank*[58] is instructive, to wit:

The remedies of appeal in the ordinary course of law and that of *certiorari* under Rule 65 of the Revised Rules of Court are mutually exclusive and not alternative or cumulative. Time and again this Court has reminded members of the bench and bar that the special civil action of *Certiorari* cannot be used as a substitute for a lost appeal where the latter remedy is available; especially if such loss or lapse

[57] See *rollo*, p. 5.

[58] G.R. No. 172299, April 22, 2008, 552 SCRA 424, 439-440.

was occasioned by one's own negligence or error in the choice of remedies.

All told, aside from the fact that a perusal of the assailed decision indicates neither reversible error nor grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the Court of Appeals, the instant petition must be dismissed for being a wrong remedy under the Rules of Court.

WHEREFORE, the petition is *DISMISSED***.**

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 166988. July 3, 2009]

HEIRS OF EMILIANO SAN PEDRO, represented by LUZVIMINDA SAN PEDRO CUNANAN, *petitioners, vs.* **PABLITO GARCIA and JOSE CALDERON,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; DEPARTMENT OF AGRARIAN REFORM ADJUDICATION BOARD (DARAB) RULES OF PROCEDURE; RULE WHEN APPEAL IS FILED BEYOND REGLEMENTARY PERIOD. — At the crux of the controversy is the determination of whether or not the DARAB may entertain an appeal filed beyond the reglementary period by invoking a liberal application of the DARAB Rules of Procedure. The pertinent provisions of the DARAB Revised Rules of Procedure, which was then in force, state: Rule I **SECTION 2.** ***Construction***. These Rules shall be liberally

construed to carry out the objectives of agrarian reform and to promote a just, expeditious, and inexpensive adjudication and settlement of any agrarian dispute, case, matter or concern. Rule VIII **SECTION 15.** ***Finality of Judgment.*** The decision, order, or ruling disposing of the case on the merits by the Adjudicator shall be final after the lapse of fifteen (15) days from receipt of a copy thereof by the counsel or representative on record, or in their absence, by the party himself. Rule XIII **SECTION 1.** ***Appeal to the Board.*** a) An appeal may be taken from an order or decision of the Regional or Provincial Adjudicator to the Board by either of the parties or both, by giving or stating a written or oral appeal within a period of fifteen (15) days from receipt of the resolution, order or decision appealed from, and serving a copy thereof on the opposite or adverse party, if the appeal is in writing.

2. ID.; ID.; ID.; ID.; LIBERAL APPLICATION OF THE RULE, NOT WARRANTED IN CASE AT BAR. — A reading of the assailed CA decision shows that the CA did not categorically state that the DARAB Rules of Procedure cannot be liberally construed. As a matter of fact, the CA acknowledged that technical rules may be relaxed in the interest of justice. The CA, however, chose not to apply the liberality rule primarily because of the long delay in the filing of the appeal, as well as petitioners' failure to offer an explanation or an excuse for their failure to abide by the reglementary period. The case of *Sebastian v. Hon. Morales* is instructive: Litigation is not a game of technicalities, but every case must be prosecuted in accordance with the prescribed procedure so that issues may be properly presented and justly resolved. Hence, rules of procedure must be faithfully followed except only when for persuasive reasons, they may be relaxed to relieve a litigant of an injustice not commensurate with his failure to comply with the prescribed procedure. **Concomitant to a liberal application of the rules of procedure should be an effort on the part of the party invoking liberality to explain his failure to abide by the rules**. Even if the Rules of Court may not apply in the proceedings before the DARAB, the CA was correct in pointing out that the Revised Rules of the DARAB itself impose a fifteen-day reglementary period to appeal. Since the perfection of an appeal within the statutory or reglementary period is not only mandatory but also jurisdictional, the failure of petitioners to so perfect their appeal

rendered the questioned decision final and executory. This rule is founded upon the principle that the right to appeal is not part of due process of law, but is a mere statutory privilege to be exercised only in the manner and in accordance with the provisions of the law. This, of course, does not mean to say that this Court has not in the past allowed a liberal application of the rules of appeal. However, the same applies only in exceptionally meritorious cases.

3. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENT; RULE WHERE JUDGMENT ATTAINS FINALITY. — Nothing is more in settled law than that once a judgment attains finality it thereby becomes immutable and unalterable. It may no longer be modified in any respect even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest court of the land. Just as the losing party has the right to file an appeal within the prescribed period, the winning party also has the correlative right to enjoy the finality of the resolution of the case. Litigation must end and terminate sometime and somewhere, and it is essential to an effective administration of justice that once a judgment has become final, the issue or cause involved therein should be laid to rest. The basic rule of finality of judgment is grounded on the fundamental principle of public policy and sound practice that at the risk of occasional error, the judgment of courts and the award of quasi-judicial agencies must become final at some definite date fixed by law. The orderly administration of justice requires that the judgment/resolutions of a court or quasi-judicial body must reach a point of finality set by law, rules and regulations. The noble purpose is to write finis to disputes once and for all. This is a fundamental principle in our justice system, without which there could be no end to litigations. Utmost respect and adherence to this principle must always be maintained by those who wield the power of adjudication. Any act which violates such principle must be struck down.

APPEARANCES OF COUNSEL

Law Office of Ernesto C. Jacinto and Associates for petitioners.

Pacifico G. Eusebio, Jr. for respondents.

D E C I S I O N

PERALTA, *J.:*

Before this Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, seeking to set aside the November 17, 2004 Decision[2] and February 8, 2005 Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP. No. 69144.

The facts of the case.

On July 1, 1991, the petitioners, Heirs of Emiliano San Pedro, represented by Ligaya San Pedro and Leonila San Pedro, filed a Complaint[4] for "Nullification of *Kasulatan ng Bilihang Tuluyan* and *Kasulatan ng Pagkakautang* and Restoration of Tenurial Rights Covered by Operation Land Transfer" against respondents Pablito Garcia and Jose Calderon before the Provincial Adjudicator of the Department of Agrarian Reform Adjudication Board (DARAB).

It was alleged that a farm lot measuring 1.8627 hectares, situated at Dampol 2nd, Pulilan, Bulacan, originally owned by Virginia King Yap, was acquired by Emiliano San Pedro sometime in 1987 by virtue of Presidential Decree No. 27 (P.D. No. 27).[5] A portion of said lot, however, has been assigned and conveyed by San Pedro to Calderon as early as 1980 through a *Kasulatan ng Bilihang Tuluyan*.[6]

In 1982, San Pedro mortgaged to Garcia the landholding for ₱30,000.00 with the condition that one-half of the landholding

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[1] *Rollo,* pp. 3-18.

[2] Penned by Associate Justice Romeo A. Brawner (now deceased), with Associate Justices Josefina Guevara-Salonga and Magdangal M. De Leon, concurring; *id.* at 20-26(A).

[3] *Id.* at 29.

[4] CA *rollo,* pp. 37-41.

[5] Decreeing the emancipation of tenants from the bondage of the soil transferring to them the ownership of the land they till and providing the instruments and mechanism therefore.

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

should be delivered to Garcia as collateral, and that Garcia shall till the land as long as the obligation remains unsettled. The transaction between San Pedro and Garcia was reduced into writing as evidenced by a *Kasulatan ng Pagkakautang*. In the same year, Calderon sold to Garcia the portions of the land sold by San Pedro to him in 1980. Thus, Garcia currently controls and cultivates the whole landholding of San Pedro.[7]

Petitioners, in their Complaint, prayed that the sale and mortgage entered into by San Pedro be declared null and void for violation of P.D. No. 27, and that their possession over the landholding be restored upon payment of the unpaid loan of ₱30,000.00 obtained by San Pedro during his lifetime.[8]

In their Position Paper,[9] respondents claim that Calderon was the real tenant of Virginia King Yap and not San Pedro, who was just helping Calderon till the land. Respondents further alleged that San Pedro was only able to obtain a Certificate of Land Transfer because at that time Calderon left for Manila. Upon his return, Calderon confronted San Pedro, who then acknowledged through a Sworn Statement[10] that Calderon was the real tenant of Virginia King Yap. Later on, both parties entered into a *Kasulatan ng Bilihang Tuluyan* ceding the entire property to Calderon. Because of San Pedro's voluntary acknowledgment of his right, Calderon rewarded San Pedro ₱50,000.00.[11]

Furthermore, respondents alleged that Calderon still continued to avail of the services of San Pedro because he could not find any helper who could work with him on the land. However, sometime in October 1982, Calderon discovered that San Pedro, through a *Kasulatan ng Pagkakautang* borrowed ₱30,000.00

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[7] *Id*.

[8] *Id.* at 9.

[9] *Id.* at 66-73.

[10] Certified by the Records Officer of the DARAB as missing. Marked as page 33 of DARAB Case No. 6869; *id.* at 65.

[11] *Id.* at 56.

from Garcia and mortgaged one-half of the land he was working on. Calderon tried to settle the matter with Garcia, who manifested his desire to get his money back. However, because San Pedro had no money to pay, the parties brought their problem to the *Samahang Nayon* where Calderon and San Pedro suggested that Garcia could buy the land and cultivate the same. Subsequently, in a conference before the *Samahang Nayon*, Calderon and San Pedro decided to surrender the landholding to the *Samahang Nayon* to be awarded to any person who would be willing to pay the value of the land and the ₱30,000.00 obligation incurred by San Pedro. Garcia decided to purchase the land and in the presence of the *Samahang Nayon* officials paid Calderon ₱60,000.00 while the ₱30,000.00 obtained by San Pedro was already considered part of the purchase price. Thus, respondents claim that, as of October 1982, the *Samahang Nayon* already considered Garcia as the lawful owner and cultivator of the land in question.[12]

On the other hand, in their Position Paper,[13] petitioners claim in the main that the conveyances made by San Pedro are void *ab initio* for such violated the provisions of P.D. No. 27.

On September 20, 1995, the Provincial Adjudicator rendered a Decision[14] dismissing the complaint, the dispositive portion of which reads:

> WHEREFORE, premises considered, judgment is hereby rendered DISMISSING the complaint for lack of merit.
>
> SO ORDERED.[15]

In said Decision, the Provincial Adjudicator concluded that San Pedro was not the real tenant of the subject landholding and that the latter had violated the provisions of P.D. No. 27 that an awardee of land under the above law shall not at anytime

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[12] *Id.* at 67-68.

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

[14] *Id.* at 86-91.

[15] *Id.* at 91.

employ tenants in the cultivation of the land. Moreover, the Provincial Adjudicator ruled that the acts of San Pedro were tantamount to an abandonment, which thereby extinguished the tenancy relationship. Furthermore, the Provincial Adjudicator ruled that San Pedro had no more tenurial right because he had already abandoned and surrendered his right to the *Samahang Nayon*.[16]

On October 16, 1995, petitioners, through their representative Leonila San Pedro, filed a Motion for Extension of Time to file a Motion for Reconsideration.[17]

After a year, on October 21, 1996, respondents filed a Manifestation[18] stating that no motion for reconsideration was filed by petitioners despite their request for an extension, nor was an appeal interposed by them. Accordingly, respondents prayed for the issuance of an entry of judgment. Later, on November 5, 1996, respondents then filed a Motion to Issue Order of Finality.[19]

On November 29, 1996, the Provincial Adjudicator issued an Order[20] granting the motion of respondents, the pertinent portion of which reads:

> Inasmuch as the plaintiff thru their representative, Leonila San Pedro, that as of this date, did not file any Motion for Reconsideration nor notice of appeal within the prescriptive period of fifteen (15) days, the Board's Decision dated September 20, 1995, is now FINAL.
>
> SO ORDERED.[21]

On February 5, 1997, petitioners filed a Notice of Appeal[22] to which respondents in response filed an Opposition.[23]

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[16] *Id.* at 90-91.
[17] *Id.* at 92.
[18] *Id.* at 94-95.
[19] *Id.* at 96-97.
[20] *Id.* at 98.
[21] *Id.*
[22] *Id.* at 99.
[23] *Id.* at 100.

Respondents argued that the decision of the Board was already final and executory by virtue of the November 29, 1996 Order of the Provincial Adjudicator.

Notwithstanding the belated appeal, the records of the case were elevated to the DARAB, as a matter of course, which then rendered a Decision[24] favorable to petitioners, the dispositive portion of which reads:

> WHEREFORE, premises considered, the decision of the Adjudicator *a quo* dated September 20, 1995, is hereby REVERSED and SET ASIDE. A new one is hereby rendered to read as follows:
>
> 1. Declaring the EP No. A-004783 issued to the late Emiliano San Pedro, predecessor-in-interest of plaintiffs-appellants valid and binding;
>
> 2. Declaring the "*Kasulatan ng Bilihang Tuluyan*" and "*Kasulatan ng Pagkakautang*" as null and void;
>
> 3. Ordering the defendants-appellees to turn over the physical possession of the subject landholding to herein plaintiffs-appellants;
>
> 4. Ordering the plaintiffs-appellants to pay the defendants-appellees the amount stated in the "*Kasulatan ng Bilihang Tuluyan*" and "*Kasulatan ng Pagkakautang.*"
>
> No pronouncement as to cost.
>
> SO ORDERED.[25]

In said Decision, the DARAB allowed the belated appeal notwithstanding that it was filed one year and five months out of time. The DARAB justified its decision by citing Section 2 of the new DARAB Rules which provides for a liberal construction of the rules.[26] Moreover, the DARAB held that

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[24] *Id.* at 23-34.

[25] *Id.* at 33-34.

[26] *Id.* at 27-28.

the transactions entered into by San Pedro and respondents violated P.D. No. 27.[27]

Respondents filed a Motion for Reconsideration[28] assailing the DARAB Decision. On January 25, 2002, the DARAB issued a Resolution[29] denying respondents' Motion for Reconsideration.

On March 6, 2002, respondents filed with the CA a Petition for Review under Rule 43 of the Rules of Court assailing the Decision and Resolution of the DARAB.

On November 17, 2004, the CA rendered a Decision[30] ruling in favor of respondents, the dispositive portion of which reads:

> WHEREFORE, in view of the foregoing, the petition is hereby GRANTED. The January 17, 2001 Decision and the January 25, 2002 Resolution of the DARAB in DARAB Case No. 6869 are hereby SET ASIDE for lack of jurisdiction.
>
> SO ORDERED.[31]

In said Decision, the CA ruled that the failure to perfect an appeal within the reglementary period is not a mere technicality, but is rather, jurisdictional. The CA pointed out that the Revised Rules of the DARAB itself impose a fifteen-day reglementary period to appeal. Moreover, notwithstanding that technical rules may be relaxed in the interest of justice, the CA ruled that the delay of two years[32] in the filing of the appeal in the case at bar no longer fits the liberality rule.[33]

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[27] *Id.* at 30.

[28] *Id.* at 101-108.

[29] *Id.* at 35-36.

[30] *Supra* note 2.

[31] *Rollo*, p. 26.

[32] Since the Provincial Adjudicator rendered its Decision on September 20, 1995 and petitioners filed their Notice of Appeal on February 5, 1997, only approximately one (1) year and five (5) months has elapsed and not two years as computed by the CA.

[33] CA *rollo*, p. 209.

On December 8, 2004, petitioners filed a Motion for Reconsideration[34] which was, however, denied by the CA in a Resolution[35] dated February 8, 2005.

Hence, herein petition, with the following assignment of errors, to wit:

I.

WHETHER OR NOT PETITIONERS ARE ENTITLED TO RECOVER THE LANDHOLDING FROM THE PRIVATE RESPONDENTS.

II.

WHETHER OR NOT THE HONORABLE PUBLIC RESPONDENT COURT OF APPEALS COMMITTED GRAVE ABUSE OF AUTHORITY, GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN GRANTING THE PETITION AND SETTING ASIDE THE DECISION DATED JANUARY 17, 2001 AND THE RESOLUTION DATED JANUARY 25, 2002 OF THE DEPARTMENT OF AGRARIAN REFORM ADJUDICATION BOARD IN DARAB CASE NO. 6869.

III.

WHETHER OR NOT THE HONORABLE PUBLIC RESPONDENT COURT OF APPEALS COMMITTED ANY ERROR IN SETTING ASIDE THE DECISION AND RESOLUTION OF THE DEPARTMENT OF AGRARIAN REFORM ADJUDICATION BOARD IN DARAB CASE NO. 6869.[36]

The petition is not meritorious.

At the crux of the controversy is the determination of whether or not the DARAB may entertain an appeal filed beyond the reglementary period by invoking a liberal application of the DARAB Rules of Procedure.

This Court rules in the negative.

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[34] *Id.* at 215-218.

[35] *Id.* at 223.

[36] *Rollo*, p. 7.

It is a matter of record that the Provincial Adjudicator rendered its Decision on September 20, 1995. Notwithstanding that petitioners filed a motion for extension of time, no motion for reconsideration or an appeal was filed by them. It is also a matter of record that petitioners only filed their Notice of Appeal on February 5, 1997. Thus, said appeal was filed approximately after the lapse of one year and five months from the date of the Decision of the Provincial Adjudicator.

The pertinent provisions of the DARAB Revised Rules of Procedure, which was then in force, state:

Rule I

SECTION 2. ***Construction.*** These Rules shall be liberally construed to carry out the objectives of agrarian reform and to promote a just, expeditious, and inexpensive adjudication and settlement of any agrarian dispute, case, matter or concern.

Rule VIII

SECTION 15. ***Finality of Judgment.*** The decision, order, or ruling disposing of the case on the merits by the Adjudicator shall be final after the lapse of fifteen (15) days from receipt of a copy thereof by the counsel or representative on record, or in their absence, by the party himself.

Rule XIII

SECTION 1. ***Appeal to the Board.*** a) An appeal may be taken from an order or decision of the Regional or Provincial Adjudicator to the Board by either of the parties or both, by giving or stating a written or oral appeal within a period of fifteen (15) days from receipt of the resolution, order or decision appealed from, and serving a copy thereof on the opposite or adverse party, if the appeal is in writing.[37]

Petitioners contend that Section 2 of the DARAB Revised Rules of Procedure categorically states that its own rules of

[37] CA *rollo*, p. 247, now superceded by the 2003 DARAB Rules of Procedure.

procedures must be liberally construed.[38] Moreover, petitioners cite Section 3, Rule I of the Revised Rules of Procedure of the DARAB to bolster their case:

> **SECTION 3.** ***Technical Rules Not Applicable***. The Board and its Regional and Provincial Adjudicators shall not be bound by technical rules of procedure and evidence as prescribed in the Rules of Court, but shall proceed to hear and decide all agrarian 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.
>
> xxx xxx xxx
>
> c) The provisions of the Rules of Court shall not apply even in a suppletory character unless adopted herein or by resolution of the Board. However, due process of the law shall be observed and followed in all instances.[39]

Petitioners argue that it was the CA's position that the Rules of Procedure of the DARAB cannot be liberally construed.[40] Hence, petitioners contend that the CA committed a grave and serious error when it reversed the September 17, 2001 Decision of the DARAB.

The arguments of petitioners are misplaced.

A reading of the assailed CA decision shows that the CA did not categorically state that the DARAB Rules of Procedure cannot be liberally construed. As a matter of fact, the CA acknowledged that technical rules may be relaxed in the interest of justice.[41] The CA, however, chose not to apply the liberality rule primarily because of the long delay in the filing of the appeal, as well as petitioners' failure to offer an explanation or an excuse for their failure to abide by the reglementary period.[42]

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[38] *Rollo*, p. 14.

[39] *Id.* at 13-14.

[40] *Id*.

[41] CA *rollo*, p. 248.

[42] *Id*.

The case of *Sebastian v. Hon. Morales*[43] is instructive:

> Litigation is not a game of technicalities, but every case must be prosecuted in accordance with the prescribed procedure so that issues may be properly presented and justly resolved. Hence, rules of procedure must be faithfully followed except only when for persuasive reasons, they may be relaxed to relieve a litigant of an injustice not commensurate with his failure to comply with the prescribed procedure. **Concomitant to a liberal application of the rules of procedure should be an effort on the part of the party invoking liberality to explain his failure to abide by the rules.**[44]

Even if the Rules of Court may not apply in the proceedings before the DARAB, the CA was correct in pointing out that the Revised Rules of the DARAB itself impose a fifteen-day reglementary period to appeal. Since the perfection of an appeal within the statutory or reglementary period is not only mandatory but also jurisdictional, the failure of petitioners to so perfect their appeal rendered the questioned decision final and executory.[45] This rule is founded upon the principle that the right to appeal is not part of due process of law, but is a mere statutory privilege to be exercised only in the manner and in accordance with the provisions of the law.[46]

This, of course, does not mean to say that this Court has not in the past allowed a liberal application of the rules of appeal. However, the same applies only in exceptionally meritorious cases. The case of *Bank of America, NT & SA v. Gerochi, Jr.*[47] is instructive:

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[43] 445 Phil. 595 (2003).

[44] *Id.* at 605. (Emphasis supplied.)

[45] *Sy Chin v. Court of Appeals*, 399 Phil. 442, 451(2000); *Yao v. Court of Appeals*, 398 Phil. 86, 100 (2000); *Republic v. Court of Appeals*, 379 Phil. 92, 98 (2000); *Apex Mining, Inc. v. Court of Appeals*, 337 Phil. 482, 493 (1999); *Almeda v. Court of Appeals*, G.R. No. 121013, July 16, 1998, 292 SCRA 587, 593-594. (Citations omitted.)

[46] *Lazaro v. Court of Appeals*, 386 Phil. 412, 417 (2000); *Republic v. Court of Appeals, supra; Videogram Regulatory Board v. Court of Appeals*, 332 Phil. 820, 828 (1996). (Citations omitted.)

[47] G.R. No. 73210, February 10, 1994, 230 SCRA 9.

True, in few highly exceptional instances, we have allowed the relaxing of the rules on the application of the reglementary periods of appeal. We cite a few typical examples: In *Ramos vs. Bagasao*, 96 SCRA 395, we excused the delay of four days in the filing of a notice of appeal because the questioned decision of the trial court was served upon appellant Ramos at a time when *her counsel of record was already dead*. Her new counsel could only file the appeal four days after the prescribed reglementary period was over. In *Republic vs. Court of Appeals*, 83 SCRA 453, we allowed the perfection of an appeal by the Republic despite the delay of six days to prevent a gross miscarriage of justice since the Republic stood to lose hundreds of hectares of land already *titled in its name* and had since then been devoted for educational purposes. In *Olacao vs. National Labor Relations Commission*, 177 SCRA 38, 41, we accepted a tardy appeal considering that the subject matter in issue had theretofore been *judicially settled, with finality, in another case*. The dismissal of the appeal would have had the effect of the appellant being ordered twice to make the same reparation to the appellee.

The case at bench, given its own settings, cannot come close to those extraordinary circumstances that have indeed justified a deviation from an otherwise stringent rule. Let it not be overlooked that the timeliness of an appeal is a *jurisdictional caveat* that not even this Court can trifle with.[48]

In the case at bar, there is no showing of a factual setting which warrants a liberal application of the rules on the period of appeal. To stress, petitioners filed their Notice of Appeal only after one year and five months from the time the Provincial Adjudicator rendered its Decision. Such a delay is unacceptable. Moreover, what makes matters worse is that petitioners offered no explanation or excuse for this Court to consider as to why it took them so long to file their appeal.

Lastly, it cannot escape this Court's notice that, on November 29, 1996, the Provincial Adjudicator issued an Order granting respondents' motion for an order of finality for failure of petitioners to file a motion for reconsideration or an appeal within the reglementary period. Hence, the September 20, 1995 Decision of the Provincial Adjudicator is already final.

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[48] *Id.* at 15-16.

Nothing is more in settled law than that once a judgment attains finality it thereby becomes immutable and unalterable. It may no longer be modified in any respect even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest court of the land. Just as the losing party has the right to file an appeal within the prescribed period, the winning party also has the correlative right to enjoy the finality of the resolution of the case.[49]

Litigation must end and terminate sometime and somewhere, and it is essential to an effective administration of justice that once a judgment has become final, the issue or cause involved therein should be laid to rest. The basic rule of finality of judgment is grounded on the fundamental principle of public policy and sound practice that at the risk of occasional error, the judgment of courts and the award of quasi-judicial agencies must become final at some definite date fixed by law.[50] The orderly administration of justice requires that the judgment/resolutions of a court or quasi-judicial body must reach a point of finality set by law, rules and regulations. The noble purpose is to write finis to disputes once and for all. This is a fundamental principle in our justice system, without which there could be no end to litigations. Utmost respect and adherence to this principle must always be maintained by those who wield the power of adjudication. Any act which violates such principle must be struck down.[51]

In sum, based on the foregoing discussion, this Court finds: (1) that the CA did not commit any error when it ruled that petitioners' delay of approximately one year and five months

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[49] *Dapar v. Biascan*, G.R. No. 141880, September 27, 2004, 439 SCRA 179, 199.

[50] *Ramos v. Combong, Jr.*, G.R. No. 144273, October 20, 2005, 473 SCRA 499, 504.

[51] *Sumalo Homeowners Association of Hermosa, Bataan v. Litton*, G.R. No. 146061, August 31, 2006, 500 SCRA 385, 397.

in filing an appeal did not fit the liberality rule; and (2) that the DARAB had no jurisdiction to entertain petitioners' appeal as the September 20, 1995 Decision of the Provincial Adjudicator had already attained finality.

WHEREFORE, premises considered, the petition is *DENIED* for lack of merit. The November 17, 2004 Decision and February 8, 2005 Resolution of the Court of Appeals in CA-G.R. SP No. 69144 are *AFFIRMED*.

Costs against petitioners.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 170014. July 3, 2009]

RENITA DEL ROSARIO, TERESITA EISMA, ROSARIO TEAÑO, ELSIE JAVINEZ, EDERLINDA YCONG, and MERCEDES MASANGKAY, *petitioners, vs.* **MAKATI CINEMA SQUARE CORPORATION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; QUESTION OF JURISDICTION, NOT ALLOWED. — This petition was filed under Rule 45 of the Rules of Court. However, petitioners allege that the CA acted with grave abuse of discretion amounting to a lack or excess of jurisdiction. Therefore, the petition ought to be dismissed outright for being procedurally infirm. A petition for review under Rule 45 must present questions of law, not questions of jurisdiction.

2. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; LOSS OF TRUST AND CONFIDENCE;

ELUCIDATED. — Under Article 282 of the Labor Code, an employer may terminate the services of an employee for loss of trust and confidence: ARTICLE 282. Termination by employer. — An employer may terminate an employment for any of the following causes: x x x (c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative; x x x Loss of confidence applies only to cases involving employees who occupy positions of trust and confidence, or to those situations where the employee is routinely charged with the care and custody of the employer's money or property. To be a valid ground for an employee's dismissal, loss of trust and confidence must be based on a willful breach. A breach is willful if it is done intentionally, knowingly and purposely, without justifiable excuse.

3. ID.; ID.; ID.; SUFFICIENCY THEREOF. — In dismissing an employee on the ground of loss of confidence, it is sufficient that the employer has a reasonable ground to believe, based on clearly established facts, that the employee is responsible for the misconduct and the nature of his participation renders him unworthy of the trust and confidence demanded by his position. If the employer has ample reason to distrust the employee, the labor tribunal cannot justly deny the former the authority to dismiss the latter.

4. ID.; ID.; ID.; SUBSTANTIAL EVIDENCE, PRESENT IN CASE AT BAR. — It may be true that the NBI agents' affidavit did not directly implicate petitioners in the scheme. However, their co-employees who had personal knowledge of petitioners' activities, narrated in their affidavits the nature, dates and time of their (petitioners') participation. Petitioners did not refute these sworn statements. Neither did they explain why their former colleagues would unjustly and falsely testify against them even if they had the opportunity to defend themselves during the administrative investigations conducted by respondent. These pieces of evidence, when taken together, constituted substantial evidence to prove petitioners' culpability. It is of no moment that they were acquitted in the criminal case. Petitioners' infractions were willful and serious, thus their dismissal was proper under the circumstances.

5. ID.; LABOR RELATIONS; UNFAIR LABOR PRACTICE; REQUIRES SUBSTANTIAL EVIDENCE. — Petitioners never substantiated their allegations of unfair labor practice. In a similar case, *Schering Employees Labor Union (SELU) et al. v. Schering*

> *Plough Corporation*, petitioner Sereneo, the president of SELU, charged respondent with ULP and illegal dismissal because she was in the process of renegotiating the CBA with respondent when she was dismissed on the ground of loss of trust and confidence. We said: Petitioners' accusation of union busting is bereft of any proof. We scanned the records very carefully and failed to discern any evidence to sustain such charge. In *Tiu vs. NLRC*, we held: . . . . It is the union, therefore, who had the burden of proof to present substantial evidence to support its allegations (of unfair labor practices committed by management). x x x . . . but in the case at bar the facts and the evidence did not establish even at least a rational basis why the union would wield a strike based on alleged unfair labor practices it did not even bother to substantiate during the conciliation proceedings. It is not enough that the union believed that the employer committed acts of unfair labor practice when the circumstances clearly negate even a *prima facie* showing to warrant such a belief. The same is true here. Petitioners failed to prove their accusations. In contrast, respondent was able to prove the guilt of petitioners.

APPEARANCES OF COUNSEL

Allan S. Montaño for petitioners.

The Law Firm of R.V. Domingo and Associates for respondent.

D E C I S I O N

CORONA, *J.*:

This is a petition for review on *certiorari*[1] of the March 4, 2004 decision[2] and October 7, 2005 resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 64271.

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[1] Under Rule 45 of the Rules of Court. *Rollo*, p. 3.

[2] Penned by Associate Justice Marina L. Buzon (retired) and concurred in by Associate Justices Sergio L. Pestaño (retired) and Aurora Santiago-Lagman (retired) of the Fourteenth Division of the Court of Appeals. *Id.*, pp. 49-62.

[3] Associate Justice Pestaño was replaced by Associate Justice Monina Arevalo-Zenarosa. *Id.*, pp. 86-87.

Petitioners Renita del Rosario, Teresita Eisma, Rosario Teaño, Elsie Javinez, Ederlinda Ycong and Mercedes Masangkay were all regular employees of respondent Makati Cinema Square Corporation as ticket sellers or portresses, and were also officers and members of the Makati Cinema Square Employees Union-FFW Chapter (union).[4]

Respondent was a domestic corporation engaged in the business of exhibiting cinematographic films to the public for a fee.[5]

On January 20, 1995, respondent requested the National Bureau of Investigation[6] (NBI) to investigate an alleged systematic fraud involving the recycling of admission tickets being perpetrated at the respondent's movie houses. On March 12, 1995, at around 6:15 p.m., the NBI agents[7] arrested Victoria Diaz and Thelma Tesoro.[8] The agents executed an affidavit wherein they stated that they conducted a series of covert operations at the cinemas and found out that sold theater tickets presented to the portress by the moviegoers upon admission were not mutilated (torn) or dropped into the box of used tickets. Instead, the portress, with the connivance of the production checker, kept some of the tickets. After a while, the portress gave them back to the ticket seller for resale for their own personal benefit and gain.[9]

It appears that there was a collective bargaining agreement (CBA) between the respondent and the union which took effect on May 1, 1992 and should remain in full force and effect for the period or five years or until April 30, 1997.[10] As the third year of the CBA had expired on May 22, 1995, the union informed

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[4] *Id.*, p. 50.

[5] *Id*.

[6] Through then Director Epimaco Velasco.

[7] Ferdinand M. Lavin, Cynthia L. Mariano and Sixto D. Espenesin, Jr.

[8] The former was a ticket seller and the latter, a portress. Also arrested were the production outfit's checkers, Marcos Mariano and Joy Ong.

[9] *Rollo*, pp. 50-51.

[10] In accordance with the provisions of the Labor Code.

respondent of its intention to renegotiate the economic provisions for the remaining two years of the CBA. On May 26, 1995, respondent informed the union that the proposed amendments to the CBA were being considered by a committee whose recommendations would be forthcoming by July 9, 1995. On June 19, 1995, respondent requested clarification on the proposed amendments. Thus, the parties met on June 23, 1995.[11]

However, on July 7, 1995, respondent filed a criminal complaint[12] for qualified theft against petitioners.[13] On the same date, Anthony Gimena, respondent's ticket auditor, executed an affidavit detailing petitioners' participation in the ticket-recycling scheme covering the period January 6, 1995 to March 12, 1995. He specified the date and time, names of the ticket sellers and portresses who handed to him his share of their *modus operandi* and the corresponding amounts each of them gave him. He tendered these amounts to respondent's vice president for administration.[14] Respondent's other witnesses were William Welsh and Erlinda Derupe, assistant floor manager and portress respectively.[15]

On July 8, 1995, the board of directors of respondent agreed to cease its theater operations and lease the same to third parties.[16]

On July 10, 1995, respondent served a notice of cessation of operations on the union and its members. At the same time, petitioners were placed under preventive suspension and administrative hearings were conducted in relation to the alleged scheme of recycling of tickets.[17]

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[11] *Rollo*, p. 51.

[12] In the Office of the Prosecutor of Makati and docketed as I.S. No. 95-1662.

[13] *Rollo*, pp. 51-52.

[14] *Id.*, pp. 513-520.

[15] *Id.*, p. 175.

[16] *Id.*, p. 52.

[17] *Id*.

Meanwhile, on July 11, 1995, the union filed a complaint for unfair labor practice (ULP) stating that respondent refused to negotiate the terms of the CBA.[18]

On July 28, 1995, respondent entered into a contract of lease with Victor Villegas over the movie theaters of the former.[19]

On August 1, 1995, the union's members were not allowed to report for work anymore and were told that they would be paid only until August 10, 1995.[20]

On August 10, 1995, petitioners were dismissed by respondent.[21]

On November 25, 1995, petitioners filed another complaint for ULP alleging union-busting, discrimination, coercion, illegal suspension and illegal dismissal.[22] This was consolidated with the first case filed by the union.[23]

The employees who were affected by the cessation of the operation of respondent received their separation pay on October 17, 1995.[24]

The charge of qualified theft against petitioners was dismissed for insufficiency of evidence on October 23, 1995.[25] This was reversed on reconsideration in a resolution dated April 26, 1999.[26] Consequently, an information was filed in the Regional Trial Court (RTC), Makati City, Branch 133. Petitioners were acquitted

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[18] Docketed as NLRC-NCR-Case No. 07-04806-95. On the same date, the union filed a preventive mediation case before the National Conciliation and Mediation Board for the alleged illegal suspension of petitioners.

[19] *Rollo*, p. 52.

[20] *Id*.

[21] *Id*.

[22] Docketed as NLRC-NCR Case No. 11-07522-95. *Id.*, p. 135.

[23] *Id.*, pp. 135-136.

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

[25] *Id.*, p. 173.

[26] *Id.*, pp. 174-177.

by the RTC on September 4, 2002 as the prosecution failed to prove their guilt beyond reasonable doubt.[27]

In the meantime, on August 31, 1998, labor arbiter Manuel P. Asuncion (LA) rendered a decision dismissing the ULP charge but declared respondent guilty of illegal suspension and illegal dismissal.[28] He found that there was no basis for the dismissal of petitioners because there was no showing in the NBI agents' affidavit of their involvement in the ticket recycling scheme.[29]

On appeal, the National Labor Relations Commission (NLRC) initially affirmed the LA's decision in a resolution dated June 21, 1999 but reversed itself upon reconsideration on June 23, 2000. It ruled that petitioners were validly dismissed on the ground of loss of trust and confidence. It declared that aside from the findings of the NBI, respondent conducted its own investigation and the statements of its witnesses were replete

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[27] Decision was penned by Judge Napoleon E. Inoturan. *Id.*, pp. 333-336, 433.

[28] The dispositive portion read:

"WHEREFORE, judgment is hereby rendered as follows:

1. Dismissing the complaint for unfair labor practice being the subject involved in NLRC-NCR Case No. 06-04013-95 now for review by the Commission;

2. Declaring the respondents as guilty of illegal suspension and illegal dismissal. The respondents are ordered to immediately reinstate individual complainants to their respective positions without loss of seniority rights, privileges and with full backwages which to this date has reached ₱174,956.40 for each. However, if reinstatement is not possible, to pay individual complainants their respective separation pay computed at one (1) month latest salary for every year of service in addition to the backwages awarded;

3. Ordering respondents to pay individual complainant attorney's fees in the amount of ₱17,495.64 equivalent to ten percent (10%) of the total benefits awarded. All other charges and claims of complainants are hereby ordered dismissed for lack of merit.

SO ORDERED." (*Id.*, pp. 144-145.)

[29] *Id.*, p. 143.

with details of the involvement of petitioners in the fraudulent scheme.[30]

Aggrieved, petitioners filed a motion for reconsideration, which was denied by the NLRC in a resolution dated January 4, 2001.[31] Petitioners filed a petition for *certiorari* in the CA which was denied in a decision dated March 4, 2004. Reconsideration was likewise denied in a resolution dated October 7, 2005. According to the CA, the NLRC did not commit grave abuse of discretion in ruling that petitioners were validly dismissed. Hence, this petition.

The main issue for our resolution is whether petitioners were validly dismissed on the ground of loss of trust and confidence.

At the outset, we note that this petition was filed under Rule 45 of the Rules of Court. However, petitioners allege that the CA acted with grave abuse of discretion amounting to a lack or excess of jurisdiction.[32] Therefore, the petition ought to be dismissed outright for being procedurally infirm. A petition for review under Rule 45 must present questions of law, not questions of jurisdiction.

Nevertheless, even on the merits, the petition must fail. Under Article 282 of the Labor Code, an employer may terminate the services of an employee for loss of trust and confidence:

> ARTICLE 282. Termination by employer. — An employer may terminate an employment for any of the following causes:
>
> xxx xxx xxx
>
> (c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
>
> xxx xxx xxx

Loss of confidence applies only to cases involving employees who occupy positions of trust and confidence, or to those situations where the employee is routinely charged with the

[30] *Id.*, p. 173.

[31] *Id.*, p. 183.

[32] *Id.*, pp. 3-4, 27, 36, 39.

care and custody of the employer's money or property. To be a valid ground for an employee's dismissal, loss of trust and confidence must be based on a willful breach.[33] A breach is willful if it is done intentionally, knowingly and purposely, without justifiable excuse.[34]

In dismissing an employee on the ground of loss of confidence, it is sufficient that the employer has a reasonable ground to believe, based on clearly established facts, that the employee is responsible for the misconduct and the nature of his participation renders him unworthy of the trust and confidence demanded by his position.[35] If the employer has ample reason to distrust the employee, the labor tribunal cannot justly deny the former the authority to dismiss the latter.[36]

Petitioners argue that there was no proof that they were involved in the alleged ticket recycling scheme which was the basis of the respondent's loss of trust and confidence in them. They insist that the NBI agents' affidavit did not point to any participation on their part.[37]

We disagree.

It may be true that the NBI agents' affidavit did not directly implicate petitioners in the scheme. However, their co-employees Gimena, Welsh and Derupe, who had personal knowledge of petitioners' activities, narrated in their affidavits the nature, dates and time of their (petitioners') participation.[38] Petitioners

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[33] *Easycall Communications Phils., Inc. v. King*, G.R. No. 145901, 15 December 2005, 478 SCRA 102, 111, citing *Asia Pacific Chartering (Phils.), Inc. v. Farolan*, 441 Phil. 776 (2002) and *National Bookstore, Inc. v. Court of Appeals*, 428 Phil. 235 (2002).

[34] *National Bookstore, Inc. v. Court of Appeals*, *id.*, p. 246.

[35] *Cañeda v. Philippine Airlines, Inc.*, G.R. No. 152232, 26 February 2007, 516 SCRA 668, 671.

[36] *Id.*, pp. 671-672, citing *Reynolds Philippines Corporation v. Eslava*, G.R. No. L-48814, 27 June 1985, 137 SCRA 259.

[37] *Rollo*, pp. 430-433.

[38] The affidavit of Gimena stated:

did not refute these sworn statements. Neither did they explain why their former colleagues would unjustly and falsely testify

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"1. I am a Ticket Auditor of Makati Cinema Square (MCS) since May 16, 1994 whose duty and responsibility it is to make an hourly round of the four (4) cinemas and conduct an audit of the ticket boxes by counting the number of tickets found therein and list them in the MCS Ticket Used Count Forms.

2. In one such round, I saw a portress hold onto some tickets instead of tearing it and putting the torn portions inside the ticket boxes except that when the said portress saw me she immediately tore the said tickets.

3. On January 6, 1995, I was approached by Teresita Eisma, Mercedes Masangkay and Thelma Tesoro, in order to include me in their ticket recycling operations since, they said, I knew of the activity.

4. I told them not to include me even as I issued a warning against my catching them engaging in this illicit activity.

5. Later, at around 5:30 PM, I received ₱110.00 from Eisma which amount I turned over to Mr. Ros Rufino, who kept them inside an MCSC envelope as evidence.

6. On January 7, 1995, I received the following amounts from the following persons at around the following time:

2:00 PM	₱225.00	from Eisma
2:45 PM	110.00	from Masangkay
5:05 PM	277.00	from Eisma
7:30 PM	110.00	from Eisma

	₱722.00	
	======	

7. I turned over the money to Mr. Ros Rufino who kept it inside a separate MCSC envelope.

8. On January 8, 1995, I received the following amounts from the following persons at around the following time:

3:00 PM	₱110.00	from Eisma
5:30 PM	257.00	from Masangkay (told me ₱57 from Elsie

against them even if they had the opportunity to defend themselves during the administrative investigations conducted by respondent. These pieces of evidence, when taken together, constituted substantial evidence to prove petitioners' culpability.[39] It is of no moment that they were acquitted in the criminal case. Petitioners' infractions were willful and serious, thus their dismissal was proper under the circumstances.

Petitioners maintain that the ground of loss of trust and confidence was simulated, a subterfuge or a mere afterthought

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			₱100 from Thelma, & ₱100 from Masangkay.)
6:20 PM	100.00	from Masangkay	(told me from Del Rosario)
8:45 PM	115.00	from Teano	

	₱582.00		
	======		

9. I turned over the money to Mr. Ros Rufino, who kept it inside a separate MCSC envelope.

10. On January 9, 1995, I received the following amounts from the following persons at around the following time:

6:00 PM	₱100.00	from Masangkay (told me from Tesoro)
9:00 PM	115.00	from Teano
9:00 PM	57.00	from Javines

	₱262.00	
	======	

11. I turned over the money to Mr. Ros Rufino, who kept in inside a separate envelope.

xxx xxx xxx

21. On January 17, 1995, I received the following amounts from the following persons at around the following time:

8:00 PM 100.00 from Ycong (C-4) xxx" (*Id.*, pp. 513-515.)

[39] See *John Hancock Life Insurance Corporation v. Davis*, G.R. No. 169549, 3 September 2008.

of respondent as shown by the following circumstances: (1) respondent suspended and dismissed them when the union was renegotiating the economic terms of the CBA; (2) respondent would not have offered them a hefty separation package of 35 days for every year of service if respondent believed they were guilty of the charge against them and (3) respondent was already planning to cease operations and lease out the cinemas.[40]

Again, we disagree.

Petitioners never substantiated their allegations. In a similar case, *Schering Employees Labor Union (SELU) et al. v. Schering Plough Corporation*,[41] petitioner Sereneo, the president of SELU, charged respondent with ULP and illegal dismissal because she was in the process of renegotiating the CBA with respondent when she was dismissed on the ground of loss of trust and confidence. We said:

> Petitioners' accusation of union busting is bereft of any proof. We scanned the records very carefully and failed to discern any evidence to sustain such charge.
>
> In *Tiu vs. NLRC*, we held:
>
> . . . It is the union, therefore, who had the burden of proof to present substantial evidence to support its allegations (of unfair labor practices committed by management).
>
> x x x x x x x x x.
>
> . . ., but in the case at bar the facts and the evidence did not establish even at least a rational basis why the union would wield a strike based on alleged unfair labor practices it did not even bother to substantiate during the conciliation proceedings. It is not enough that the union believed that the employer committed acts of unfair labor practice when the circumstances clearly negate even a *prima facie* showing to warrant such a belief.

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[40] *Rollo*, pp. 45, 437, 443.

[41] G.R. No. 142506, 17 February 2005, 451 SCRA 689, 695, citing *Tiu v. NLRC*, G.R. No. 123276, 18 August 1997, 277 SCRA 680, 687.

The same is true here. Petitioners failed to prove their accusations. In contrast, respondent was able to prove the guilt of petitioners.

WHEREFORE, the petition is hereby *DENIED*.

Costs against petitioners.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 170472. July 3, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JOJO MUSA *y* SANTOS, ROBERT CARIÑO *y* FERRERAS, AUGUST DAYRIT *y* HERNANDEZ, CESAR DOMONDON, JR. *y* SACRIZ, and MICHAEL GARCIA *y* DELA CRUZ,** *accused-appellants.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FACTUAL FINDINGS OF TRIAL COURT AFFIRMED BY THE COURT OF APPEALS, RESPECTED. — An established rule in appellate review is that the trial court's factual findings – including its assessment of the credibility of the witnesses, the probative weight of their testimonies, and the conclusions drawn from the factual findings – are accorded great respect and even conclusive effect if duly supported by evidence. These factual findings and conclusions assume greater weight if they are affirmed by the CA. This jurisprudential rule notwithstanding, we fully scrutinized the records of this case; the penalty of

reclusion perpetua that the CA imposed on the appellants demands no less than this kind of careful consideration.

2. ID.; EVIDENCE; CREDIBILITY OF WITNESSES; UPHELD IN THE ABSENCE OF REBUTTING EVIDENCE. — In considering the testimonies of Nancy and Ryan, we find it significant that the defense failed to refute their testimonies through evidence of motive impelling them to falsely testify against the appellants. The absence of such evidence immeasurably enhances the worth and credit of their testimonies.

3. ID.; ID.; OUT-OF-COURT IDENTIFICATION; PROCEDURE AND DETERMINATION OF THEIR ADMISSIBILITY. — We had the opportunity to explain the procedure for out-of-court identification and the test to determine their admissibility in *People v. Rivera* where we said: Out-of-court identification is conducted by the police in various ways. It is done thru *show-ups* where the suspect alone is brought face to face with the witness for identification. It is done thru *mug shots* where photographs are shown to the witness to identify the suspect. It is also done thru *line-ups* where a witness identifies the suspect from a group of persons lined up for the purpose x x x In resolving the admissibility of and relying on out-of-court identification of suspects, courts have adopted the totality of circumstances test where they consider the following factors, *viz*: (1) the witness' opportunity to view the criminal at the time of the crime; (2) the witness' degree of attention at that time; (3) the accuracy of any prior description given by the witness; (4) the level of certainty demonstrated by the witness at the identification; (5) the length of time between the crime and the identification; and, (6) the suggestiveness of the identification procedure. The totality test has been formulated precisely to assure fairness as well as compliance with constitutional due process requirements in out-of-court identification.

4. ID.; ID.; PHOTOGRAPHIC IDENTIFICATION; PROCEDURE. — In *People v. Pineda*, we laid down the proper procedure on photographic identification: *first*, a series of photographs must be shown and not merely that of the suspect; and *second*, when a witness is shown a group of pictures, their arrangement and display should in no way suggest which one of the pictures pertains to the suspect.

5. ID.; ID.; CREDIBILITY OF WITNESSES; ADMISSIBILITY OF INDEPENDENT AND CORROBORATED IN-COURT IDENTIFICATION OF ACCUSED, NOT AFFECTED BY OUT-OF-COURT IRREGULAR IDENTIFICATION BY ANOTHER WITNESS. — Ryan's identification of the appellants at the police station is not as reliable since he admitted having been told by the police that the persons detained were the suspects in the robbery before he identified them. Nevertheless, this irregular identification does not need to affect the admissibility of Nancy and Ryan's *independent* in-court identification. We emphasize that in convicting the appellants of the crime charged, the RTC and CA *did not rely* on the identification made by Nancy and Ryan at the police station; they relied on Nancy's positive identification of the appellants during trial as well as the corroborative testimony of Ryan.

6. ID.; ID.; ALIBI; FAILS WITH THE DEARTH OF TIME AND PLACE REQUIREMENTS THEREIN, AND PRESENT CREDIBLE POSITIVE IDENTIFICATION OF ACCUSED. — Alibi is generally viewed with suspicion because of its inherent weakness and unreliability. For this defense to prosper, jurisprudence demands the physical impossibility of the presence of the accused at the *locus criminis* or its immediate vicinity at the time of the incident. Where the least chance exists for the accused to be present at the crime scene, the defense of alibi fails. In the present case, the appellants failed to demonstrate by clear and convincing evidence that they were *so far away* from the scene of the crime so that *it was physically impossible* for them to have been at the crime scene at the time of its commission. In other words, their alibi did not meet the requirements of "time" and "place." x x x Moreover, they failed to present any witness corroborating their claim that they were indeed in other places at the time of the robbery. Thus, their alibi cannot also stand in the face of their positive identification by credible witnesses as the perpetrators of the crime. The well-settled rule is that positive identification, when categorical, consistent, and not attended by any showing of ill-motive on the part of the witnesses, prevails over an alibi that is not substantiated by clear and convincing evidence; alibi, under these circumstances, becomes a negative and self-serving evidence undeserving of any weight in law.

7. CRIMINAL LAW; ROBBERY WITH VIOLENCE AGAINST OR INTIMIDATION OF PERSONS; PENALTIES. — 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 intimidation of any person shall suffer: 1. The penalty of *reclusion perpetua* to death, **when by reason or on the 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.

8. ID.; ROBBERY WITH HOMICIDE; ELEMENTS; ELUCIDATED. — Robbery with homicide is committed when a person is killed, either by reason or on occasion of the robbery. To sustain a conviction for robbery with homicide, the prosecution must prove the following elements: (1) taking of personal property belonging to another; (2) with intent to gain; (3) with the use of violence or intimidation against a person; and (4) on the occasion or by reason of the robbery, the crime of homicide, as used in its generic sense, was committed. A conviction requires certitude that the robbery is the malefactor's main purpose and objective, and the killing is merely incidental to the robbery. The *intent* to rob must precede the taking of human life, but the killing may occur before, during, or after the robbery.

9. ID.; ID.; ID.; CASE AT BAR. — In the case before us, the prosecution proved that the appellants' original intention was to rob the passengers of the jeepney. A careful examination of the testimonies of Nancy and Ryan reveals the following facts clearly pointing to the appellants' intent: Michael clung to the jeepney as it left the loading station; he ordered its driver to stop when the jeepney crossed EDSA to allow his companions to board; Jojo announced a hold-up and Barredo fired a gun when the jeepney reached the Barangka flyover; in Barangka; Barredo pointed a gun at Harold, took his wristwatch, and shot him; Barredo pointed the gun at Nancy and grabbed her handbag; Jojo pointed a gun at the other passengers and grabbed their belongings; the other appellants divested the other passengers of their belongings. From these established facts, the **overriding intention** of the appellants could not but be robbery; the death of Harold incidentally intervened in the course of the robbery. Admittedly, the reason for Harold's shooting was unclear, as the testimonies of the witnesses

revealed that Barredo had already taken his watch when he shot Harold. Why Barredo still shot Harold, however, is immaterial as long as the killing is perpetrated as a consequence, or on the occasion of, the robbery. Thus we held in *People v. Werba*: A conviction for robbery with homicide is proper even if the homicide is committed before, during or after the robbery. **The homicide may be committed by the malefactor at the spur of the moment or by mere accident. x x x What is critical is the result obtained without reference or distinction as to circumstances, cause, modes or persons intervening in the commission of the crime.**

10. ID.; CONSPIRACY; APPRECIATION THEREOF. — Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Conspiracy may be inferred from the acts of the accused before, during, and after the commission of the crime which indubitably point to, and are indicative of, a joint purpose, concert of action, and community of interest. Conspiracy does not require proof of an appreciable period of time for the perpetrators to come to an agreement, or for proof of an agreement prior to the criminal deed; conspiracy exists if evidence indicates that *at the time of the commission of the offense*, the malefactors had the *same purpose and were united in its execution*.

11. ID.; ID.; PRESENT IN CASE AT BAR. — In the present case, the appellants and Barredo clearly acted in conspiracy in committing the crimes charged. From the time Michael stopped the jeepney for the others to board, to the time they announced a robbery in Barangka, up to the time they commonly alighted near Marcos Highway, there can be no conclusion other than that they had a prior criminal scheme that led to their synchronized acts, unity of execution, and assistance to each other to consummate their plan. When conspiracy or action in concert to achieve a common criminal design is shown, the act of one is the act of all the other conspirators, and the precise extent or modality of participation of each of them becomes secondary. As a corollary rule, when homicide is committed as a consequence or on the occasion of a robbery, all those who took part as principals in the robbery will also be held guilty as principals of the special complex crime of robbery with homicide, although they did not all actually take part in the

homicide; only those who clearly endeavored to prevent the homicide are excluded. In the present case, none of the appellants has been shown to have tried to prevent Harold's shooting. In fact, they exhibited an indifferent and nonchalant attitude to the killing as shown by the fact that they continued robbing the other passengers even after they heard a shot from inside the jeepney. Hence, their cooperative acts toward their common criminal objective render them equally liable as conspirators.

12. ID.; ROBBERY WITH HOMICIDE; PENALTY. — The special complex crime of robbery with homicide is punished under Article 294 (as amended by Republic Act No. 7659) of the Revised Penal Code by *reclusion perpetua* to death. Article 63 of the Revised Penal Code states that when the law prescribes a penalty consisting of two indivisible penalties, and the crime is neither attended by mitigating nor aggravating circumstances, the lesser penalty shall be imposed. Considering that no modifying circumstance attended the commission of the crime, the RTC correctly sentenced the appellants to suffer the penalty of *reclusion perpetua*.

13. ID.; ID.; CIVIL LIABILITY; PROPER CIVIL INDEMNITY, MORAL DAMAGES AND INCIDENTAL EXPENSES IN CASE AT BAR. — For the death of Harold, we sustain the award of ₱50,000.00 as civil indemnity as ordered by the RTC and affirmed by the CA. Jurisprudence sets the amount of civil indemnity at ₱50,000.00 if the special complex crime of robbery with homicide was not qualified by any circumstance warranting the imposition of the death penalty. This award for civil indemnity is mandatory and is granted to the heirs of the victim without need of proof other than the commission of the crime. We likewise agree with the CA's grant of moral damages even in the absence of proof for the entitlement to the same. As borne out by human nature and experience, a violent death invariably and necessarily brings about emotional pain and anguish on the part of the victim's family. It is inherently human to suffer sorrow, torment, pain, and anger when a loved one becomes the victim of a violent or brutal killing. The heirs of Harold are thus entitled to moral damages in the amount of ₱50,000.00. Finally, we sustain the award of ₱100,000.00 representing the hospital and funeral expenses incurred, as this amount was based on the stipulation of the prosecution and defense.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellants.

D E C I S I O N

BRION, *J.*:

We review in this appeal the decision[1] of the Court of Appeals (*CA*) dated October 11, 2005 in CA-G.R. CR-HC No. 00735, which affirmed with modification the decision[2] of the Regional Trial Court (*RTC*), Branch 272, Marikina City, convicting Jojo Musa (*Jojo*), Robert Cariño (*Robert*), August Dayrit (*August*), Cesar Domondon, Jr. (*Cesar*), and Michael Garcia (*Michael*) – collectively referred to as the *appellants* – of robbery with homicide and imposing on them the penalty of *reclusion perpetua*.

ANTECEDENT FACTS

The prosecution charged the appellants and Roberto Barredo (*Barredo*) before the RTC with the special complex crime of robbery with homicide under an Information that states:

x x x x x x x x x

That on or about the 11th day of June 2001, in the city of Marikina, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and they [*sic*] mutually helping and aiding one another, while armed with guns and knives, respectively, with intent to gain and by means of force, violence and intimidation, did then and there willfully, unlawfully, and feloniously rob and divest from one NANCY BONIFACIO *y* GALVO of her black wallet containing the following:

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[1] Penned by Associate Justice Jose L. Sabio, Jr., and concurred in by Associate Justice Jose C. Mendoza and Associate Justice Arturo G. Tayag.

[2] Penned by Judge Reuben P. De la Cruz (now Deputy Court Administrator).

ATM China Bank Card
ATM Allied Bank Card
Smart Money
School I.D., School Registration Form
S.S.S., TIN, Pag-ibig
Cash money
Video shop card
Casio electronic organizer
Cosmetics
Office Uniform

in the amount of ₱700.00 belonging to said NANCY BONIFACIO *y* GALVO, to the damage and prejudice of the owner thereof, and that on the occasion and by reason of said robbery, accused ROBERTO BARREDO armed with a gun and with intent to kill, did then and there willfully, unlawfully, and feloniously attack, assault and shoot HAROLD HERRERA on his neck, thereby inflicting upon the latter mortal wound which directly caused his death.

CONTRARY TO LAW.[3]

On arraignment, the appellants pleaded not guilty to the charge. The prosecution presented the following witnesses during the trial on the merits that followed: Dr. Maria Cristina B. Freyra (*Dr. Freyra*); Nancy G. Bonifacio (*Nancy*); and Ryan Del Rosario (*Ryan*). The appellants took the witness stand for the defense.

The prosecution and the defense agreed at the pre-trial that the deceased accused Barredo would be excluded from the Information.[4]

Dr. Freyra, the Medico-Legal Officer of the Eastern Police District Crime Laboratory, declared on the witness stand that she conducted on June 22, 2001 a postmortem examination on the body of Harold Herrera (*Harold*) at the request of the Marikina City police, and made the following findings:

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[3] Records, pp. 4-5.

[4] See Pre-Trial Order, *id.*, pp. 68-69.

POSTMORTEM FINDINGS

Fairly developed, fairly nourished, male cadaver in *rigor mortis* with postmortem lividity at the dependent portions of the body. Conjunctiva, lips, nailbeds are pale. There is surgical incision at the right submandibular region, measuring 1.3 x 0.9 cm, 4 cm from the anterior midline, 145 cm from the heel, surgical incision at the right lateral neck region, measuring 11 cm long with 12 stitches applied, surgical incision at the right lateral neck region, measuring 1.4 x 1 cm, 7 cm right of the anterior midline, 143 cm from the heel and surgical incision at the umbilical region, measuring 5 cm long with 4 stitches applied, cutdown incision at the left arm and gastronomy incision at the abdomen, measuring 0.8 x 0.7 cm, 2.5 cm from the anterior midline.

x x x x x x x x x

CONCLUSION:

Cause of death is cardio-respiratory arrest as a result of a gunshot wound, neck.

S/P neck exploration, esophageal repair muscle flap of esophageal injury, gastrostomy tube insertion and tracheostomy.[5]

According to Dr. Freyra, the victim died from a gunshot wound on the right side of his neck which "fractured the 6th and 7th cervical vertebra, lacerating the spinal cord and esophagus." She added that a .38 caliber slug was recovered from the victim's left scapular region.[6]

Nancy narrated that around 1:00 a.m. of June 11, 2001, she and her boyfriend, Harold, boarded a jeepney bound for Montalban at the corner of EDSA and Aurora Boulevard. She noticed, as the jeepney was leaving the loading area, that one of the passengers, Michael, simply clung to the jeepney's rear end although some seats were still vacant. When the jeepney crossed EDSA, Michael ordered it to stop and other passengers, namely, Jojo, Robert, August, Cesar, and Barredo, boarded. Some of these new passengers clung at the jeepney's rear end; the others went inside.[7]

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[5] *Id.*, p. 64.

[6] TSN, February 26, 2003, pp. 17-26.

[7] TSN, March 18, 2003, pp. 5-7.

When the jeepney reached the flyover in Barangka, Barredo fired a gun and Jojo (who was seated inside the jeepney) declared a hold-up. Barredo pointed a gun at Harold as he tried to get the latter's wristwatch. Nancy heard a gunshot, but did not know that Harold had been hit. Barredo thereafter pointed the gun at Nancy and at the same time grabbed her handbag. Meanwhile, Jojo pointed a gun at the other passengers and grabbed their belongings. The other appellants, all carrying bladed weapons, also took part in divesting the passengers of their personal belongings. The appellants and Barredo alighted from the jeepney when it reached Marcos Highway. After the appellants had left, Harold leaned on Nancy who noticed blood oozing from Harold's neck. Nancy directed the driver to bring them to the nearest hospital.[8]

They arrived at 1:30 a.m. at the Sta. Monica Hospital where Harold's wound was cleaned. However, the Sta. Monica Hospital's personnel advised them to transfer Harold to another hospital where his wound could better be attended to. They therefore brought Harold to the Amang Rodriguez Hospital, but the hospital was full and could not admit Harold. Thus, they again transferred Harold to another hospital, this time to the East Avenue Hospital, where he was confined until he died on June 22, 2001.[9]

On cross-examination, Nancy testified that she and Harold identified the six persons who held them up from among the many pictures shown to them in the hospital. She added that she went to the Marikina Police Station on June 16, 2001 after the police informed her that arrests had been made in connection with the hold-up. It took her some time to go to the police station because Harold would not allow her to leave his side. At the police station, she recognized her co-passengers who were then in a detention cell, and she identified them as the persons who had robbed them. Thereafter, she executed an affidavit before PO3 Manuel Ragay (*PO3 Ragay*). She likewise

[8] *Id.*, pp. 8-20.

[9] *Id.*, pp. 21-26.

testified that she had given a description of the robbers to a police inspector prior to June 16, 2001.[10]

Ryan testified that he boarded a jeepney at around 12:30 a.m. of July 11, 2001 on Aurora Boulevard, and sat on the left side, third seat from the rear. As the jeepney was leaving the loading area at around 12:45 a.m., he noticed that Michael clung to the rear end of the jeepney. When the jeepney crossed EDSA near Uniwide, Michael told the driver to stop and five men boarded the jeepney, one of whom Ryan identified as Jojo. Two of the men went inside, while the other three clung to the rear end of the jeepney. As the jeepney approached Barangka, one of the men clinging to the rear end ordered the driver to stop and then fired a gun. At that point, Jojo announced a hold-up; the other appellants brought out bladed weapons and collected the passengers' belongings.[11]

Ryan saw Harold give his watch to one of the appellants who was pointing a gun at him (Harold). Ryan then heard a gunshot and claimed to have seen the "explosion from the gun." Soon after, the robbers got off the jeepney, but one of them again fired a gun while crossing the street. Nancy requested him to help bring Harold to the hospital after he (Harold) leaned on her shoulder. They went to the Sta. Monica Hospital, but were advised to bring Harold to another hospital. They proceeded to Amang Rodriguez Hospital, and eventually to East Avenue Hospital.[12]

On cross-examination, Ryan admitted executing a sworn statement before the police on June 16, 2001, five days after the robbery. He recalled that it was Nancy who informed him that the robbery suspects had been arrested by the police.[13]

On re-direct, he maintained that it was Michael who clung to the jeepney at the loading area and told the driver to stop

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[10] *Id.*, pp. 27-49.

[11] TSN, August 11, 2003, pp. 3-5.

[12] *Id.*, pp. 6-10.

[13] *Id.*, pp. 11-12.

along EDSA. On re-cross, he declared that a total of six persons committed the robbery.[14]

The testimony of Honesto A. Herrera, Harold's father, was dispensed with after the prosecution and the defense stipulated that he had spent ₱100,000.00 for the hospitalization, wake, and burial of his son.[15]

The defense presented a different version of events.

Jojo declared on the witness stand that he was asleep in their house on Pipino Street, Tumana, Concepcion, Marikina City at around 1:00 a.m. of June 11, 2001. He slept early because he would be selling basins, hangers, and pails the following morning.

He recalled that on June 15, 2001, four policemen in civilian clothes came to his house and told him to go with them. Outside, he saw Cesar, August, Michael, and Robert already under police custody. They were all brought to the Criminal Investigation Division. A day after he was placed under custody and after seeing Nancy give her statement to the police, he learned that they were being accused of robbery with homicide. He claimed that the police urged Nancy to testify against him because he was the only one who was not arrested on June 14, 2001. He likewise maintained that Cesar was forced to name him as one of the robbers because the police mauled Cesar.[16]

On cross-examination, he testified that the police did not interrogate him in the station. He also disclosed that Cesar, Michael, and August were also his co-accused in a separate robbery incident that allegedly happened on June 14, 2001. [17]

Michael testified that he was asleep with his older brother in their house at Stop Dragon, Zenia, Parola, Cainta, Rizal at 1:00 a.m. of June 11, 2001. He had sold fish balls in their area

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[14] *Id.,* pp. 13-15.

[15] Records, p. 94.

[16] TSN, August 27, 2003, pp. 4-15.

[17] *Id.,* pp. 16-18.

on June 10 to 13, 2001 from 3:00 to 8:00 p.m., but did not do so on June 14 because he did not feel well. Instead, he called his cousin Rosalinda Rostata (*Rosalinda*) to inform her that he wanted to work for her as a painter. On his way to Rosalinda's house, however, the vehicle he was riding on suffered a flat tire somewhere in Santolan; he thus alighted and simply walked towards Barangka. While inside a store in Barangka, he heard a gunshot; he saw a policeman pass by and soon after, people were pointing at him as one of the robbers. He first learned that he was a suspect in the June 11, 2001 robbery incident when he was arrested and detained on June 14, 2001. He denied any participation in the June 11, 2001 robbery.[18]

The prosecution and the defense dispensed with the presentation of Cesar as a witness, after stipulating that Ryan could not identify him.[19]

August testified that he and his wife and daughter were resting at their house at Modesta Village, San Mateo, Rizal at around 12:30 a.m. of June 11, 2001. From June 12 to 13, he operated his tricycle along his usual route until 9:00 p.m. On June 14, 2001, he went to Cubao to watch a movie, but could not recall its title. He was on his way home in a jeepney when two armed men boarded the vehicle; he immediately got off the jeepney upon seeing these armed men. Soon after, he learned that he was a suspect in two separate robbery incidents.[20]

Robert maintained that he was working at his aunt's auto air conditioning supply store at Jacky Lou Ville, BF Homes, Parañaque on June 11, 2001 between 12:30 a.m. and 1:00 a.m. On June 14, 2001, he was walking near Barangka when the police saw him and told him that they were running after robbers. When they asked him which direction the robbers took, he replied that he did not know. They then asked him to go with them to give his statement. He denied knowing any of the appellants before his arrest, and stated that it was only on June 14, 2001

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[18] TSN, October 7, 2003, pp. 4-11.

[19] Records, p. 151.

[20] TSN, December 1, 2003, pp. 3-9.

that he came to know that he was a suspect in the June 11, 2001 robbery. He likewise denied having any knowledge of the crime.[21]

The RTC convicted the appellants in its decision of January 12, 2004. The dispositive portion of this decision reads:

> WHEREFORE, foregoing premises considered, the Court finds the accused JOJO MUSA *y* SANTOS, ROBERT CARIÑO *y* FERRERAS, AUGUST DAYRIT *y* HERNANDEZ, CESAR DOMONDON, JR. *y* SACRIZ and MICHAEL GARCIA *y* DELA CRUZ all GUILTY beyond reasonable doubt of having committed the crime of ROBBERY with HOMICIDE and each of the herein accused is hereby sentenced to suffer the penalty of *RECLUSION PERPETUA*, there being no aggravating or mitigating circumstance present in the commission thereof, and: (1) to jointly and severally indemnify the parents of victim, Harold Herrera, of the amount of Php50,000.00; (2) to jointly and severally pay the amount of Php100,000.00 representing the stipulated amount of hospitalization and funeral expenses incurred; and (3) to jointly and severally pay the amount of ₱20,000.00 by way of moral damages.
>
> SO ORDERED.[22]

On appeal, we endorsed this case to the CA for appropriate action and disposition[23] pursuant to our ruling in *People v. Mateo*.[24] The CA, in its decision of October 11, 2005, affirmed the RTC decision with the modification that the awarded moral damages be increased to ₱50,000.00.

The CA ruled that the positive, clear, and categorical testimonies of witnesses Nancy and Ryan "deserve full merit in both probative weight and credibility over the mere alibi of the appellants." The CA added that Nancy vividly remembered the events that transpired prior to, during, and after the robbery. Moreover, Nancy's positive identification of the appellants was corroborated by Ryan.

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[21] *Id.*, pp. 11-17.

[22] RTC Decision, CA *rollo*, pp. 33-34.

[23] Per our Resolution dated October 20, 2004.

[24] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640, 656.

The CA gave the appellants' alibi scant consideration, ruling that after positive identification by witnesses, they could no longer deny their participation in the robbery by claiming to be somewhere else.

Finally, the CA upheld the RTC's finding of conspiracy, as it had been proven that there was unity of purpose and design in the commission of the crime. Therefore, all those who participated in the robbery were held guilty of the special complex crime of robbery with homicide even if they did not take an active part in the homicide.

In their brief,[25] the appellants argue that the trial court gravely erred in:

(a) convicting them of the crime charged despite the failure of the prosecution to establish their guilt beyond reasonable doubt; and

(b) admitting the seriously flawed out-of-court identification by the witnesses.

The sole issue for our resolution is whether the prosecution proved the appellants' guilt beyond reasonable doubt.

THE COURT'S RULING

We resolve to *deny* the appeal for lack of merit.

Sufficiency of Prosecution Evidence

An established rule in appellate review is that the trial court's factual findings – including its assessment of the credibility of the witnesses, the probative weight of their testimonies, and the conclusions drawn from the factual findings – are accorded great respect and even conclusive effect if duly supported by evidence. These factual findings and conclusions assume greater weight if they are affirmed by the CA. This jurisprudential rule notwithstanding, we fully scrutinized the records of this case; the penalty of *reclusion perpetua* that the CA imposed on the

[25] CA *rollo*, pp. 46-63.

appellants demands no less than this kind of careful consideration.[26]

A distinctive feature of this case is the presence of a witness, Nancy, who was **inside** the jeepney during the robbery, and who positively identified **all** the appellants in her March 18, 2003 testimony. To directly quote from the records:

PROSECUTOR FLORIAN ABALAJON:

Q: Madam witness, could you remember where were you in the early morning or at around 1:00 in the morning of June 11, 2001?

NANCY BONIFACIO:

A: We were at the loading area of vehicles going to Montalban at the corner of EDSA and Aurora Blvd.

xxx xxx xxx

Q: On that day, from the time that you took the jeepney, could you remember any incident that happened to the passengers of the jeep?

A: The jeep left and there was somebody clinging to the jeep, sir.

Q: What happened next?

A: Upon crossing EDSA, the person clinging to the jeepney flagged down the jeepney to allow four (4) other passengers to board the jeepney, sir.

xxx xxx xxx

Q: After the other four passengers rode while clinging to the passenger jeepney, what happened, if any, on your way to Montalban?

A: When we were somewhere in Barangka, one of them fired a gun and declared a holdup, sir.

Q: Who, if you remember, declared the holdup?

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[26] *People v. Algarme*, G.R. No. 175978, February 12, 2009, citing *People v. Ballesteros*, G.R. No. 172696, August 11, 2008 and *People v. Garalde*, 521 SCRA 327, 340 (2007).

A: As far as I could remember, **the one who declared the holdup was Jojo Musa, and the one who fired the gun was Robert Barredo.**

xxx xxx xxx

Q: Was Jojo Musa one of the passengers who rode on the jeepney after the passenger jeepney has crossed EDSA?

A: He was together with the person who clung to the vehicle before the jeepney crossed EDSA, sir.

Q: Do you know the identity of the person who was clinging to the passenger jeepney and told the driver to stop upon crossing EDSA?

A: Yes, sir.

Q: Who was he?

A: I do not know his name, but I could recognize his face, sir.

xxx xxx xxx

Q: Could you kindly point to him?

(The witness pointed to the rightmost person on the bench at the last row. The person pointed to by the witness when requested to stand up identify his name as **Michael Garcia *y* De la Cruz** [*sic*])

xxx xxx xxx

Q: From these five persons seated at the back, could you point or identify the person that you said is Musa?

(The witness pointed to the leftmost person seated at the last row. The person pointed to by the witness, when requested to stand, identified himself as **Jojo Musa *y* Delos Santos**)

xxx xxx xxx

Q: Now what happened after the declaration of the holdup?

A: They gathered the personal belongings of the other passengers, and the person beside Harold pointed a gun at him and tried to get his wristwatch, sir.

Q: **And could you remember who is the person who was pointing a gun at Harold?**

A: **Robert Barredo**, sir.

xxx xxx xxx

Q: And why are you so sure that this Robert Barredo was the one who pointed a gun at Harold Herrera?

A: While we were in the hospital we learned that the suspect was arrested, and they presented picture of Robert Barredo, and he was identified by the victim, sir.

Q: Now, let us go back to the incident when a gun was pointed at Harold. What happened at that time?

A: Robert Barredo pointed a gun like this. (The witness raised her right hand with the index finger pointing towards her face) [A]nd the suspect tried to use his left hand to get the wristwatch of Harold, and after getting the wristwatch of Harold, I heard a gunshot, and I did not know that Harold was hit by that gunshot, and afterwards Robert Barredo pointed a gun at me (the witness pointed her right hand index finger into her forehead) and Robert Barredo tried to grab my handbag, sir.

xxx xxx xxx

Q: Were you divested your bag by Robert Barredo? [*sic*]

A: Yes, sir.

Q: What happened with Jojo Musa? Were you able to notice what Jojo Musa did during the incident?

A: He pointed to the passenger beside him and gathered their belongings, sir.

Q: What did he point to the other passengers?

A: Gun, sir.

Q: What about the three other passengers that you said there were four passengers? [*sic*]

A: They were carrying bladed weapon(s), sir.

xxx xxx xxx

Q: Could you remember the person who entered the jeepney?

A: The two persons were able to enter, and one of them was Jojo Musa and the other one, I don't know his name, but I could recognize his face, sir.

Q: Could you identify him if you could see that person inside the courtroom?

A: Yes, sir.

Q: Please point to him.

(The witness pointed to the second person from the right seated on the last row, who, when requested to stand up, identified himself as **Robert Cariño *y* Ferreras**)

xxx xxx xxx

Q: Could you recall what Robert Cariño did while the holdup was going on?

A: He was at the other end collecting the belongings of the other passengers.

Q: You said after they had divested you, Harold, and other passengers of their personal belongings they alighted upon reaching Marcos Highway, right? Now, could you tell us who were they or how many of them that alighted?

A: They were six (6), sir.

xxx xxx xxx

Q: At the back there were five (5) persons sitting. Could you kindly go over the faces and tell us who you said alighted together with Jojo Musa, Robert Barredo and other accused that you just identified?

(The witness pointed to the second and third person from the last sitting on the last row, who, when requested to stand up, identified themselves as **August Dayrit *y* Hernandez** and **Cesar Domondon, Jr. *y* Sacris**)[27] [*Emphasis ours*]

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[27] TSN, March 18, 2003, pp. 5-20.

Nancy's testimony was clear, detailed, and straightforward; she never wavered in pointing to the appellants as the persons who robbed her and her co-passengers in the early morning of June 11, 2001. She remained consistent and steadfast under the defense counsel's cross-examination. She was likewise firm in her identification of Barredo as the person who pointed a gun at Harold and divested him of his wristwatch. Although Barredo died before trial, Nancy testified that she and Harold had identified him (Barredo) and the other appellants as the perpetrators of the crime from the pictures shown to them at the hospital.

Nancy's testimony finds full support and corroboration from the testimony of another passenger, Ryan, on the events that transpired before, during, and after the June 11, 2001 robbery. Although Ryan could only identify Jojo and Michael, his narration of events coincided with Nancy's testimony on material points: (a) Michael clung to the jeepney as it left the loading station on Aurora Boulevard; (b) Michael ordered the driver to stop when the jeepney crossed EDSA to allow his companions to board; (c) Jojo declared a hold-up and another one (identified by Nancy as Barredo) fired a gun when the jeepney reached Barangka; (d) the person who fired a gun (Barredo) pointed it at Harold, took his wristwatch, and shot him in the neck; (e) the other robbers carried bladed weapons and divested the other passengers of their belongings; and (f) Harold was initially brought to the Sta. Monica Hospital, then transferred to Amang Rodriguez Hospital, and subsequently to the East Avenue Hospital where he died after 11 days. Furthermore, the testimonies of Nancy and Ryan matched on other details of the robbery, such as the seating arrangement of the passengers, the number of perpetrators and their relative positions in the jeepney, and the place where the robbers alighted.

These testimonies, when considered together, lead to no conclusion other than the appellants' direct participation in the robbery where Harold was shot and killed. Aside from their court testimonies, Nancy and Ryan executed separate sworn statements on June 16, 2001 before PO3 Ragay naming all the

appellants as the persons who robbed them and their co-passengers on June 11, 2001.[28] In her sworn statement, Nancy likewise named Barredo as the person who shot Harold. These sworn statements were formally offered in evidence; hence, they are integral parts of the prosecution's evidence.

In considering the testimonies of Nancy and Ryan, we find it significant that the defense failed to refute their testimonies through evidence of motive impelling them to falsely testify against the appellants. The absence of such evidence immeasurably enhances the worth and credit of their testimonies.[29]

Admissibility of Identification

The appellants assail the reliability and integrity of their out-of-court identification by Nancy and Ryan. They argue that when these witnesses went to the police station, their minds were ready to accept that the persons they would identify were the suspects in the June 11, 2001 robbery.

We find this argument misplaced.

We had the opportunity to explain the procedure for out-of-court identification and the test to determine their admissibility in *People v. Rivera*[30] where we said:

> Out-of-court identification is conducted by the police in various ways. It is done thru *show-ups* where the suspect alone is brought face to face with the witness for identification. It is done thru *mug shots* where photographs are shown to the witness to identify the suspect. It is also done thru *line-ups* where a witness identifies the suspect from a group of persons lined up for the purpose x x x In resolving the admissibility of and relying on out-of-court identification of suspects, courts have adopted the totality of circumstances test where they consider the following factors, *viz*: (1) the witness'

[28] Records, pp. 10 and 13.

[29] See *People v. Algarme*, *supra* note 26, citing *People v. Laurente*, 255 SCRA 543 (1996).

[30] G.R. No. 139185, September 29, 2003, 412 SCRA 224, citing *People v. Teehankee, Jr.*, 249 SCRA 54 (1995).

opportunity to view the criminal at the time of the crime; (2) the witness' degree of attention at that time; (3) the accuracy of any prior description given by the witness; (4) the level of certainty demonstrated by the witness at the identification; (5) the length of time between the crime and the identification; and, (6) the suggestiveness of the identification procedure.

The totality test has been formulated precisely to assure fairness as well as compliance with constitutional due process requirements in out-of-court identification. Applying this test, we find Nancy's out-of-court identification to be reliable and, hence, admissible. *First*, Nancy testified that she was seated on the first seat of the jeepney's left rear side. From this vantage point, she had a good view of the faces of the four persons clinging to the jeepney as well as the two who were seated inside. *Second*, no competing event took place to draw her attention from the hold-up. Nothing in the records shows the presence of any distraction that could have disrupted her attention at the time of the robbery or that could have prevented her from having a clear view of the faces and appearances of the robbers. *Third*, the identification took place within five days after the robbery; she sufficiently explained why it took her five days to go to the police station. *Fourth*, she described the suspects to a police inspector prior to identifying them in the police station on June 16, 2001. *Finally*, nothing persuasive supports the appellants' contention that their identification at the police station was the result of an unduly suggestive procedure. When Nancy went to the Marikina Police Station, the police merely informed her of the *date* when the appellants were arrested. Afterwards, she went to the cell where the appellants were detained; she identified them as the persons who were her co-passengers and who participated in the robbery. The records are silent on whether other inmates were detained together with the appellants. Nonetheless, there was no evidence that the police either prodded Nancy to point to the appellants as the robbers, or suggested to her that the appellants were the suspects in the June 11, 2001 robbery. That she readily recognized them was not surprising as they were her fellow passengers before the hold-up took place.

If any identification should be critically examined at all, this should be Nancy's in-court identification, as she was shown photographs and made a previous out-of-court photographic identification in the hospital.

In *People v. Pineda*,[31] we laid down the proper procedure on photographic identification: *first*, a series of photographs must be shown and not merely that of the suspect; and *second*, when a witness is shown a group of pictures, their arrangement and display should in no way suggest which one of the pictures pertains to the suspect.

In the present case, Nancy significantly testified that "other" pictures, aside from the pictures of the five appellants and of Barredo, were shown to her and to Harold at the hospital. From these pictures, they were able to identify the six perpetrators of the crime, including Barredo. Nancy testified on this point, as follows:

ATTY. RODAFLOR LARRACAS:

Q: So the pictures of the six persons that you said a while ago no other pictures except the pictures of the six persons?

NANCY BONIFACIO:

A: There were **other** persons but we were not able to identify to [*sic*] them; only the pictures of the six persons were identified.[32]

The records are bereft of any evidence showing that Nancy's photographic identification was attended by an impermissible suggestion that singled out the appellants and Barredo as the robbers. More importantly, if there was one person among the perpetrators who would have caught her attention, it would have been Barredo because he was the one who pointed a gun at her and at Harold, who took their bag and watch, and who shot Harold. Thus, we uphold the integrity and reliability of Nancy's in-court identification of the appellants.

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[31] G.R. No. 141644, May 17, 2004, 429 SCRA 478.

[32] TSN, March 18, 2003, p. 30.

Ryan's identification of the appellants at the police station is not as reliable since he admitted having been told by the police that the persons detained were the suspects in the robbery before he identified them. Nevertheless, this irregular identification does not need to affect the admissibility of Nancy and Ryan's *independent* in-court identification.[33] We emphasize that in convicting the appellants of the crime charged, the RTC and CA *did not rely* on the identification made by Nancy and Ryan at the police station; they relied on Nancy's positive identification of the appellants during trial as well as the corroborative testimony of Ryan.

The Appellants' Defense

The appellants interposed the defense of alibi to support their claim of innocence.

Jojo and Michael maintained that they were sleeping in their respective houses in Marikina City and Cainta, respectively, at 1:00 a.m. of June 11, 2001. August, on the other hand, claimed that he was at his house in San Mateo, Rizal at 12:30 a.m. of the same date. Robert, for his part, alleged that he was working at his aunt's auto air conditioning supply in BF Homes, Parañaque City on the day of the robbery.

Alibi is generally viewed with suspicion because of its inherent weakness and unreliability. For this defense to prosper, jurisprudence demands the physical impossibility of the presence of the accused at the *locus criminis* or its immediate vicinity at the time of the incident.[34] Where the least chance exists for the accused to be present at the crime scene, the defense of alibi fails.[35]

In the present case, the appellants failed to demonstrate by clear and convincing evidence that they were *so far away*

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[33] See *People v. Almanzor*, G.R. No. 124916, July 11, 2002, 384 SCRA 311.

[34] See *People v. Navales*, G.R. No. 135230, August 8, 2000, 337 SCRA 436.

[35] See *People v. Werba*, G.R. No. 144599, June 9, 2004, 431 SCRA 482.

from the scene of the crime so that *it was physically impossible* for them to have been at the crime scene at the time of its commission. In other words, their alibi did not meet the requirements of "time" and "place." The places where they claimed to be at the time of the hold up were Cainta and San Mateo (both in Rizal), Marikina City, and Parañaque City whose locations do not negate the possibility that they were in Barangka on June 11, 2001. Moreover, they failed to present any witness corroborating their claim that they were indeed in other places at the time of the robbery. Thus, their alibi cannot also stand in the face of their positive identification by credible witnesses as the perpetrators of the crime. The well-settled rule is that positive identification, when categorical, consistent, and not attended by any showing of ill-motive on the part of the witnesses, prevails over an alibi that is not substantiated by clear and convincing evidence; alibi, under these circumstances, becomes a negative and self-serving evidence undeserving of any weight in law.[36]

The Crime Committed

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 intimidation of any person shall suffer:
>
> 1. The penalty of *reclusion perpetua* to death, **when by reason or on the 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.

Robbery with homicide is committed when a person is killed, either by reason or on occasion of the robbery. To sustain a conviction for robbery with homicide, the prosecution must prove the following elements: (1) taking of personal property belonging to another; (2) with intent to gain; (3) with the use of violence or intimidation against a person; and (4) on the occasion or by

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[36] See *People v. Dulay*, G.R. No. 174775, October 11, 2007, 535 SCRA 656.

reason of the robbery, the crime of homicide, as used in its generic sense, was committed. A conviction requires certitude that the robbery is the malefactor's main purpose and objective, and the killing is merely incidental to the robbery. The *intent* to rob must precede the taking of human life, but the killing may occur before, during, or after the robbery.[37]

In the case before us, the prosecution proved that the appellants' original intention was to rob the passengers of the jeepney. A careful examination of the testimonies of Nancy and Ryan reveals the following facts clearly pointing to the appellants' intent: Michael clung to the jeepney as it left the loading station; he ordered its driver to stop when the jeepney crossed EDSA to allow his companions to board; Jojo announced a hold-up and Barredo fired a gun when the jeepney reached the Barangka flyover; in Barangka; Barredo pointed a gun at Harold, took his wristwatch, and shot him; Barredo pointed the gun at Nancy and grabbed her handbag; Jojo pointed a gun at the other passengers and grabbed their belongings; the other appellants divested the other passengers of their belongings.

From these established facts, the **overriding intention** of the appellants could not but be robbery; the death of Harold incidentally intervened in the course of the robbery. Admittedly, the reason for Harold's shooting was unclear, as the testimonies of the witnesses revealed that Barredo had already taken his watch when he shot Harold. Why Barredo still shot Harold, however, is immaterial as long as the killing is perpetrated as a consequence, or on the occasion of, the robbery. Thus we held in *People v. Werba*:[38]

> A conviction for robbery with homicide is proper even if the homicide is committed before, during or after the robbery. **The homicide may be committed by the malefactor at the spur of the moment or by mere accident. x x x What is critical is the result obtained without reference or distinction as to circumstances, cause,**

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[37] *People v. Dela Cruz*, G.R. No. 168173, December 24, 2008.

[38] *People v. Werba*, *supra*, citing *People v. Daniela*, 401 SCRA 519 (2003).

modes or persons intervening in the commission of the crime. [Emphasis ours]

The Presence of Conspiracy

Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Conspiracy may be inferred from the acts of the accused before, during, and after the commission of the crime which indubitably point to, and are indicative of, a joint purpose, concert of action, and community of interest.[39] Conspiracy does not require proof of an appreciable period of time for the perpetrators to come to an agreement, or for proof of an agreement prior to the criminal deed; conspiracy exists if evidence indicates that *at the time of the commission of the offense*, the malefactors had the *same purpose and were united in its execution*.[40]

In the present case, the appellants and Barredo clearly acted in conspiracy in committing the crimes charged. From the time Michael stopped the jeepney for the others to board, to the time they announced a robbery in Barangka, up to the time they commonly alighted near Marcos Highway, there can be no conclusion other than that they had a prior criminal scheme that led to their synchronized acts, unity of execution, and assistance to each other to consummate their plan.[41]

When conspiracy or action in concert to achieve a common criminal design is shown, the act of one is the act of all the other conspirators, and the precise extent or modality of participation of each of them becomes secondary.[42]

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[39] *People v. Porras*, G.R. Nos. 103550-51, July 17, 2001, 361 SCRA 246, 271.

[40] *People v. Carrozo*, G.R. No. 97913, October 12, 2000, 342 SCRA 600.

[41] See *People v. Napalit*, G.R. Nos. 142919 and 143876, February 4, 2003, 396 SCRA 687.

[42] *People v. Punzalan*, G.R. No. 78853, November 8, 1991, 203 SCRA 364.

As a corollary rule, when homicide is committed as a consequence or on the occasion of a robbery, all those who took part as principals in the robbery will also be held guilty as principals of the special complex crime of robbery with homicide, although they did not all actually take part in the homicide; only those who clearly endeavored to prevent the homicide are excluded. In the present case, none of the appellants has been shown to have tried to prevent Harold's shooting. In fact, they exhibited an indifferent and nonchalant attitude to the killing as shown by the fact that they continued robbing the other passengers even after they heard a shot from inside the jeepney. Hence, their cooperative acts toward their common criminal objective render them equally liable as conspirators.[43]

The Proper Penalty

The special complex crime of robbery with homicide is punished under Article 294 (as amended by Republic Act No. 7659) of the Revised Penal Code by *reclusion perpetua* to death. Article 63[44] of the Revised Penal Code states that when the law prescribes a penalty consisting of two indivisible penalties, and the crime is neither attended by mitigating nor aggravating circumstances, the lesser penalty shall be imposed. Considering that no modifying circumstance attended the commission of the crime, the RTC correctly sentenced the appellants to suffer the penalty of *reclusion perpetua*.

Civil Liability

For the death of Harold, we sustain the award of ₱50,000.00 as civil indemnity as ordered by the RTC and affirmed by the CA. Jurisprudence sets the amount of civil indemnity at ₱50,000.00 if the special complex crime of robbery with homicide was not qualified by any circumstance warranting the imposition of the death penalty. This award for civil indemnity is mandatory

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[43] See *People v. Sabadao*, G.R. No. 126126, October 30, 2000, 344 SCRA 432.

[44] Rules for the Application of Indivisible Penalties.

and is granted to the heirs of the victim without need of proof other than the commission of the crime.[45]

We likewise agree with the CA's grant of moral damages even in the absence of proof for the entitlement to the same. As borne out by human nature and experience, a violent death invariably and necessarily brings about emotional pain and anguish on the part of the victim's family. It is inherently human to suffer sorrow, torment, pain, and anger when a loved one becomes the victim of a violent or brutal killing. The heirs of Harold are thus entitled to moral damages in the amount of ₱50,000.00.

Finally, we sustain the award of ₱100,000.00 representing the hospital and funeral expenses incurred, as this amount was based on the stipulation of the prosecution and defense.

WHEREFORE, in light of all the foregoing, we hereby *AFFIRM* the October 11, 2005 Decision of the Court of Appeals in CA-G.R. CR-HC No. 00735 *in toto*. Costs against the appellants.

SO ORDERED.

Quisumbing (Chairperson), Carpio Morales, Chico-Nazario,[*] and *Leonardo-de Castro,*[**] *JJ.*, concur.

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[45] See *People v. Buduhan*, G.R. No. 178196, August 6, 2008.

[*] 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.

FIRST DIVISION

[G.R. No. 172640. July 3, 2009]

VICTORIANO DELA PEÑA, AGUSTINA DELA PEÑA, ELENA DELA PEÑA, JOSE DELA PEÑA, NOEL DELA PEÑA, and FILOMENA DELA PEÑA, *petitioners, vs.* **SPOUSES VICENTE ALONZO and LIGAYA DELA PEÑA herein substituted by their heirs LERMA MANLICLIC, *et al.*,** *respondents.*

SYLLABUS

1. COMMERCIAL LAW; MORTGAGE; EQUITY OF REDEMPTION; ELUCIDATED. — The RTC's construction of the term equity of redemption is erroneous. The term equity of redemption has a settled meaning. It refers to the right of the mortgagor in case of judicial foreclosure to redeem the mortgaged property after his default in the performance of the conditions of the mortgage but before the confirmation of the sale of the mortgaged property.

2. ID.; ID.; EXTRAJUDICIAL FORECLOSURE AND LEVY ON EXECUTION; RIGHT OF REDEMPTION, EXTANT. — In the present case, the 1,650-square meter portion of the subject property was foreclosed extrajudicially through the Office of the Provincial Sheriff as reflected by the **Certificate of Sale.** In extrajudicial foreclosure, what is extant is the right of redemption, or the right of the mortgagor to redeem the property within one year from and after the date of sale. The remaining 5,625-square meter portion was sold to the bank through levy on execution. A similar right of redemption exists with respect to such purchase, pursuant to Rule 39, Section 30 of the then applicable Rules of Civil Procedure.

3. CIVIL LAW; SPECIAL CONTRACTS; CONTRACT OF SALE; PARTIES THEREOF. — The contract of sale was solely between the respondents and the San Fernando Rural Bank and the petitioners are not privies to such contract. It is a fundamental principle in contract law that a contract binds only the parties to it and their privies and successors.

4. REMEDIAL LAW; APPEALS; FINDINGS OF THE COURT OF APPEALS, RESPECTED. — It is a well-settled rule that findings of fact of the Court of Appeals are conclusive upon this Court and are generally not subject to review. In this proceeding, we find no cogent reason to disturb the factual finding of the Court of Appeals.

APPEARANCES OF COUNSEL

Roberto T. Neri for petitioners.
Surla and Surla Law Office for respondents.

D E C I S I O N

PUNO, *C.J.*:

Before the Court is this Petition for Review on *Certiorari* which seeks to set aside the Decision and Resolution of the Court of Appeals in CA G.R. CV No. 56128 dated May 11, 2005 and May 8, 2006 respectively.[1]

First, the facts of the case.

Petitioners Victoriano, Agustina, Elena, Jose and Filomena, all surnamed Dela Peña and respondent Ligaya Dela Peña are all heirs of the late Spouses Ignacio and Engracia Dela Peña. Respondent Vicente Alonzo is the husband of respondent Ligaya Dela Peña.[2]

The Spouses Ignacio Dela Peña and Engracia Rivera, parents and predecessors-in-interest of the parties herein, are absolute owners of an unregistered parcel of land situated in Pescadores, Candaba, Pampanga, with an area of approximately 7,275 square meters. A portion of the land was mortgaged by the Spouses dela Peña to the San Fernando Rural Bank on June 10, 1964 and June 3, 1966.[3] The mortgage transaction covered 1,650

[1] Penned by Associate Justice Amelita G. Tolentino and concurred in by Associate Justices Roberto A. Barrios and Vicente E. Veloso.

[2] *Rollo*, p. 40.

[3] *Id.*

square meters to secure their debt to the bank amounting to ₱1,200.00. The spouses failed to pay their obligation and the bank foreclosed the mortgaged parcel of land. The bank later acquired the land through purchase in a public auction held on November 21, 1968. The spouses failed to redeem the property within the one-year redemption period. Thus, on November 5, 1971 a **Certificate of Final Sale** was issued to the mortgagee.[4]

The remaining 5,625-square meter portion of the same parcel of land was acquired by the San Fernando Rural Bank through a public auction conducted on April 28, 1972, pursuant to a **Levy on Execution** dated March 23, 1972, with its corresponding **Notice of Sheriff's Sale**.[5] The levy on execution was issued pursuant to the judgment in Civil Case No. 1988 of the Municipal Court of San Fernando, Pampanga, entitled ***San Fernando Rural Bank Inc. v. Alberto Maun and Ignacio Dela Peña***.[6] A **Certificate of Sale** was issued on the same date as the public auction.

Ignacio Dela Peña died on August 11, 1975 while Engracia Rivera died on February 19, 1983 without having redeemed the property.[7]

Over two decades later, or on March 25, 1992, respondents Ligaya Dela Peña-Alonzo and Vicente Alonzo purchased a 7,125-square meter portion of the property. The remaining 150-square meter portion was purchased by Onofre Dela Peña.[8] The purchase was prompted by a notice sent to them and the petitioners by the San Fernando Rural Bank. The notice was sent pursuant to an internal policy by the bank which gives priority to the heirs of the borrower in the disposal of the land.[9]

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[4] *Id.,* p. 41.

[5] *Id.*

[6] *Id.,* p. 93.

[7] *Id.,* p. 42.

[8] *Ibid.*

[9] *Id.,* p. 137.

Thereafter, petitioners demanded from respondents the partition of the lot which the latter have purchased from the San Fernando Rural Bank. The respondents rejected the claim.[10] Petitioners Victoriano, Agustina and Elena Dela Peña referred the matter to their *barangay* captain for the conduct of conciliation proceedings. The conciliation proceedings failed and a **Katibayan Upang Makadulog sa Hukuman**, dated June 8, 1995, was subsequently issued to the parties.[11]

On June 26, 1995, petitioners commenced an action for judicial partition before Branch 38 of the Regional Trial Court (RTC) of San Fernando, Pampanga. The case was docketed as Civil Case No. 10534.[12]

In their Complaint, the petitioners alleged that they, together with the respondents, are co-owners of the subject property, having inherited the same from their parents.[13] They also alleged that an understanding existed between them and respondent Ligaya Dela Peña that the latter shall pay the obligation with the San Fernando Rural Bank while the petitioners shall pay their respective shares later.[14] Petitioners prayed for the partition of the property.

Respondents, in their Answer, averred that no co-ownership existed between them and the petitioners.[15] Respondents posited that at the time of the death of Ignacio and Engracia Dela Peña, they no longer owned the property in question.[16] The land was then owned by the San Fernando Rural Bank, having purchased portions thereof in two public auctions conducted by the Office of the Provincial Sheriff.[17] Respondents likewise

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[10] *Id.*, p. 42.

[11] *Id.*, p. 43.

[12] *Id.*

[13] *Id.*, p. 77.

[14] *Id.*, pp. 78-79.

[15] *Id.*, p. 85.

[16] *Id.*

[17] *Id.*, p. 86.

alleged that ownership was consolidated in the San Fernando Rural Bank, the Spouses Dela Peña having failed to redeem the parcel of land from the bank. Finally, respondents claimed that they made the purchase before the San Fernando Rural Bank on their own behalf and not as representatives or heirs of the late Ignacio Dela Peña and Engracia Rivera.[18]

On June 23, 1997, the RTC rendered a Decision in favor of the petitioners. The RTC held that the repurchase of the land in question could not have been made by the respondents alone. It ruled that the right belonged to all the heirs of Ignacio Dela Peña and Engracia Rivera. The RTC based the foregoing on the fact that the bank intended to sell the land back to all the heirs.[19]

The RTC concluded its ruling with the following statement:

> The [c]ourt recognizes the principle of equity of redemption whereby the mortgagee bank prefers the heirs or successors-in-interest to redeem the property. This equity of redemption was exercised by the San Fernando Rural Bank.[20]

The RTC ordered the partition of the parcel of land in equal proportion to all the heirs of Ignacio Dela Peña and Engracia Rivera. In addition, the RTC ordered the petitioners to pay the commensurate amount that they shared in the repurchase of the property from the San Fernando Rural Bank. The RTC likewise required the parties to submit a project of partition and to respect the status quo with respect to the location of the houses of the petitioners. Finally, the RTC required the respondents to pay ₱10,000 to the petitioners as attorney's fees.[21]

Aggrieved, the respondents filed a notice of appeal on July 3, 1997,[22] which the RTC granted on July 29, 1997.[23]

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[18] *Id.*, pp. 86-87.

[19] *Id.*, p. 138.

[20] *Id.*, p. 139.

[21] *Id.*, pp. 139-140.

[22] *Id.*, p. 141.

[23] *Id.*, p. 142.

In a Decision promulgated on May 11, 2005, the Court of Appeals reversed the ruling of the RTC and ruled in favor of the respondents.[24] The Court of Appeals likewise denied the motion for reconsideration filed by the petitioners on May 8, 2006.[25]

In its decision, the Court of Appeals found that there was a lawful transfer of the property from the Spouses Dela Peña to the San Fernando Rural Bank. There was likewise a transfer from the bank to the respondents.[26]

The Court of Appeals held that with respect to the 1,650-square meter portion of the property, ownership was already consolidated in the bank as evidenced by the **Certificate of Final Sale** dated November 5, 1971.[27] With respect to the remaining portion, constituting of 5,625 square meters, the same was likewise acquired by the bank in a public auction and has likewise not been redeemed by the spouses.[28]

The Court of Appeals ruled that even before the death of the Spouses Dela Peña, the latter already lost all their rights and interests in the subject parcel of land after their failure to redeem. The absolute owner of the property was the San Fernando Rural Bank.[29]

With the foregoing as premises, the Court of Appeals debunked the contention of the petitioners that the property subject of the controversy still belonged to their predecessors-in-interest and that upon the latter's death, they became the owners of the property. It pointed out that the purchase of the property was not an exercise of the right of redemption inasmuch as there is no right of redemption to speak of.[30] It held further

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[24] *Id.*, pp. 39-52.
[25] *Id.*, p. 76.
[26] *Id.*, p. 47.
[27] *Id*.
[28] *Id.*, p. 48.
[29] *Id*.
[30] *Id*.

that the principle of equity of redemption was inapplicable in this case.[31]

Respondents filed a motion for reconsideration against the decision of the Court of Appeals which the latter denied in a resolution dated May 8, 2006. Thus, this petition for review.

In their petition for review, the petitioners raise the following issues before the Court:

> B. The Honorable Court of Appeals seriously erred when it treated the term "equity of redemption" mentioned in the decision of the trial court in its strict and technical sense when such was not obviously meant by the trial court, as may be gleaned from the decision itself and undisputed evidence on record.
>
> C. Be that as it may, whether or not the payment made by respondent Ligaya Dela Peña to the Bank was for the redemption or repurchase of the subject property, the Court of Appeals likewise committed a serious error when it totally disregarded the agreement between the petitioners and respondent Ligaya Dela Peña that whoever among them has the money will advance payment for the redemption of the subject property, subject to reimbursement by the other heirs.[32]

We affirm the ruling of the Court of Appeals.

With respect to the first issue, petitioners insist on the RTC's interpretation of the concept of equity of redemption and in the latter's application of such principle to their case, *i.e.*, as a preference extended by the mortgagee to the heirs or successors-in-interest of the mortgagor.

The RTC's construction of the term equity of redemption is erroneous. The term equity of redemption has a settled meaning. It refers to the right of the mortgagor in case of judicial foreclosure to redeem the mortgaged property after his default in the

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[31] *Id.*, p. 49.

[32] *Id.*, p. 19.

performance of the conditions of the mortgage but before the confirmation of the sale of the mortgaged property.[33]

In the present case, the 1,650-square meter portion of the subject property was foreclosed extrajudicially through the Office of the Provincial Sheriff as reflected by the **Certificate of Sale**. In extrajudicial foreclosure, what is extant is the right of redemption, or the right of the mortgagor to redeem the property within one year from and after the date of sale.[34]

The remaining 5,625-square meter portion was sold to the bank through levy on execution. A similar right of redemption exists with respect to such purchase, pursuant to Rule 39, Section 30 of the then applicable Rules of Civil Procedure.[35] There is no equity of redemption in either case because neither one of these acquisitions by the San Fernando Rural Bank was done through judicial foreclosure.

With respect to the portion of the property subject to mortgage, a **Certificate of Final Sale** has already been issued on November 5, 1971. As of this date, ownership is already consolidated with the San Fernando Rural Bank, the mortgagee.

The portion of the property acquired by the bank through levy on execution, on the other hand, has not been redeemed since April 28, 1972, the day it was sold through public auction. The right of redemption to such property would have lapsed a year later or on April 28, 1973. It has not been redeemed since then, until the day the property was sold by the San Fernando Rural Bank to the respondents.

Thus, at the time the parties' predecessors-in-interest died, the bank was already the absolute owner of the properties. There is no basis for the petitioners to claim a co-ownership between them and the respondents because no right as to the subject property could have been transmitted to them by the

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[33] *Top-Rate International Services, Inc. v. Intermediate Appellate Court,* G.R. Nos. 67496 and 68257, July 7, 1986,142 SCRA 467, 473.

[34] Sec. 6, Act 3135.

[35] Now Section 28, Rule 39 of the 1997 Rules of Civil Procedure.

death of their predecessors-in-interest, the Spouses Ignacio Dela Peña and Engracia Rivera.

As it is, the transaction between the respondents and the San Fernando Rural Bank on March 25, 1992 was purely a contract of sale. The fact that the bank exercised a policy of preferring the designated "heirs" of their customers does not *ipso facto* make the same individuals co-owners of the property.

The contract of sale was likewise solely between the respondents and the San Fernando Rural Bank and the petitioners are not privies to such contract. It is a fundamental principle in contract law that a contract binds only the parties to it and their privies and successors.

There being no co-ownership nor privity of contract, petitioners have no cause of action for demanding the partition of the property.

Finally, petitioners attempt to foist upon this Court the existence of an alleged oral contract between them and the respondents to purchase the property subject of this controversy. The RTC has not made any finding as to the existence of such a contract; on the other hand, the existence of such a contract has been negated by the foregoing finding of the Court of Appeals:

> Evidently, the defendants-appellants acquired the property from the owner, the San Fernando Rural Bank, by purchase, and **there being no evidence to prove that the defendants-appellants purchased the subject property previously owned by their predecessors as representatives of the latter's surviving heirs,** the plaintiffs-appellees cannot claim any right thereto. There is no co-ownership in the instant case between the plaintiffs-appellees and the (sic) defendant-appellant Ligaya Dela Peña, pertaining to the subject property. The defendants-appellants could therefore not be legally compelled to partition the subject property, which they bought with their own resources and for their exclusive use and enjoyment.[36] (emphasis supplied)

It is a well-settled rule that findings of fact of the Court of Appeals are conclusive upon this Court and are generally not

[36] *Rollo*, p. 49.

subject to review.[37] In this proceeding, we find no cogent reason to disturb the foregoing factual finding of the Court of Appeals.

IN VIEW WHEREOF, the petition is dismissed. The Decision of the Court of Appeals dated May 11, 2005 is affirmed.

Costs against petitioners.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 182485. July 3, 2009]

SPS. HENRY O and PACITA CHENG, *petitioners, vs.* **SPS. JOSE JAVIER and CLAUDIA DAILISAN,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF IN CIVIL CASES; AVERMENT OF NEGATIVE FACT. — In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. When a plaintiff's case depends upon the establishment of a negative fact, and the means of proving the fact are equally within the control of each party, then the burden of proof is upon the party averring the negative fact.

2. ID.; ID.; ID.; BEST EVIDENCE TO PROVE COURT NOTICE WAS SENT BY MAIL. — In the instant case, respondents assert the negative fact, *i.e.*, that no copy of the October 16, 1989

[37] *Gold Loop Properties v. Court of Appeals*, G.R. No. 122088, January 26, 2001, 350 SCRA 371, 379-380; *Nokom v. National Labor Relations Commission*, G.R. No. 140043, July 18, 2000, 336 SCRA 97, 110.

Order was sent to petitioners. In short, they have the burden of proof to show that petitioners were not furnished with a copy of the October 16, 1989 Order. To prove that petitioners did not receive a copy of the Order, respondents submitted the certification of the Acting Branch Clerk of Court of the Regional Trial Court-Pasig, Branch 155 stating that "*there is no showing that the Order of this Court dated October 16, 1989 which was sent by registered mail to Atty. Nicasio E. Martin at his address appearing on record was received by the said counsel*" and that "*the registry receipt number evidencing that this Court had indeed sent the said Order by registered mail to Atty. Nicasio E. Martin at his given address is no longer available and cannot be located anymore despite diligent efforts*." However, said certification does not conclusively prove that the Order was not sent to or received by petitioners' counsel. On the contrary, what the certification shows is that a copy of the Order was sent by registered mail to petitioner's counsel but the registry receipt accompanying the same could no longer be found in the records. Said certification did not indicate that the Order was never sent out. Besides, a closer examination of the records shows that although no registry receipt was attached to the October 16, 1989 Order, the dorsal side bears a notation stating "Reg. Mail, date, and 1. N. Martin 2. D. Telan." This is similar to the notations in the other notices that were previously sent to and received by the parties' counsels. Besides, the best evidence to prove that notice was sent would be a certification from the postmaster, and not from the clerk of court, who should certify not only that the notice was issued or sent but also as to how, when and to whom the delivery thereof was made. The mailman may also testify that the notice was actually delivered.

3. ID.; CIVIL PROCEDURE; SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS; COMPLETENESS OF SERVICE. — Section 8, Rule 13 of the Rules of Court states that: SEC. 8. *Completeness of service*. Personal service is complete upon actual delivery. Service by ordinary mail is complete upon the expiration of five (5) days after mailing, unless the court otherwise provides. Service by registered mail is complete upon actual receipt by the addressee; but if he fails to claim his mail from the post office within five (5) days from the date of first notice of the postmaster, service shall take effect at the expiration of such time.

4. ID.; ID.; EXECUTION, SATISFACTION AND EFFECT OF JUDGMENTS; TIME LIMITATIONS IN ENFORCEMENT OF JUDGMENT. — Once a judgment becomes final, it is basic that the prevailing party is entitled as a matter of right to a writ of execution the issuance of which is the trial court's ministerial duty, compellable by *mandamus*. However, the prevailing party must comply with the time limitations in enforcing judgments. Section 6, Rule 39 of the Revised Rules of Court states that: A final and executory judgment or order may be executed on motion within five (5) years from the date of its entry. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action. The revived judgment may also be enforced by motion within five (5) years from the date of its entry and thereafter by action before it is barred by the statute of limitations. The purpose of the law in prescribing time limitations for enforcing judgments by action is to prevent obligors from sleeping on their rights.

5. ID.; ID.; ID.; ID.; ID.; STATUTE OF LIMITATIONS FROM ASKING EXECUTION OF JUDGMENT, APPLIED IN CASE AT BAR. — In the instant case, the October 29, 1987 Decision became final and executory in 1989. However, respondents moved for its execution only on January 24, 2003. Having slept on their right to enforce the judgment for more than 13 years, respondents are now barred by the statute of limitations from asking for its execution. Mere presumption that petitioners filed an appeal is not a valid excuse in failing to verify the status of the case and assert their right to enforce judgment for more than a decade. Respondents' blind reliance on their lawyer and inaction for 13 years constitute unreasonable delay in exercising their right to have the October 29, 1987 Decision be executed.

6. LEGAL ETHICS; LITIGANTS REPRESENTED BY COUNSEL; DUTY TO GIVE THE NECESSARY ASSISTANCE TO THEIR COUNSEL ON MATTERS OF THEIR CASE, OVERLOOKED IN CASE AT BAR. — Litigants represented by counsel should not expect that all they need to do is sit back and relax, and await the outcome of their case. They should give the necessary assistance to their counsel, for at stake is their interest in the case. While lawyers are expected to exercise a reasonable degree of diligence and competence in handling cases for their clients, the realities of law practice as well as certain fortuitous events

sometimes make it almost physically impossible for lawyers to be immediately updated on a particular client's case. Had respondents been persistent in following up the status of their case with their former lawyer, they would have discovered that he was already a judge thus necessitating the hiring of another lawyer. Their indifference, if not negligence, is indicative of lack of interest in executing the decision rendered in their favor. Obviously, respondents capitalized on their alleged discovery that petitioners were not furnished a copy of the October 16, 1989 Order as a convenient excuse for tarrying on the motion for execution and non-compliance with Rule 39, Sections 1 and 6 of the Rules of Court.

7. CIVIL LAW; HUMAN RELATIONS; LACHES; ELUCIDATED. — We find respondents guilty of laches, the essence of which is the failure or neglect, for an unreasonable and unexplained length of time to do that which, by exercising due diligence, could or should have been done earlier; it is the negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it. Laches is not concerned with the mere lapse of time, rather, the party must have been afforded an opportunity to pursue his claim in order that the delay may sufficiently constitute laches.

APPEARANCES OF COUNSEL

Rosenberg G. Palabasan for petitioners.
Dino M. Adriosula for respondents.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

Assailed in this petition for review on *certiorari* is the November 29, 2007 Decision[1] of the Court of Appeals in CA-G.R. CV No. 82342, setting aside the May 29, 2003 Order[2] of

[1] *Rollo*, pp. 57-63; penned by Associate Justice Magdangal M. de Leon and concurred in by Associate Justices Rebecca de Guia-Salvador and Ricardo R. Rosario.

[2] *Id.* at 39, penned by Judge Luis R. Tongco.

Branch 155 of the Regional Trial Court of Pasig City in Civil Case No. 33043 which denied respondents' Motion for Execution[3] of the trial court's October 29, 1987 Decision.[4] Also assailed is the April 10, 2008 Resolution[5] denying the Motion for Reconsideration.[6]

In May 1979, respondents filed a Complaint for Annulment of Contract of Sale[7] involving a parcel of land in Tanay, Rizal. They alleged that petitioners took advantage of respondent Jose Javier's illiteracy and deceived him to sign a Deed of Sale over the subject property; and that petitioners did not pay in full the contract price.

On October 29, 1987, the Regional Trial Court of Pasig City, Branch 155 rendered a Decision, the dispositive portion of which states:

> Wherefore, judgment is hereby rendered in favor of plaintiffs [herein respondents] and against the defendant [herein petitioner Henry O.];
>
> 1. Declaring as null and void the Deed of Sale marked as Exh. A.
> 2. Ordering the Register of Deeds to cancel TCT M-7458 issued in favor of defendant;
> 3. Ordering the plaintiff to return the sum of ₱20,000.00 to defendant which they received as down payment and
> 4. Ordering the plaintiff to pay attorney's fees of ₱5,000.00 and to pay the costs.
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> SO ORDERED.[8]

Respondents filed a Notice of Appeal[9] which was denied by the trial court for having been belatedly filed.[10] On the other

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

[4] *Id.* at 51-54, penned by Judge Fernando I. Gerona, Jr.

[5] *Id.* at 111-112.

[6] *Id.* at 64-71.

[7] Records, pp. 2-6.

[8] *Rollo*, p. 54.

[9] Records, p. 355.

[10] *Id.* at 357.

hand, petitioners filed a Motion for Reconsideration[11] but the same was also denied in an Order[12] dated October 16, 1989.

Thirteen years thereafter, respondents allegedly discovered that no copy of the October 16, 1989 Order was sent to petitioners; hence they filed an Urgent *Ex-Parte* Motion[13] for the transmittal of the said Order to petitioners and their counsel of record which was granted by the trial court in an Order[14] dated December 9, 2002.

Meanwhile, petitioners filed a Manifestation[15] that their previous counsel[16] received a copy of the October 16, 1989 Order sometime in November 1989 thus making the service of another copy superfluous and unnecessary. Nonetheless, a copy of the October 16, 1989 Order was still served upon them. Thereafter, respondents moved for the execution of judgment[17] but the same was denied by the trial court in its May 29, 2003 Order,[18] to wit:

> Acting on the Motion For Execution of Judgment dated October 29, 1987 filed by the plaintiffs [herein respondents], through counsel, stating, among others, that defendants [herein petitioners] failed to perfect an appeal within the reglementary period, and it appearing that more than 13 years had elapsed since the issuance of the Order dated October 16, 1989 thus, making the same final and executory, and it appearing further that plaintiffs have not taken any action to enforce the Decision rendered in the instant case except by mere motion which is not allowed by Sec. 6, Rule 39 of the 1997 Rules of Civil Procedure, and it appearing finally that plaintiffs failed to exercise due diligence in asserting their right within a reasonable time

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[11] *Id.* at 345-354.

[12] *Id.* at 358.

[13] *Id.* at 359-360.

[14] *Id.* at 376.

[15] *Id.* at 379-380.

[16] Atty. Nicasio Martin, now deceased.

[17] Records, pp. 382-383.

[18] *Rollo*, p. 39.

warranting the presumption that they either had abandoned or declined to assert it (*Heirs of Pedro Lopez vs. Hondesto de Castro, et al.*, G.R. No. 112905, February 3, 2000), the same is hereby DENIED for lack of merit.

SO ORDERED.[19]

Respondents appealed to the Court of Appeals which set aside the above-quoted Order and directed the trial court to issue a writ of execution. According to the appellate court, the trial court's decision had not attained finality in 1989 because petitioners were not served a copy of the October 16, 1989 Order denying the motion for reconsideration; and that the trial court erred in declaring that respondents slept on their right to enforce judgment.

On April 10, 2008, the Court of Appeals denied petitioners' Motion for Reconsideration; hence, this petition based on the following grounds:

1. WHETHER OR NOT THE DECISION DATED 29 OCTOBER 1987 BECAME FINAL AND EXECUTORY ONLY IN 2002.
2. WHETHER OR NOT RESPONDENTS ARE GUILTY OF ESTOPPEL *IN PAIS* OR LACHES?
3. WHETHER OR NOT THE APPEAL SHOULD HAVE BEEN DISMISSED.[20]

Petitioners insist that their former counsel received a copy of the October 16, 1989 Order but they opted not to appeal the same anymore. They contend that it was sent to them at the same time a copy thereof was sent to respondents, in view of the presumption of regularity in the performance of the postmaster's official duty. Since they never appealed the October 29, 1987 Decision, petitioners conclude that the same became final and executory; consequently, respondents' move to have it executed 13 years after its finality is already barred by prescription.

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[19] *Id*.

[20] *Id.* at 13.

We grant the petition.

In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence.[21] When a plaintiff's case depends upon the establishment of a negative fact, and the means of proving the fact are equally within the control of each party, then the burden of proof is upon the party averring the negative fact.[22]

In the instant case, respondents assert the negative fact, *i.e.*, that no copy of the October 16, 1989 Order was sent to petitioners. In short, they have the burden of proof to show that petitioners were not furnished with a copy of the October 16, 1989 Order.

To prove that petitioners did not receive a copy of the Order, respondents submitted the certification of the Acting Branch Clerk of Court of the Regional Trial Court-Pasig, Branch 155 stating that "*there is no showing that the Order of this Court dated October 16, 1989 which was sent by registered mail to Atty. Nicasio E. Martin at his address appearing on record was received by the said counsel*" and that "*the registry receipt number evidencing that this Court had indeed sent the said Order by registered mail to Atty. Nicasio E. Martin at his given address is no longer available and cannot be located anymore despite diligent efforts*."[23] However, said certification does not conclusively prove that the Order was not sent to or received by petitioners' counsel. On the contrary, what the certification shows is that a copy of the Order was sent by registered mail to petitioner's counsel but the registry receipt accompanying the same could no longer be found in the records. Said certification did not indicate that the Order was never sent out. Besides, a closer examination of the records shows that although no registry receipt was attached to the October 16, 1989 Order, the dorsal side

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[21] RULES OF COURT, Rule 133, Sec. 1.

[22] *People v. Solayao*, G.R. No. 119220, September 20, 1996, 262 SCRA 255, 265, citing V. Francisco, *Evidence* 13, 1973 ed.

[23] *Rollo*, p. 72.

bears a notation stating "Reg. Mail, date, and 1. N. Martin 2. D. Telan."[24] This is similar to the notations in the other notices[25] that were previously sent to and received by the parties' counsels. Besides, the best evidence to prove that notice was sent would be a certification from the postmaster, and not from the clerk of court, who should certify not only that the notice was issued or sent but also as to how, when and to whom the delivery thereof was made. The mailman may also testify that the notice was actually delivered.[26]

Respondents miserably failed to discharge their burden of proof. Their bare assertion, without presenting proof to substantiate the same, failed to show that petitioners were not furnished with a copy of the October 16, 1989 Order. Moreover, petitioners admitted having received a copy of the Order denying their Motion for Reconsideration but chose not to appeal the October 29, 1987 Decision anymore.

Section 8, Rule 13 of the Rules of Court states that:

> SEC. 8. *Completeness of service*. Personal service is complete upon actual delivery. Service by ordinary mail is complete upon the expiration of five (5) days after mailing, unless the court otherwise provides. Service by registered mail is complete upon actual receipt by the addressee; but if he fails to claim his mail from the post office within five (5) days from the date of first notice of the postmaster, service shall take effect at the expiration of such time.

Pursuant to the foregoing rule, when petitioners' former counsel received in November of 1989 a copy of the October 16, 1989 Order by registered mail, service is deemed completed. Since they chose not to file an appeal, the October 29, 1987 Decision became final and executory after the lapse of 15 days from the date of receipt of the October 16, 1989 Order.

Once a judgment becomes final, it is basic that the prevailing party is entitled as a matter of right to a writ of execution the

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[24] Records, p. 358.

[25] *Id.* at 302, 344, 357, 371, 387, 397, and 403.

[26] *Aguilar v. Court of Appeals*, 369 Phil. 655, 661-662 (1999).

issuance of which is the trial court's ministerial duty, compellable by *mandamus*.[27] However, the prevailing party must comply with the time limitations in enforcing judgments. Section 6, Rule 39 of the Revised Rules of Court states that:

> A final and executory judgment or order may be executed on motion within five (5) years from the date of its entry. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action. The revived judgment may also be enforced by motion within five (5) years from the date of its entry and thereafter by action before it is barred by the statute of limitations.

The purpose of the law in prescribing time limitations for enforcing judgments by action is to prevent obligors from sleeping on their rights.[28]

In the instant case, the October 29, 1987 Decision became final and executory in 1989. However, respondents moved for its execution only on January 24, 2003. Having slept on their right to enforce the judgment for more than 13 years, respondents are now barred by the statute of limitations from asking for its execution. Mere presumption that petitioners filed an appeal is not a valid excuse in failing to verify the status of the case and assert their right to enforce judgment for more than a decade. Respondents' blind reliance on their lawyer and inaction for 13 years constitute unreasonable delay in exercising their right to have the October 29, 1987 Decision be executed.

Litigants represented by counsel should not expect that all they need to do is sit back and relax, and await the outcome of their case. They should give the necessary assistance to their counsel, for at stake is their interest in the case. While lawyers are expected to exercise a reasonable degree of diligence and competence in handling cases for their clients, the realities of law practice as well as certain fortuitous events sometimes

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[27] *Greater Metropolitan Manila Solid Waste Management Committee v. Jancom Environmental Corporation*, G.R. No. 163663, June 30, 2006, 494 SCRA 280, 296.

[28] *Camacho v. Court of Appeals*, 351 Phil. 108, 115 (1998).

make it almost physically impossible for lawyers to be immediately updated on a particular client's case.[29]

Had respondents been persistent in following up the status of their case with their former lawyer, they would have discovered that he was already a judge thus necessitating the hiring of another lawyer. Their indifference, if not negligence, is indicative of lack of interest in executing the decision rendered in their favor. Obviously, respondents capitalized on their alleged discovery that petitioners were not furnished a copy of the October 16, 1989 Order as a convenient excuse for tarrying on the motion for execution and non-compliance with Rule 39, Sections 1 and 6 of the Rules of Court.

Worth noting is the fact that in respondents' Notice of Appeal, they stated that the October 29, 1987 Decision is "contrary to the facts and the laws involved in the case,"[30] notwithstanding that the same had been rendered in their favor. Also in 2001, Antonio D. Javier, the son of respondents, sent petitioners a facsimile letter which reads:

18 December 2001

Mr. Henry O.,

This is with regards to the piece of land owned by my father situated in Tanay, Rizal, which is now presently in your possession.

I have been trying to call for quite some time now but I was not so lucky to have contacted you. This is to ask for your help in order to settle this matter once and for all.

At this point, may I offer you One Hundred Thousand Pesos (₱100,000.00) as settlement, but I guess, it would be much better if we could talk personally regarding this matter.

(signed)
Mr. Antonio D. Javier[31]

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[29] *Gold Line Transit, Inc. v. Ramos*, 415 Phil. 492, 504 (2001).

[30] Records, p. 355.

[31] CA *rollo*, p. 77.

Considering that the October 29, 1987 Decision was rendered in their favor which ordered the reconveyance of the property to herein respondents, we find it unusual that they filed a notice of appeal and even stated that the Decision was contrary to the laws and facts involved in the case; likewise unusual is their offer of ₱100,000.00 to petitioners just to get hold of the property.

Finally, we find respondents guilty of laches, the essence of which is the failure or neglect, for an unreasonable and unexplained length of time to do that which, by exercising due diligence, could or should have been done earlier; it is the negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it.[32] Laches is not concerned with the mere lapse of time, rather, the party must have been afforded an opportunity to pursue his claim in order that the delay may sufficiently constitute laches.[33]

WHEREFORE, the Petition for Review on *Certiorari* is *GRANTED*. The November 29, 2007 Decision of the Court of Appeals in CA-G.R. CV 82342, setting aside the May 29, 2003 Order of Branch 155 of the Regional Trial Court of Pasig City in Civil Case No. 33043, which denied respondents' Motion for Execution of the Judgment of the trial court as embodied in its October 29, 1987 Decision, and its April 10, 2008 Resolution denying petitioners' Motion for Reconsideration are *REVERSED* and *SET ASIDE*.

SO ORDERED.

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

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[32] *Felix v. Buenaseda,* 310 Phil. 161, 174 (1995).

[33] *Pineda v. Heirs of Eliseo Guevara,* G.R. No. 143188, February 14, 2007, 515 SCRA 627, 635.

SECOND DIVISION

[G.R. No. 182941. July 3, 2009]

ROBERT SIERRA *y* CANEDA, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TESTIMONY OF RAPE VICTIM UPHELD AS AGAINST ACCUSED' DEFENSE OF DENIAL AND ALIBI. — The records show that the prosecution established all the elements of the crime charged through the credible testimony of AAA and the other corroborating evidence; sexual intercourse did indeed take place as the information charged. As against AAA's testimony, the petitioner could only raise the defenses of denial and alibi – defenses that, in a long line of cases, we have held to be inherently weak unless supported by clear and convincing evidence; the petitioner failed to present this required evidentiary support. We have held, too, that as negative defenses, denial and alibi cannot prevail over the credible and positive testimony of the complainant. We sustain the lower courts on the issue of credibility, as we see no compelling reason to doubt the validity of their conclusions in this regard.

2. ID.; CIVIL PROCEDURE; APPEAL; DEFENSE ON APPEAL OF EXEMPTION FROM CRIMINAL LIABILITY UNDER R.A. NO. 9344; HOW THE SAME HANDLED BY THE COURT. — While the defense, on appeal, raises a new ground – *i.e.*, exemption from criminal liability under R.A. No. 9344 – that implies an admission of guilt, this consideration in no way swayed the conclusion we made above, as the defense is entitled to present all alternative defenses available to it, even inconsistent ones. We note, too, that the defense's claim of exemption from liability was made for the first time in its appeal to the CA. While this may initially imply an essential change of theory that is usually disallowed on appeal for reasons of fairness, no essential change is really involved as the claim for exemption from liability is not incompatible with the evidence submitted below and with the lower courts' conclusion that the petitioner is guilty of the crime charged. An exempting circumstance, by its nature, admits

that criminal and civil liabilities exist, but the accused is freed from criminal liability; in other words, the accused committed a crime, but he cannot be held criminally liable therefor because of an exemption granted by law. In admitting this type of defense on appeal, we are not unmindful, too, that the appeal of a criminal case (even one made under Rule 45) opens the whole case for review, even on questions that the parties did not raise. By mandate of the Constitution, no less, we are bound to look into every circumstance and resolve every doubt in favor of the accused. It is with these considerations in mind and in obedience to the direct and more specific commands of R.A. No. 9344 on how the cases of children in conflict with the law should be handled that we rule in this Rule 45 petition. We find a review of the facts of the present case and of the applicable law on exemption from liability compelling because of the patent errors the CA committed in these regards. Specifically, the CA's findings of fact on the issues of age and minority, premised on the supposed absence of evidence, are contradicted by the evidence on record; it also manifestly overlooked certain relevant facts not disputed by the parties that, if properly considered, would justify a different conclusion. In tackling the issues of age and minority, we stress at the outset that the ages of both the petitioner and the complaining victim are material and are at issue. The age of the petitioner is critical for purposes of his entitlement to exemption from criminal liability under R.A. No. 9344, while the age of the latter is material in characterizing the crime committed and in considering the resulting civil liability that R.A. No. 9344 does not remove.

3. CRIMINAL LAW; JUVENILE JUSTICE AND WELFARE ACT OF 2006 (R.A. NO. 9344); ON MINORITY AS AN EXEMPTING CIRCUMSTANCE. — R.A. No. 9344 was enacted into law on April 28, 2006 and took effect on May 20, 2006. Its intent is to promote and protect the rights of a child in conflict with the law or a child at risk by providing a system that would ensure *that children are dealt with in a manner appropriate to their well-being through a variety of disposition measures such as care, guidance and supervision orders, counseling, probation, foster care, education and vocational training programs and other alternatives to institutional care*. More importantly in the context of this case, this law modifies as well the minimum

age limit of criminal irresponsibility for minor offenders; it changed what paragraphs 2 and 3 of Article 12 of the Revised Penal Code (*RPC*), as amended, previously provided – *i.e.*, from "under nine years of age" and "above nine years of age and under fifteen" (who acted without discernment) – to "fifteen years old or under" and "above fifteen but below 18" (who acted without discernment) in determining exemption from criminal liability. In providing exemption, the new law – as the old paragraphs 2 and 3, Article 12 of the RPC did – presumes that the minor offenders completely lack the intelligence to distinguish right from wrong, so that their acts are deemed involuntary ones for which they cannot be held accountable. The current law also drew its changes from the principle of restorative justice that it espouses; it considers the ages 9 to 15 years as formative years and gives minors of these ages a chance to right their wrong through diversion and intervention measures.

4. ID.; ID.; ID.; BURDEN OF PROOF. — Burden of proof, under Section 1, Rule 131 of the Rules on Evidence, refers to the duty of a party to present evidence on the facts in issue in order to establish his or her claim or defense. In a criminal case, the burden of proof to establish the *guilt of the accused* falls upon the prosecution which has the duty to prove all the essential ingredients of the crime. The prosecution completes its case as soon as it has presented the evidence it believes is sufficient to prove the required elements. At this point, the burden of evidence shifts to the defense to disprove what the prosecution has shown by evidence, or to prove by evidence the circumstances showing that the accused did not commit the crime charged or cannot otherwise be held liable therefor. In the present case, the prosecution completed its evidence and had done everything that the law requires it to do. The burden of evidence has now shifted to the defense which now claims, by an affirmative defense, that the accused, even if guilty, should be exempt from criminal liability because of his age when he committed the crime. The defense, therefore, not the prosecution, has the burden of showing by evidence that the petitioner was 15 years old or less when he committed the rape charged. This conclusion can also be reached by considering that minority and age are not elements of the crime of rape; the prosecution therefore has no duty to prove these

circumstances. To impose the burden of proof on the prosecution would make minority and age integral elements of the crime when clearly they are not. If the prosecution has a burden related to age, this burden relates to proof of the age of the victim as a circumstance that qualifies the crime of rape.

5. ID.; ID.; ID.; DETERMINATION OF AGE; MAY BE ESTABLISHED BY TESTIMONIAL EVIDENCE. — The CA seriously erred when it rejected testimonial evidence showing that the petitioner was only 15 years old at the time he committed the crime. Section 7 of R.A. No. 9344 expressly states how the age of a child in conflict with the law may be determined: SEC. 7. *Determination of Age.* – x x x **The age of a child may be determined from the child's birth certificate, baptismal certificate or any other pertinent documents.** ***In the absence of these documents, age may be based on information from the child himself/herself, testimonies of other persons, the physical appearance of the child and other relevant evidence*****. In case of doubt as to the age of the child, it shall be resolved in his/her favor.** Rule 30-A of the Rules and Regulations Implementing R.A. No. 9344 provides the implementing details of this provision by enumerating the measures that may be undertaken by a law enforcement officer to ascertain the child's age: (1) Obtain documents that show proof of the child's age, such as (a) Child's birth certificate; (b) Child's baptismal certificate; or (c) Any other pertinent documents such as but not limited to the child's school records, dental records, or travel papers. (2) x x x (3) When the above documents cannot be obtained or pending receipt of such documents, the law enforcement officer shall exhaust other measures to determine age by: (a) Interviewing the child and obtaining information that indicate age (*e.g.* date of birthday, grade level in school); (b) Interviewing persons who may have knowledge that indicate[s] age of the child (*e.g.* relatives, neighbors, teachers, classmates); (c) Evaluating the physical appearance (*e.g.* height, built) of the child; and (d) Obtaining other relevant evidence of age. x x x Section 7, R.A. No. 9344, while a relatively new law (having been passed only in 2006), does not depart from the jurisprudence existing at that time on the evidence that may be admitted as satisfactory proof of the accused's minority and age.

6. ID.; ID.; ID.; ID.; ID.; CONCURRING CONDITIONS IN PERTINENT CASES THAT GAVE EVIDENTIARY WEIGHT

ON ACCUSED' MINORITY AND AGE, AND ANY DOUBT ON THE AGE OF THE CHILD OFFENDER MUST BE RESOLVED IN HIS FAVOR. —In several pertinent cases, we gave evidentiary weight to testimonial evidence on the accused's minority and age upon the concurrence of the following conditions: (1) the absence of any other satisfactory evidence such as the birth certificate, baptismal certificate, or similar documents that would prove the date of birth of the accused; (2) the presence of testimony from accused and/or a relative on the age and minority of the accused at the time of the complained incident without any objection on the part of the prosecution; and (3) lack of any contrary evidence showing that the accused's and/or his relatives' testimonies are untrue. All these conditions are present in this case. We also stress that the last paragraph of Section 7 of R.A. No. 9344 provides that any doubt on the age of the child must be resolved in his favor. Hence, any doubt in this case regarding the petitioner's age at the time he committed the rape should be resolved in his favor. In other words, the testimony that the petitioner as 15 years old when the crime took place should be read to mean that he was not more than 15 years old as this is the more favorable reading that R.A. No. 9344 directs.

7. ID.; ID.; ID.; RETROACTIVE APPLICATION, DISCUSSED. — That the petitioner committed the rape before R.A. No. 9344 took effect and that he is no longer a minor (he was already 20 years old when he took the stand) will not bar him from enjoying the benefit of total exemption that Section 6 of R.A. No. 9344 grants. As we explained in discussing Sections 64 and 68 of R.A. No. 9344 in the recent case of *Ortega v. People*: Section 64 of the law categorically provides that cases of children 15 years old and below, **at the time of the commission of the crime,** shall immediately be dismissed and the child shall be referred to the appropriate local social welfare and development officers (LSWDO). **What is controlling, therefore, with respect to the exemption from criminal liability of the CICL, is not the CICL's age at the time of the promulgation of judgment but the CICL's age at the time of the commission of the offense.** In short, by virtue of R.A. No. 9344, the age of criminal irresponsibility has been raised from 9 to 15 years old. The retroactive application of R.A. No. 9344 is also justified under Article 22 of the RPC, as amended, which provides that penal laws are to be given

retroactive effect insofar as they favor the accused who is not found to be a habitual criminal. Nothing in the records of this case indicates that the petitioner is a habitual criminal.

8. ID.; ID.; ID.; CIVIL LIABILITY REMAINS DESPITE EXEMPTION. — The last paragraph of Section 6 of R.A. No. 9344 provides that the accused shall continue to be civilly liable despite his exemption from criminal liability; hence, the petitioner is civilly liable to AAA despite his exemption from criminal liability. The extent of his civil liability depends on the crime he would have been liable for had he not been found to be exempt from criminal liability.

9. ID.; RAPE; GUIDELINES IN APPRECIATING THE AGE OF OFFENDED PARTY. — *People v. Pruna* laid down these guidelines in appreciating the age of the complainant: In order to remove any confusion that may be engendered by the foregoing cases, we hereby set the following guidelines in appreciating age, either as an element of the crime or as a qualifying circumstance. 1. The best evidence to prove the **age of the offended party** is an original or certified true copy of the certificate of live birth of such party. 2. In the absence of a certificate of live birth, similar authentic documents such as baptismal certificate and school records which show the date of birth of the victim would suffice to prove age. 3. If the certificate of live birth or authentic document is shown to have been lost or destroyed or otherwise unavailable, the testimony, if clear and credible, of the victim's mother or a member of the family either by affinity or consanguinity who is qualified to testify on matters respecting pedigree such as the exact age or date of birth of the offended party pursuant to Section 40, Rule 130 of the Rules on Evidence shall be sufficient under the following circumstances: a. If the victim is alleged to be below 3 years of age and what is sought to be proved is that she is less than 7 years old; b. If the victim is alleged to be below 7 years of age and what is sought to be proved is that she is less than 12 years old; c. If the victim is alleged to be below 12 years of age and what is sought to be proved is that she is less than 18 years old. 4. In the absence of a certificate of live birth, authentic document, or the testimony of the victim's mother or relatives concerning the victim's age, **the complainant's testimony will suffice provided that it is expressly and clearly admitted by the accused. 5. It is the prosecution**

that has the burden of proving the age of the offended party. The failure of the accused to object to the testimonial evidence regarding age shall not be taken against him.

10. ID.; ID.; SIMPLE RAPE COMMITTED IN THE ABSENCE OF CIRCUMSTANCES THAT WILL UPGRADE THE CRIME TO QUALIFIED RAPE; PROPER CIVIL LIABILITY IN CASE AT BAR. — The required concurrence of circumstances that would upgrade the crime to qualified rape – *i.e.*, relationship within the third degree of consanguinity and minority of the victim – does not exist. The crime for which the petitioner should have been found criminally liable should therefore only be simple rape pursuant to par. 1, Article 266-A of the RPC, not qualified rape. The civil liability that can be imposed on the petitioner follows the characterization of the crime and the attendant circumstances. Accordingly, we uphold the grant of moral damages of ₱50,000.00 but increase the awarded exemplary damages of ₱30,000.00, both pursuant to prevailing jurisprudence. Moral damages are automatically awarded to rape victims without the necessity of proof; the law assumes that the victim suffered moral injuries entitling her to this award. Article 2230 of the Civil Code justifies the award of exemplary damages because of the presence of the aggravating circumstances of relationship between AAA and petitioner and dwelling. As discussed, the relationship (between the parties) is not disputed. We appreciate dwelling as an aggravating circumstance based on AAA's testimony that the rape was committed in their house. While dwelling as an aggravating circumstance was not alleged in the Information, established jurisprudence holds that it may nevertheless be appreciated as basis for the award of exemplary damages. We modify the awarded civil indemnity of ₱75,000.00 to ₱50,000.00, the latter being the civil indemnity appropriate for simple rape on the finding that rape had been committed.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
The Solicitor General for respondent.

D E C I S I O N

BRION, *J.*:

Before us is the petition of Robert Sierra *y* Caneda (*petitioner*) for the review on *certiorari*[1] of the Decision[2] and Resolution[3] of the Court of Appeals[4] (*CA*) that affirmed with modification his conviction for the crime of qualified rape rendered by the Regional Trial Court (*RTC*), Branch 159, Pasig City, in its decision of April 5, 2006.

THE ANTECEDENT FACTS

In August 2000, thirteen-year-old AAA[5] was playing with her friend BBB in the second floor of her family's house in Palatiw, Pasig. The petitioner arrived holding a knife and told AAA and BBB that he wanted to play with them. The petitioner then undressed BBB and had sexual intercourse with her. Afterwards, he turned to AAA, undressed her, and also had sexual intercourse with her by inserting his male organ into hers. The petitioner warned AAA not to tell anybody of what they did.

AAA subsequently disclosed the incident to Elena Gallano (her teacher) and to Dolores Mangantula (the parent of a classmate), who both accompanied AAA to the *barangay* office. AAA was later subjected to physical examination that revealed

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

[2] Dated February 29, 2008; *rollo*, pp. 81-103.

[3] Dated May 22, 2008; *id.*, pp. 115-117.

[4] Docketed as CA-G.R.-CR. H.C. No. 02218, and penned by Associate Justice Andres B. Reyes, Jr., with Associate Justice Jose C. Mendoza and Associate Justice Ramon M. Bato, Jr., concurring.

[5] The real name of the victim as well as those of her immediate family members is withheld *per* Republic Act (*R.A.*) No. 7610 (An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and for Other Purposes) and R.A. No. 9262 (An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefore, and for Other Purposes).

a laceration on her hymen consistent with her claim of sexual abuse. On the basis of the complaint and the physical findings, the petitioner was charged with rape under the following Information:

> On or about August 5, 2000, in Pasig City and within the jurisdiction of this Honorable Court, the accused, a minor, 15 years old, with lewd designs and by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with his (accused) sister, AAA, thirteen years of age, against the latter's will and consent.
>
> Contrary to law.[6]

The petitioner pleaded not guilty to the charge and raised the defenses of denial and alibi. He claimed that he was selling cigarettes at the time of the alleged rape. He also claimed that AAA only invented her story because she bore him a grudge for the beatings he gave her. The parties' mother (*CCC*) supported the petitioner's story; she also stated that AAA was a troublemaker. Both CCC and son testified that the petitioner was fifteen (15) years old when the alleged incident happened.[7]

The defense also presented BBB who denied that the petitioner raped her; she confirmed the petitioner's claim that AAA bore her brother a grudge.

On April 5, 2006, the RTC convicted the petitioner of qualified rape as follows:

> WHEREFORE, in view of the foregoing, this Court finds the accused ROBERT SIERRA *y* CANEDA GUILTY beyond reasonable doubt of the crime of rape (Violation of R.A. 8353 in relation to SC A.M. 99-1-13) and hereby sentences the said juvenile in conflict with law to suffer the penalty of imprisonment of *reclusion perpetua*; and to indemnify the victim the amount of ₱75,000 as civil indemnity, ₱50,000 as moral damages, and ₱25,000 as exemplary damages.

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[6] This case was docketed as Criminal Case No. 120292-H; *rollo*, pp. 82-83.

[7] *Id.*, pp. 51 and 53.

SO ORDERED.[8]

The petitioner elevated this RTC decision to the CA by attacking AAA's credibility. He also invoked paragraph 1, Section 6 of R.A. No. 9344 (*Juvenile Justice and Welfare Act of 2006*)[9] to exempt him from criminal liability considering that he was only 15 years old at the time the crime was committed.

The CA nevertheless affirmed the petitioner's conviction with modification as to penalty as follows:

> WHEREFORE, finding that the trial court did not err in convicting Robert Sierra, the assailed Decision is hereby **AFFIRMED** with **MODIFICATION** that Robert Sierra has to suffer the penalty of imprisonment of ***RECLUSION TEMPORAL* MAXIMUM.** The award of damages are likewise affirmed.
>
> SO ORDERED.[10]

In ruling that the petitioner was not exempt from criminal liability, the CA held:

> As to the penalty, We agree with the Office of the Solicitor General that Robert is not exempt from liability. First, it was not clearly established and proved by the defense that Robert was 15 years old or below at the time of the commission of the crime. It was incumbent for the defense to present Robert's birth certificate if it was to invoke Section 64 of Republic Act No. 9344. Neither is the suspension of sentence available to Robert as the Supreme Court, in one case, clarified that:
>
> > We note that, in the meantime, Rep. Act No. 9344 took effect on May 20, 2006. Section 38 of the law reads:
> >
> > SEC. 38. *Automatic Suspension of Sentence*. – Once the child who is under eighteen (18) years of age at the

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[8] *Id.*,pp. 81-82.

[9] **SEC. 6.** ***Minimum Age of Criminal Responsibility.*** – A child fifteen (15) years of age or under at the time of the commission of the offense shall be exempt from criminal liability. However, the child shall be subjected to an intervention program pursuant to Section 20 of this Act. x x x

[10] *Rollo,* pp. 102-103.

> time of the commission of the offense is found guilty of the offense charged, the court shall determine and ascertain any civil liability which may have resulted from the offense committed. However, instead of pronouncing the judgment of conviction, the court shall place the child in conflict with the law under suspended sentence, without need of application: *Provided, however*, That suspension of sentence shall still be applied even if the juvenile is already eighteen (18) years of age or more at the time of the pronouncement of his/her guilt.
>
> Upon suspension of sentence and after considering the various circumstances of the child, the court shall impose the appropriate disposition measures as provided in the Supreme Court on Juveniles in Conflict with the Law.
>
> The law merely amended Article 192 of P.D. No. 603, as amended by A.M. No. 02-1-18-SC, in that the suspension of sentence shall be enjoyed by the juvenile even if he is already 18 years of age or more at the time of the pronouncement of his/her guilt. The other disqualifications in Article 192 of P.D. No. 603, as amended, and Section 32 of A.M. No. 02-1-18-SC have not been deleted from Section 38 of Republic Act No. 9344. Evidently, the intention of Congress was to maintain the other disqualifications as provided in Article 192 of P.D. No. 603, as amended, and Section 32 of A.M. No. 02-1-18-SC. Hence, juveniles who have been convicted of a crime the imposable penalty for which is *reclusion perpetua*, life imprisonment or *reclusion perpetua* to death or death, are disqualified from having their sentences suspended.[11]

The CA denied the petitioner's subsequent motion for reconsideration; hence, the present petition.

THE ISSUES

The petitioner no longer assails the prosecution's evidence on his guilt of the crime charged; what he now assails is the

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[11] *Id.*, pp. 127-129.

failure of the CA to apply paragraph 1, Section 6[12] of R.A. No. 9344 under the following issues:

(1) Whether or not the CA erred in not applying the provisions of R.A. No. 9344 on the petitioner's exemption from criminal liability;

(2) Whether or not the CA erred in ruling that it was incumbent for the defense to present the petitioner's birth certificate to invoke Section 64 of R.A. No. 9344 when the burden of proving his age lies with the prosecution by express provisions of R.A. No. 9344; and

(3) Whether or not the CA erred in applying the ruling in *Declarador v. Hon. Gubaton*[13] thereby denying the petitioner the benefit of exemption from criminal liability under R.A. No. 9344.

The threshold issue in this case is the determination of who bears the burden of proof for purposes of determining exemption from criminal liability based on the age of the petitioner at the time the crime was committed.

The petitioner posits that the burden of proof should be on the prosecution as the party who stands to lose the case if no evidence is presented to show that the petitioner was not a 15-

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[12] SEC. 6. *Minimum Age of Criminal Responsibility.* – A child fifteen (15) years of age or under at the time of the commission of offense shall be exempt from criminal liability. However, the child shall be subjected to an intervention program pursuant to Section 20 of this Act.

A child above fifteen (15) years but below eighteen (18) years of age shall likewise be exempt from criminal liability and be subjected to an intervention program, unless he/she has acted with discernment, in which case, such child shall be subjected to the appropriate proceedings in accordance with this Act.

The exemption from criminal liability herein established does not include exemption from civil liability, which shall be enforced in accordance with existing laws.

[13] G.R. No. 159208, August 18, 2006, 499 SCRA 341.

year old minor entitled to the exempting benefit provided under Section 6 of R.A. No. 9344.[14] He additionally claims that Sections 3,[15] 7,[16] and 68[17] of the law also provide a presumption of minority in favor of a child in conflict with the law, so that any doubt regarding his age should be resolved in his favor.

The petitioner further submits that the undisputed facts and evidence on record – specifically: the allegation of the Information, the testimonies of the petitioner and CCC that the prosecution never objected to, and the findings of the RTC – established that he was not more than 15 years old at the time of the commission of the crime.

The People's *Comment*, through the Office of the Solicitor General (*OSG*), counters that the burden belongs to the petitioner who should have presented his birth certificate or other documentary evidence proving that his age was 15 years or

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[14] *Rollo*, pp. 10-23.

[15] **SEC. 3.** ***Liberal Construction of this Act.*** – In case of doubt, the interpretation of any of the provisions of this Act, including its implementing rules and regulations (IRRs), shall be construed liberally in favor of the child in conflict with the law.

[16] **SEC. 7.** ***Determination of Age.*** – The child in conflict with the law shall enjoy the presumption of minority. He/She shall enjoy all the rights of a child in conflict with the law until he/she is proven to be eighteen (18) years old or older. The age of a child may be determined from the child's birth certificate, baptismal certificate or any other pertinent documents. In the absence of these documents, age may be based on information from the child himself/herself, testimonies of other persons, the physical appearance of the child and other relevant evidence. **In case of doubt as to the age of the child, it shall be resolved in his/her favor.**

[17] **SEC. 68.** ***Children Who Have Been Convicted and are Serving Sentence.*** – Persons who have been convicted and are serving sentence at the time of the effectivity of this Act, and who were below the age of eighteen (18) years at the time the commission of the offense for which they were convicted and are serving sentence, shall likewise benefit from the retroactive application of this Act. They shall be entitled to appropriate dispositions provided under this Act and their sentences shall be adjusted accordingly. They shall be immediately released if they are so qualified under this Act or other applicable law.

below. The OSG also stressed that while petitioner is presumed to be a minor, he is disqualified to have his sentence suspended following the ruling in *Declarador v. Hon. Gubaton.*[18]

THE COURT'S RULING

We grant the petition.

We examine at the outset the prosecution's evidence and the findings of the lower courts on the petitioner's guilt, since the petition opens the whole case for review and the issues before us are predicated on the petitioner's guilt of the crime charged. A determination of guilt is likewise relevant under the terms of R.A. No. 9344 since its exempting effect is only on the criminal, not on the civil, liability.

We see no compelling reason, after examination of the CA decision and the records of the case, to deviate from the lower courts' findings of guilt. The records show that the prosecution established all the elements of the crime charged through the credible testimony of AAA and the other corroborating evidence; sexual intercourse did indeed take place as the information charged.[19] As against AAA's testimony, the petitioner could only raise the defenses of denial and alibi – defenses that, in a long line of cases, we have held to be inherently weak unless supported by clear and convincing evidence; the petitioner failed to present this required evidentiary support.[20] We have held, too, that as negative defenses, denial and alibi cannot prevail over the credible and positive testimony of the complainant.[21] We sustain the lower courts on the issue of credibility, as we see no compelling reason to doubt the validity of their conclusions in this regard.

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[18] *Supra* note 13, citing the case of *People v. Lugto*, 190 SCRA 754 (1990).

[19] *Rollo*, p. 46.

[20] *People v. Bon*, G.R. No. 166401, October 20, 2006, 506 SCRA 168, 185.

[21] *Ibid.*

While the defense, on appeal, raises a new ground – *i.e.*, exemption from criminal liability under R.A. No. 9344 – that implies an admission of guilt, this consideration in no way swayed the conclusion we made above, as the defense is entitled to present all alternative defenses available to it, even inconsistent ones. We note, too, that the defense's claim of exemption from liability was made for the first time in its appeal to the CA. While this may initially imply an essential change of theory that is usually disallowed on appeal for reasons of fairness,[22] no essential change is really involved as the claim for exemption from liability is not incompatible with the evidence submitted below and with the lower courts' conclusion that the petitioner is guilty of the crime charged. An exempting circumstance, by its nature, admits that criminal and civil liabilities exist, but the accused is freed from criminal liability; in other words, the accused committed a crime, but he cannot be held criminally liable therefor because of an exemption granted by law. In admitting this type of defense on appeal, we are not unmindful, too, that the appeal of a criminal case (even one made under Rule 45) opens the whole case for review, even on questions that the parties did not raise.[23] By mandate of the Constitution, no less, we are bound to look into every circumstance and resolve every doubt in favor of the accused.[24] It is with these considerations in mind and in obedience to the direct and more specific commands of R.A. No. 9344 on how the cases of children in conflict with the law should be handled that we rule in this Rule 45 petition.

We find a review of the facts of the present case and of the applicable law on exemption from liability compelling because of the patent errors the CA committed in these regards. Specifically, the CA's findings of fact on the issues of age and minority, premised on the supposed absence of evidence, are

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[22] *Toledo v. People*, G.R. No. 158057, September 24, 2004, 439 SCRA 94, 103.

[23] *People v. Yam-Id*, G.R. No. 126116, January 21, 1999, 308 SCRA 651, 655, citing *Sacay v. Sandiganbayan*, 142 SCRA 593 (1986).

[24] *Id*.

contradicted by the evidence on record; it also manifestly overlooked certain relevant facts not disputed by the parties that, if properly considered, would justify a different conclusion.[25]

In tackling the issues of age and minority, we stress at the outset that the ages of both the petitioner and the complaining victim are material and are at issue. The age of the petitioner is critical for purposes of his entitlement to exemption from criminal liability under R.A. No. 9344, while the age of the latter is material in characterizing the crime committed and in considering the resulting civil liability that R.A. No. 9344 does not remove.

Minority as an Exempting Circumstance

R.A. No. 9344 was enacted into law on April 28, 2006 and took effect on May 20, 2006. Its intent is to promote and protect the rights of a child in conflict with the law or a child at risk by providing a system that would ensure *that children are dealt with in a manner appropriate to their well-being through a variety of disposition measures such as care, guidance and supervision orders, counseling, probation, foster care, education and vocational training programs and other alternatives to institutional care*.[26] More importantly in the context of this case, this law modifies as well the minimum age limit of criminal irresponsibility for minor offenders; it changed what paragraphs 2 and 3 of Article 12 of the Revised Penal Code (*RPC*), as amended, previously provided – *i.e.*, from "under nine years of age" and "above nine years of age and under fifteen" (who acted without discernment) – to "fifteen years old or under" and "above fifteen but below 18" (who acted without discernment) in determining exemption from criminal liability. In providing exemption, the new law – as the old paragraphs 2 and 3, Article 12 of the RPC did – presumes that the minor offenders completely lack the intelligence to distinguish right from wrong, so that their acts are deemed involuntary

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[25] *Manila Doctors Hospital v. So Un Chua*, G.R. No. 150355, July 31, 2006, 497 SCRA 230, 238.

[26] Section 2(d) of R.A. No. 9344.

ones for which they cannot be held accountable.[27] The current law also drew its changes from the principle of restorative justice that it espouses; it considers the ages 9 to 15 years as formative years and gives minors of these ages a chance to right their wrong through diversion and intervention measures.[28]

In the present case, the petitioner claims total exemption from criminal liability because he was not more than 15 years old at the time the rape took place. The CA disbelieved this claim for the petitioner's failure to present his birth certificate as required by Section 64 of R.A. No. 9344.[29] The CA also found him disqualified to avail of a suspension of sentence because the imposable penalty for the crime of rape is *reclusion perpetua* to death.

Burden of Proof

Burden of proof, under Section 1, Rule 131 of the Rules on Evidence, refers to the duty of a party to present evidence on the facts in issue in order to establish his or her claim or defense. In a criminal case, the burden of proof to establish the *guilt of the accused* falls upon the prosecution which has the duty to prove all the essential ingredients of the crime. The prosecution completes its case as soon as it has presented the evidence it believes is sufficient to prove the required elements. At this point, the burden of evidence shifts to the defense to disprove what the prosecution has shown by evidence, or to prove by evidence the circumstances showing that the accused did not

[27] See: Reyes, *Revised Penal Code*; Book 1 (2008 ed.), p. 40.

[28] See Section 4(q) of R.A. No. 9344.

[29] **SEC. 64.** ***Children in Conflict with the Law Fifteen (15) Years Old and Below.*** – Upon effectivity of this Act, cases of children fifteen (15) years old and below at the time of the commission of the crime shall immediately be dismissed and the child shall be referred to the appropriate local social welfare and development officer. Such officer, upon thorough assessment of the child, shall determine whether to release the child to the custody of his/her parents, or refer the child to prevention programs as provided under this Act. Those with suspended sentences and undergoing rehabilitation at the youth rehabilitation center shall likewise be released, unless it is contrary to the best interest of the child.

commit the crime charged or cannot otherwise be held liable therefor. In the present case, the prosecution completed its evidence and had done everything that the law requires it to do. The burden of evidence has now shifted to the defense which now claims, by an affirmative defense, that the accused, even if guilty, should be exempt from criminal liability because of his age when he committed the crime. The defense, therefore, not the prosecution, has the burden of showing by evidence that the petitioner was 15 years old or less when he committed the rape charged.[30]

This conclusion can also be reached by considering that minority and age are not elements of the crime of rape; the prosecution therefore has no duty to prove these circumstances. To impose the burden of proof on the prosecution would make minority and age integral elements of the crime when clearly they are not. [31] If the prosecution has a burden related to age, this burden relates to proof of the age of the victim as a circumstance that qualifies the crime of rape.[32]

Testimonial Evidence is Competent Evidence to Prove the Accused's Minority and Age

The CA seriously erred when it rejected testimonial evidence showing that the petitioner was only 15 years old at the time

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[30] *People v. Concepcion*, G.R. No. 136844, August 1, 2002, 386 SCRA 74, 78; See*: People v. Austria*, G.R. Nos. 111517-19, July 31, 1996, 260 SCRA 106, 117; *Ty v. People*, G.R. No. 149275, September 27, 2004, 439 SCRA 220, 231; *People v. Castillo*, G.R. No. 172695, June 29, 2007, 526 SCRA 215, 227; *Ortega v. People*, G.R. No. 151085, August 20, 2008.

[31] The elements of rape under paragraph 1 of Article 266-A of the RPC, as amended are: (1) The offender is a man; (2) The offender had carnal knowledge of a woman; and (3) That such act is accomplished under any of the following circumstances: (a) by using force and intimidation; or (b) when the woman is deprived of reason or otherwise unconscious; or (c) by means of fraudulent machination or grave abuse of authority; or (d) when the woman is under 12 years of age or demented; Reyes, II *Revised Penal Code*, p. 556 (2008 edition).

[32] *People v. Dela Cruz*, G.R. Nos. 131167-68, August 23, 2000, 338 SCRA 582; *People v. Villarama*, G.R. No. 139211, February 12, 2003, 397 SCRA 306.

he committed the crime. Section 7 of R.A. No. 9344 expressly states how the age of a child in conflict with the law may be determined:

SEC. 7. *Determination of Age.* – x x x **The age of a child may be determined from the child's birth certificate, baptismal certificate or any other pertinent documents.** ***In the absence of these documents, age may be based on information from the child himself/herself, testimonies of other persons, the physical appearance of the child and other relevant evidence.*** **In case of doubt as to the age of the child, it shall be resolved in his/her favor.** [Emphasis supplied]

Rule 30-A of the Rules and Regulations Implementing R.A. No. 9344 provides the implementing details of this provision by enumerating the measures that may be undertaken by a law enforcement officer to ascertain the child's age:

(1) Obtain documents that show proof of the child's age, such as

  (a) Child's birth certificate;
  (b) Child's baptismal certificate ;or
  (c) Any other pertinent documents such as but not limited to the child's school records, dental records, or travel papers.

(2) x x x x x x x x x

(3) When the above documents cannot be obtained or pending receipt of such documents, the law enforcement officer shall exhaust other measures to determine age by:

  (a) Interviewing the child and obtaining information that indicate age (*e.g.* date of birthday, grade level in school);
  (b) Interviewing persons who may have knowledge that indicate[s] age of the child (*e.g.* relatives, neighbors, teachers, classmates);
  (c) Evaluating the physical appearance (*e.g.* height, built) of the child; and
  (d) Obtaining other relevant evidence of age.

x x x x x x x x x

Section 7, R.A. No. 9344, while a relatively new law (having been passed only in 2006), does not depart from the jurisprudence existing at that time on the evidence that may be admitted as satisfactory proof of the accused's minority and age.

In the 1903 case of *U.S. v. Bergantino*,[33] we accepted testimonial evidence to prove the minority and age of the accused in the absence of any document or other satisfactory evidence showing the date of birth. This was followed by *U.S. v. Roxas*[34] where the defendant's statement about his age was considered sufficient, even without corroborative evidence, to establish that he was a minor of 16 years at the time he committed the offense charged. Subsequently, in *People v. Tismo*,[35] the Court appreciated the minority and age of the accused on the basis of his claim that he was 17 years old at the time of the commission of the offense in the absence of any contradictory evidence or objection on the part of the prosecution. Then, in *People v. Villagracia*,[36] we found the testimony of the accused that he was less than 15 years old sufficient to establish his minority. We reiterated these dicta in the cases of *People v. Morial*[37] and *David v. Court of Appeals*,[38] and ruled that the allegations of minority and age by the accused will be accepted as facts upon the prosecution's failure to disprove the claim by contrary evidence.

In these cases, we gave evidentiary weight to testimonial evidence on the accused's minority and age upon the concurrence of the following conditions: (1) the absence of any other satisfactory evidence such as the birth certificate, baptismal certificate, or similar documents that would prove the date of birth of the accused; (2) the presence of testimony from accused and/or a relative on the age and minority of the accused at the time of the complained

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[33] 3 Phil 59, 61 (1903).

[34] 5 Phil 186, 187 (1905).

[35] G.R. No. L-44773, December 4,1991, 204 SCRA 535, 556-557.

[36] G.R. No. 94471, September 14, 1993, 226 SCRA 374, 381.

[37] G.R. No. 129295, August 15, 2001, 368 SCRA 96, 125-126.

[38] G.R. Nos. 11168-69, June 17, 1998, 290 SCRA 727, 745.

incident without any objection on the part of the prosecution; and (3) lack of any contrary evidence showing that the accused's and/or his relatives' testimonies are untrue.

All these conditions are present in this case. *First*, the petitioner and CCC both testified regarding his minority and age when the rape was committed.[39] *Second*, the records before us show that these pieces of testimonial evidence were never objected to by the prosecution. And *lastly*, the prosecution did not present any contrary evidence to prove that the petitioner was above 15 years old when the crime was committed.

We also stress that the last paragraph of Section 7 of R.A. No. 9344 provides that any doubt on the age of the child must be resolved in his favor.[40] Hence, any doubt in this case regarding the petitioner's age at the time he committed the rape should be resolved in his favor. In other words, the testimony that the petitioner as 15 years old when the crime took place should be read to mean that he was not more than 15 years old as this is the more favorable reading that R.A. No. 9344 directs.

Given the express mandate of R.A. No. 9344, its implementing rules, and established jurisprudence in accord with the latest statutory developments, the CA therefore cannot but be in error in not appreciating and giving evidentiary value to the petitioner's and CCC's testimonies relating to the former's age.

Retroactive Application of R.A. No. 9344

That the petitioner committed the rape before R.A. No. 9344 took effect and that he is no longer a minor (he was already 20 years old when he took the stand) will not bar him from enjoying the benefit of total exemption that Section 6 of R.A. No. 9344 grants.[41] As we explained in discussing Sections 64

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[39] See note 7.

[40] Section 7 of R.A. No. 9344.

[41] *Rollo*, p. 51.

and 68 of R.A. No. 9344[42] in the recent case of —*Ortega v. People*:[43]

> Section 64 of the law categorically provides that cases of children 15 years old and below, **at the time of the commission of the crime,** shall immediately be dismissed and the child shall be referred to the appropriate local social welfare and development officers (LSWDO). **What is controlling, therefore, with respect to the exemption from criminal liability of the CICL, is not the CICL's age at the time of the promulgation of judgment but the CICL's age at the time of the commission of the offense.** In short, by virtue of R.A. No. 9344, the age of criminal irresponsibility has been raised from 9 to 15 years old. [Emphasis supplied]

The retroactive application of R.A. No. 9344 is also justified under Article 22 of the RPC, as amended, which provides that penal laws are to be given retroactive effect insofar as they favor the accused who is not found to be a habitual criminal. Nothing in the records of this case indicates that the petitioner is a habitual criminal.

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[42] SECTION 64. *Children in Conflict with the Law Fifteen (15) Years Old and Below*. – Upon effectivity of this Act, cases of children fifteen (15) years old and below at the time of the commission of the crime shall immediately be dismissed and the child shall be referred to the appropriate local social welfare and development officer. Such officer, upon thorough assessment of the child shall determine whether to release the child to the custody of his/her parents, or refer the child to prevention programs, as provided under this Act. Those with suspended sentences and undergoing rehabilitation at the youth rehabilitation center shall likewise be released, unless it is contrary to the best interest of the child.

x x x x x x x x x

SECTION 68. *Children Who Have Been Convicted and are Serving Sentences.* — Persons who have been convicted and are serving sentence at the time of the effectivity of this Act, and who were below the age of eighteen (18) years at the time of the commission of the offense for which they were convicted and are serving sentence, shall likewise benefit from the retroactive application of this Act. They shall be entitled to appropriate dispositions provided under this Act and their sentences shall be adjusted accordingly. They shall be immediately released if they are so qualified under this Act or other applicable laws.

[43] *Supra* note 30.

Civil Liability

The last paragraph of Section 6 of R.A. No. 9344 provides that the accused shall continue to be civilly liable despite his exemption from criminal liability; hence, the petitioner is civilly liable to AAA despite his exemption from criminal liability. The extent of his civil liability depends on the crime he would have been liable for had he not been found to be exempt from criminal liability.

The RTC and CA found, based on item (1) of Article 266-B of the RPC, as amended, that the petitioner is guilty of qualified rape because of his relationship with AAA within the second civil degree of consanguinity and the latter's minority.[44] Both courts accordingly imposed the civil liability corresponding to qualified rape.

The relationship between the petitioner and AAA, as siblings, does not appear to be a disputed matter. Their mother, CCC, declared in her testimony that AAA and the petitioner are her children. The prosecution and the defense likewise stipulated in the proceedings below that the relationship exists. We find, however, that AAA's minority, though alleged in the Information, had not been sufficiently proven.[45] *People v. Pruna*[46] laid down these guidelines in appreciating the age of the complainant:

> In order to remove any confusion that may be engendered by the foregoing cases, we hereby set the following guidelines in appreciating age, either as an element of the crime or as a qualifying circumstance.
>
> 1. The best evidence to prove the **age of the offended party** is an original or certified true copy of the certificate of live birth of such party.

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[44] 1) Whether the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common law spouse of the parent of the victim.

[45] *Rollo*, pp. 51 and 84.

[46] G.R. No. 138471, October 10, 2002, 390 SCRA 577, 603-604; see also *People v. Lopit*, G.R. No. 177742, December 17, 2008.

2. In the absence of a certificate of live birth, similar authentic documents such as baptismal certificate and school records which show the date of birth of the victim would suffice to prove age.

3. If the certificate of live birth or authentic document is shown to have been lost or destroyed or otherwise unavailable, the testimony, if clear and credible, of the victim's mother or a member of the family either by affinity or consanguinity who is qualified to testify on matters respecting pedigree such as the exact age or date of birth of the offended party pursuant to Section 40, Rule 130 of the Rules on Evidence shall be sufficient under the following circumstances:

    a. If the victim is alleged to be below 3 years of age and what is sought to be proved is that she is less than 7 years old;
    b. If the victim is alleged to be below 7 years of age and what is sought to be proved is that she is less than 12 years old;
    c. If the victim is alleged to be below 12 years of age and what is sought to be proved is that she is less than 18 years old.

4. In the absence of a certificate of live birth, authentic document, or the testimony of the victim's mother or relatives concerning the victim's age, **the complainant's testimony will suffice provided that it is expressly and clearly admitted by the accused.**

5. **It is the prosecution that has the burden of proving the age of the offended party. The failure of the accused to object to the testimonial evidence regarding age shall not be taken against him.** [Emphasis supplied]

The records fail to show any evidence proving the age of AAA. They do not likewise show that the petitioner ever expressly and clearly admitted AAA's age at the time of the rape. Pursuant to *Pruna*, *neither can his failure to object to AAA's testimony be taken against him.*

Thus, the required concurrence of circumstances that would upgrade the crime to qualified rape – *i.e.*, relationship within the third degree of consanguinity and minority of the victim –

does not exist. The crime for which the petitioner should have been found criminally liable should therefore only be simple rape pursuant to par. 1, Article 266-A of the RPC, not qualified rape. The civil liability that can be imposed on the petitioner follows the characterization of the crime and the attendant circumstances.

Accordingly, we uphold the grant of moral damages of ₱50,000.00 but increase the awarded exemplary damages ₱30,000.00, both pursuant to prevailing jurisprudence.[47] Moral damages are automatically awarded to rape victims without the necessity of proof; the law assumes that the victim suffered moral injuries entitling her to this award.[48] Article 2230 of the Civil Code justifies the award of exemplary damages because of the presence of the aggravating circumstances of relationship between AAA and petitioner and dwelling.[49] As discussed above, the relationship (between the parties) is not disputed. We appreciate dwelling as an aggravating circumstance based on AAA's testimony that the rape was committed in their house.[50] While dwelling as an aggravating circumstance was not alleged in the Information, established jurisprudence holds that it may nevertheless be appreciated as basis for the award of exemplary damages.[51]

We modify the awarded civil indemnity of ₱75,000.00 to ₱50,000.00, the latter being the civil indemnity appropriate for simple rape[52] on the finding that rape had been committed.[53]

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[47] *Id., People v. Sia*, G.R. No. 174059, February 27, 2009 and *People v. Bandin*, G.R. No. 176531, April 24, 2009.

[48] *People v. Suarez*, G.R. Nos. 153573-76, April 15, 2005, 456 SCRA 333, 352.

[49] Paragraph 3 of Article 13 and Article 15 of the RPC, as amended.

[50] *Rollo*, p. 46.

[51] *People v. Blancaflor*, G.R. No. 130586, January 29, 2004, 421 SCRA 354, 365-366.

[52] *Supra* note 46.

[53] *People v. Canares*, G.R. No. 174065, February 18, 2009.

In light of the above discussion and our conclusions, we see no need to discuss the petition's third assignment of error.

WHEREFORE, premises considered, the instant petition is *GRANTED*. The Decision dated February 29, 2008 and Resolution dated May 22, 2008 of the Court of Appeals in CA-G.R. CR.-H.C. No. 02218 are *REVERSED* and *SET ASIDE*.

Pursuant to Section 64 of R.A. No. 9344, Criminal Case No. 120292-H for rape filed against petitioner Robert Sierra *y* Caneda is hereby *DISMISSED*. Petitioner is *REFERRED* to the appropriate local social welfare and development officer who shall proceed in accordance with the provisions of R.A. No. 9344. Petitioner is *ORDERED* to pay the victim, AAA, ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱30,000.00 as exemplary damages.

Unless there are other valid causes for petitioner's continued detention, we hereby *ORDER* his *IMMEDIATE RELEASE* under the above terms.

Let a copy of this Decision be furnished the Director of the Bureau of Corrections in Muntinlupa City for its immediate implementation. The Director of the Bureau of Corrections is directed to report to this Court within five days from receipt of this Decision the action he has taken.

Let a copy of this Decision be likewise furnished the Juvenile Justice and Welfare Council.

SO ORDERED.

Quisumbing (Chairperson), Carpio Morales, Chico-Nazario,[*] and *Leonardo-De Castro,*[**] *JJ.*, concur.

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[*] 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.

EN BANC

[A.M. No. 08-4-4-SC. July 7, 2009]

RE: REQUEST OF POLICE DIRECTOR GENERAL AVELINO I. RAZON FOR AUTHORITY TO DELEGATE THE ENDORSEMENT OF APPLICATION FOR SEARCH WARRANT.

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; RULE ON THE ISSUANCE OF SEARCH WARRANTS IN SPECIAL CRIMINAL CASES BY THE REGIONAL TRIAL COURTS OF MANILA AND QUEZON CITY; THAT APPLICATIONS FOR SEARCH WARRANT MUST BE *PERSONALLY* APPROVED BY HEADS OF THE PROPER AGENCIES; AMENDED FOR MORE EFFECTIVE AND EFFICIENT CAMPAIGN AGAINST CRIMINALITY. — Sec. 12, Chapter V of A.M. No. 03-8-02-SC, entitled "Guidelines on the Selection and Appointment of Executive Judges and Defining their Powers, Prerogatives and Duties," dictates that – SEC. 12. *Issuance of search warrants to special criminal cases by the Regional Trial Courts of Manila and Quezon City*. – The Executive Judges and, whenever they are on official leave of absence or are not physically present in the station, the Vice-Executive Judges of the RTCs of Manila and Quezon City shall have authority to act on applications filed by the National Bureau of Investigation (NBI), the Philippine National Police (PNP) and the Anti-Crime Task Force (ACTAF), for search warrants involving heinous crimes, illegal gambling, illegal possession of firearms and ammunitions as well as violations of the Comprehensive Dangerous Drugs Act of 2002, the Intellectual Property Code, the Anti-Money Laundering Act of 2001, the Tariff and Customs Code, as amended, and other relevant laws that may hereafter be enacted by Congress, and included herein by the Supreme Court. The applications shall be **personally** endorsed by the heads of such agencies and shall particularly describe therein the places to be searched and/or the property or things to be seized as prescribed in the Rules of Court. The Executive Judges and Vice Executive Judges

concerned shall issue the warrants, if justified, which may be served in places outside the territorial jurisdiction of the said courts. The Executive Judges and the authorized Judges shall keep a special docket book listing names of Judges to whom the applications are assigned, the details of the applications and the results of the searches and seizures made pursuant to the warrants issued. This Section shall be an exception to Section 2 of Rule 126 of the Rules of Court. From a cursory reading of the aforementioned provision of A.M. No. 03-8-02-SC, it is crystal that applications for search warrant to be filed before the RTCs of Manila and Quezon City must be essentially approved in person by the heads of the following agencies: the PNP, NBI, and ACTAF of the AFP. x x x Nevertheless, the Court acknowledges that, to be efficient in the campaign to fight crime, the PNP Chief must not be tied to his desk. Recent developments and trends in criminality require the PNP Chief to be mobile, so that he will be effective in the performance of several functions and responsibilities attendant to his position. That being the case, there will be instances when documents demanding the PNP Chief's immediate attention and signature will not be acted upon right away. One such document may be an application for a search warrant, the immediate endorsement of which is a must in order for the PNP to be effective and responsive in the conduct of its criminal investigation. It is, therefore, evident that for the PNP to function more effectively and efficiently in its campaign against criminality, the safeguard in Sec. 12, Chapter V of A.M. No. 03-8-02-SC, *i.e.*, requiring the PNP Chief's personal endorsement of an application for search warrant, calls for a review. x x x **NOW, THEREFORE, BE IT RESOLVED**, as it is hereby Resolved x x x that x x x (2) Sec. 12, Chapter V of the *Guidelines on the Selection and Appointment of Executive Judges and Defining their Powers, Prerogatives and Duties,* as embodied in A.M. No. 03-8-02-SC, as approved by the Court in its Resolution of 27 January 2004, is hereby **AMENDED** to read as follows: SEC. 12. *Issuance of search warrants in special criminal cases by the Regional Trial Courts of Manila and Quezon City* x x x The applications shall be endorsed by the heads of such agencies ***or their respective duly authorized officials*** and shall particularly describe therein the places to be searched and/or the property or things to be seized as prescribed in the Rules of Court. The

> Executive Judges and Vice-Executive Judges concerned shall issue the warrants, if justified, which may be served outside the territorial jurisdiction of the said courts. x x x

R E S O L U T I O N

CHICO-NAZARIO, *J.*:

Before Us are two communications; the first letter,[1] dated 19 March 2008, was sent by then Police Director General Avelino I. Razon, Jr. (P/Dir. Gen. Razon), Chief, Philippine National Police (PNP); and the second one,[2] dated 25 November 2008, from Police Director General Jesus A. Verzosa (P/Dir. Gen. Verzosa), the succeeding Chief of the PNP. Both letters were addressed to then Court Administrator Zenaida N. Elepaño, and involved the procedural requirement that applications for search warrant filed before Regional Trial Courts (RTCs) of Manila and Quezon City should be personally endorsed by heads of the PNP, National Bureau of Investigation (NBI), and the Anti-Crime Task Force (ACTAF) of the Armed Forces of the Philippines (AFP).

The 19 March 2008 letter of then P/Dir. Gen. Razon manifested his apprehension that –

> [R]ecently that the concerned Executive Regional Trial Court Judges have required that the applications for search warrants in accordance with the [Section 12, Chapter V of the Guidelines on the Selection and Appointment of Executive Judges] need to be endorsed personally by the undersigned otherwise the application would not be acted upon.
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> The undersigned (P/Dir. Gen. Razon), due to the numerous demands of his office, may not be able to act expeditiously on the required endorsements of application for search warrant. Any unnecessary delay in the application, especially on cases which require immediate search and seizure of any contraband, would not serve the purpose for which

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[1] *Rollo,* pp. 3-4.

[2] *Id*. at 12.

the search warrant was applied for and render the ends of justice nugatory.[3]

In connection thereto, P/Dir. Gen. Razon requested that –

> [He] be allowed to delegate the endorsement of the application for search warrant to the Director of the Directorate for Investigation and Detective Management (PDIR JEFFERSON P. SORIANO), in view of his inherent investigative functions and as Commander of the Task Force USIG and Anti-Illegal Drugs Special Operations Task Force.[4]

Acting upon the foregoing letter, Court Administrator Elepano recommended to Chief Justice Reynato S. Puno, through a Memorandum dated 28 March 2008, that leave be granted allowing P/Dir. Gen. Razon to delegate the authority to endorse the applications for search warrant, based on the following considerations –

> Being the chief of the PNP, General Razon oversees the operations of the entire police force all over the Philippines, and in the discharge of his duties and responsibilities, he is expected to be very mobile. His constant official and ceremonial functions compel him to be out of his office most of the time. Such situation poses a problem in terms of expediting the filing of application for search warrant by the PNP in the Regional Trial Courts of Manila and Quezon City because of the requirement under Section 12 of A.M. No. 03-8-02, the compliance of which is dependent upon the presence of General Razon in his office. Delegating the authority to endorse is a legal and viable option to address this problem and to ensure the speedy filing of applications for search warrant by the PNP.[5]

Court Administrator Elepano's above-quoted recommendation, however, carried a qualification, *i.e.*, that "the matter of whether this requirement may be relaxed such that the endorsement of applications for search warrant may be delegated to a subordinate officer should be resolved insofar as it applies only to General Razon"; preceding from the assumption that "the

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[3] *Id*. at 3-4.

[4] *Id*. at 4.

[5] *Id*. at 2.

concern of General Razon [was] peculiar to him alone since the heads of the other agencies have no problem in complying with the requirement in question."

In a Resolution dated 15 April 2008, the Court granted the request of P/Dir. Gen. Razon, to wit:

> The Court Resolved, upon the recommendation of Court Administrator Zenaida N. Elepaño, to GRANT the request of Police Director General Avelino I. Razon, Chief, Philippine National Police (PNP), to delegate the authority to endorse the applications for search warrant to be filed in the Regional Trial Courts of Manila and Quezon City to the Director of the Directorate for Investigation and Detective Management of the PNP in connection with Section 12 of the Guidelines on the Selection and Appointment of Executive Judges (A.M. No. 03-8-02-SC).[6]

Thereafter, on 25 November 2008, the PNP, this time under the headship P/Dir. Gen. Verzosa, asked the Court for "clarification x x x regarding the construction on the duration or effectivity"[7] of the 15 April 2008 *Resolution* of the Court. The necessity for clarification resulted from an incident that occurred on 11 November 2008, wherein the application for search warrant filed by the Anti-Illegal Drugs Special Operations Task Force (AIDSOTF), as endorsed by the Director for Investigation and Detective Management (DIDM), Police Chief Superintendent Raul M. Bacalzo,[8] was denied by Executive Judge Reynaldo Ros of the Manila RTC, on the ground that the authority to delegate was "already inoperative for it only applies to the incumbency of PDG AVELINO I. RAZON, JR. being the requesting party."[9] P/Dir. Gen. Verzosa, thus, asked of the Court that –

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[6] *Id*. at 7.

[7] *Id*. at 12.

[8] Also the concurrent Commander of AIDSOTF, as well as Task Force Usig.

[9] *Rollo,* p. 12.

Should the [15 April 2008 Resolution of the Court] be rendered moot by mere change of PNP leadership, the undersigned formally requests for the issuance of a Resolution granting continuing authority delegating to the Director, DIDM the endorsement of SW application in behalf of the Chief, PNP before the said courts to withstand future changes of officers.[10]

The Court directed the Court Administrator and the Chief Attorney to comment on P/Dir. Gen. Verzosa's request.

In a Memorandum dated 19 December 2008, the Office of the Court Administrator (OCA), through incumbent Court Administrator, Jose P. Perez, recommended that the current Chief of the PNP, as well as all his successors thereafter, should be allowed to delegate to the Director of the DIDM, PNP, the authority to endorse applications for search warrant which are to be filed before the RTCs of Manila and Quezon City.

The Office of the Chief Attorney (OCAT), on the other hand, observed in its Comment, submitted on 13 March 2009, that –

Since Section 12, Chapter V of the *Guidelines for Executive Judges* appear to be the hindrance to immediate action on applications for search warrant in the cases mentioned therein, and to make the delegation applicable to all heads of law enforcement agencies regardless of the holder of those positions, it may be best for the Court to amend that guideline. Thereby, a change in leadership in the PNP would not require the incumbent PNP Chief to seek the authority of the Court to delegate his function to endorse an application for search warrant. The amendment may also achieve the reason for and purpose of the requested 'continuing authority,' especially because the authority of the PNP Chief to delegate functions is expressly recognized by Section 26 of Republic Act No. 6975.

The Court finds the observations and recommendations of the OCA and OCAT to be well taken.

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[10] *Id*.

At present, Sec. 12, Chapter V of A.M. No. 03-8-02-SC, entitled "Guidelines on the Selection and Appointment of Executive Judges and Defining their Powers, Prerogatives and Duties," dictates that –

> SEC. 12. *Issuance of search warrants in special criminal cases by the Regional Trial Courts of Manila and Quezon City.* – The Executive Judges and, whenever they are on official leave of absence or are not physically present in the station, the Vice-Executive Judges of the RTCs of Manila and Quezon City shall have authority to act on applications filed by the National Bureau of Investigation (NBI), the Philippine National Police (PNP) and the Anti-Crime Task Force (ACTAF), for search warrants involving heinous crimes, illegal gambling, illegal possession of firearms and ammunitions as well as violations of the Comprehensive Dangerous Drugs Act of 2002, he Intellectual Property Code, the Anti-Money Laundering Act of 2001, the Tariff and Customs Code, as amended, and other relevant laws that may hereafter be enacted by Congress, and included herein by the Supreme Court.
>
> The applications shall be **personally** endorsed by the heads of such agencies and shall particularly describe therein the places to be searched and/or the property or things to be seized as prescribed in the Rules of Court. The Executive Judges and Vice-Executive Judges concerned shall issue the warrants, if justified, which may be served in places outside the territorial jurisdiction of the said courts.
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> The Executive Judges and the authorized Judges shall keep a special docket book listing names of Judges to whom the applications are assigned, the details of the applications and the results of the searches and seizures made pursuant to the warrants issued.
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> This Section shall be an exception to Section 2 of Rule 126 of the Rules of Court.[11] (Emphasis supplied.)

From a cursory reading of the aforementioned provision of A.M. No. 03-8-02-SC, it is crystal that applications for search warrant to be filed before the RTCs of Manila and Quezon City must be essentially approved in person by the heads of

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[11] *Id.* at 17.

the following agencies: the PNP, NBI, and ACTAF of the AFP. Accordingly, in the incident recounted in the 25 November 2008 letter of P/Dir. Gen. Verzosa, Judge Ros correctly denied the application for search warrant of the PNP for being defective. The authority granted by the Court to P/Dir. Gen. Razon to delegate to the Director of DIDM, PNP, the endorsement of applications for search warrant to be filed before the RTCs of Manila and Quezon City, was personal to P/Dir. Gen. Razon. It cannot be invoked by P/Dir. Gen. Razon's successor.

Nevertheless, the Court acknowledges that, to be efficient in the campaign to fight crime, the PNP Chief must not be tied to his desk. Recent developments and trends in criminality require the PNP Chief to be mobile, so that he will be effective in the performance of several functions and responsibilities attendant to his position. That being the case, there will be instances when documents demanding the PNP Chief's immediate attention and signature will not be acted upon right away. One such document may be an application for a search warrant, the immediate endorsement of which is a must in order for the PNP to be effective and responsive in the conduct of its criminal investigation. It is, therefore, evident that for the PNP to function more effectively and efficiently in its campaign against criminality, the safeguard in Sec. 12, Chapter V of A.M. No. 03-8-02-SC, *i.e.*, requiring the PNP Chief's personal endorsement of an application for search warrant, calls for a review.

As correctly observed by the OCAT, the very specific requirement under Sec. 12, Chap. V of A.M. No. 03-8-02-SC – that the heads of the PNP, NBI, and ACTAF of the AFP, personally endorse applications of search warrants to be filed before the RTCs of Manila and Quezon City – deters the delegation of said duty even to their authorized representatives. Hence, as suggested,[12] A.M. No. 03-8-02-SC must be amended to **delete the word "personally"** in the second paragraph of Sec. 12, Chap. V thereof. However, as to the proposal of the OCAT to **insert** the phrase "or their respective duly authorized

[12] *Id*. at 15-24.

officials as provided by law," the Court is of the view that the **abridged phrase "or their respective duly authorized officials"** is more than sufficient to serve the intended purpose. The phrase "as provided by law" is a mere surplus since, as correctly pointed out by the OCAT, it may be presumed that the delegation of authority by the head of the agency concerned is in accordance with law.[13]

The aforementioned amendments of Sec. 12, Chap. V of A.M. No. 03-8-02-SC, will not only enable the Chief of the PNP, but the heads of the NBI and ACTAF of the AFP, as well, to delegate to their duly authorized representatives the duty to endorse applications for search warrant to be filed before the RTCs of Manila and Quezon City.

NOW, THEREFORE, BE IT RESOLVED, as it is hereby Resolved, in accordance with the following discussion, that:

(1) The request of P/Dir. Gen. Jesus A. Verzosa for leave to delegate to the Director of the DIDM, PNP, the authority to endorse applications for search warrants to be filed before the RTCs of Manila and Quezon City, is hereby *GRANTED* in accordance with Sec. 12, Chapter V of A.M. No. 03-8-02-SC, as it is hereinafter amended; and

(2) Sec. 12, Chapter V of the *Guidelines on the Selection and Appointment of Executive Judges and Defining their Powers, Prerogatives and Duties*, as embodied in A.M. No. 03-8-02-SC, as approved by the Court in its Resolution of 27 January 2004, is hereby *AMENDED* to read as follows:

SEC. 12. *Issuance of search warrants in special criminal cases by the Regional Trial Courts of Manila and Quezon City.* – The Executive Judges and, whenever they are on official leave of absence or are not physically present in the station, the Vice-Executive Judges of the RTCs of Manila and Quezon City shall have authority to act on applications filed by the National Bureau of Investigation (NBI), the Philippine National Police (PNP) and the Anti-Crime Task Force (ACTAF), for search warrants involving heinous crimes, illegal

[13] *Id*. at 21.

gambling, illegal possession of firearms and ammunitions as well as violations of the Comprehensive Dangerous Drugs Act of 2002, the Intellectual Property Code, the Anti-Money Laundering Act of 2001, the Tariff and Customs Code, as amended, and other relevant laws that may hereafter be enacted by Congress, and included herein by the Supreme Court.

The applications shall be endorsed by the heads of such agencies *or their respective duly authorized officials* and shall particularly describe therein the places to be searched and/or the property or things to be seized as prescribed in the Rules of Court. The Executive Judges and Vice-Executive Judges concerned shall issue the warrants, if justified, which may be served outside the territorial jurisdiction of the said courts.

The Executive Judges and the authorized Judges shall keep a special docket book listing names of Judges to whom the applications are assigned, the details of the applications and the results of the searches and seizures made pursuant to the warrants issued.

This Section shall be an exception to Section 2 of Rule 126 of the Rules of Court. (Emphasis supplied.)

This amendment shall apply to all current, as well as succeeding heads of the PNP, NBI, and ACTAF of the AFP. It shall take effect on 20 July 2009 and shall be published in a newspaper of general circulation in the Philippines not later than 5 July 2009.

SO ORDERED.

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

EN BANC

[A.M. No. 2007-17-SC. July 7, 2009]

RE: UNAUTHORIZED DISPOSAL OF UNNECESSARY AND SCRAP MATERIALS IN THE SUPREME COURT BAGUIO COMPOUND, AND THE IRREGULARITY ON THE BUNDY CARDS OF SOME PERSONNEL THEREIN.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; SUPREME COURT ADMINISTRATIVE CIRCULAR NO. 36-2001; DUTY OF EVERY COURT EMPLOYEE TO CORRECTLY INDICATE TIME OF ARRIVAL IN OFFICE, AND PUNCHING ONE'S DAILY TIME RECORD (DTR) PERSONALLY. — Supreme Court Administrative Circular No. 36-2001, pertinent portions of which read: WHEREAS, CSC MC No. 21 s. 1991 requires **all** employees to record **their** daily attendance on the proper forum or, whenever possible, to have their attendance registered in the bundy clock but allows any other means of recording attendance provided that the names and signatures of employees as well as their actual time of arrival to and departure from office are indicated; x x x ACCORDINGLY, **all** employees (whether regular, coterminous or casual) are required to register *their* daily attendance in the Chronolog Time Recorder Machine and in the logbook of their respective offices. The foregoing SC Circular clearly provides that every court official and employee must truthfully and accurately indicate the time of his or her arrival at and departure from the office. Equally important is the fact that this Court has already held that the **punching in of one's daily time record is a personal act of the holder**. It cannot and should not be delegated to anyone else. This is mandated by the word "all" and "their" in the above-quoted Circular.

2. ID.; ID.; ID.; ID.; VIOLATED IN CASE AT BAR. — SC employee Estonilo's own admission, he not only punched in his time card on the morning of 7 February 2007, but also those of co-employees Padilla and Bambilla, purportedly to return a favor

and show his gratitude to Padilla, and to help Bambilla save his transportation expenses for the day. Estonilo's act of punching in another employee's daily time card falls within the ambit of falsification. Worse, he did not do it for only one co-employee, but for two others. He made it appear as though his co-employees personally punched in their daily time cards. Estonilo also made Padilla's daily time card reflect a log-in time different from the latter's actual time of arrival, as well as made Bambilla's daily time card falsely show that the latter was at the Supreme Court premises in Baguio City when he was not there at all. It is patent dishonesty, which inevitably reflects on Estonilo's fitness as an employee to continue in office and on the level of discipline and morale in the service.

3. ID.; ID.; ID.; ID.; ID.; LIABILITY SHARED BY COURT EMPLOYEES WHOSE TIME RECORD HAD BEEN PUNCHED IN BY A CO-EMPLOYEE. — Padilla and Bambilla should also be held liable to a certain extent for dishonesty, because even though they did not request or permit Estonilo to punch in their daily time cards for them, they failed to take the necessary action, *i.e.*, informing the proper authorities and correcting their attendance records, as soon as they found out what Estonilo had done. They were content to let their daily time cards bear the false information. They waited until they were asked to explain on the report by the security personnel. We can only read Padilla and Bambilla's actions — or more appropriately, inaction, subsequent to learning that Estonilo punched in their daily time cards for them — as implied accession to the same.

4. ID.; ID.; ID.; ID.; ID.; ID.; DISHONESTY BY FALSIFICATION OF DTR COMMITTED IN CASE AT BAR, ABHORRED. — Respondents violated their sacred trust as public servants and judicial officers. We shall never be less strict in applying only the highest standards of propriety, decorum, integrity, uprightness and honesty from the highest judicial officer of the land to the humblest court employee, for the ultimate power of this court lies in its incorruptibility. Indeed, dishonesty is a malevolent act that has no place in the judiciary. We have defined dishonesty as the "(d)isposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray." Falsification of daily time records is an act of dishonesty, for

which all three respondents must be held administratively liable under Rule XVII, Section 4 of the Omnibus Civil Service Rules and Regulations (Civil Service Rules). Under Rule XIV, Section 21 of the Civil Service Rules, falsification of official documents (such as daily time records) and dishonesty are both grave offenses. As such, they carry the penalty of dismissal from the service with forfeiture of retirement benefits, except accrued leave credits, and perpetual disqualification from reemployment in government service.

5. ID.; ID.; REVISED ADMINISTRATIVE CIRCULAR NO. 7-2004 ON THE MANAGEMENT OF UNNECESSARY PROPERTY OF THE JUDICIARY; MODES OF DISPOSAL; VIOLATED IN CASE AT BAR. — Revised Administrative Circular No. 7-2004, entitled "Providing a Program for the Management of Unnecessary Property of the Judiciary," issued on 3 March 2004 enumerates the modes of disposal of unnecessary property, thus: IV. Modes of Disposal Unnecessary property may be disposed by trade-in, transfer to other offices of the Judiciary, sale to personnel, public auction or bidding, sale through negotiation after two (2) unsuccessful public biddings or failure of public auction, transfer without costs to other government agencies, or destruction or condemnation. The Disposal Committee shall undertake that mode of disposal which is most advantageous to the Judiciary. Under the aforequoted Circular, the modes of disposing of court property are by 1) trade-in; 2) transfer to other offices of the Judiciary; 3) sale to personnel; 4) public auction or bidding; 5) sale of unserviceable property; 6) transfer without costs to other government agencies; and 7) destruction or condemnation of the property. The bringing of the scrap materials out of the court premises by respondents and leaving the same at their houses do not fall under any of these recognized modes. Disposal of court property, albeit deemed unserviceable, not in accordance with Revised Administrative Circular No. 7-2004, is an act of impropriety.

6. ID.; ID.; COA CIRCULAR NO. 75-6 ON REGULATIONS IN THE PROPER USE OF GOVERNMENT VEHICLES. — As far back as 1975, the Commission on Audit (COA) issued COA Circular No. 75-6 "*Regulating the Use of Government Motor Vehicles, Aircrafts, and Watercrafts*." It was issued then in line with the effort of the government to conserve fuel and to economize on expenditures relating to the use, operation and maintenance

of government motor vehicles, aircrafts and watercrafts of all kinds. Pursuant to the said Circular, the use of a government motor vehicle shall be authorized only through the issuance of a trip ticket, duly signed by the chief or administrative officer of the bureau, office or entity concerned, to wit: V. Regulations in the Proper Use of Government Vehicles – The use of government motor vehicles by the bureaus and offices enumerated under Section 12 of Presidential Decree No. 733 for the purpose herein indicated shall be authorized only through the issuance of each trip ticket, duly signed by the Chief or Administrative Officer of the bureau, office or entity concerned…. **Except in emergency cases, under no circumstance should government motor vehicles be used without the corresponding trip ticket** having been duly issued by the official designated for the purpose. In case of use of said vehicles without such trip tickets, the **official to whom the vehicle is assigned, his driver and other passengers shall be personally liable for the unauthorized use thereof.** The proper procedure for official travel using a court vehicle is as follows: the personnel must request the use of a court vehicle by accomplishing a trip ticket form in two copies, stating therein the name of the driver, purpose, and destination of the travel; the trip ticket must be duly approved by the official authorizing the travel; and one copy of the trip ticket shall be surrendered to the guard on-duty upon departure, and the other copy to be retained by the driver for audit purposes.

7. ID.; ID.; COURT EMPLOYEES; DUTY TO COMPLY WITH SPECIFIED RULES, REGULATIONS AND PROCEDURES, EMPHASIZED. — If there are specific rules and regulations issued and procedures laid down on how certain things must be done, then the court employee must adhere to the same as far as practicable and reasonable, given the circumstances. The Court has repeatedly emphasized that everyone in the judiciary, from the presiding judge to the clerk, must always be beyond reproach and must be circumscribed with the heavy burden of responsibility as to let them free of any suspicion that may taint the judiciary. Any impression of impropriety, misdeed or negligence in the performance of official functions must be avoided. 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.

8. ID.; ID.; ID.; GRAVE MISCONDUCT; COMMITTED IN CASE AT BAR. — Grave Misconduct is a malevolent transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer or employee which threatens the very existence of the system of administration of justice. Estonilo, Padilla, and Bambilla committed grave misconduct in unlawfully bringing scrap materials out of the court premises and using the court vehicle for the purpose, deviating from the established or definite rule of action.

9. ID.; ID.; ID.; ID.; PROPER PENALTY IS DISMISSAL; LENIENCY APPLIED IN CASE AT BAR. — Section 52(A)(3) of the Revised Rules on Administrative Cases in the Civil Service classifies grave misconduct as a grave offense punishable by dismissal for the first offense. In several administrative cases, we refrained from imposing the actual penalties in the presence of mitigating factors. Factors such as, the employee's length of service, acknowledgement of his or her infractions and feelings of remorse for the same, advanced age, family circumstances, and other humanitarian and equitable considerations, had varying significance in our determination of the imposable penalty. The compassion we extended in these cases was not without legal basis. Section 53, Rule IV of the Revised 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. We also ruled that where a penalty less punitive would suffice, whatever missteps may be committed by the employee 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. Following judicial precedent, certain circumstances extant in the case at bar also persuade us to exhibit a degree of leniency towards respondents, particularly: (1) respondents' long years of service in the judiciary: Estonilo, for 13 years; Padilla, for 16 years; and Bambilla, for 15 years; (2) this is the first time respondents were found administratively liable per

available records; (3) respondents' acknowledgment of their infractions and feelings of remorse; and (4) respondents' Performance Ratings which had been consistently "Very Satisfactory" for the past three consecutive years. Thus, we deem the penalties of two-year suspension for Estonilo, Padilla, and Bambilla, to be appropriate.

D E C I S I O N

CHICO-NAZARIO, *J.*:

This administrative matter before Us involves Oscar M. Estonilo (Estonilo), Danilo S. Padilla (Padilla) and Moises R. Bambilla, Jr. (Bambilla), employees of the Supreme Court in Baguio City, who were charged with (1) irregularities in their daily time cards; and (2) unauthorized disposal of some unnecessary and scrap materials from the Cottage and Administrative Compounds of the Supreme Court in Baguio City, as well as the unauthorized use of the court vehicle.

The aforementioned employees were hired as casual Utility Workers II of the Supreme Court Maintenance Unit in Baguio City: Padilla, in 1993; Bambilla, in 1994; and Estonilo, in 1996. They are still presently holding the same positions.

On 7 February 2007, Johannes R. Granil (Granil), Watchman II and guard on-duty at the gate of the Cottage Compound, saw Estonilo personally punching in more than one card. After five minutes, Estonilo and Padilla boarded a court vehicle, the Toyota Tamaraw FX with Plate No. SDX 797. When the Tamaraw FX was about to leave the Cottage Compound, Granil asked Estonilo and Padilla where they were going, and the two answered that they were going to San Fabian, Pangasinan, to pick up the sacks of carabao manure to be used as fertilizer. Granil also inquired about the materials loaded inside the Tamaraw FX. The materials consisted of three pieces of GI pipes and cyclone wires. Estonilo replied that they were unnecessary and scrap materials cleared for disposal by Engr. Bernardito R. Bundoc (Engr. Bundoc), Chief Judicial Staff Officer of the Supreme Court and former Officer-in-Charge of the

Maintenance Unit of the Supreme Court in Baguio City. After leaving the Cottage Compound, Estonilo and Padilla proceeded, on board the Tamaraw FX, to the Administrative Compound where they loaded one used toilet bowl onto the vehicle.

Although neither of the security guard's logbooks at the Cottage Compound nor at the Administrative Compound contained detailed entries on the foregoing incidents, Granil did immediately inform his supervisor, Mr. Ramon D. Torres (Torres), Security Officer I and Shift-in-Charge, of the same.

After receiving the information from Granil, Torres prepared a report[1] dated 7 February 2007 detailing the irregularity committed by Estonilo in punching in the time cards of his co-employees, and the unauthorized bringing of some scrap materials out of the Supreme Court Cottage and Administrative Compounds by Estonilo and Padilla.

On 17 February 2007, Rommel Rique (Rique), the Supervising Judicial Staff Officer of the Supreme Court Security Division in Baguio City, submitted his own report,[2] which contained the following additional information:

> Follow up investigation was initiated. By this time, I invited Oscar Estonilo to shed light on the allegations against them and he narrated the following facts surrounding the incident.
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> 1. That he was the one who punched in the time cards of Messrs. Bambilla and Padilla.
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> 2. That since Mr. Bambilla was in their house in Pozorubio, Pangasinan which is near in (sic) San Fabian where they will get carabao manure and to minimize travel expenses on the part of Mr. Bambilla, they decided to meet in San Fabian at the house of Mr. Padilla.
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> 3. That they boarded a Tamaraw FX with Plate No. SDX 797, three g.i. pipes, cyclone wires and one toilet bowl.
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> 4. That they proceeded first in (sic) his residence in Tubao, La Union and unloaded the toilet bowl, then proceeded at the house of Mr.

[1] *Rollo*, pp. 89-90.

[2] *Id.* at 87.

Padilla and unloaded two g.i pipes and the cyclone wires. After that, they loaded sacks of manure. Finally, they went at (sic) the residence of Mr. Bambilla in Pozorubio, Pangasinan wherein they dropped one g.i pipe and loaded another five sacks of manure.

5. That they were on their way back here at around 2:30 p.m. which is about 15 kilometers away from the house of Mr. Bambilla when they met [an] accident at around 3 p.m.

As narrated in the incident report dated 9 February 2007 submitted by Police Chief Inspector Frankie Castro Candelario of the Pozorrubio Police Station, the Tamaraw FX used by Estonilo, Padilla and Bambilla sustained damages as follows:

Its right rear wheel blew out thereby, it lost control of its steering wheel and swerved to the right shoulder of the road incidentally sideswiped a narra tree and four (4) small concrete post owned by Brgy. council of Brgy. Bobonan, this town and bumped a steel sign board of Bobonan metal craft owned by Juan Bautista of Brgy. Bobonan, this town, as a result thereof, said vehicle incurred heavy damages on its right side portion, front bumper, right roof top, right side window glass, right rear wheel rim, left front flasher, and rear door, while the concrete post and metal sign board incurred damages. No injury reported.[3]

The Office of Administrative Services (OAS) of the Supreme Court issued a Memorandum on 20 February 2007, directing Estonilo, Padilla, and Bambilla, to explain the reported incidents.

The three employees concerned complied by submitting their respective explanations, all dated 23 February 2007.

Estonilo admitted that he personally punched in his time card at 6:12 a.m. on 7 February 2007, and immediately thereafter also punched in the time cards of his co-employees, Padilla, and Bambilla, without the knowledge and consent of the latter two. Estonilo punched in the time cards of his co-employees to (1) return a favor to Padilla who prepared the food for the trip; and (2) show kindness to Bambilla by helping him save his transportation expenses since he need not go anymore to the

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[3] *Id.* at 76.

Supreme Court in Baguio for that day. Estonilo believed that he was not violating any rule or law. Estonilo also alleged that he and his co-employees brought several unnecessary and scrap materials out of the Supreme Court Compound in Baguio City, with the permission of and clearance from Engr. Bundoc. In the end, Estonilo, nonetheless, pleaded for understanding and sympathy for his infractions and promised that he would endeavor to be more circumspect in his duties.

Padilla, on his part, explained that he was with Estonilo when they left the Supreme Court premises in Baguio City to get some carabao manure. Although he was physically present at the Supreme Court in Baguio City on the day in question, he was busy preparing the things they were bringing for the trip. Padilla averred that he did not request or permit Estonilo to punch in his time card for him. According to Padilla, he learned about what Estonilo had done only when Estonilo admitted it to him, supposedly as the latter's way of returning a favor and showing his gratitude to Padilla. Like Estonilo, Padilla claimed that the bringing of several scrap materials, already deemed unserviceable, out of the Supreme Court premises, was with the knowledge and consent of Engr. Bundoc.

Bambilla narrated that on 6 February 2007, a day before the scheduled trip, he went home to Pozorrubio, Pangasinan, to just wait for and meet with his co-employees there. He denied, however, giving permission to Estonilo to punch in his time card for him on 7 February 2007. Only when Bambilla reported to work at the Supreme Court in Baguio City on 8 February 2007 that he learned, from Estonilo's own admission, of the latter's punching in his time card for him. Bambilla also pointed out that he was not with Estonilo and Padilla when the scrap materials were loaded and brought out of the Supreme Court premises. Bambilla maintained, however, that one of the items, particularly, a piece of G.I. pipe, was not among the scrap materials belonging to the Court. He alleged having found the said pipe outside the Supreme Court premises which he brought inside the Cottage Compound thinking that somebody might claim it later. Since nobody had come for the pipe, he requested, as a favor, that Estonilo and Padilla bring it with them to

Bambilla's house in the course of the scheduled trip. Bambilla insisted that the pipe was erroneously included among the scrap materials for disposal by the Supreme Court. Noticeably, Bambilla failed to submit any evidence in support of his claims.

In compliance with a directive from the OAS, Engr. Bundoc submitted his Comment dated 8 March 2007, categorically stating therein that he "does not have any authority for the disposal of any used or unused materials of the Court and x x x did not allow or give them permission to bring out used materials."[4]

The OAS then required Estonilo, Padilla, and Bambilla, together with Granil, Torres, Rique, and Rommel H. Pindug (Watchman II), to appear before an investigating team, which would be at the Supreme Court in Baguio City, on 31 July 2008.

After investigation, the OAS, through Atty. Eden Candelaria, submitted its report dated 2 September 2008, with the following recommendations:

> In view of the foregoing, this Office respectfully submits for the consideration and approval of the Court the following recommendations:
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> a. That Mr. Oscar M. Estonilo, Utility Worker II, be found guilty of two (2) counts of Simple Misconduct, as principal by direct participation, for the irregularity he committed in punching in the time cards of his two (2) co-employees; and the unauthorized disposal and taking of unnecessary and scrap materials of the Court aggravated by taking advantage of the use of vehicle to facilitate its commission. It is recommended that he be SUSPENDED for one (1) month without pay with a WARNING that a commission of the same or similar acts in the future shall be dealt with more severely;
>
> b. That Mr. Danilo S. Padilla, Utility Worker II, be found guilty of Simple Misconduct, as principal by cooperation, for the unauthorized disposal and taking of unnecessary and scrap materials of the Court aggravated by taking advantage of the use of vehicle to facilitate its commission. It is recommended that he be SUSPENDED for two (2) weeks without pay with a WARNING

[4] *Id.* at 66.

that a commission of the same or similar acts in the future shall be dealt with more severely;

c. That Mr. Moises R. Bambilla, Jr., Utility Worker II, be found guilty of Simple Misconduct, as principal by cooperation, for the unauthorized disposal and taking of unnecessary and scrap materials of the Court. It is recommended that he be SUSPENDED for one (1) week with a WARNING that a commission of the same or similar acts in the future shall be dealt with more severely;

d. That the Court should impose upon the three (3) respondents an additional or accessory penalties such as: (a) forfeiture of Additional Cost of Living Allowance from the Judiciary Development Fund [JDF] in the month the decision is handed down; (b) forfeiture of year-end benefits such as 13th month pay and Cash Gift, and Productivity Incentive Benefit in the year the decision is handed down; and (c) forfeiture of other fringe benefits in the year the decision is handed down;

e. That the present Officer-in-Charge of the SC Maintenance Unit, Baguio compound be directed to strictly implement the procedure in authorizing the trips of vehicle/s issued thereat for official purpose outside the Court compound; and

f. That the present Officer-in-Charge of the SC Security Unit, Baguio compound be directed to strictly implement and carry out all the preventive, corrective and other safety measures against the commission of theft of Court's property and the property of the employees as well as maintain a high visibility presence at all times in the premises of the Court.[5]

On 7 October 2008, we required[6] the parties to manifest within 10 days from notice if they were willing to submit the matter for resolution based on the pleadings filed. The parties complied by filing their respective manifestations: Teofilo Sanchez, Engineer III, for the Supreme Court in Baguio City, on 30 October 2008;[7] and respondents Estonillo, Padilla, and

[5] *Id.* at 11-12.

[6] *Id.* at 3.

[7] *Id* at p. 1

Bambilla, on 4 November 2008.[8] Resultantly, the case was submitted for decision based on the pleadings filed.

We agree to the findings of the OAS, except for the penalties imposed.

As to the punching in of bundy cards for other employees

By Estonilo's own admission, he not only punched in his time card on the morning of 7 February 2007, but also those of Padilla and Bambilla, purportedly to return a favor and show his gratitude to Padilla, and to help Bambilla save his transportation expenses for the day.

Despite his proffered justification for his action, we find that Estonilo violated Supreme Court Administrative Circular No. 36-2001,[9] pertinent portions of which read:

> WHEREAS, CSC MC No. 21 s. 1991 requires **all** employees to record **their** daily attendance on the proper forum or, whenever possible, to have their attendance registered in the bundy clock but allows any other means of recording attendance provided that the names and signatures of employees as well as their actual time of arrival to and departure from office are indicated;
>
> x x x x x x x x x
>
> ACCORDINGLY, **all** employees (whether regular, coterminous or casual) are required to register **their** daily attendance in the Chronolog Time Recorder Machine and in the logbook of their respective offices. (Emphases supplied.)

The foregoing SC Circular clearly provides that every court official and employee must truthfully and accurately indicate the time of his or her arrival at and departure from the office. Equally important is the fact that this Court has already held that the **punching**

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[8] *Id.* at 2.

[9] Requiring All Employees to Register their Daily Attendance in the Chronolog Time Recorder Machine.

in of one's daily time record is a personal act of the holder. It cannot and should not be delegated to anyone else.[10] This is mandated by the word "all" and "their" in the above-quoted Circular.

Estonilo's act of punching in another employee's daily time card falls within the ambit of falsification. Worse, he did not do it for only one co-employee, but for two others. He made it appear as though his co-employees personally punched in their daily time cards. Estonilo also made Padilla's daily time card reflect a log-in time different from the latter's actual time of arrival, as well as made Bambilla's daily time card falsely show that the latter was at the Supreme Court premises in Baguio City when he was not there at all. It is patent dishonesty, which inevitably reflects on Estonilo's fitness as an employee to continue in office and on the level of discipline and morale in the service.[11]

Padilla and Bambilla should also be held liable to a certain extent for dishonesty, because even though they did not request or permit Estonilo to punch in their daily time cards for them, they failed to take the necessary action, *i.e.*, informing the proper authorities and correcting their attendance records, as soon as they found out what Estonilo had done. They were content to let their daily time cards bear the false information. They waited until they were asked to explain on the report by the security personnel. We can only read Padilla and Bambilla's actions — or more appropriately, inaction, subsequent to learning that Estonilo punched in their daily time cards for them — as implied accession to the same.

Respondents violated their sacred trust as public servants and judicial officers. We shall never be less strict in applying only the highest standards of propriety, decorum, integrity,

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[10] *In Re: Irregularities in the Use of Logbook and Daily Time Records by Clerk of Court Raquel D. J. Razon, Cash Clerk Joel M. Magtuloy and Utility Worker Tiburcio O. Morales, MTC-OCC, Guagua, Pampanga*, A.M. No. P-06-2243, 26 September 2006, 503 SCRA 52, 61.

[11] *Alabastro v. Moncada, Sr.*, A.M. No. P-04-1887, 16 December 2004, 447 SCRA 42, 59; *Nera v. Garcia and Elicaño*, 106 Phil. 1031, 1036 (1960).

uprightness and honesty from the highest judicial officer of the land to the humblest court employee, for the ultimate power of this court lies in its incorruptibility.[12]

Indeed, dishonesty is a malevolent act that has no place in the judiciary.[13] We have defined dishonesty as the "(d)isposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray."[14] Falsification of daily time records is an act of dishonesty, for which all three respondents must be held administratively liable under Rule XVII, Section 4 of the Omnibus Civil Service Rules and Regulations (Civil Service Rules).[15]

Under Rule XIV, Section 21 of the Civil Service Rules, falsification of official documents (such as daily time records) and dishonesty are both grave offenses. As such, they carry the penalty of dismissal from the service with forfeiture of retirement benefits, except accrued leave credits, and perpetual disqualification from reemployment in government service.[16]

As to the act of taking alleged scrap materials and unauthorized use of Court vehicle.

Respondents' allegations that the taking was with the knowledge and consent of Engr. Bundoc was belied by the

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[12] *Sy v. Mongcupa*, 335 Phil. 182, 187 (1997).

[13] *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).

[14] *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.

[15] Which reads: "Section 4. Falsification or irregularities in the keeping of time records will render the guilty officer or employee administratively liable x x x."

[16] *Office of the Court Administrator v. Magno, supra* note 13; 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).

latter in his Comment, in which he categorically stated that he did not allow or give respondents permission to bring out the said materials out of the Supreme Court premises.

Respondents' claim that what they took were mere scrap materials, which were already deemed unserviceable, it does not exculpate them as the mere act of unauthorized taking, no matter how small the value, is a blatant disregard and violation of Revised Administrative Circular No. 7-2004, entitled "Providing a Program for the Management of Unnecessary Property of the Judiciary," issued on 3 March 2004. Said Circular enumerates the modes of disposal of unnecessary property, thus:

IV. Modes of Disposal

Unnecessary property may be disposed by trade-in, transfer to other offices of the Judiciary, sale to personnel, public auction or bidding, sale through negotiation after two (2) unsuccessful public biddings or failure of public auction, transfer without costs to other government agencies, or destruction or condemnation. The Disposal Committee shall undertake that mode of disposal which is most advantageous to the Judiciary.

Under the aforequoted Circular, the modes of disposing of court property are by 1) trade-in; 2) transfer to other offices of the Judiciary; 3) sale to personnel; 4) public auction or bidding; 5) sale of unserviceable property; 6) transfer without costs to other government agencies; and 7) destruction or condemnation of the property. The bringing of the scrap materials out of the court premises by respondents and leaving the same at their houses do not fall under any of these recognized modes. Disposal of court property, albeit deemed unserviceable, not in accordance with Revised Administrative Circular No. 7-2004, is an act of impropriety.

As to the use of the vehicle, we take note that no trip ticket was ever issued to Estonilo or to Padilla by their superior authorizing them to use the court vehicle on 7 February 2007 for their trip to Pangasinan and La Union, even though said trip was for an official purpose.

Respondents asserted that they were directed by Engr. Bundoc, through a text message, to make the trip; and for said reason, they were allowed by the guard on-duty to leave the court premises using the Tamaraw FX. Engr. Bundoc confirmed that for quite some time, this was the practice followed by the Supreme Court Maintenance Unit in Baguio City whenever Engr. Bundoc was at the Supreme Court main office in Manila, since it was more practical, reasonable and convenient, considering the difficulty of sending with dispatch written communication to Baguio City. Engr. Bundoc added that even though no written authority was sent for the use of the court vehicle, it was duly entered in the security guard's log book for record purposes.

As far back as 1975, the Commission on Audit (COA) issued COA Circular No. 75-6[17] "*Regulating the Use of Government Motor Vehicles, Aircrafts, and Watercrafts*." It was issued then in line with the effort of the government to conserve fuel and to economize on expenditures relating to the use, operation and maintenance of government motor vehicles, aircrafts and watercrafts of all kinds. Pursuant to the said Circular, the use of a government motor vehicle shall be authorized only through the issuance of a trip ticket, duly signed by the chief or administrative officer of the bureau, office or entity concerned, to wit:

V. Regulations in the Proper Use of Government Vehicles –

The use of government motor vehicles by the bureaus and offices enumerated under Section 12 of Presidential Decree No. 733 for the purpose herein indicated shall be authorized only through the issuance of each trip ticket, duly signed by the Chief or Administrative Officer of the bureau, office or entity concerned….

Except in emergency cases, under no circumstance should government motor vehicles be used without the corresponding trip ticket having been duly issued by the official designated for the purpose. In case of use of said vehicles without such trip tickets, the **official to whom the vehicle is assigned, his driver and other passengers shall be**

[17] Dated 7 November 1975

personally liable for the unauthorized use thereof. (Emphases supplied.)

The proper procedure for official travel using a court vehicle is as follows: the personnel must request the use of a court vehicle by accomplishing a trip ticket form in two copies, stating therein the name of the driver, purpose, and destination of the travel; the trip ticket must be duly approved by the official authorizing the travel; and one copy of the trip ticket shall be surrendered to the guard on-duty upon departure, and the other copy to be retained by the driver for audit purposes.[18]

Considering the above, respondents' trip on 7 February 2007 was indeed beset by certain lapses. Respondents did not secure a trip ticket for the use of the Tamaraw FX. The authority and instructions given by Engr. Bundoc to respondents through cellular phone calls or text messages were not in official form. Picking up of carabao manure, to be used as fertilizer, can hardly be considered an emergency situation, excepted from the requirement of a trip ticket.

If there are specific rules and regulations issued and procedures laid down on how certain things must be done, then the court employee must adhere to the same as far as practicable and reasonable, given the circumstances.

The Court has repeatedly emphasized that everyone in the judiciary, from the presiding judge to the clerk, must always be beyond reproach and must be circumscribed with the heavy burden of responsibility as to let them free of any suspicion that may taint the judiciary.[19] Any impression of impropriety, misdeed or negligence in the performance of official functions must be avoided.[20] As the administration of justice is a sacred task, the persons involved in it ought to live up to the strictest

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[18] COA Circular No. 75-6A, 15 December 1975.

[19] *Dipolog v. Montealto*, A.M. No. P-04-190, 23 November 2004, 443 SCRA 465, 476.

[20] *Velasquez v. Inacay*, 432 Phil. 140, 146-147 (2002).

standard of honesty and integrity.[21] 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.[22]

Grave Misconduct is a malevolent transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer or employee which threatens the very existence of the system of administration of justice.[23] Estonilo, Padilla, and Bambilla committed grave misconduct in unlawfully bringing scrap materials out of the court premises and using the court vehicle for the purpose, deviating from the established or definite rule of action.

Section 52(A)(3) of the Revised Rules on Administrative Cases in the Civil Service classifies grave as a grave offense punishable by dismissal for the first offense.

As to the penalty to be imposed

In several administrative cases, we refrained from imposing the actual penalties in the presence of mitigating factors. Factors such as, the employee's length of service, acknowledgement of his or her infractions and feelings of remorse for the same, advanced age, family circumstances, and other humanitarian and equitable considerations, had varying significance in our determination of the imposable penalty.[24]

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[21] *Hernandez v. Borja*, 312 Phil. 199, 204 (1995).

[22] *Basco v. Gregorio*, 315 Phil. 681, 688 (1995).

[23] *Fernandez, Jr. v. Gatan*, A.M. No. P-03-1720, 28 May 2004, 430 SCRA 19, 23.

[24] In *Re: Administrative Case for Dishonesty Against Elizabeth Ting, Court Secretary I, and Angelita C. Esmerio, Clerk III, Office of the Division Clerk of Court, Third Division* (*supra* note 14), 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

The compassion we extended in these cases was not without legal basis. Section 53, Rule IV of the Revised Rules on

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in respondents' 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 *Reyes-Domingo v. Morales* (396 Phil 150,165-166 [2000]), the branch clerk of court, Miguel C. Morales, who was found guilty of dishonesty in not reflecting the correct time in his Daily Time Record (DTR) was merely imposed a penalty of ₱5,000.00. In this case, respondent did not indicate his absences on 10th and 13th May 1996, although he was at Katarungan Village, interfering with the construction of the Sports Complex therein, and at the Department of Environment and Natural Resources-National Capital Region, pursuing his personal business.

In *Office of the Court Administrator v. Saa* (457 Phil. 25 [2003]) the clerk of court of the Municipal Circuit Trial Court of Camarines Norte, Rolando Saa, who made it appear in his DTR that he was present in court on the 5th and 6th June 1997, when all the while, he was attending hearings of his own case in Quezon City, was fined ₱5,000.00.

The Court in *In Re: Irregularities in the Use of Logbook and Daily Time Records by Clerk of Court Raquel D.J. Razon, Cash Clerk Joel M. Magtuloy and Utility Worker Tiburcio Morales, MTC-OCC, Guagua, Pampanga* (*supra* note 10) deemed it proper to impose a fine of ₱2,000.00 on Raquel Razon for making it appear that she was present in the office on 7 September 2004. The Court further noted that Razon readily acknowledged her offense, offered sincere apologies, and promised not to do it again. The fact that it was only her second administrative case in her 27 years in government service was also in her favor. She was previously charged with discourtesy, insubordination and violation of office regulation and procedure in A.M. No. P-97-89, but the same was dismissed on 10 October 1989.

In *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

Administrative Cases in the Civil Service,[25] grants the disciplining authority the discretion to consider mitigating circumstances in the imposition of the proper penalty.

We also ruled that where a penalty less punitive would suffice, whatever missteps may be committed by the employee ought not to be visited with a consequence so severe.[26] 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.[27]

Following judicial precedent, certain circumstances extant in the case at bar also persuade us to exhibit a degree of leniency towards respondents, particularly: (1) respondents' long years of

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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 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 *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.

[25] CSC Memorandum Circular No. 19-99, 14 September 1999.

[26] *Re: Habitual Absenteeism of Mr. Fernando P. Pascual*, A.M. No. 2005-16-SC, 22 September 2005, 470 SCRA 569, 573.

[27] *Mendoza, Jr. v. Navarro*, A.M. No. P-05-2034, 11 September 2006, 501 SCRA 354, 364.

service in the judiciary: Estonilo, for 13 years; Padilla, for 16 years; and Bambilla, for 15 years; (2) this is the first time respondents were found administratively liable per available records; (3) respondents' acknowledgment of their infractions and feelings of remorse; and (4) respondents' Performance Ratings which had been consistently "Very Satisfactory" for the past three consecutive years.

Thus, we deem the penalties of two-year suspension for Estonilo, Padilla and Bambilla, to be appropriate.

WHEREFORE, in view of the foregoing, judgment is hereby rendered as follows:

a. Mr. Oscar M. Estonilo, Utility Worker II, is found guilty of dishonesty, as principal by direct participation, for the irregularity he committed in punching in the time cards of his two (2) co-employees; and grave misconduct for the unauthorized disposal and taking of unnecessary and scrap materials out of the Court aggravated by taking advantage of the use of the court's vehicle to facilitate its commission. Taking into consideration the mitigating circumstances discussed above, he is hereby *SUSPENDED* for two (2) years without pay with a *WARNING* that a commission of the same or similar acts in the future shall be dealt with more severely;

b. Mr. Danilo S. Padilla, Utility Worker II, is found guilty of dishonesty, as an accessory to the irregular punching in of his time card by his co-employee Oscar M. Estonilo; and Grave Misconduct, as principal by cooperation, for the unauthorized disposal and taking of unnecessary and scrap materials out of the Court aggravated by taking advantage of the use of the Court's vehicle to facilitate its commission. Taking into consideration the mitigating circumstances discussed above, he is hereby *SUSPENDED* for two (2) years without pay with a *WARNING* that a commission of the same or similar acts in the future shall be dealt with more severely;

c. Mr. Moises R. Bambilla, Jr., Utility Worker II, is found guilty of dishonesty, as an accessory to the irregular punching in of his time card by his co-employee Oscar M. Estonilo; and Grave Misconduct, as principal by cooperation, for the unauthorized disposal and taking of unnecessary and scrap

materials out of the Court. Taking into consideration the mitigating circumstances discussed above, he is hereby *SUSPENDED* for two (2) years with a *WARNING* that a commission of the same or similar acts in the future shall be dealt with more severely;

d. In the course of their two-year suspension, additional or accessory penalties are hereby *IMPOSED* upon the three (3) respondents, such as: (a) forfeiture of Additional Cost of Living Allowance from the Judiciary Development Fund;[28] (b) forfeiture of year-end benefits such as 13th month pay and Cash Gift,[29] and Productivity Incentive Benefit;[30] and (c) forfeiture of other fringe benefits;[31]

e. The present Officer-in-Charge of the Supreme Court Maintenance Unit in Baguio City is hereby *DIRECTED* to strictly implement the procedure in authorizing the trips using the court vehicle/s for official purpose outside the Court premises; and

f. The present Officer-in-Charge of the Supreme Court Security Unit in Baguio City is hereby *DIRECTED* to strictly implement and carry out all the preventive, corrective and other safety measures against the commission of theft of the property of the Court and of its employees, as well as to maintain a high visibility presence at all times in the premises of the Court.

SO ORDERED.

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

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[28] Part III, Section 5 (Guidelines on the Grant of Additional Cost of Living Allowance (COLA) from Judiciary Development Fund) of Administrative Circular No. 5-2001 issued on 9 January 2001.

[29] Pursuant to DBM Budget Circular and Guidelines Implementing the Grant of Year-End Bonus and Cash Gift.

[30] Part I, Sec. 5 (Guidelines on the Grant of Productivity Incentive Benefits) of A.C. No. 5-2001.

[31] Part II, Sec. 5 (Guidelines on the Grant of Fringe Benefits) of A.C. No. 5-2001.

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[A.M. No. RTJ-09-2183. July 7, 2009]
(formerly A.M. OCA IPI No. 05-2346-RTJ)

CONCERNED LAWYERS OF BULACAN, *petitioners, vs.* **PRESIDING JUDGE VICTORIA VILLALON-PORNILLOS, RTC, BRANCH 10, MALOLOS CITY, BULACAN,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE PROCEEDINGS; SUBSTANTIAL EVIDENCE, REQUIRED. — The burden of substantiating the charges in an administrative proceeding against court officials and employees falls on the complainant, who must be able to prove the allegations in the complaint with substantial evidence. In the absence of evidence to the contrary, the presumption that respondent regularly performed her duties will prevail. Moreover, in the absence of cogent proof, bare allegations of misconduct cannot prevail over the presumption of regularity in the performance of official functions. In fact, an administrative complaint leveled against a judge must always be examined with a discriminating eye, for its consequential effects are, by their nature, highly penal, such that the respondent stands to face the sanction of dismissal and/or disbarment. The Court does not thus give credence to charges based on mere suspicion and speculation.

2. ID.; ID.; JUDGES; DUTY TO RESOLVE CASES WITHIN PRESCRIBED PERIOD; VIOLATED IN CASE AT BAR. — While respondent provided the Court the latest issued orders in all but one (Criminal Case No. 1385-M-2004) of the listed cases, she failed to justify her failure to act on the incidents thereon despite the lapse of a considerable period. Respondent offered no explanation for the delay in the resolution of the incidents in the cases. She simply furnished their status, some of which involve decisions or orders issued **after** the conduct of the judicial audit and mostly **beyond** the prescribed 90-day period, without her having requested extension for the purpose. Notably, respondent failed to explain her inaction for allowing a hiatus of at least one year in Civil Case No. 714-M-2002 and

eight months in Civil Case No. 195-M-2006, she appearing to have merely waited for the submission of a comment on/ opposition to a motion for reconsideration, and a reply, if any.

3. ID.; ID.; ID.; RESPONSIBILITY ON THE PHYSICAL INVENTORY OF CASES; VIOLATED AS JUDGE IN CASE AT BAR FAILED TO MAKE COMPLETE REPORT TO THE AUDIT TEAM AS MANDATED BY ADMINISTRATIVE CIRCULAR NO. 10-94. — It bears emphasis that the responsibility of making a physical inventory of cases primarily rests on the presiding judge, even as he/she is provided with a court staff, and a branch clerk of court who shall take steps to meet the requirements of the directives on docket inventory. Why respondent failed to make a complete report to the audit team, the court cannot fathom, despite the clear mandate of Administrative Circular No. 10-94 for the performance of a semestral physical inventory of the court's docket which, for the first semester of 2007, should have been conducted by June 30, a full month prior to the start on July 31, 2007 of the judicial audit. What was instead presented to the audit team was a docket inventory of cases for the period from July 2006 to December 2006.

4. ID.; ID.; ID.; RESPONSIBILITY TO ESPOUSE EFFICIENT COURT MANAGEMENT FOR PROPER DISPOSITION OF COURT'S BUSINESS; REMISS WHERE JUDGE FAILS TO ADOPT A SYSTEM OF RECORD MANAGEMENT. — Judges are mandated to "perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness." Prompt disposition of the court's business is attained through proper and efficient court management, and a judge is remiss in his duty as court manager if he fails to adopt a system of record management. A judge being expected to keep his own record of cases so that he may act on them promptly without undue delay, it is incumbent upon him to devise an efficient recording and filing system in his court so that no disorderliness can affect the flow of cases and their speedy disposition. Proper and efficient court management is as much his responsibility. As the judge is the one directly responsible for the proper discharge of official functions, he/she is charged with exercising extra care in ensuring that the records of the cases and official documents in his/her custody are intact.

Hence, the necessity of adopting a system of record management and of organization of dockets in order to bolster the prompt and efficient dispatch of business.

5. ID.; ID.; ID.; DUTY TO INITIATE APPROPRIATE DISCIPLINARY MEASURES AGAINST ERRING COURT PERSONNEL; VIOLATED WHERE JUDGE OMITTED ADMINISTRATIVE ACTION AND SIMPLY DETAILED THEM. — If respondent became aware of any unprofessional conduct on the part of any of her court personnel, she should have, as a rule of judicial canon, taken or initiated appropriate disciplinary measures against them. By simply detailing them and omitting to initiate an administrative proceeding, she has not only tolerated the misdeed but also paid no heed to finding suitable and qualified replacements who could assist her. Respondent had only to request the Executive Judge of the RTC of Malolos City or the Office of the Court Administrator for the detail of needed personnel in order not to deprive the public of vital services. In previous cases, the Court rejected the lame excuse that a trial court had no legal researcher or branch clerk of court. Adhering to what she personally perceives to be the best way of managing her court, respondent has only herself to blame for any gaffe plaguing her court.

6. ID.; ID.; ID.; PROPER COURT MANAGEMENT; INCLUDES CONTROL AND DISCIPLINE OF COURT STAFF. — It bears reiteration that proper court management for the effective discharge of official functions is the direct responsibility of judges who, therefore, cannot take refuge behind the inefficiency of the court personnel. The inability of a judge to control and discipline the staff demonstrates weakness in administrative supervision, an undesirable trait frowned upon by this Court. A judge should be the master of his own domain and take responsibility for the mistakes of his subjects. Indeed, a judge's duties and responsibilities are not strictly confined to judicial functions. A judge is also an administrator who must organize the court with a view to prompt and convenient dispatch of its business.

7. ID.; ID.; ID.; UNDUE DELAY IN RENDERING DECISION; PROPER PENALTY. — Section 9 of Rule 140 of the Rules of Court classifies as less serious offense the undue delay in rendering a decision or order, which is punishable, under Section

11 (b) thereof, by suspension from office without salary and other benefits ranging from one to three months, or a fine of more than ₱10,000 but not exceeding ₱20,000.

8. ID.; ID.; ID.; DUTY OF JUDGES TO FAITHFULLY OBSERVE OFFICIAL TIME. — To further ensure the speedy disposition of cases, Administrative Circular No. 3-99 provides guidelines for faithful observance: x x x And Administrative Circular No. 1-99 enunciates that in inspiring public respect for the justice system, court officials and employees must strictly observe official time. As punctuality is a virtue, absenteeism and tardiness are impermissible. x x x Under Administrative Circular No. 2-99, absenteeism and tardiness, even if such do not qualify as "habitual" or "frequent," shall be dealt with severely. In *Office of the Court Administrator v. Go*, the Court enjoined all judges to render at least eight hours of service just like any ordinary government employee. Judges are duty bound to comply with the required working hours to insure the maximum efficiency of the trial courts for a speedy administration of justice. Daily trials at a minimum of five hours per working day of the week will enable the judge to calendar as many cases as possible and to dispose with regular dispatch the increasing number of litigations pending with the court. All other matters needing the attention of the judge are to be attended to outside of this five-hour schedule of trial. Judges are reminded that circulars prescribing hours of work are not just empty pronouncements. They are there for the purpose of promoting efficiency and speed in the administration of justice, and require prompt and faithful compliance by all concerned. Moreover, OCA Circular 63-2001 reiterated the strict observance of working hours and session hours by the trial courts and the rules on punctuality and attendance, and enjoined strict compliance with Administrative Circulars Nos. 1-99, 2-99, and 3-99.

9. ID.; ID.; ID.; RULE THAT ONLY CLERKS OF COURT WHO ARE MEMBERS OF THE BAR CAN BE DELEGATED TO RECEIVE EVIDENCE *EX-PARTE*; VIOLATED IN CASE AT BAR; PENALTY. — Respecting respondent's designation of OIC-BCC Venus Awin who is a non-lawyer to receive evidence *ex-parte*, the Court finds the same contrary to the express mandate of Section 9, Rule 30 of the Rules of Court which requires that only clerks of court who are members of the bar

can be delegated to receive evidence *ex-parte*. Respondent's Orders for the OIC-BCC to conduct *ex-parte* hearings and to submit reports thereon, as confirmed by the audit team from the written orders in the records, clearly contradict and outweigh respondent's denial and avowed posture that she personally heard all cases. A violation of the basic rule on reception of evidence *ex-parte* or any of its related circulars merits the imposition of an administrative sanction. Under Section 9 in relation to Section 11(b) of Rule 140 of the Rules of Court, violation of Supreme Court rules, directives and circulars is a less serious offense punishable by suspension from office without salary and other benefits ranging from one to three months, or a fine of more than ₱10,000 but not exceeding ₱20,000.

10. ID.; ID.; ID.; PROSCRIPTION ON BORROWING MONEY BY SUPERIOR OFFICERS FROM SUBORDINATES; NOT EXCUSED BY THE FACT THAT LOANS HAD ALREADY BEEN PAID OR WAIVED. — With respect to the OCA's finding that respondent obtained loans from court personnel and lawyers in amounts ranging from ₱500 to ₱5,000, that the loans had already been paid or waived by the creditors do not detract from the fact that certain prohibitions were violated. That the loans were obtained way back in 1991-1992 is of no moment, considering that administrative offenses do not prescribe. There is a standing legal proscription on "[b]orrowing money by superior officers from subordinates," a violation of which is punishable, under the Uniform Rules on Administrative Cases in the Civil Service, by reprimand, suspension ranging from one to 30 days, and dismissal from service, for the first, second and third offense respectively. At the very least, respondent should be admonished for such dealings with her subordinates in an improper manner that is precisely being averted by the prohibition, any tinge or appearance of impropriety of which is sternly avoided by judges.

11. ID.; ID.; ID.; PROHIBITION AGAINST BORROWING MONEY OR PROPERTY FROM LAWYERS AND LITIGANTS IN A CASE PENDING BEFORE THE COURT; VIOLATED IN CASE AT BAR. — More severely prohibited is the serious charge of "[b]orrowing money or property from lawyers and litigants in a case pending before the court." In this case, the loan extended to respondent remains unpaid, yet was unilaterally

condoned by the lawyer-creditor. Notably, the investigation team did not inquire whether the Malolos-based lawyer-creditor has handled a case pending before Branch 10 of the RTC of Malolos City, over which respondent presides. A perusal of the court calendar submitted by respondent to this Court reveals, however, that the lawyer-creditor has at least two cases pending before respondent's sala.

12. ID.; ID.; ID.; ID.; VIOLATION THEREOF IS GRAVELY DETESTED UNDER THE CODE OF JUDICIAL CONDUCT AND THE RULES OF COURT; PENALTY. — The impropriety of borrowing money from unsuitable sources is underscored by the broad tenets of Canon 5 of the Code of Judicial Conduct which took effect on October 20, 1999 or prior to the date of the loan transactions entered into by respondent. In the recent case of *Burias v. Valencia*, the Court ruled: With respect to the charge of borrowing money in exchange for a favorable judgment, Rule 5.02, Canon 5 of the Code of Judicial Conduct mandates that a judge shall refrain from **financial and business dealings that** tend to reflect adversely on the court's impartiality, interfere with the proper performance of judicial activities, or **increase involvement with lawyers or persons likely to come before the court.** A judge should so manage investments and other financial interests as to minimize the number of cases giving grounds for disqualification. Under Rule 5.04 of Canon 5, a judge may obtain a loan if no law prohibits such loan. However, the law prohibits a judge from engaging in financial transactions with a party-litigant. Respondent admitted borrowing money from complainant during the pendency of the case. This act alone is patently inappropriate. The impression that respondent would rule in favor of complainant because the former is indebted to the latter is what the Court seeks to avoid. A judge's conduct should always be beyond reproach Under Section 8 of Rule 140 of the Rules of Court, it is a serious charge to borrow money or property from lawyers and litigants in a case pending before the court. Under the same provision, an act that violates the Code of Judicial Conduct constitutes gross misconduct, which is also a serious charge. In either instance, a serious charge is punishable by: 1) dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned

or controlled corporations, provided, however, that the forfeiture of benefits shall in no case include accrued leave credits; 2) suspension from office without salary and other benefits for more than three but not exceeding six months; or 3) a fine of more than ₱20,000 but not exceeding ₱40,000. Civil service rules and jurisprudence provide that when the respondent is guilty of two or more charges, the penalty to be imposed shall be that corresponding to the most serious charge, and the rest shall be considered aggravating circumstances. Considering that respondent is not a first-time offender and taking into account respondent's less serious violations as aggravating circumstances, the Court imposes the penalty of dismissal from service.

13. ID.; ID.; ID.; REMINDER AND WARNING TO JUDGES. — All those who don the judicial robe must always instill in their minds the exhortation that the administration of justice is a mission. Judges, from the lowest to the highest levels, are the gems in the vast government bureaucracy, beacon lights looked upon as the embodiments of all what is right, just and proper, the ultimate weapons against injustice and oppression. Those who cannot meet the exacting standards of judicial conduct and integrity have no place in the judiciary. The various violations of respondent reflect a totality of transgressions of one who no longer deserves a seat in the bench. This Court will not withhold penalty when called for to uphold the people's faith in the judiciary.

D E C I S I O N

***PER CURIAM*:**

Some "Concerned Lawyers of Bulacan," denominating themselves as such, filed a five-page Anonymous Administrative Complaint of August 31, 2005 against Presiding Judge Victoria Villalon-Pornillos (respondent) of Branch 10 of the Regional Trial Court (RTC) of Malolos City.

THE CHARGES AGAINST RESPONDENT:

Complainants charged respondent with having violated Republic Act Nos. 3019 and 6713, the Canons of Judicial Conduct,

the Code of Professional Responsibility, and the Rules of Court, Rule 140, Sections 1, 8 (pars. 1-4, 6-9) and 9 (pars. 2, 4), as amended by A.M. No. 01-8-10-SC[1] (2001), and furnished details synthesized as follows:

Respondent has a notorious history of committing graft and corruption by "fixing" cases and "selling" decisions or orders, such as receiving ₱5 million from Lorna Silverio, extorting ₱6 million from Romeo Estrella, and obtaining ₱200,000 from Leonardo de Leon and asking him to pay her electric bills while simultaneously extorting from de Leon's detractors, all relative to the election protests involving the mayoralty race at San Rafael, Baliuag and Angat, respectively.

Respondent is maintaining amorous relationships with her driver and bodyguards, borrowing money from her staff and other court officers to cover up her corruption, vindictively detailing almost all of her staff to other offices, and bragging about her associations with former classmates now working in the judiciary.

Respondent has ostentatiously displayed ill-gotten wealth. She rented a taxi for ₱2,000 a day for almost six months. She maintains and enrolls her four children in first-class schools. And she acquired a new *Ford Lynx* car.

Respondent reports to court only twice a week. She became mentally ill when her husband passed away in 1993 and experienced mental trauma when her alleged lover was killed.

REFERRAL OF THE COMPLAINT TO, AND ACTION TAKEN BY, THE OFFICE OF THE COURT ADMINISTRATOR:

By internal Resolution of September 20, 2005,[2] the Court directed the Office of the Court Administrator (OCA) to conduct a discreet investigation of the charges and to submit a report thereon within 30 days from notice.

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[1] Issued on September 11, 2001 and took effect on October 1, 2001.

[2] *Rollo*, p. 28.

A *sub rosa* investigation was conducted in October 2005 by an investigating team which interviewed court officers and personnel as well as practicing lawyers in Malolos, after apprising and assuring them of the confidentiality of the inquiry. Without disclosing the subject of the investigation, the investigating team represented itself to be on a covert fact-finding mission on alleged irregularities by some RTC judges of Malolos.

The OCA, which submitted its report by Memorandum of November 24, 2005, concluded that the allegations of corruption and extortion were based on hearsay; and absent any evidence from reliable witnesses, it found the same to be difficult to prove; and "as long as no one is willing to come forward and testify based on personal knowledge, the charges of corruption must fail."

On the allegations of respondent's illicit amorous relationships with her driver and bodyguards, the OCA found the same to be based on rumors, noting that not one of the witnesses confirmed that respondent and her alleged lovers were seen under scandalous circumstances.

The OCA confirmed, however, that Judge Pornillos obtained loans from court personnel and lawyers. One lawyer the team interviewed who maintains a law office in Malolos disclosed, under condition of anonymity, that respondent obtained a ₱5,000 loan from her which has remained unpaid, albeit she has condoned it as she considers respondent as one of her friends. One court employee also interviewed by the team similarly revealed that respondent obtained loans ranging from ₱500 to ₱1,000 from her in 1991-1992 which had, however, been settled.

Respecting respondent's alleged reporting to court twice a week, the team noted that a perusal of the guard's logbook indicating the Malolos judges' time of arrival and departure shows that out of the 29 working days for the period from September 1, 2005 to October 11, 2005, respondent reported to court only for 20 days. Respondent notably arrived late in court and departed therefrom almost always earlier than 4:30 p.m.

Upon the recommendation of the OCA, the Court, by Resolution of January 17, 2006, directed the Office of the Deputy Court Administrator to immediately conduct a judicial audit to ascertain conclusively whether respondent could be held to answer administratively for (a) habitual tardiness, (b) failure to report to the court during all working days of the week, and (c) apparent poor records management; and to forthwith submit a judicial report thereon.[3]

The Office of the Deputy Court Administrator thus conducted a judicial audit from July 31, 2007 to August 3, 2007 and examined 354 cases assigned to Branch 10 of the Malolos RTC.

DIRECTIVE FOR RESPONDENT TO COMMENT:

As recommended in the Audit Report of October 15, 2007, the Court, by Resolution of November 20, 2007, required respondent to comment on the following:

(a) Why the records of Criminal Case No. 600-M-1997 was not presented to the audit team for judicial audit and to submit to the Office of the Court Administrator the status of the said cases;

(b) Why it took her several months to act on the Motion for Reconsideration in the following decided cases: Civil Cases 388-M-2006, CV-520-M-2006, CV-714-M-2002 and CV-195-2006;

(c) Why she designated Ms. Venus M. Awin, Officer-in-Charge/ Branch Clerk of Court to receive evidence *ex-parte* despite the clear mandate of Sec. 9, Rule 30 of the Rules of Court, requiring that only Clerk[s] of Court who are members of the bar can be delegated to receive evidence *ex-parte*;

(d) Why the criminal cases CR-836-M-98, CR-2315-M-2004, CR-3569-M-2003 and P-558-2004 has not been acted upon for a considerable period of time since its last orders;

(e) Why Election Case No. 01-M-2004 entitled "Apolonio Marcelo vs. Leonardo De Leon" is still pending despite the

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

order of the Comelec for her to cease and desist from acting on the case since April 3, 2006;

(f) Why the following cases has not been set for further hearing/ trial for a considerable length of time since its last orders:

Civil Cases	Criminal Cases
18-M-2005	CR-4180-M-2003
654-M-2004	CR-2189-M-2003
515-M-2005	CR-2190-M-2003
	CR-559-M-2004
	CR-1385-M-2004
	CR-833-M-2003
	CR-1433-M-1999[;]

to submit a report on the status of the following cases which were submitted for decision and resolution:

Submitted for decision are: Civil Cases Nos. 119-M-2007, CV-583-M-2006, CV-310-M-2007 and CV-071-2004[;]

Submitted for resolution are: Civil Cases Nos. 236-M-2007, 76-M-2005, 288-M-2006, 497-M-2003, SP-Proc. 20-M-2000, CV-228-M-2005, CV-797-M-2005, CV-775-M-2001 and Criminal Cases Nos. CR-1677-M-2006, CR-2199-M-2007, CR-3866-M-2003, CR-452-M-2006, CR-453-M-2006, CR-2609-M-2006, CR-2610-M-2006, CR-2611-M-2006, CR-2612-M-2006, CR-1197-M-1998 and CR-1359-M-2005[;]

and to submit her comment on the charges of (i) habitual tardiness; (ii) failure to report during all working days of the week; and (iii) apparent poor records management.[4]

RESPONDENT'S COMMENT:

On January 15, 2008, respondent filed her 34-page Comment, devoting the first five pages thereof to imputing to former Judge Florentino Floro the malicious filing of the anonymous complaint. She prayed for the immediate dismissal of "**all** the false charges engineered by petitioner herein for lack of merit, with costs against him [*sic*]."[5]

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[4] *Id.* at 352-354.

[5] *Id.* at 388.

Respondent explains that the record of Criminal Case No. **600-M-1997** was not presented to the audit team for audit because Public Prosecutor Gaudioso Gillera borrowed it on June 1, 2005 along with two other related cases; and that by Order of November 29, 2007, Criminal Case No. 600-M-1997 and the related cases were provisionally dismissed for failure to prosecute.

Respondent belies the delay in resolving the respective motions for reconsideration in four civil cases. Thus, she explains: In Civil Case No. **388-M-2006**, the two motions for reconsideration of the September 8, 2006 Decision (which were filed on March 16, 2007 and May 28, 2007) were expunged by Orders of March 16, 2007 and June 28, 2007; the Motion for Reconsideration of March 5, 2007 in Civil Case No. **520-M-2006** was denied by Order of April 17, 2007 after it was submitted for resolution on April 16, 2007, and since no appeal was taken therefrom, the Decision of November 17, 2006 became final and executory; while Civil Case No. **714-M-2002** was dismissed by Decision of November 15, 2005, the Motion for Reconsideration was only resolved on January 10, 2007 because the motion was submitted for resolution only on January 10, 2007; and in Civil Case No. **195-M-2006**, a motion for reconsideration of the June 10, 2006 Decision was filed on August 24, 2006 but was resolved only on May 10, 2007 because the motion was submitted for resolution only on May 9, 2007.

Respondent denies designating Venus M. Awin, Officer-in-Charge/Branch Clerk of Court (OIC-BCC), to receive evidence *ex parte* and claims that she herself heard all cases on the merits in open court, including *ex parte* proceedings.

Respondent asserts that she has always timely resolved motions submitted for resolution upon receipt of the last pleading and explains as follows: the last Order in Criminal Case No. **836-M-1998** found in the records by the audit team was one dated February 1, 2006 giving the prosecution five days to file the necessary motion to finally terminate the case but respondent states that she actually issued an Order of June 28, 2007 setting the pre-trial conference/hearing on August 15, 2007, which was

followed by notices of pre-trial conference/hearing for September 26, 2007, October 24, 2007 and February 6, 2008; in Criminal Case No. **2315-M-2004** where the last notice referred to a trial *in absentia* set on June 1, 2005, she scheduled the case for reception of prosecution evidence on October 10, 17, 31, 2007 and of defense evidence on January 30, 2008; in Criminal Case No. **3569-M-2003**, she provisionally dismissed the case by Order of November 9, 2005, and as no further setting appeared in the record, the case was archived by Order of April 10, 2007.

On why EPC No. **01-M-2004** was still pending despite the order of the Comelec for her to cease and desist from acting on the case since April 3, 2006, respondent explains that she ordered the suspension of the proceedings on March 17, 2005 and subsequently dismissed the case by Order of August 28, 2007 for being moot after the protestant filed his candidacy for the *Sangguniang Barangay* elections.

Respecting the cases listed under paragraph (f) of the Court's November 20, 2007 Resolution, respondent states that there was no necessity to set them for further hearings because: Civil Case No. **18-M-2005** was already dismissed for failure to prosecute by Order of April 10, 2007; judgment on the pleadings was rendered on April 19, 2007 in Civil Case No. **654-M-2004**; in Civil Case No. **515-M-2005,** the process server was required, by Order of May 17, 2007, to explain in writing why no disciplinary action should be taken against him for his non-submission of an Explanation as required by previous Orders; several hearings were set in Criminal Case No. **4180-M-2003** by Orders of April 19, 2007, May 30, 2007, June 20, 2007 and December 5, 2007; in Criminal Cases Nos. **2189-M-2003** and **2190-M-2003**, hearings were set on October 3, 2007 and November 21, 2007 by Orders of July 12, 2007 and October 3, 2007, respectively, and subpoena *duces tecum/ad testificandum* was issued to confirm the alleged death of the accused at the Manila City Jail; Criminal Case No. **559-M-2004** was provisionally dismissed by Order of November 30, 2005; Criminal Case No. **833-M-2003** was provisionally

dismissed by Order of July 6, 2005, which dismissal was clarified by Order of January 17, 2006; and Criminal Case No. **1433-M-1999** was provisionally dismissed by Order of December 7, 2007.

As for the status of the cases submitted for decision, respondent relates that Civil Case No. **119-M-2007** was not raffled to Branch 10 but to Branch 20; a Decision of November 10, 2006 was already rendered in Civil Case No. **583-M-2006**; a Decision of July 19, 2007 was issued in Civil Case No. **310-M-2007**; and a Decision of May 10, 2005 was released in Civil Case No. **071-M-2004.**

Respecting the incidents submitted for resolution in the following enumerated cases, respondent narrates that: the motion to dismiss in Civil Case No. **236-M-2007** was granted by Order of July 29, 2007; in Civil Case No. **76-M-2005**, the motion for new trial was granted by Order of July 26, 2007; in Civil Case No. **288-M-2006**, the Orders of March 19 and 21, 2007 denying the defendant's motions for reconsideration and to quash subpoena were sustained by this Court in G.R. No. 176295 by Resolution of June 18, 2007; in Civil Case No. **497-M-2003**, pre-trial conference was set by Order of June 14, 2007; in SP-Proc. **20-M-2000**, an Order of November 27, 2007 was issued partly granting a motion to exclude certain properties from the estate and denying the motion to distribute collected rentals from the existing improvements in those partly excluded properties except the withdrawal of the sum to pay inheritance and realty taxes; in Civil Case No. **228-M-2005**, judgment on the pleadings was rendered on August 28, 2007; Civil Case No. **797-M-2005** was dismissed without prejudice by Order of August 1, 2007; Civil Case No. **775-M-2001** was dismissed for failure to prosecute by Order of April 9, 2007; Criminal Case No. **1677-M-2006** was dismissed by Order of August 29, 2007; in Criminal Case No. **2199-M-2007**, the Amended Information which downgrades the offense to homicide was admitted by Orders of October 3, 2007; in Criminal Case No. **3866-M-2003**, the prosecution's exhibits were admitted by Order of July 23, 2007 which also set the reception of defense evidence

on September 19, 2007; Criminal Cases Nos. **452-M-2006, 453-M-2006, 2609-M-2006**, **2610-M-2006**, **2611-M-2006**, **2612-M-2006** were consolidated and set for pre-trial conference on January 30, 2008 per Notice of November 21, 2007; in Criminal Case No. **1197-M-1998**, the defense counsel was directed anew to submit the required pleading and to manifest in writing the intention to present rebuttal evidence; and in Criminal Case No. **1359-M-2005**, the accused's Motion for Reconsideration was denied by Order of May 30, 2007.

Respondent avers that she arrives early for work, her asthmatic attacks or high fever notwithstanding. She submitted a certification[6] from the Court's Leave Division which enumerates the days for which she had filed leaves of absence. She states that she has always filed leaves of absence for the days that she was absent from work. She adds that while on leave, she would still work on cases and would never use such time for pleasure, travel or vacation. She maintains that she operates the court efficiently despite it being understaffed, as there are only four remaining in her staff, adding that she merely placed some of her erring staff on floating status to reform them after their commission of misdeeds.

As no Reply is expected to be forthcoming from complainants, the Court deems waived their right to file one.[7]

THE COURT'S FINDINGS:

The Court finds no evidence to sustain the charges of corruption and immorality, and accordingly finds the OCA recommendation to dismiss well-taken.

The burden of substantiating the charges in an administrative proceeding against court officials and employees falls on the complainant, who must be able to prove the allegations in the complaint with substantial evidence. In the absence of evidence to the contrary, the presumption that respondent regularly performed her duties will prevail. Moreover, in the absence

[6] *Id.* at 389.

[7] *Id.* at 390.

of cogent proof, bare allegations of misconduct cannot prevail over the presumption of regularity in the performance of official functions. In fact, an administrative complaint leveled against a judge must always be examined with a discriminating eye, for its consequential effects are, by their nature, highly penal, such that the respondent stands to face the sanction of dismissal and/or disbarment. The Court does not thus give credence to charges based on mere suspicion and speculation.[8]

The Court, however, finds well-taken the audit team's observation that Branch 10 lacks proper monitoring of cases.

While respondent provided the Court the latest issued orders in all but one (Criminal Case No. 1385-M-2004) of the listed cases, she failed to justify her failure to act on the incidents thereon despite the lapse of a considerable period. Respondent offered no explanation for the delay in the resolution of the incidents in the cases. She simply furnished their status, some of which involve decisions or orders issued **after** the conduct of the judicial audit and mostly **beyond** the prescribed 90-day period,[9] without her having requested extension for the purpose. Notably, respondent failed to explain her inaction for allowing a hiatus of at least one year in Civil Case No. 714-M-2002 and eight months in Civil Case No. 195-M-2006, she appearing to have merely waited for the submission of a comment on/opposition to a motion for reconsideration, and a reply, if any.

Moreover, respecting the orders or decisions purportedly dated **before** July 31, 2007, the start of the judicial audit, respondent gave no reason why those issuances were not presented or made available to the audit team during the four-day judicial audit ending on August 3, 2007.

It bears emphasis that the responsibility of making a physical inventory of cases primarily rests on the presiding judge, even as he/she is provided with a court staff, and a branch clerk of

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[8] *Guzman v. Lloren*, A.M. OCA IPI No. 06-2435-RTJ, December 4, 2006 Resolution.

[9] CONSTITUTION, Art. VIII, Sec. 15(1).

court who shall take steps to meet the requirements of the directives on docket inventory.[10] Why respondent failed to make a complete report to the audit team, the court cannot fathom, despite the clear mandate of Administrative Circular No. 10-94[11] for the performance of a semestral physical inventory of the court's docket which, for the first semester of 2007, should have been conducted by June 30, a full month prior to the start on July 31, 2007 of the judicial audit. What was instead presented to the audit team was a docket inventory of cases for the period from July 2006 to December 2006.

Judges are mandated to "perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness."[12] Prompt disposition of the court's business is attained through proper and efficient court management, and a judge is remiss in his duty as court manager if he fails to adopt a system of record management.[13]

Respondent defied the duties to "dispose of the court's business promptly and decide cases within the required periods," to "diligently discharge administrative responsibilities, maintain professional competence in court management, and facilitate the performance of the administrative functions of other judges and court personnel," and to "organize and supervise the court personnel to ensure the prompt and efficient dispatch of business, and require at all times the observance of high standards of public service and fidelity."[14]

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[10] *Sianghio, Jr. v. Judge Reyes,* 416 Phil. 215 (2001); *vide* SC Administrative Circular No. 10-94.

[11] Issued on June 29, 1994, which restates Administrative Circular No. 1 (January 28, 1988).

[12] A.M. No. 03-05-01-SC (April 27, 2004) entitled ADOPTING THE NEW CODE OF JUDICIAL CONDUCT FOR THE PHILIPPINE JUDICIARY, Canon 6 (Competence and Diligence), Sec. 5.

[13] *Office of the Court Administrator v. Janolo, Jr.*, A.M. No. RTJ-06-1994, September 28, 2007, 534 SCRA 262.

[14] Code of Judicial Conduct (September 5, 1989), Canon 3, Rules 3.05, 3.08 & 3.09. While the New Code of Judicial Conduct for the Philippine

A judge being expected to keep his own record of cases so that he may act on them promptly without undue delay, it is incumbent upon him to devise an efficient recording and filing system in his court so that no disorderliness can affect the flow of cases and their speedy disposition. Proper and efficient court management is as much his responsibility. As the judge is the one directly responsible for the proper discharge of official functions, he/she is charged with exercising extra care in ensuring that the records of the cases and official documents in his/her custody are intact. Hence, the necessity of adopting a system of record management and of organization of dockets in order to bolster the prompt and efficient dispatch of business.[15]

Oblivious to the telling condition – *res ipsa loquitor*, respondent asserts that she efficiently manages her court. If respondent's declarations are, by any measure, reflective of her level of satisfaction with court management, it is unfortunate to find her standard of professional competence in court administration below par. It is disquieting that she, even while acknowledging that she does not have a full complement of court personnel,[16] has not been bothered by the prevailing human resource predicament in her court. She finds comfort in maintaining a limited number of staff for years without actively seeking additional staff, and in detailing her clerk-in-charge of civil cases and legal researcher to other offices for alleged misconduct without initiating the appropriate disciplinary measures.

If respondent became aware of any unprofessional conduct on the part of any of her court personnel, she should have, as

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Judiciary supersedes the Canons of Judicial Ethics and the Code of Judicial Conduct, it expressly states that the latter two shall be applicable in a suppletory character in case of deficiency or absence of specific provisions in the New Code.

[15] *Office of the Court Administrator v. Alon*, A.M. No. RTJ-06-2022, June 27, 2007, 525 SCRA 786, 791-792.

[16] Respondent's court staff consists of OIC Carmelita Zamora, interpreter Venus Awin, stenographers Judy Arandela, Aurelia Manoloto, Jessybel Sta. Maria, Carol Gutierrez, process server Samuel Burgos, and sheriff Glen Umali; *rollo*, pp. 157-158.

a rule of judicial canon,[17] taken or initiated appropriate disciplinary measures against them. By simply detailing them and omitting to initiate an administrative proceeding, she has not only tolerated the misdeed but also paid no heed to finding suitable and qualified replacements who could assist her. Respondent had only to request the Executive Judge of the RTC of Malolos City or the Office of the Court Administrator for the detail of needed personnel in order not to deprive the public of vital services. In previous cases, the Court rejected the lame excuse that a trial court had no legal researcher[18] or branch clerk of court.[19] Adhering to what she personally perceives to be the best way of managing her court, respondent has only herself to blame for any gaffe plaguing her court.

It bears reiteration that proper court management for the effective discharge of official functions is the direct responsibility of judges who, therefore, cannot take refuge behind the inefficiency of the court personnel. The inability of a judge to control and discipline the staff demonstrates weakness in administrative supervision, an undesirable trait frowned upon by this Court.[20] A judge should be the master of his own domain and take responsibility for the mistakes of his subjects.[21]

Indeed, a judge's duties and responsibilities are not strictly confined to judicial functions. A judge is also an administrator who must organize the court with a view to prompt and convenient dispatch of its business.[22]

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[17] *Supra*, Canon 3, Rule 3.10.

[18] *Re: Report on the Judicial Audit & Financial Audit Conducted in MTCs, Bayombong & Solano & MCTC, Aritao-Sta. Fe, Nueva Vizcaya*, A.M. No. 05-3-83-MTC, October 9, 2007, 535 SCRA 224.

[19] *Office of the Court Administrator v. Laron*, A.M. No. RTJ-04-1870, July 9, 2007, 527 SCRA 45.

[20] *Office of the Court Administrator v. Judge Sayo, Jr.*, 431 Phil. 413 (2002); *vide Estoya v. Abraham-Singson*, A.M. No. RTJ-91-758, September 26, 1994, 237 SCRA 1.

[21] *Atty. Pantaleon v. Judge Guadiz, Jr.*, 380 Phil. 106, 107 (2000).

[22] *Vide Tudtud v. Judge Coliflores*, 458 Phil. 49 (2003).

Section 9 of Rule 140 of the Rules of Court classifies as less serious offense the undue delay in rendering a decision or order, which is punishable, under Section 11 (b) thereof, by suspension from office without salary and other benefits ranging from one to three months, or a fine of more than ₱10,000 but not exceeding ₱20,000.

To further ensure the speedy disposition of cases, Administrative Circular No. 3-99[23] provides the following guidelines for faithful observance:

I. The session hours of all Regional Trial Courts, Metropolitan Trial Courts, Municipal Trial Courts in Cities, Municipal Trial Courts and Municipal Circuit Trial Courts shall be from 8:30 A.M. to noon and from 2:00 P.M. to 4:30 P.M. from Monday to Friday. The hours in the morning shall be devoted to the conduct of trial, while the hours in the afternoon shall be utilized for (1) the conduct of pre-trial conferences; (2) writing of decisions, resolutions, or orders; or (3) the continuation of trial on the merits, whenever rendered necessary, as may be required by the Rules of Court, statutes, or circular in specified cases.

However, in multi-sala courts in places where there are few practicing lawyers, the schedule may be modified upon request of the Integrated Bar of the Philippines such that one-half of the branches may hold their trial in the morning and the other half in the afternoon. Except those requiring immediate action, all motions should be scheduled for hearing on Friday afternoons, or if Friday is a non-working day, in the afternoon of the next business day. The unauthorized practice of some judges of entertaining motions or setting them for hearing on any other day or time must be immediately stopped.

II. Judges must be punctual at all times.

III. The Clerk of Court, under the direct supervision of the Judge, must comply with Rule 20 of the 1997 Rules of Civil Procedure regarding the calendar of cases.

IV. There should be strict adherence to the policy on avoiding postponements and needless delay.

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[23] Issued on January 15, 1999, which reiterates Circular No. 13 (July 1, 1987) providing that trial judges should strictly observe the requirement of at least eight hours of service a day.

Sections 2, 3, and 4 of Rule 30, 1997 Rules on Civil Procedure on adjournments and postponements and on the requisites of a motion to postpone trial for absence of evidence or for illness or a party or counsel should be faithfully observed.

Lawyers as officers of the court, are enjoined to cooperate with judges to ensure swift disposition of cases.

And Administrative Circular No. 1-99[24] enunciates that in inspiring public respect for the justice system, court officials and employees must strictly observe official time. As punctuality is a virtue, absenteeism and tardiness are impermissible.

As shown by the logbook maintained by the security personnel, respondent was absent for nine out of the 29 working days for the period from September 1, 2005 to October 11, 2005,[25] and for eight out of the 24 working days for the period from July 1, 2007 to August 2, 2007.[26] In both periods, respondent usually arrived at around 9:30 a.m. and mostly stayed for less than four hours in office. Such documented evidence is, however, insufficient to hold respondent liable for habitual tardiness and habitual absenteeism. An employee shall be considered "habitually tardy" if one incurs tardiness, regardless of the number of minutes, ten times a month for at least two months in a semester or at least two consecutive months during the year,[27] while one is considered "habitually absent" if one incurs unauthorized absences in excess of the allowable 2.5 monthly leave credit under the Leave Law for at least three months in a semester or at least three consecutive months during the year.[28]

Nonetheless, under Administrative Circular No. 2-99,[29] absenteeism and tardiness, even if such do not qualify as

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[24] Issued on January 15, 1999.

[25] *Rollo*, pp. 159-161.

[26] *Id.* at 199-200.

[27] Civil Service Memorandum Circular No. 23, series of 1998.

[28] Civil Service Memorandum Circular No. 4, series of 1991.

[29] Issued on January 15, 1999.

"habitual" or "frequent," shall be dealt with severely.[30] In *Office of the Court Administrator v. Go*,[31] the Court enjoined all judges to render at least eight hours of service just like any ordinary government employee.

> Judges are duty bound to comply with the required working hours to insure the maximum efficiency of the trial courts for a speedy administration of justice. Daily trials at a minimum of five hours per working day of the week will enable the judge to calendar as many cases as possible and to dispose with regular dispatch the increasing number of litigations pending with the court. All other matters needing the attention of the judge are to be attended to outside of this five-hour schedule of trial.
>
> Judges are reminded that circulars prescribing hours of work are not just empty pronouncements. They are there for the purpose of promoting efficiency and speed in the administration of justice, and require prompt and faithful compliance by all concerned.[32]

Moreover, OCA Circular 63-2001[33] reiterated the strict observance of working hours and session hours by the trial courts and the rules on punctuality and attendance, and enjoined strict compliance with Administrative Circulars Nos. 1-99, 2-99 and 3-99.

Respecting respondent's designation of OIC-BCC Venus Awin who is a non-lawyer to receive evidence *ex-parte*, the Court finds the same contrary to the express mandate of Section 9, Rule 30 of the Rules of Court which requires that only clerks of court who are members of the bar can be delegated to receive evidence *ex-parte*. Respondent's Orders for the OIC-BCC to conduct *ex-parte* hearings and to submit reports thereon, as confirmed by the audit team from the written orders in the records, clearly contradict and outweigh respondent's denial and avowed posture that she personally heard all cases.

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[30] *Vide* *Yu-Asensi v. Judge Villanueva*, 379 Phil. 258 (2000).

[31] A.M. No. MTJ-07-1667, September 27, 2007, 534 SCRA 156.

[32] *Id.* at 167-168.

[33] Issued on October 3, 2001.

A violation of the basic rule on reception of evidence *ex-parte* or any of its related circulars[34] merits the imposition of an administrative sanction.[35]

Under Section 9 in relation to Section 11(b) of Rule 140 of the Rules of Court, violation of Supreme Court rules, directives and circulars is a less serious offense punishable by suspension from office without salary and other benefits ranging from one to three months, or a fine of more than ₱10,000 but not exceeding ₱20,000.

With respect to the OCA's finding that respondent obtained loans from court personnel and lawyers in amounts ranging from ₱500 to ₱5,000, the Court takes exception to the OCA's conclusion that such act attaches no administrative liability. That the loans had already been paid or waived by the creditors do not detract from the fact that certain prohibitions were violated. That the loans were obtained way back in 1991-1992 is of no moment, considering that administrative offenses do not prescribe.[36]

There is a standing legal proscription on "[b]orrowing money by superior officers from subordinates," a violation of which is punishable, under the Uniform Rules on Administrative Cases

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[34] OCA Circular No. 50-2001 (August 17, 2001) which prohibits clerks of court from collecting compensation for services rendered as commissioners in *ex-parte* proceedings, *vide Atty. Concepcion v. Atty. Hubilla*, 445 Phil. 689 (2003); *Nieva v. Alvarez-Edad*, A.M. No. P-01-1459, January 31, 2005, 450 SCRA 45; and SC Circular No. 12 (October 2, 1986) which directs judges to personally hear all adoption cases and desist from the practice of delegating the reception of evidence of the petitioner to the Clerk of Court; *vide* A.M. No. 02-6-02-SC (August 2, 2002) RULE ON ADOPTION, Sec. 14.

[35] *Munsayac-De Villa v. Reyes,* A.M. No. RTJ-05-1925, June 26, 2006, 492 SCRA 404, 435, 454.

[36] *Floria v. Sunga*, 420 Phil. 637, 648-649 (2001); *Heck v. Santos*, A.M. No. RTJ-01-1657, February 23, 2004, 423 SCRA 329, 351 where it was held that no matter how much time has elapsed from the time of the commission of the act complained of to the time of the institution of the complaint, erring members of the bench and bar cannot escape the disciplining arm of the Court.

in the Civil Service, by reprimand, suspension ranging from one to 30 days, and dismissal from service, for the first, second and third offense respectively.[37] At the very least, respondent should be admonished for such dealings with her subordinates in an improper manner that is precisely being averted by the prohibition, any tinge or appearance of impropriety of which is sternly avoided by judges.

More severely prohibited is the serious charge of "[b]orrowing money or property from lawyers and litigants in a case pending before the court."[38] In this case, the loan extended to respondent remains unpaid, yet was unilaterally condoned by the lawyer-creditor. Notably, the investigation team did not inquire whether the Malolos-based lawyer-creditor has handled a case pending before Branch 10 of the RTC of Malolos City, over which respondent presides. A perusal of the court calendar submitted by respondent to this Court reveals, however, that the lawyer-

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[37] CSC Resolution No. 99-1936 (August 31, 1999), Rule IV, Sec. 52, Par. (C), No. 8, which retained the earlier rule found in the Omnibus Civil Service Rules and Regulations (December 27, 1991), Rule XIV. *Vide Orfila v. Arellano*, A.M. No. P-06-2110, April 26, 2006, 488 SCRA 279.

[38] RULES OF COURT, Rule 140, Sec. 8. Serious charges include:

1. Bribery, direct or indirect;

2. Dishonesty and violations of the Anti-Graft and Corrupt Practices Law (R.A. No. 3019);

3. Gross misconduct constituting violations of the Code of Judicial Conduct;

4. Knowingly rendering an unjust judgment or order as determined by a competent court in an appropriate proceeding;

5. Conviction of a crime involving moral turpitude;

6. Willful failure to pay a just debt;

7. Borrowing money or property from lawyers and litigants in a case pending before the court;

8. Immorality;

9. Gross ignorance of the law or procedure;

10. Partisan political activities; and

11. Alcoholism and/or vicious habits. (Underscoring supplied)

creditor has at least two cases pending before respondent's sala.[39]

The impropriety of borrowing money from unsuitable sources is underscored by the broad tenets of Canon 5 of the Code of Judicial Conduct[40] which took effect on October 20, 1999 or prior to the date of the loan transactions entered into by respondent. In the recent case of *Burias v. Valencia*,[41] the Court ruled:

> With respect to the charge of borrowing money in exchange for a favorable judgment, Rule 5.02, Canon 5 of the Code of Judicial Conduct mandates that a judge shall refrain from **financial and business dealings that** tend to reflect adversely on the court's impartiality, interfere with the proper performance of judicial activities, or **increase involvement with lawyers or persons likely to come before the court**. A judge should so manage investments and other financial interests as to minimize the number of cases giving grounds for disqualification.
>
> Under Rule 5.04 of Canon 5, a judge may obtain a loan if no law prohibits such loan. However, the law prohibits a judge from engaging in financial transactions with a party-litigant. Respondent admitted borrowing money from complainant during the pendency of the case. This act alone is patently inappropriate. **The impression that respondent would rule in favor of complainant because the former is indebted to the latter is what the Court seeks to avoid.** A judge's conduct should always be beyond reproach. (Underscoring and emphasis supplied)

Under Section 8 of Rule 140 of the Rules of Court, it is a serious charge to borrow money or property from lawyers and litigants in a case pending before the court. Under the same provision, an act that violates the Code of Judicial Conduct constitutes gross misconduct,[42] which is also a serious charge.

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[39] *Rollo*, pp. 307-308.

[40] Now the "New Code of Judicial Conduct for the Philippine Judiciary," A.M. No. 03-05-01-SC (April 27, 2004).

[41] A.M. No. MTJ-07-1689, March 13, 2009.

[42] *Flores v. Garcia*, A.M. No. MTJ-03-1499, October 6, 2008.

In either instance, a serious charge is punishable by: 1) dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations, provided, however, that the forfeiture of benefits shall in no case include accrued leave credits; 2) suspension from office without salary and other benefits for more than three but not exceeding six months; or 3) a fine of more than ₱20,000 but not exceeding ₱40,000.[43]

Civil service rules[44] and jurisprudence[45] provide that when the respondent is guilty of two or more charges, the penalty to be imposed shall be that corresponding to the most serious charge, and the rest shall be considered aggravating circumstances.

It bears noting that this is the third time that respondent has been haled to face an administrative complaint. Although, in *Portic v. Villalon-Pornillos*,[46] the complaint against respondent for abuse of authority and neglect of duty was dismissed, respondent was meted a fine of ₱5,000 in *Dela Cruz v. Villalon-Pornillos*[47] for failure to comply with Administrative Circular No. 20-95 with a stern warning against repetition of similar acts.

Considering that respondent is not a first-time offender and taking into account respondent's less serious violations as aggravating circumstances, the Court imposes the penalty of dismissal from service.

All those who don the judicial robe must always instill in their minds the exhortation that the administration of justice is

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[43] Rules of Court, Rule 140, Sec. 11 (A).

[44] CSC OMNIBUS RULES IMPLEMENTING BOOK V OF EXECUTIVE ORDER No. 292, Rule XIV, Sec. 17; UNIFORM RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE (AUGUST 31, 1999), Rule IV, Sec. 55.

[45] *QBE Insurance Phils., Inc. v. Laviña*, A.M. No. RTJ-06-1971, October 17, 2007, 536 SCRA 372, 393; *Office of the Court Administrator v. Trocino*, A.M. No. RTJ-05-1936, May 29, 2007, 523 SCRA 262.

[46] A.M. No. RTJ-02-1717, May 28, 2004, 430 SCRA 29.

[47] A.M. No. RTJ-04-1853, June 8, 2004, 431 SCRA 153.

a mission. Judges, from the lowest to the highest levels, are the gems in the vast government bureaucracy, beacon lights looked upon as the embodiments of all what is right, just and proper, the ultimate weapons against injustice and oppression.[48]

Those who cannot meet the exacting standards of judicial conduct and integrity have no place in the judiciary. The various violations of respondent reflect a totality of transgressions of one who no longer deserves a seat in the bench. This Court will not withhold penalty when called for to uphold the people's faith in the judiciary.

WHEREFORE, Judge Victoria Villalon-Pornillos, Presiding Judge of Branch 10 of the Regional Trial Court of Malolos City, is found guilty of violating paragraph 7, Section 8, Rule 140 of the Rules of Court (borrowing money from a lawyer in a case pending before her court) which is also a gross misconduct constituting violation of the Code of Judicial Conduct, aggravated by, *inter alia*, undue delay in rendering decisions or orders, and violation of Supreme Court rules, directives and circulars. She is *DISMISSED* from the service, with forfeiture of all retirement benefits, except accrued leave credits, with prejudice to re-employment in any government agency or instrumentality. Immediately upon service on her of this decision, she is deemed to have vacated her office and her authority to act as judge is considered automatically terminated.

SO ORDERED.

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

Velasco, Jr., J., no part due to prior action in OCA.

Leonardo-de Castro, J., no part.

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[48] *Employees of the RTC of Dagupan City v. Judge Falloran-Aliposa,* 384 Phil. 168, 191 (2000).

FIRST DIVISION

[G.R. No. 148600. July 7, 2009]

ATTY. EMMANUEL PONTEJOS, *petitioner, vs.* **HON. ANIANO A. DESIERTO and RESTITUTO AQUINO,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; LAW OF THE CASE DOCTRINE. —** It is a basic legal principle that whatever is once irrevocably established as the controlling legal rule or decision between the same parties in the case continues to be the law of the case, whether correct on general principles or not, so long as the facts on which such decision was predicated continue to be the facts of the case before the court.

2. **POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE PROCEEDINGS; DUE PROCESS; SATISFIED WHERE FAIR AND REASONABLE OPPORTUNITY TO EXPLAIN AFFORDED. —** Due process in an administrative context does not require trial-type proceedings similar to those in courts of justice. Where opportunity to be heard either through oral arguments or through pleadings is accorded, there is no denial of procedural due process. A formal or trial-type hearing is not at all times and in all instances essential. The requirements are satisfied where the parties are afforded fair and reasonable opportunity to explain their side of the controversy at hand. x x x We have consistently held that the essence of due process is simply the opportunity to be heard or, as applied to administrative proceedings, the opportunity to explain one's side or the opportunity to seek a reconsideration of the action or ruling complained of. Any seeming defect in its observance is cured by the filing of a motion for reconsideration. Denial of due process cannot be successfully invoked by a party who has had the opportunity to be heard on his motion for reconsideration.

3. **ID.; ID.; ID.; ID.; ID.; DUE PROCESS NOT DENIED BY MERE FAILURE TO CROSS-EXAMINE A WITNESS. —** The absence

of Aquino in two hearings is not a sufficient ground to say that due process was not afforded petitioner. Administrative bodies are not bound by the technical niceties of law and procedure and the rules obtaining in courts of law. In administrative proceedings, technical rules of procedure and evidence are not strictly applied and administrative due process cannot be fully equated with due process in its strict judicial sense. In fact, it is well-settled that, in administrative cases, the requirement of notice and hearing does not connote full adversarial proceedings. Thus, petitioner was not denied due process when he failed to cross-examine Aquino since he was given the opportunity to be heard and present his evidence. To repeat, in administrative cases, a fair and reasonable opportunity to explain one's side suffices to meet the requirements of due process. x x x Besides, in an administrative case, the complainant, like Aquino, is a mere witness. No private interest is involved in an administrative case as the offense is committed against the government. Thus, his absence in two hearings is not a ground for the dismissal of the case against petitioner.

4. REMEDIAL LAW; CIVIL PROCEDURE; DISMISSAL OF ACTIONS; DISMISSAL DUE TO FAULT OF PLAINTIFF. — Section 3, Rule 17 of the 1997 Rules of Civil Procedure, states – SEC. 3. Dismissal due to fault of plaintiff. – If, for no justifiable cause, the plaintiff fails to appear on the date of the presentation of his evidence in chief on the complaint, or to prosecute his action for an unreasonable length of time, or to comply with these Rules or any order of the court, the complaint may be dismissed upon motion of the defendant or upon the court's own motion, without prejudice to the right of the defendant to prosecute his counterclaim in the same or in a separate action. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise declared by the court. Section 3, Rule 17 provides for three instances where the complaint may be dismissed due to the plaintiff's fault: (1) if he fails to appear during a scheduled trial, especially on the date for the presentation of his evidence in chief; (2) if he fails to prosecute his action for an unreasonable length of time; and (3) if he fails to comply with the rules or any order of the court. While a court can dismiss a case on the ground of *non prosequitur*, the real test for the exercise of such power is whether, under

the circumstances, plaintiff is chargeable with want of due diligence in failing to proceed with reasonable promptitude. In the absence of a pattern or scheme to delay the disposition of the case or a wanton failure to observe the mandatory requirement of the rules on the part of the plaintiff, as in the case at bar, courts should decide to dispense with rather than wield their authority to dismiss.

5. ID.; ID.; ID.; ID.; RULES OF COURT MAY BE APPLIED SUPPLETORILY TO ADMINISTRATIVE PROCEEDINGS. — The provisions of the Rules of Court may be applied suppletorily to the rules of procedure of administrative bodies exercising quasi-judicial powers, unless otherwise provided by law or the rules of procedure of the administrative agency concerned. The Rules of Court, which are meant to secure to every litigant the adjective phase of due process of law, may be applied to proceedings before an administrative body with quasi-judicial powers in the absence of different and valid statutory or administrative provisions prescribing the ground rules for the investigation, hearing and adjudication of cases before it.

6. ID.; ID.; APPEALS; FACTUAL FINDINGS OF ADMINISTRATIVE BODIES, RESPECTED. — The Office of the Ombudsman and the appellate court invariably found petitioner guilty of grave misconduct. The Court affirms this finding following the salutary rule that factual findings of administrative bodies are accorded not only respect but even finality by the Court. In administrative proceedings, the quantum of evidence required is only substantial. The gauge of substantial evidence is satisfied where there is reasonable ground to believe that petitioner is guilty of misconduct, even if the evidence might not be overwhelming. Here, there is substantial evidence to support the Ombudsman's finding, as sustained by the CA, that petitioner is guilty of the offense charged against him. Absent a clear showing of grave abuse of discretion, the findings of the Ombudsman, when supported by substantial evidence, are conclusive and shall not be disturbed by the Court. It is not the task of this Court to weigh once more the evidence submitted before administrative bodies and to substitute its own judgment for that of the latter.

7. POLITICAL LAW; CONSTITUTIONAL LAW; STATE POLICY TO PROMOTE HIGH STANDARD OF ETHICS IN THE

PUBLIC SERVICE; VIOLATED IN CASE AT BAR. — We thus find petitioner guilty of grave misconduct. By his actuations, he violated the policy of the State to promote a high standard of ethics in the public service. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency, act with patriotism and justice, and lead modest lives. Public servants must bear in mind this constitutional mandate at all times to guide them in their actions during their entire tenure in the government service.

8. ID.; ADMINISTRATIVE LAW; CIVIL SERVICE LAW; GRAVE MISCONDUCT; PENALTY. — Under the Civil Service Law and its implementing rules, grave misconduct is punishable by dismissal from service. Specifically, Section 22, Rule XIV of the Omnibus Rules Implementing Book V of the Administrative Code of 1987 provides: Sec. 22. Administrative offenses with its corresponding penalties are classified into grave, less grave, and light, depending on the gravity of its nature and effects of acts on the government service. The following are grave offenses with its corresponding penalties: xxx (c) Grave Misconduct 1st Offense – Dismissal x x x. To end, it must be stressed that grave misconduct has always been and should remain anathema in the civil service. It inevitably reflects on the fitness of a civil servant to continue in office. When an officer or employee is disciplined, the object sought is not the punishment of such officer or employee but the improvement of the public service and the preservation of the public's faith and confidence in the government.

APPEARANCES OF COUNSEL

Domingo H. Ballon for petitioner.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

In this petition for review on *certiorari* under Rule 45 of the Rules of Court, petitioner seeks to set aside and annul the

Decision[1] dated August 21, 2000 as well as the Resolution[2] dated June 15, 2001 of the Court of Appeals (CA) in *CA-G.R. SP No. 54474.*

The CA decision dismissed the petition filed by herein petitioner assailing the decision[3] of Aniano Desierto in his capacity as Ombudsman which found petitioner guilty of grave misconduct and imposed upon him the penalty of dismissal.

The factual antecedents of the case are summarized by the CA thus:

On August 26, 1998, the Housing and Land Regulatory Board (HLURB, for brevity) received a Notice of Appeal filed by Rasemco, Inc., represented by its President Restituto Aquino, in a case captioned as "*Rasemco Construction Corp. vs. Hammercon, Inc.*" docketed as HLURB Case No. 9817 decided by Arbiter Emmanuel Pontejos, petitioner herein. In said Notice of Appeal, Rasemco, through Aquino, asked for the nullification of all the proceedings conducted before Arbiter Pontejos for alleged extortion, bribery and graft and corruption committed by Pontejos in conspiracy with Director Wilfredo Imperial and Ms. Carmen Atos, both of HLURB and one Roderick Ngo, officer of Hammercon, Inc. Attached to the Notice of Appeal were a photocopy of Aquino's letter to President Joseph Estrada dated August 12, 1998 and his complaint-affidavit. The complaint-affidavit imputed to the named officer and employee of HLURB the following acts, *viz:*

1. Demanding and receiving monetary consideration in exchange for offers of assistance in securing a favorable decision in a pending case;

2. Inaction of Director Imperial of complainant's opposition to the issuance of license to sell in favor of Rasemco, Inc., and subsequently, his issuance of said license despite his supposed knowledge about the existence of legal defect or impediment in applicant's title;

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[1] Penned by then Associate Justice Presbitero J. Velasco, Jr., now a member of this Court, with Associate Justice Bernardo LL. Salas (ret.) and Associate Justice Edgardo P. Cruz (ret.) concurring; *rollo*, pp. 40-54.

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

[3] *Id.* at 98-103.

3. Arbiter Pontejos' preparing and/or editing pleadings such as draft petition for review as well as other legal documents such as affidavits and contracts for Rasemco; and

4. Arbiter Pontejos and Ms. Atos' (para-legal staff of Arbiter Pontejos meeting and conferring with Aquino and his lawyer, Atty. Venturanza, outside of office premises.

The gravity of the allegations contained in the complaint prompted the HLURB to conduct an investigation despite the absence of a formal administrative complaint. On August 28, 1998, Commissioner Francisco L. Dagñalan of the Legal and Administrative Affairs of HLURB directed Dir. Imperial, Atty. Pontejos and Ms. Atos to submit their comments to Mr. Aquino's affidavit complaint within five (5) days from receipt of the memorandum dated August 28, 1998. On September 2, 1998, petitioner and Ms. Atos submitted separate explanations denying the allegations in the complaint and giving their own version of the events. Meanwhile, Dir. Imperial submitted a Manifesto written in Filipino, dated August 31, 1998, as his answer to the complaint.

On September 8, 1998, HLURB Chief Executive Officer (CEO) and Commissioner Romulo Q. Fabul issued HLURB Special Order No. 55 creating a fact-finding committee to investigate the background and circumstances of Mr. Aquino's complaint against Dir. Imperial, Arbiter Pontejos and Carmen Atos and determine the remedial and preventive management measures that HLRUB must undertake, if any. Commissioner Francisco Dagñalan was named chairman of the fact-finding committee and Commissioners Roque Arrieta Magno and Teresita A. Desierto as members.

While the fact-finding committee of the HLURB was conducting their investigation, Mr. Aquino filed an administrative complaint with the Office of the Ombudsman against the same persons on alleged conspiracy to extort money form him under a promise that a favorable decision will be rendered in a case pending before HLURB. Attached to the complaint are the sworn statements of Ruth Adel and Atty. Thaddeus E. Venturanza, Resemco's finance officer and legal counsel, respectively, and a photocopy of the check allegedly received by Arbiter Pontejos through Ms. Atos. The Evaluation and Preliminary Investigation Bureau (EPIB, for brevity) of the Office of the Ombudsman conducted a preliminary investigation and directed the respondents to file their counter-affidavits and other supporting

evidence. On September 25, 1998, respondent Atos filed her counter-affidavit denying the material allegations of the complaint and raised the defense that the check given by Ruth Adel was in payment of a personal transaction between them. The counter-affidavit of respondent Pontejos submitted on December 4, 1998, also denied the material allegations of the complaint and dismissed the complaint as "nothing more than a disgruntled losing party seeking to gain leverage." Repondent Imperial also denied the allegations linking him to the alleged extortion perpetrated by Atty. Pontejos and Ms. Atos and in the receipt of his alleged share in the bribe.

Meanwhile, the fact-finding committee of the HLURB proceeded with their own investigation, limiting their inquiry into the administrative aspect of the complaint. On January 29, 1999, the committee submitted its report on the investigation proposing among others to indorse the report to the Office for the Ombudsman for its consideration.

On February 18, 1999, public respondent Ombudsman Aniano A. Desierto issued an order placing petitioner Pontejos under preventive suspension for a period of six (6) months without pay and further directing him and Dir. Imperial to file their counter-affidavits and other controverting evidence to the complaint. Thereafter or on February 19, 1999, the EPIB of the Office of the Ombudsman issued a joint resolution recommending that: 1) an Information for Estafa (one count) be filed against respondent Atty. EMMANUEL T. PONTEJOS befor (sic) the Regional Trial Court of Quezon City; 2) an Information for Direct Bribery be filed against respondent Atty. EMMANUEL T. PONTEJOS before the Regional Trial Court of Quezon City; 3) an Information for Unauthorized Practice of Profession in violation of R.A. 6713 to be filed against Atty. EMMANUEL T. PONTEJOS before the Metropolitan Trial Court of Quezon City; 4) the complaint against Director WILFREDO I. IMPERIAL and RODERICK NGO be dismissed for insufficiency of evidence; and 5) respondent CARMENCITA ATOS **y**. (sic) RUIZ be extended immunity from criminal prosecution in accordance with Section 17 of R.A.A (sic) 6770 and be utilized as a state witness. Respondent Pontejos (petitioner, herein) moved to reconsider the Order of the Office of the Ombudsman dated February 18, 1999 which motion was denied in an Order dated March 5, 1999. In accordance with the recommendation of the EPIB, the Office of the Ombudsman filed criminal informations for bribery and estafa against respondent Atty. Emmanuel T. Pontejos. Meanwhile, in a Resolution dated June 21, 1999, the Office of the Ombudsman granted

Carmencita Atos immunity from criminal prosecution for bribery and estafa filed with the Regional Trial Court of Quezon City and in the Metropolitan Trial Court of Quezon City.

On June 29, 1999, the Office of the Ombudsman disposed of the administrative complaint as follows:

> "WHEREFORE, in view of the foregoing premises, we hereby declare respondent Emmanuel Pontejos guilty of Grave Misconduct, and as such, the penalty of dismissal from the service is hereby meted on him.
>
> We hereby absolve respondent Wilfredo Imperial of the charges for lack of substantial evidence.
>
> SO ORDERED."

Petitioner moved to reconsider the above decision but this was denied by the Ombudsman in an Order dated July 21, 1999. Thereafter, he filed a petition for review under Rule 43 of the Rules of Court in the CA. On August 21, 2000, the CA dismissed the petition and upheld the Ombudsman's decision finding petitioner guilty of grave misconduct. Petitioner moved for reconsideration but the CA denied his motion.

Hence, this petition based on the following assignment of errors:

1. THE HONORABLE COURT OF APPEALS ERRED IN NOT DECLARING THAT PETITIONER WAS DENIED DUE PROCESS BY THE OFFICE OF THE OMBUDSMAN;
2. THE HONORABLE COURT OF APPEALS ERRED IN NOT DECLARING THAT THE PROCEEDINGS BEFORE THE OFFICE OF OMBUDSMAN WAS TAINTED WITH ILL-MOTIVES;
3. THE HONORABLE COURT OF APPEALS ERRED IN NOT DECLARING THAT THE GRANT OF IMMUNITY TO MS. CARMENCITA R. ATOS WAS IMPROPER;
4. THE HONORABLE COURT OF APPEALS ERRED IN NOT DECLARING THAT THE OFFICE OF THE OMBUSMAN SINGLED OUT HEREIN PETITIONER FOR PREVENTIVE SUSPENSION;

5. THE HONORABLE COURT OF APPEALS ERRED IN GIVING WEIGHT TO THE AFFIDAVIT DATED 18 FEBRUARY 1999 OF MS. ATOS;

6. THE HONORABLE COURT OF APPEALS ERRED IN NOT DECLARING THAT THERE WAS A FAILURE TO PROSECUTE ON THE PART OF PRIVATE RESPONDENT.

At the outset, it must be stated that petitioner had already raised the same issues and arguments before this Court in the case of *Pontejos v. Office of the Ombudsman*[4] decided on February 22, 2006. That case involved exactly the same set of facts and issues as in this case, except that what was challenged therein was the February 19, 1999 Joint Resolution of the Evaluation and Preliminary Investigation Bureau (EPIB) of the Office of the Ombudsman which found probable cause against petitioner for estafa, direct bribery and illegal practice of profession, whereas what is assailed in the instant case is the decision of the Ombudsman finding petitioner guilty of grave misconduct and dismissing him from service. We held in that case, penned by former Chief Justice Artemio V. Panganiban:

> Petitioner theorizes that the OMB resolved the Complaint against him for reasons other than the merits of the case. He specifically charges HLURB Commissioner Teresita Desierto, the spouse of Ombudsman Desierto, as the "unseen hand" behind the filing of the criminal cases. Commissioner Desierto allegedly harbored resentment against him for signing a Manifesto issued by some lawyers in the HLURB. He also recalls Commissioner Desierto threatening him if he did not resign from the HLURB. Thus, he concludes that the proceedings before the OMB were tainted with ill motives.
>
> We cannot accept petitioner's arguments. The Court observes that his arguments are merely conjectures bereft of any proof. He presented absolutely no evidence of any irregularity in the proceedings before the OMB. There was no showing that Commissioner Desierto interfered in any manner in the proceedings before the OMB. Other than petitioner's bare assertions, there was also no proof that Commissioner Desierto bore a grudge against Pontejos.

[4] G.R. Nos. 158613-614, February 22, 2006, 483 SCRA 83.

x x x x x x x x x

The decision on whether to prosecute and whom to indict is executive in character. It is the prosecution that could essentially determine the strength of pursuing a case against an accused. The prosecutorial powers include the discretion of granting immunity to an accused in exchange for testimony against another. xxx

It is constitutionally permissible for Congress to vest the prosecutor with the power to determine who can qualify as a witness and be granted immunity from prosecution. Noteworthy, there are many laws that allow government investigators and prosecutors to grant immunity. In relation to this, the Court has previously upheld the discretion of the Department of Justice (DOJ), Commission on Elections (Comelec), and the Presidential Commission on Good Government (PCGG) to grant immunity from prosecution on the basis of the respective laws that vested them with such power.

The OMB was also vested with the power to grant immunity from prosecution, thus:

"SEC. 17. x x x.

"Under such terms and conditions as it may determine, taking into account the pertinent provisions of the Rules of Court, the Ombudsman may grant immunity from criminal prosecution to any person whose testimony or whose possession and production of documents or other evidence may be necessary to determine the truth in any hearing, inquiry or proceeding being conducted by the Ombudsman or under its authority, in the performance or in the furtherance of its constitutional functions and statutory objectives. x x x."

According to Pontejos, the OMB's authority to grant immunity is subject to the "pertinent provisions of the Rules of Court." He claims that the procedural rules allow the discharge of an accused as state witness only upon conformity of the trial court. An information against the accused must first be filed in court prior to the discharge. Moreover, the prosecution could only recommend and propose, but not grant immunity.

The pertinent provision of the Rules of Court reads:

"Sec. 17. Discharge of accused to be state witness. –When two or more persons are jointly charged with the commission

> of any offense, upon motion of the prosecution before resting its case, the court may direct one or more of the accused to be discharged with their consent so that they may be witnesses for the state when after requiring the prosecution to present evidence and the sworn statement of each proposed state witness at a hearing in support of the discharge, the court is satisfied that:
>
> '(a) There is absolute necessity for the testimony of the accused whose discharge is requested;
>
> '(b) There is no other direct evidence available for the proper prosecution of the offense committed, except the testimony of said accused;
>
> '(c) The testimony of said accused can be substantially corroborated in its material points;
>
> '(d) Said accused does not appear to be the most guilty; and
>
> '(e) Said accused has not at any time been convicted of any offense involving moral turpitude.
>
> 'Evidence adduced in support of the discharge shall automatically form part of the trial. If the court denies the motion for discharge of the accused as state witness, his sworn statement shall be inadmissible in evidence.'"

The Court has already held that this provision is applicable only to cases already filed in court. The trial court is given the power to discharge an accused as a state witness only because it has already acquired jurisdiction over the crime and the accused.

As stated earlier, the power to choose who to discharge as state witness is an executive function. Essentially, it is not a judicial prerogative. The fact that an individual had not been previously charged or included in an information does not prevent the prosecution from utilizing said person as a witness.

Section 17 of the Ombudsman Act requires conformity with the Rules of Court. Accordingly, this should be read as requiring the following circumstances prior to the discharge: (1) absolute necessity for the testimony of the accused sought to be discharged; (2) no direct evidence available for the proper prosecution of the offense committed except the testimony of the said accused; (3) the testimony of the said accused can be substantially corroborated in its material

points; (4) said accused does not appear to be most guilty; and (5) said accused has not any time been convicted of any offense involving moral turpitude.

Indeed, there must be a standard to follow in the exercise of the prosecutor's discretion. The decision to grant immunity cannot be made capriciously. Should there be unjust favoritism, the Court may exercise its *certiorari* power.

In the present case, *certiorari* is not proper. Pontejos' allegations do not show, much less allege, grave abuse of discretion in the granting of immunity to Atos. The OMB considered Atos' position, record and involvement in the case prior to the discharge.

Pontejos also claims that he was not furnished a copy of Atos' Affidavit that connected him to the crimes. Since he was not afforded the opportunity to challenge the assertions in said Affidavit, his right to due process had allegedly been violated.

The alleged denial of due process is controverted by the facts. It appears from the records that Pontejos eventually received a copy of the aforementioned Affidavit. More importantly, he had challenged the Affidavit in his Motion for Reinvestigation and request for reconsideration of the Review and Recommendation of the Overall Deputy Ombudsman. Pontejos' contention must necessarily fail because — as shown — he had the opportunity to be heard and in fact, availed of it.

The foregoing ruling is the law of the case and thus lays to rest the issues posed by petitioner in his assignment of errors. We see no reason in this case to deviate therefrom. It is a basic legal principle that whatever is once irrevocably established as the controlling legal rule or decision between the same parties in the case continues to be the law of the case, whether correct on general principles or not, so long as the facts on which such decision was predicated continue to be the facts of the case before the court.[5]

We are now left to discuss petitioner's liability for grave misconduct and the propriety of the penalty of dismissal imposed upon him.

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[5] *Cucueco v. Court of Appeals*, G.R. No. 139278, October 25, 2004, 441 SCRA 290, 301.

Petitioner contends that he was denied of his right to due process when he was not able to confront Aquino who failed to appear in two hearings. He further avers that Aquino's absence in those hearings constitutes failure to prosecute and a ground for the dismissal of the administrative case against him. Petitioner insists that no substantial evidence existed to hold him liable for grave misconduct as the Ombudsman merely relied on the affidavits of Carmencita Atos and respondent Aquino's subordinates namely Ruth Adel, Rowena Alcovendas and Atty. Thaddeus Venturanza, in determining his administrative liability.

Due process in an administrative context does not require trial-type proceedings similar to those in courts of justice. Where opportunity to be heard either through oral arguments or through pleadings is accorded, there is no denial of procedural due process. A formal or trial-type hearing is not at all times and in all instances essential. The requirements are satisfied where the parties are afforded fair and reasonable opportunity to explain their side of the controversy at hand.[6]

In the instant case, petitioner had ample opportunity to ventilate his case. On the administrative complaint filed by Aquino against him with the Office of the Ombudsman, petitioner had received sufficient information which, in fact, enabled him to prepare his defense. He submitted his counter-affidavit denying the allegations in the complaint. He was also able to seek reconsideration of the Ombudsman's Order placing him under preventive suspension for six (6) months. Finally, he was able to appeal the Ombudsman's ruling to the CA. Clearly, petitioner had all the opportunity to be heard, present his case and submit evidence in his defense.

We have consistently held that the essence of due process is simply the opportunity to be heard or, as applied to administrative proceedings, the opportunity to explain one's side or the opportunity to seek a reconsideration of the action or ruling complained of. Any seeming defect in its observance is cured

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[6] *Samalio v. Court of Appeals*, G.R. No. 140079, March 31, 2005, 454 SCRA 462, 472.

by the filing of a motion for reconsideration. Denial of due process cannot be successfully invoked by a party who has had the opportunity to be heard on his motion for reconsideration.[7] As the records would show, petitioner had filed a motion for reconsideration of the decision of the Ombudsman. Hence, petitioner's protestations that he had been deprived of due process must necessarily fail.

The absence of Aquino in two hearings is not a sufficient ground to say that due process was not afforded petitioner. Administrative bodies are not bound by the technical niceties of law and procedure and the rules obtaining in courts of law. In administrative proceedings, technical rules of procedure and evidence are not strictly applied and administrative due process cannot be fully equated with due process in its strict judicial sense. In fact, it is well-settled that, in administrative cases, the requirement of notice and hearing does not connote full adversarial proceedings.[8] Thus, petitioner was not denied due process when he failed to cross-examine Aquino since he was given the opportunity to be heard and present his evidence. To repeat, in administrative cases, a fair and reasonable opportunity to explain one's side suffices to meet the requirements of due process.[9]

Petitioner cites Section 3, Rule 17 of the 1997 Rules of Civil Procedure to support his argument that the administrative case against him should have been dismissed for failure to prosecute because Aquino failed to appear in two hearings of the EPIB of the Office of the Ombudsman.

Section 3, Rule 17 of the 1997 Rules of Civil Procedure, states –

SEC. 3. Dismissal due to fault of plaintiff. – If, for no justifiable cause, the plaintiff fails to appear on the date of the presentation of

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[7] *Ibid.*

[8] *Id.* at 471.

[9] *Autencio v. Mañara*, G.R. No. 152752, January 19, 2005, 449 SCRA 46, 55.

his evidence in chief on the complaint, or to prosecute his action for an unreasonable length of time, or to comply with these Rules or any order of the court, the complaint may be dismissed upon motion of the defendant or upon the court's own motion, without prejudice to the right of the defendant to prosecute his counterclaim in the same or in a separate action. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise declared by the court.

The provisions of the Rules of Court may be applied suppletorily to the rules of procedure of administrative bodies exercising quasi-judicial powers, unless otherwise provided by law or the rules of procedure of the administrative agency concerned. The Rules of Court, which are meant to secure to every litigant the adjective phase of due process of law, may be applied to proceedings before an administrative body with quasi-judicial powers in the absence of different and valid statutory or administrative provisions prescribing the ground rules for the investigation, hearing and adjudication of cases before it.[10]

However, even if Section 3, Rule 17 of the Rules of Court is applied to the subject administrative proceedings, petitioner's argument on the matter of failure to prosecute still lacks merit. Section 3, Rule 17 provides for three instances where the complaint may be dismissed due to the plaintiff's fault: (1) if he fails to appear during a scheduled trial, especially on the date for the presentation of his evidence in chief; (2) if he fails to prosecute his action for an unreasonable length of time; and (3) if he fails to comply with the rules or any order of the court.[11]

While a court can dismiss a case on the ground of *non prosequitur*, the real test for the exercise of such power is whether, under the circumstances, plaintiff is chargeable with want of due diligence in failing to proceed with reasonable promptitude. In the absence of a pattern or scheme to delay

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[10] *Supra* note 6 at 469.

[11] *Belonio v. Rodriguez*, G.R. No. 161379, August 11, 2005, 466 SCRA 557, 577.

the disposition of the case or a wanton failure to observe the mandatory requirement of the rules on the part of the plaintiff, as in the case at bar, courts should decide to dispense with rather than wield their authority to dismiss.[12]

Aquino, who initiated the complaint against petitioner, has not shown culpable negligence that would warrant the dismissal of his complaint. As pointed out by the Solicitor General in his Comment filed with this Court, records show that Aquino appeared at the clarificatory hearing called by the EPIB.[13] He even brought to the attention of the proper authorities petitioner's misconduct. Likewise, the CA noted that respondent had not manifested a lack of interest to prosecute. Besides, in an administrative case, the complainant, like Aquino, is a mere witness. No private interest is involved in an administrative case as the offense is committed against the government.[14] Thus, his absence in two hearings is not a ground for the dismissal of the case against petitioner.

We agree with the conclusions of the Office of the Ombudsman as affirmed by the CA that there was sufficient evidence to support the finding of administrative liability on the part of petitioner. It has been substantially established that petitioner demanded and received the amount of One Hundred Thousand Pesos (₱100,000.00) in exchange for a favorable decision of a case[15] then pending in the HLURB where petitioner was an Arbiter. The money was given in installments from January to March 1998.[16] The statements of witnesses Atos, Adel and Atty. Venturanza are clear, categorical and replete with the details establishing how the offense was perpetrated

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[12] *Marahay v. Melicor*, G.R. No. L- 44980, February 6, 1990, 181 SCRA 811, 817.

[13] *Rollo*, p. 174.

[14] *Paredes v. Civil Service Commission*, G.R. No. 88177, December 4, 1990, 192 SCRA 84, 98-99.

[15] HLURB Case No. 9817 entitled, "*Rasemco Construction Corp. v. Hammercon, Inc.*"

[16] *Rollo*, p. 86.

by petitioner. Their statements corroborated the allegations of complainant Aquino. The petitioner failed to present any evidence to counter the aforesaid positive and unequivocal declarations of these witnesses, same, and as such, his guilt has been adequately shown. His bare denial undoubtedly paled in comparison with the witnesses' categorical declarations.

The Office of the Ombudsman and the appellate court invariably found petitioner guilty of grave misconduct. The Court affirms this finding following the salutary rule that factual findings of administrative bodies are accorded not only respect but even finality by the Court. In administrative proceedings, the quantum of evidence required is only substantial. The gauge of substantial evidence is satisfied where there is reasonable ground to believe that petitioner is guilty of misconduct, even if the evidence might not be overwhelming. Here, there is substantial evidence to support the Ombudsman's finding, as sustained by the CA, that petitioner is guilty of the offense charged against him. Absent a clear showing of grave abuse of discretion, the findings of the Ombudsman, when supported by substantial evidence, are conclusive and shall not be disturbed by the Court.[17] It is not the task of this Court to weigh once more the evidence submitted before administrative bodies and to substitute its own judgment for that of the latter.[18]

We thus find petitioner guilty of grave misconduct. By his actuations, he violated the policy of the State to promote a high standard of ethics in the public service. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency, act with patriotism and justice, and lead modest lives.[19] Public servants must bear in mind this constitutional mandate at all times to guide them in their actions during their entire tenure in the government service.

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[17] *Basuel v. Fact-Finding and Intelligence Bureau*, G.R. No. 143664, June 30, 2006, 494 SCRA 118, 127.

[18] *Santos v. Manalili*, G.R. No. 157812, November 22, 2005, 475 SCRA 679, 687.

Under the Civil Service Law and its implementing rules, grave misconduct is punishable by dismissal from service. Specifically, Section 22, Rule XIV of the Omnibus Rules Implementing Book V of the Administrative Code of 1987 provides:

> Sec. 22. Administrative offenses with its corresponding penalties are classified into grave, less grave, and light, depending on the gravity of its nature and effects of acts on the government service.
>
> The following are grave offenses with its corresponding penalties:
>
> xxx xxx xxx
>
> (c) Grave Misconduct
>
> 1st Offense – Dismissal
>
> x x x xxx xxx.

To end, it must be stressed that grave misconduct has always been and should remain anathema in the civil service. It inevitably reflects on the fitness of a civil servant to continue in office. When an officer or employee is disciplined, the object sought is not the punishment of such officer or employee but the improvement of the public service and the preservation of the public's faith and confidence in the government.[20]

WHEREFORE, the petition for review is hereby *DENIED***.** The assailed decision of the CA in *CA-G.R. SP No. 54474* is hereby *AFFIRMED*.

SO ORDERED.

Puno, C.J. (Chairperson), Carpio, Corona, and *Bersamin, JJ.,* concur.

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[19] 1987 Constitution, Article XI, Section 1.

[20] *Civil Service Commission v. Cortez*, G.R. No. 155732, June 3, 2004, 430 SCRA 593, 607-608.

THIRD DIVISION

[G.R. No. 149763. July 7, 2009]

EDUARDO J. MARIÑO, JR., MA. MELVYN P. ALAMIS, NORMA P. COLLANTES, and FERNANDO PEDROSA, *petitioners, vs.* **GIL Y. GAMILLA, RENE LUIS TADLE, NORMA S. CALAGUAS, MA. LOURDES C. MEDINA, EDNA B. SANCHEZ, REMEDIOS GARCIA, MAFEL YSRAEL, ZAIDA GAMILLA, and AURORA DOMINGO,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; GOVERNMENT ASSISTANCE TO STUDENTS AND TEACHERS IN PRIVATE EDUCATION ACT (R.A. NO. 6728). —The provisions of Republic Act No. 6728 were not arbitrarily applied by the DOLE-NCR Regional Director, the BLR, or the Court of Appeals to the ₱42 million economic benefits package granted by UST to USTFU, considering that the parties themselves stipulated in Section 7 of the MOA they signed on 10 September 1992 that: 7.0. **It is clearly understood and agreed upon that the aggregate sum of ₱42 million is chargeable against the share of the faculty members in the incremental proceeds of tuition fees collected and still to be collected**[;] Provided, however, that he (sic) commitment of the UNIVERSITY to pay the aggregate sum of ₱42 million shall subsist even if the said amount exceeds the proportionate share that may accrue to the faculty members in the tuition fee increases that the UNIVERSITY may be authorized to collect in School–Year 1992-1993, and, Provided, finally, that the covered faculty members shall still be entitled to their proportionate share in any undistributed portion of the incremental proceeds of the tuition fee increases in School-Year 1992-1993, and **which incremental proceeds are, by law and pertinent Department of Education Culture and Sports (DECS) regulations, required to be allotted for the payment of salaries, wages, allowances and other benefits of teaching and non-teaching personnel for the UNIVERSITY.** The "law" in the aforequoted Section 7 of the MOA can only refer to Republic Act No. 6728, otherwise known as the "Government

Assistance to Students and Teachers in Private Education Act." Republic Act No. 6728 was enacted in view of the declared policy of the State, in conformity with the mandate of the Constitution, to promote and make quality education accessible to all Filipino citizens, as well as the recognition of the State of the complementary roles of public and private educational institutions in the educational system and the invaluable contribution that the private schools have made and will make to education. The said statute primarily grants various forms of financial aid to private educational institutions such as tuition fee supplements, assistance funds, and scholarship grants.

2. ID.; ID.; ID.; FINANCIAL AID PROVIDED; TUITION FEE SUPPLEMENT FOR STUDENT IN PRIVATE HIGH SCHOOL (SECTION 5); COVERAGE, ELUCIDATED. — One form of financial aid is provided under R.A. No. 6728, Section 5 (Tuition Fee Supplement For Student in Private High School) thereof. x x x Although Section 5 of Republic Act No. 6728 does speak of government assistance to students in private high schools, it is not limited to the same. Contrary to petitioners' puerile claim, Section 5 likewise grants an unmistakable authority to private high schools to increase their tuition fees, subject to the condition that seventy (70%) percent of the tuition fee increases shall go to the payment of the salaries, wages, allowances, and other benefits of their teaching and non-teaching personnel. The said allocation may also be used to cover increases in the salaries, wages, allowances, and other benefits of school employees as provided for in the CBAs existing or in force at the time when Republic Act No. 6728 was approved and made effective.

3. ID.; ID.; ID.; ID.; ID.; ID.; NOT LIMITED TO PRIVATE HIGH SCHOOLS. — Contrary to petitioners' argument, the right of private schools to increase their tuition fee — with their corresponding obligation to allocate 70% of said increase to the payment of the salaries, wages, allowances, and other benefits of their employees — is not limited to private high schools. Section 9 of Republic Act No. 6728, on "Further Assistance to Students in Private Colleges and Universities," is crystal clear in providing that: d) Government assistance and tuition increases as described in this Section shall be governed by the same conditions as provided under Section 5 (2). Indeed, a private educational institution under Republic

Act No. 6728 still has the discretion on the disposition of 70% of the tuition fee increase. It enjoys the privilege of determining how much increase in salaries to grant and the kind and amount of allowances and other benefits to give. The only precondition is that 70% percent of the incremental tuition fee increase goes to the payment of salaries, wages, allowances and other benefits of teaching and non-teaching personnel.

4. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; APPEARANCES AND FEES; PERTINENT LEGAL PROVISIONS ON CHECK-OFF. — The pertinent legal provisions on a check-off are found in Articles 222(b) and 241(n) and (o) of the Labor Code, as amended. Article 222(b) states: (b) No attorney's fees, negotiation fees or similar charges of any kind arising from any collective bargaining negotiations or conclusion of the collective agreement shall be imposed on any individual member of the contracting union: Provided, however, that attorney's fees may be charged against unions funds in an amount to be agreed upon by the parties. Any contract, agreement or arrangement of any sort to the contrary shall be null and void. Article 241(n) reads: (n) No special assessment or other extraordinary fees may be levied upon the members of a labor organization unless authorized by a written resolution of a majority of all the members at a general membership meeting duly called for the purpose. The secretary of the organization shall record the minutes of the meeting including the list of all members present, the votes cast, the purpose of the special assessment or fees and the recipient of such assessment or fees. The record shall be attested to by the president. And Article 241(o) provides: (o) Other than for mandatory activities under the Code, no special assessments, attorney's fees, negotiation fees or any other extraordinary fees may be checked off from any amount due to an employee without an individual written authorization duly signed by the employee. The authorization should specifically state the amount, purpose and beneficiary of the deduction.

5. ID.; ID.; ID.; ID.; GENERAL RULE AND EXCEPTION. — Article 222(b) of the Labor Code, as amended, prohibits the payment of attorney's fees only when it is effected through forced contributions from the employees from their own funds as distinguished from union funds. Hence, the general rule is that attorney's fees, negotiation fees, and other similar charges may

only be collected from union funds, not from the amounts that pertain to individual union members. As an exception to the general rule, special assessments or other extraordinary fees may be levied upon or checked off from any amount due an employee for as long as there is proper authorization by the employee. A check-off is a process or device whereby the employer, on agreement with the Union, recognized as the proper bargaining representative, or on prior authorization from the employees, deducts union dues or agency fees from the latter's wages and remits them directly to the Union. Its desirability in a labor organization is quite evident. The Union is assured thereby of continuous funding. As this Court has acknowledged, the system of check-off is primarily for the benefit of the Union and, only indirectly, for the individual employees.

6. ID.; ID.; ID.; ID.; ID.; REQUIREMENT ON UNION FUNDS, ELUCIDATED. — What the law requires is that the funds be already deemed union funds even before the attorney's fees are deducted or paid therefrom; it does not become union funds after the deduction or payment. To rule otherwise will also render the general prohibition stated in Article 222(b) nugatory, because all that the union needs to do is to deduct from the total benefits awarded to the employees the amount intended for attorney's fees and, thus, "convert" the latter to union funds, which could then be used to pay for the said attorney's fees.

7. ID.; ID.; ID.; ID.; VALID LEVY AND CHECK-OFF OF SPECIAL ASSESSMENTS; REQUISITES; CASE AT BAR. — The Court further determines that the requisites for a valid levy and check-off of special assessments, laid down by Article 241(n) and (o), respectively, of the Labor Code, as amended, have not been complied with in the case at bar. To recall, these requisites are: (1) an authorization by a written resolution of the majority of all the union members at the general membership meeting duly called for the purpose; (2) secretary's record of the minutes of the meeting; and (3) individual written authorization for check-off duly signed by the employee concerned. The failure of the Mariño Group to strictly comply with the requirements set forth by the Labor Code, as amended, and the USTFU Constitution and By-Laws, invalidates the questioned special assessment. Substantial compliance is not enough in view of the fact that the special assessment will diminish the compensation of the

union members. Their express consent is required, and this consent must be obtained in accordance with the steps outlined by law, which must be followed to the letter. No shortcuts are allowed.

APPEARANCES OF COUNSEL

Eduardo J. Mariño, Jr. for petitioners.
Quadra Quadra & Associates for respondents.

D E C I S I O N

CHICO-NAZARIO, *J.*:

Assailed in this Petition for Review on *Certiorari*,[1] under Rule 45 of the Rules of Court, are (1) the Decision[2] dated 16 March 2001 of the Court of Appeals in CA-G.R. SP No. 60657, dismissing petitioners' Petition for *Certiorari* under Rule 65 of the Rules of Court; and (2) the Resolution[3] dated 30 August 2001 of the appellate court in the same case denying petitioners' Motion for Reconsideration.

I

FACTS

The Petition at bar arose from the following factual and procedural antecedents.

(1) Case No. NCR-OD-M-9412-022

At the time when the numerous controversies in the instant case first came about, petitioners Atty. Eduardo J. Mariño, Jr., Ma. Melvyn P. Alamis, Norma P. Collantes, and Fernando Pedrosa were among the executive officers and directors

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[1] *Rollo*, pp. 14-68.

[2] Penned by the then Associate Justice Romeo J. Callejo, Sr. with Associate Justices Renato C. Dacudao and Perlita J. Tria Tirona, concurring; *rollo*, pp. 69-92.

[3] *Rollo*, p. 93.

(collectively called the Mariño Group) of the University of Sto. Tomas Faculty Union (USTFU), a labor union duly organized and registered under the laws of the Republic of the Philippines and the bargaining representative of the faculty members of the University of Santo Tomas (UST).[4]

Respondents Gil Y. Gamilla, Rene Luis Tadle, Norma S. Calaguas, Ma. Lourdes C. Medina, Edna B. Sanchez, Remedios Garcia, Mafel Ysrael, Zaida Gamilla, and Aurora Domingo were UST professors and USTFU members.

The 1986 Collective Bargaining Agreement (CBA) between UST and USTFU expired on 31 May 1988. Thereafter, bargaining negotiations ensued between UST and the Mariño Group, which represented USTFU. As the parties were not able to reach an agreement despite their earnest efforts, a bargaining deadlock was declared and USTFU filed a notice of strike. Subsequently,

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[4] As alleged by herein respondents in their complaints before the Med-Arbiter and admitted by herein petitioners in their responsive pleadings, the following were the then Executive Officers and Directors of the USTFU:

EDUARDO J. MARIÑO, JR.	- President
MA. MELVYN P. ALAMIS	- Executive Vice-President
MYRNA P. HILARIO	- Internal Vice-President
URBANO F. AGALABIA	- External Vice-President
LILY B. MATIAS	- Vice-President For Labor Education And Research
ANTHONY D. CURA	- Vice-President For Grievance And Complaints
NORMA P. COLLANTES	- Secretary-General
PORFIRIO JOSE B. GUICO	- Treasurer
ZENAIDA C. BURGOS	- Public Relations Officer
MILAGROSA G. NINO	- Auditor
RENE V. SISON	- Sergeant-At-Arms
RONALDO G. ASUNCION	- Director
ROSY ATIENZA	- Director
NOEL FIEDACAN	- Director
FULVIO MA. L. GUERRERO	- Director
TERESITA MEER	- Director
FERNANDO PEDROSA	- Director
ZENAIDA REALUYO	- Director
NILDA REDOBLADO	- Director
EVELYN TIROL	- Director (CA *rollo*, p. 114.)

then Secretary of the Department of Labor and Employment (DOLE) Franklin Drilon assumed jurisdiction over the dispute, which was docketed as NCMB-NCR-NS-02-117-89. The DOLE Secretary issued an Order on 19 October 1990, laying the terms and conditions for a new CBA between the UST and USTFU. In accordance with said Order, the UST and USTFU entered into a CBA in 1991, which was to be effective for the period of 1 June 1988 to 31 May 1993 (hereinafter 1988-1993 CBA). In keeping with Article 253-A[5] of the Labor Code, as amended, the economic provisions of the 1988-1993 CBA were subject to renegotiation for the fourth and fifth years.

Accordingly, on 10 September 1992, UST and USTFU executed a Memorandum of Agreement (MOA),[6] whereby UST faculty members belonging to the collective bargaining unit were granted additional economic benefits for the fourth and fifth years of the 1988-1993 CBA, specifically, the period from 1 June 1992 up to 31 May 1993. The relevant portions of the MOA read:

MEMORANDUM OF AGREEMENT

x x x x x x x x x

1.0. The University hereby grants additional benefits to **Faculty Members** belonging to the collective bargaining unit as defined in Article I, Section 1 of the Collective Bargaining Agreement entered into between the parties herein over and above the benefits now enjoyed by the said faculty members, which additional benefits shall amount in the aggregate to **₱42,000,000.00**[.]

2.0. Under this Agreement the University shall grant salary increases, to wit:

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[5] ART. 253-A. *Terms of a collective bargaining agreement.* – Any Collective Bargaining Agreement that the parties may enter into shall, insofar as the representation aspect is concerned, be for a term of five (5) years. x x x. All other provisions of the Collective Bargaining Agreement shall be renegotiated not later than three (3) years after its execution. x x x. (As amended by Section 21, Republic Act No. 6715, 21 March 1989).

[6] *Rollo*, pp. 142-144.

2.1. THIRTY (₱30.00) PESOS per lecture unit per month to **covered faculty members** retroactive to June 1, 1991;

2.2. Additional THIRTY (₱30.00) PESOS per lecture unit per month on top of the salary increase granted in [paragraph] 2.1 hereof to the said **faculty members** effective June 1, 1992;

2.3. In the case of a covered **faculty member** whose compensation is computed on a basis other than lecture unit per month, he shall receive salary increases that are equivalent to those provided in paragraphs 2.1 and 2.2 hereof, with the amount of salary increases being arrived at by using the usual method of computing the said faculty member's basic pay;

3.0. The UNIVERSITY shall likewise restore to the **faculty members** the amounts corresponding to the deductions in salary that were taken from the pay checks in the second half of June, 1989 and in the first half of July, 1989, provided that said deductions in salary relate to the union activities that were held in the aforestated payroll periods, and provided further that the amounts involved shall be taken from the ₱42 Million (sic) economic package.

4.0. A portion of the ₱42,000,000.00 economic package amounting to **₱2,000,000.00** shall be used to satisfy all obligations that remained outstanding and unpaid in the May 17, 1986 Collective Bargaining Agreement.

5.0. Any unspent balance of the aggregate of ₱42,000,000.00 as of October 15, 1992, shall, within two weeks, be remitted to the Union[:]

5.1. The **unspent balance** mentioned in paragraph 5.0 inclusive of earnings but exclusive of check-offs, shall be used for the salary increases herein granted up to May 31, 1993, for increases in hospitalization, educational and retirement benefits, and for other economic benefits.

6.0. The benefits herein granted constitute the entire and complete package of economic benefits granted by the UNIVERSITY to the covered faculty members for the balance of the term of the existing collective bargaining agreement.

7.0. **It is clearly understood and agreed upon that the aggregate sum of ₱42 million is chargeable against the share of the faculty members in the incremental proceeds of tuition fees collected and still to be collected**; Provided, however, that he (sic) commitment of the

UNIVERSITY to pay the aggregate sum of ₱42 million shall subsist even if the said amount exceeds the proportionate share that may accrue to the faculty members in the tuition fee increases that the UNIVERSITY may be authorized to collect in School-Year 1992-1993, and, Provided, finally, that the covered faculty members shall still be entitled to their proportionate share in any undistributed portion of the incremental proceeds of the tuition fee increases in School-Year 1992-1993, and **incremental proceeds are, by law and pertinent Department of Education Culture and Sports (DECS) regulations, required to be allotted for the payment of salaries, wages, allowances and other benefits of teaching and non-teaching personnel for the UNIVERSITY.**

8.0. With this Agreement, the parties confirm that[:]

8.1. the University has complied with the requirements of the law relative to the release and distribution of the incremental proceeds of tuition fee increases as these incremental proceeds pertain to the faculty share in the tuition fee increase collected during the School-Year 1991-1992; and,

8.2. the economic benefits herein granted constitute the full and complete financial obligation of the UNIVERSITY to the members of its faculty for the period June 1, 1991 to May 31, 1993, pursuant to the provisions of the existing Collective Bargaining Agreement.

9.0. Subject to the provisions of law, and without reducing the amounts of salary increases granted under paragraphs 2.0, 2.1, 2.2 and 2.3[,] the UNION shall have the **right to a pro-rata lump sum check-off** of all sums of money due and payable to it from the package of economic benefits granted under this Agreement, provided that there is an authorization of a majority of the members of the UNION and provided, further, that the ₱42 million economic package herein granted shall not in any way be exceeded.

10.0. This Agreement shall be effective for a period of two (2) years, starting June 1, 1991 and ending on May 31, 1993, provided, however, that if for any reason no new collective bargaining agreement is entered into at the expiration date hereof, this Agreement, together with the March 18, 1991 Collective Bargaining Agreement, shall remain in full force and effect until such time as a new collective bargaining agreement shall have been executed by the parties.

xxx xxx xxx

UNIVERSITY OF SANTO TOMAS BY: (signed) FR. TERESO M. CAMPILLO, JR., O.P. Treasurer	UST FACULTY UNION BY: (signed) ATTY. EDUARDO J. MARINO, JR. President

Attested by[:]
(signed)
REV. FR. ROLANDO DELA ROSA, O.P. (Emphasis ours.)

On 12 September 1992, the majority of USTFU members signed individual instruments of ratification,[7] which purportedly signified their consent to the economic benefits granted under the MOA. Said instruments uniformly recited:

RATIFICATION OF THE UST-USTFU MEMORANDUM OF AGREEMENT DATED SEPTEMBER 10, 1992 GRANTING A PACKAGE OF THE ₱42 MILLION FACULTY BENEFITS WITH PROVISION FOR CHECK-OFF.

September 12, 1992
Date

TO WHOM IT MAY CONCERN:

I, the undersigned UST faculty member, aware that the law requires ratification and that without ratification by majority of all faculty members belonging to the collective bargaining unit, the Memorandum of Agreement between the University of Santo Tomas and the UST Faculty Union (or USTFU) dated September 10, 1992 may be questioned and all the faculty benefits granted therein may be cancelled, **do hereby ratify the said agreement**.

Under the Agreement, the University shall pay ₱42 million over a period of two (2) years from June 1, 1991 up to May 31, 1992.

In consideration of the efforts of the UST Faculty Union as the faculty members' sole and exclusive collective bargaining representative in obtaining the said ₱42 million package of economic benefits, a **check-off of ten percent thereof covering union dues**,

[7] *Rollo*, p. 145; CA *rollo*, pp. 159-165.

and special assessment for Labor Education Fund and attorney's fees from USTFU members and agency fee from non-members for the period of the Agreement is hereby authorized to be made in one lump sum effective immediately, provided that two per cent (sic) shall be for [the] administration of the Agreement and the balance of eight per cent (sic) shall be for attorney's fees to be donated, as pledged by the USTFU lawyer to the Philippine Foundation for the Advancement of the Teaching Profession, Inc. whose principal purpose is the advancement of the teaching profession and teacher's welfare, and provided further that the deductions shall not be taken from my individual monthly salary but from the total package of ₱42 million due under the Agreement.

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Signature of Faculty Member
(Emphasis ours.)

USTFU, through its President, petitioner Atty. Mariño, wrote a letter[8] dated 1 October 1992 to the UST Treasurer requesting the release to the union of the sum of ₱4.2 million, which was 10% of the ₱42 million economic benefits package granted by the MOA to faculty members belonging to the collective bargaining unit. The ₱4.2 million was sought by USTFU in consideration of its efforts in obtaining the said ₱42 million economic benefits package. UST remitted the sum of ₱4.2 million to USTFU on 9 October 1992.[9]

After deducting from the ₱42 million economic benefits package the ₱4.2 million check-off to USTFU, the amounts owed to UST, and the salary increases and bonuses of the covered faculty members, a net amount of ₱6,389,145.04 remained. The remaining amount was distributed to the faculty members on 18 November 1994.

On 15 December 1994, respondents[10] filed with the Med-Arbiter, DOLE-National Capital Region (NCR), a Complaint for the expulsion of the Mariño Group as USTFU officers and

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[8] Records, Folder II, p. 80.

[9] *Id.* at 78-79.

[10] Except for respondent Gil Y. Gamilla.

directors, which was docketed as **Case No. NCR-OD-M-9412-022**.[11] Respondents alleged in their Complaint that the Mariño Group violated the rights and conditions of membership in USTFU, particularly by: 1) investing the unspent balance of the ₱42 million economic benefits package given by UST without prior approval of the general membership; 2) simultaneously holding elections *viva voce*; 3) ratifying the CBA involving the ₱42 million economic benefits package; and 4) approving the attorney's/agency fees worth ₱4.2 million in the form of check-off. Respondents prayed that the Mariño Group be declared jointly and severally liable for refunding all collected attorney's/agency fees from individual members of USTFU and the collective bargaining unit; and that, after due hearing, the Mariño group be expelled as USTFU officers and directors.

(2) Case No. NCR-OD-M-9510-028

On 16 December 1994, UST and USTFU, represented by the Mariño Group, entered into a new CBA, effective 1 June 1993 to 31 May 1998 (1993-1998 CBA). This new CBA was registered with the DOLE on 20 February 1995.

Respondents[12] filed with the Med-Arbiter, DOLE-NCR, on 18 October 1995, another Complaint against the Mariño Group for violation of the rights and conditions of union membership, which was docketed as **Case No. NCR-OD-M-9510-028**.[13] The Complaint primarily sought to invalidate certain provisions of the 1993-1998 CBA negotiated by the Mariño Group for USTFU and the registration of said CBA with the DOLE.

(3) Case No. NCR-OD-M-9610-001

On 24 September 1996, petitioner Norma Collantes, as USTFU Secretary-General, posted notices in some faculty rooms at UST, informing the union members of a general assembly to be held on 5 October 1996. Part of the agenda for said date was the

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[11] CA *rollo*, pp. 90-97.

[12] Except for respondents Gil Y. Gamilla and Edna B. Sanchez.

[13] *Rollo*, pp. 146-150.

election of new USTFU officers. The following day, 25 September 1996, respondents wrote a letter[14] to the USTFU Committee on Elections, urging the latter to re-schedule the elections to ensure a free, clean, honest, and orderly election and to afford the union members the time to prepare themselves for the same. The USTFU Committee on Elections failed to act positively on respondents' letter, and neither did they adopt and promulgate the rules and regulations for the conduct of the scheduled election.

Thus, on 1 October 1996, respondents[15] filed with the Med-Arbiter, DOLE-NCR, an Urgent *Ex-Parte* Petition/Complaint, which was docketed as **Case No. NCR-OD-M-9610-001**.[16] Respondents alleged in their Petition/Complaint that the general membership meeting called by the USTFU Board of Directors on 5 October 1996, the agenda of which included the election of union officers, was in violation of the provisions of the Constitution and By-Laws of USTFU. Respondents prayed that the DOLE supervise the conduct of the USTFU elections, and that they be awarded attorney's fees.

On 4 October 1996, the Med-Arbiter DOLE-NCR, issued a Temporary Restraining Order (TRO) enjoining the holding of the USTFU elections scheduled the next day.

(4) Case No. NCR-OD-M-9610-016

Also on 4 October 1996, the UST Secretary General headed a general faculty assembly attended by USTFU members, as well as USTFU non-members, but who were members of the collective bargaining unit. During said assembly, respondents were among the elected officers of USTFU (collectively referred to as the Gamilla Group). Petitioners filed with the Med-Arbiter, DOLE-NCR, a Petition seeking injunctive reliefs and the nullification of the results of the 4 October 1994 election. The Petition was docketed as **Case No. NCR-OD-M-9610-016**.

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[14] Records, Folder VI, pp. 77-80.

[15] Except for respondents Gil Y. Gamilla and Edna B. Sanchez.

[16] *Rollo,* pp. 151-169.

In a Decision dated 11 February 1997 in Case No. NCR-OD-M-9610-016, the Med-Arbiter DOLE-NCR, nullified the election of the Gamilla Group as USTFU officers on 4 October 1996 for having been conducted in violation of the Constitution and By-Laws of the union. This ruling of the Med-Arbiter was affirmed on appeal by the Bureau of Labor Relations (BLR) in a Resolution issued on 15 August 1997. Respondents were, thus, prompted to file a Petition for *Certiorari* before this Court, docketed as **G.R. No. 131235**.

While G.R. No. 131235 was pending, the term of office of the Gamilla Group as USTFU officers expired on 4 October 1999. The Gamilla Group then scheduled the next election of USTFU officers on 14 January 2000.

On 16 November 1999, the Court promulgated its Decision in G.R. No. 131235, affirming the BLR Resolution dated 15 August 1997 which ruled that the purported election of USTFU officers held on 4 October 1996 was void for violating the Constitution and By-Laws of the union.[17]

(5) Case No. NCR-OD-M-9611-009

On 15 November 1996, respondents[18] filed before the Med-Arbiter, DOLE-NCR, a fourth Complaint/Petition against the Mariño Group, as well as the Philippine Foundation for the Advancement of the Teaching Profession, Inc., Security Bank Corporation, and Bank of the Philippine Islands, which was docketed as **Case No. NCR-OD-M-9611-009**.[19] Respondents claimed in their latest Complaint/Petition that they were the legitimate USTFU officers, having been elected on 4 October 1996. They prayed for an order directing the Mariño Group

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[17] *UST Faculty Union v. Bitonio*, G.R. No. 131235, 16 November 1999.

[18] With the exceptions of respondents Rene Luis Tagle, Edna B. Sanchez, Zenaida Gamilla and Aurora Domingo. Additional complainants were: Irma Potenciano, Editha Ocampo, Luz De Guzman, Gliceria Baldres, Ferdinand Limos, Hidelita Gabo, Corazon Cui, Rene Arnejo, Cesar Reyes, Natividad Santos, Celso Niera, Zenaida Famorca, Philip Aguilnaldo, Benedicta Alava, Laura Abara, Leoncio Casal and Carmelita Espina.

[19] CA *rollo*, pp. 266-276.

to cease and desist from using the name of USTFU and from performing acts for and on behalf of the USTFU and the rest of the members of the collective bargaining unit.

DOLE Department Order No. 9 took effect on 21 June 1997, amending the Rules Implementing Book V of the Labor Code, as amended. Thereunder, jurisdiction over the complaints for any violation of the union constitution and by-laws and the conditions of union membership was vested in the Regional Director of the DOLE.[20] Pursuant to said Department Order, all four Petitions/Complaints filed by respondents against the Mariño Group, particularly, Case No. NCR-OD-M-9412-022, Case No. NCR-OD-M-9510-028, Case No. NCR-OD-M-9610-001, and Case No. NCR-OD-M-9611-009 were consolidated and indorsed to the Office of the Regional Director of the DOLE-NCR.

On 27 May 1999, the DOLE-NCR Regional Director rendered a Decision[21] in the consolidated cases in respondents' favor.

In Case No. NCR-OD-M-9412-022 and Case No. NCR-OD-M-9510-028, the DOLE-NCR Regional Director adjudged the Mariño Group, as the executive officers of USTFU, guilty of violating the provisions of the USTFU Constitution and By-laws by failing to collect union dues and to conduct a general assembly every three months. The DOLE-NCR Regional Director also ruled that the Mariño Group violated Article

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[20] Section 1, Rule XIV (INTRA-UNION DISPUTES) of the Rules Implementing Book V provides:

Section 1. **Complaint; who may file**. – Any member of a union may file with the Regional Director a complaint for any violation of the constitution and by-laws and the rights and conditions of membership under Article 241 of the Code. However, if the issue involves the entire membership of the union, the complaint shall be supported by at least thirty percent (30%) of the members of the federation, national union, local/chapter, affiliate or independent union, as the case may be, at the time of the filing thereof. Such complaint shall be filed in the Regional Office where the union is domiciled.

[21] Penned by Regional Director Maximo B. Lim; *rollo*, pp. 188-212.

241(c)[22] and (l)[23] of the Labor Code when they did not submit a list of union officers to the DOLE; when they did not submit/ provide DOLE and the USTFU members with copies of the audited financial statements of the union; and when they invested in a bank, without prior consent of USTFU members, the sum of ₱9,766,570.01, which formed part of the ₱42 million economic benefits package.

Additionally, the DOLE-NCR Regional Director declared that the check-off of ₱4.2 million collected by the Mariño Group, as negotiation fees, was invalid. According to the MOA executed on 10 September 1992 by UST and USTFU, the ₱42 million economic benefits package was chargeable against the share of the faculty members in the incremental proceeds of tuition fees collected and still to be collected. Under Republic Act No. 6728,[24] 70% of the tuition fee increases should be allotted to academic and non-academic personnel. Given that the records

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[22] Article 241(c) of the Labor Code, as amended, provides:

(c) x x x. The secretary or any other responsible union officer shall furnish the Secretary of Labor and Employment with a list of the newly-elected officers, together with the appointive officers or agents who are entrusted with the handling of funds, within thirty (30) calendar days after the election of officers or from the occurrence of any change in the list of officers of the labor organization. [As amended by Section 16, Republic Act No. 6715, 21 March 1989.]

[23] Article 241 (l) of the Labor Code, as amended, provides:

(l) The treasurer of any labor organization and every officer thereof who is responsible for the account of such organization for the collection, management, disbursement, custody or control of the funds, moneys and other properties of the organization, shall render to the organization and to its members a true and correct account of all moneys received and paid by him since he assumed office or since the last day on which he rendered such account, and of all bonds, securities and other properties of the organization entrusted to his custody or under his control. x x x.

x x x x x x x x x

The account shall be duly audited and verified by affidavit and a copy thereof shall be furnished the Secretary of Labor.

[24] AN ACT PROVIDING GOVERNMENT ASSISTANCE TO STUDENTS AND TEACHERS IN PRIVATE EDUCATION AND APPROPRIATING FUNDS THEREFOR.

were silent as to how much of the ₱42 million economic benefits package was obtained through negotiations and how much was from the statutory allotment of 70% of the tuition fee increases, the DOLE-NCR Regional Director held that the entire amount was within the statutory allotment, which could not be the subject of negotiation and, thus, could not be burdened by negotiation fees.

The DOLE-NCR Regional Director further found that the principal subject of Case No. NCR-OD-M-9610-001 (*i.e.*, violation by the Mariño Group of the provisions on election of officers in the Labor Code and the USTFU Constitution and By-Laws) had been superseded by the central event in Case No. NCR-OD-M-9611-009 (*i.e.*, the subsequent election of another set of USTFU officers consisting of the Gamilla Group). While there were two sets of USTFU officers vying for legitimacy, the eventual ruling of the DOLE-NCR Regional Director, for the expulsion of the Mariño Group from their positions as USTFU officers, practically extinguished Case No. NCR-OD-M-9611-009.

The decretal portion of the 27 May 1999 Decision of the DOLE-NCR Regional Director reads:

WHEREFORE, premises considered, judgment is hereby rendered:

a) Expelling [the Mariño Group] from their positions as officers of USTFU, and hereby order them under pain of contempt, to cease and desist from performing acts as such officers;

b) Ordering [the Mariño Group] to jointly and severally refund to USTFU the amount of ₱4.2 M checked-off as attorney's fees from the ₱42 M economic package;

c) Ordering [the Mariño Group] to account for:

c.1. ₱2.0 M paid to USTFU in satisfaction of the remaining obligation of the University under the 1986 CBA;

c.2. ₱7.0 M as consideration of the Compromise Agreement entered into by USTFU involving certain labor cases;

c.3. Interest/earnings of the ₱9,766,570.01 balance of the ₱42 M invested/deposited by [the Mariño Group] with the PCI Capital Corporation.

d) Ordering conduct of election of Union officers under the supervision of this Department.[25]

Petitioners interposed an appeal[26] before the BLR, which was docketed as **BLR-A-TR-52-25-10-99**.

In the meantime, the election of USTFU officers was held as scheduled on 14 January 2000,[27] in which the Gamilla Group claimed victory.[28] On 3 March 2000, the Gamilla group, as the new USTFU officers, entered into a Memorandum of Agreement[29] with the UST, which provided for the economic

[25] CA *rollo*, pp. 300-301.

[26] *Id.* at 303-341.

[27] Records, Folder IX, pp. 92-93.

[28] The individuals elected on the 14 January 2000 elections are:

GIL Y. GAMILLA, M.D.	- President
NORMA S. CALAGUAS	- Executive Vice-President
EDITH B. OCAMPO	- Internal Vice-President
IRMA P. E. POTENCIANO	- External Vice-President for President
ERNESTUS C. PADILLA	- Vice-President For Labor Education And Research
GLICERIA B. BALDRES	- Vice-President For Legal Affairs
MINERVA B. RIVERA	- Vice-President For Grievance And Complaints
MA. LOURDES C. MEDINA	- Secretary-General
HIDELITA R. GABO	- Treasurer
REMEDIOS T. GARCIA	- Public Relations Officer
CORAZON O. QUI	- Auditor
LEONCIO R. CASAL	- Sergeant-At-Arms
RENE LUIS M. TADLE	- Director
AURORA L. DOMINGO	- Director
FERDINAND E. LIMOS	- Director
BENEDICTA B. ALAVA	- Director
CESAR M. REYES, M.D.	- Director
GIL Y. GARCIA	- Director
CELSO M. NIERRA	- Director
JIMMY T. RICO, Ph.D.	- Director

[29] Records, Folder IX, pp. 87-91.

benefits to be granted to the faculty members of the UST for the years 1999-2001. Said Agreement was ratified by the USTFU members on 9 March 2000.

On the same day, 9 March 2000, the BLR promulgated its Decision[30] in BLR-A-TR-52-25-10-99, the *fallo* of which provides:

> WHEREFORE, the appeal is **GRANTED IN PART**. Accordingly, the decision appealed from is hereby **MODIFIED** to the effect that appellant USTFU officers are hereby ordered to return to the general membership the amount of ₱4.2 million they have collected by way of attorney's fees.
>
> Let the entire records of this case be remanded to the Regional Office of origin for the immediate conduct of election of officers of USTFU. The election shall be held under the control and supervision of the Regional Office, in accordance with Section 1 (b), Rule XV of Department Order No. 9, unless the parties mutually agree to a different procedure consistent with ensuring integrity and fairness in the electoral exercise.

The BLR found no basis for the order of the DOLE-NCR Regional Director to the Mariño Group to account for the amounts of ₱2 million and ₱7 million supposedly paid by UST to USTFU. The BLR clarified that UST paid USTFU a lump sum of ₱7 million. The ₱2 million of this lump sum was the payment by UST of its outstanding obligations to USTFU under the 1986 CBA. This amount was subsequently donated by USTFU members to the Philippine Foundation for the Advancement of the Teaching Profession, Inc. The remaining ₱5 million of the lump sum was the consideration for the settlement of an illegal dismissal case between UST and the Mariño Group. Hence, the ₱5 million legally belonged to the Mariño Group, and there was no need to make it account for the same. As to the interest earnings of the sum of ₱9,766,570.01 that was invested by the Mariño Group in a bank, the BLR ruled that the same was included in the amount of ₱6,389,145.04 that was distributed to the faculty members on 18 November 1994.

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[30] Penned by Director Benedicto Ernesto R. Bitonio, Jr.; *rollo*, pp. 213-223.

The BLR, however, agreed in the finding of the DOLE-NCR Regional Director that the ₱42 million economic benefits package was sourced from the faculty members' share in the tuition fee increases under Republic Act No. 6728. Under said law, 70% of tuition fee increases shall go to the payment of salaries, wages, allowances, and other benefits of teaching and non-teaching personnel. As was held in the decision[31] and subsequent resolution[32] of the Supreme Court in *Cebu Institute of Technology v. Ople*, the law has already provided for the minimum percentage of tuition fee increases to be allotted for teachers and other school personnel. This allotment is mandatory and cannot be diminished, although it may be increased by collective bargaining. It follows that only the amount beyond that mandated by law shall be subject to negotiation fees and attorney's fees for the simple reason that it was only this amount that the school employees had to bargain for.

The BLR further reasoned that the ₱4.2 million collected by the Mariño Group was in the nature of attorney's fees or negotiation fees and, therefore, fell under the general prohibition against such fees in Article 222(b)[33] of the Labor Code, as amended. Also, the exception to charging against union funds was not applicable because the ₱42 million economic benefits package under the 10 September 1992 MOA was not union fund, as the same was intended not for the union coffers, but for the members of the entire bargaining unit. The fact that the ₱4.2 million check-off was approved by the majority of USTFU members was immaterial in view of the clear command of Article 222(b) that any contract, agreement, or arrangement

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[31] G.R. No. 58870, 18 December 1987, 156 SCRA 629.

[32] G.R. No. 58870, 15 April 1988, 160 SCRA 503.

[33] Article 222 (b) of the Labor Code, as amended, provides:

Art. 222. *Appearances and Fees.* – x x x.

(b) No attorney's fees, negotiation fees or similar charges of any kind arising from any collective bargaining negotiations or conclusion of the collective agreement shall be imposed on any individual member of the contracting union: Provided, however, That attorney's fees may be charged against union funds in an amount to be agreed upon by the parties. Any contract, agreement or arrangement of any sort to the contrary shall be null and void. (As amended by Presidential Decree No. 1691, 1 May 1980).

of any sort, contrary to the prohibition contained therein, shall be null and void.

Lastly, as to the alleged failure of the Mariño Group to perform some of its duties, the BLR held that the change of USTFU officers can best be decided, not by outright expulsion, but by the general membership through the actual conduct of elections.

Petitioners' Motion for Partial Reconsideration[34] of the foregoing Decision was denied by the BLR in a Resolution[35] dated 13 June 2000.

Aggrieved once again, petitioners filed with the Court of Appeals a Petition for *Certiorari*[36] under Rule 65 of the Rules of Court, which was docketed as **CA-G.R. SP No. 60657**. In a Resolution dated 26 September 2000, the Court of Appeals directed respondents to file their Comment; and, in order not to render moot and academic the issues in the Petition, enjoined respondents and all those acting for and on their behalf from enforcing, implementing, and effecting the BLR Decision dated 9 March 2000.

On 16 March 2001, the Court of Appeals rendered its Decision in CA-G.R. SP No. 60657, favoring respondents.

According to the Court of Appeals, the BLR did not commit grave abuse of discretion, amounting to lack or excess of jurisdiction, in ruling that the ₱42 million economic benefits package was merely the share of the faculty members in the tuition fee increases pursuant to Republic Act No. 6728. The appellate court explained:

> It is too plain to see that the 60% of the proceeds is to be allocated specifically for increase in salaries or wages of the members of the faculty and all other employees of the school concerned. Under Section 5(2) of Republic Act 6728, the amount had been increased to 70% of the tuition fee increases which was specifically allocated to the payment of salaries, wages, allowances and other benefits of

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[34] CA *rollo*, pp. 384-401.

[35] *Rollo*, pp. 224-226.

[36] *Id.* at 227-293.

teaching and non-teaching personnel of the school[,] except administrators who are principal stockholders of the school and to cover increases as provided for in the collective bargaining agreements existing or in force at the time the law became effective[.]

xxx xxx xxx

It is too plain to see, too, that under the "Memorandum of Agreement" between UST and the Union, x x x, the ₱42,000,000.00 economic package granted by the UST to the Union was in compliance with the mandates of the law and pertinent Department of Education, Culture and Sports regulation (sic) required to be allotted following the payment of salaries, wages, allowances and other benefits of teaching and non-teaching personnel of the University[.]

xxx xxx xxx

Whether or not UST implemented the mandate of Republic Act 6728 voluntarily or through the efforts and prodding of the Union does not and cannot change or alter a whit the nature of the economic package or the purpose or purposes of the allocation of the said amount. For, if we acquiesced to and sustained Petitioners' stance, we will thereby be leaving the compliance by the private educational institutions of the mandate of Republic Act 6728 at the will, mercy, whims and caprices of the Union and the private educational institution. This cannot and should not come to pass.

With our foregoing findings and disquisitions, We thus agree with the [BLR] that the aforesaid amount of ₱42,000,000.00 should not answer for any attorney's fees claimed by the Petitioners. x x x.

xxx xxx xxx

Moreover, [Section 5 of Rule X of] the CBL of the Union provides that:

> Section 5. Special assessments or other extraordinary fees such as for payment of attorney's fees shall be made only upon such a resolution duly ratified by the general membership by secret balloting. x x x.

Also, Article 241(n)[37] of the Labor Code, as amended, provides that no special assessment shall be levied upon the members of the union unless authorized by a written resolution of a majority of all

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[37] Article 241(n) of the Labor Code, as amended, provides:

the members at a general membership meeting duly called for the purpose[.]

x x x x x x x x x

In "*ABS-CBN Supervisors-Employees Union Members versus ABS-CBN Broadcasting Corporation*, 304 SCRA 489", our Supreme Court declared that Article 241(n) of the Labor Code, as amended, speaks of three (3) requisites, to wit: (1) authorization by a written resolution of the majority of all members at the general membership meeting called for the purpose; (2) secretary's record of the minutes of the meeting; and (3) individual written authorization for check-off duly signed by the employee concerned.

Contrary to the provisions of Articles 222(b) and 241(n) of the Labor Code, as amended, and Section 5, Rule X of [the] CBL of the Union, no resolution ratified by the general membership of [the] USTFU through secret balloting which embodied the award of attorney's fees was submitted. Instead, the Petitioners submitted copies of the form for the ratification of the MOA and the check-off for attorney's fees.

x x x x x x x x x

The aforementioned "ratification with check-off" form embodied the: (a) ratification of the MOA; (b) check-off of union dues; and (c) check-off of a special assessment, *i.e.*, attorney's fees and labor education fund. x x x. Patently, the CBL was not complied with.

Worse, the check-off for union dues and attorney's fees were included in the ratification of the MOA. The members were thus placed in a situation where, upon ratification of the MOA, not only the check-off of union dues and special assessment for labor education fund but also the payment of attorney's fees were (sic) authorized.[38]

(n) No special assessment or other extraordinary fees may be levied upon the members of a labor organization unless authorized by a written resolution of a majority of all the members at a general membership meeting duly called for the purpose. The secretary of the organization shall record the minutes of the meeting including the list of all members present, the votes cast, the purpose of the special assessment or fees and the recipient of such assessment or fees. The record shall be attested to by the president.

[38] CA *rollo*, pp. 528-536.

In like manner, the Court of Appeals found no grave abuse of discretion, amounting to lack or excess of jurisdiction, on the part of the BLR in ordering the conduct of elections under the control and supervision of the DOLE-NCR. Said the appellate court:

> We agree with the Petitioners that the elections of officers of the Union, before the Decision of the [BLR], had been unfettered by any intervention of the DOLE. However, We agree with the Decision of the [BLR] for two (2) specific reasons, namely: (a) the parties are given an opportunity to first agree on a different procedure to ensure the integrity and fairness of the electoral exercise, before the DOLE, may supervise the election[.]
>
> x x x x x x x x x
>
> Under Article IX of the CBL, the Board of Officers of the Union shall create a Committee on Elections, Comelec for brevity, composed of a chairman and two (2) members appointed by the Board of Officers[.]
>
> x x x x x x x x x
>
> It, however, appears that the term of office of the Petitioners had already expired in September of 1996. In fact, an election of officers was scheduled on October 6, 1996. However, on October 4, 1996, [respondents] and the members of the faculty of UST, both union member and non-union member, elected [respondents] as the new officers of the USTFU. The same was, however, (sic) nullified by the Supreme Court, on November 16, 1999. However, as the term of office of the [respondents] had expired, on October 4, 1999, there is nothing to nullify anymore. By virtue of an election, held on January 14, 2000, the [respondents] were elected as the new officers of the Union, which election was not contested by the Petitioners or any other group in the union.
>
> x x x x x x x x x
>
> We are thus faced with a situation where one set of officers claim to be the legitimate and incumbent officers of the Union, pursuant to the CBL of the Union, and another set of officers who claim to have been elected by the members of the faculty of the Union thru an election alleged to have been supervised by the DOLE which situation partakes of and is akin to the nature of an intra-union dispute[.] x x x.

Undeniably, the CBL gives the Board of Officers the right to create and appoint members of the Comelec. However, the CBL has no application to a situation where there are two (2) sets of officers, one set claiming to be the legitimate incumbent officers holding over to their positions who have not exercised their powers and functions therefor and another claiming to have been elected in an election supervised by the DOLE and, at the same time, exercising the powers and functions appended to their positions. In such a case, the BLR, which has jurisdiction over the intra-union dispute, can validly order the immediate conduct of election of officers, otherwise, internecine disputes and blame-throwing will derail an orderly and fair election. Indeed, Section 1(b), [Rule XV], Book V of the Implementing Rules and Regulations of the Labor Code, as amended, by Department Order No. 09, Series of 1997,[39] provides that, in the absence of any agreement among the members or any provision in the constitution and by-laws of the labor organization, in an election ordered by the Regional Director, the chairman of the committee shall be a representative of the Labor Relations Division of the Regional Office[.][40]

Ultimately, the Court of Appeals decreed:

IN THE LIGHT OF ALL THE FOREGOING, the Petition is denied due course and is hereby **DISMISSED**.[41]

Petitioners moved for reconsideration[42] of the Decision dated 16 March 2001 of the Court of Appeals, but it was denied by the said court in its Resolution[43] dated 30 August 2001.

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[39] Section 1. Committee on election; constitution. – In the absence of any agreement among the members or of any provision in the constitution and by-laws of the labor organization or workers association, the following guidelines may be adopted in the election of officers:

x x x x x x x x x

(b) x x x In case of an election the conduct of which was ordered by the Regional Director, the chairman of the committee shall be a representative of the Labor Relations Division of the Regional Office.

[40] CA *rollo*, pp. 536-538.

[41] *Id.* at 539.

[42] *Rollo*, 324-336.

[43] *Id.* at 93.

Petitioners elevated the case to this Court *via* the instant Petition, invoking the following assignment of errors:

I.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS ERROR AND GRAVELY ABUSED ITS DISCRETION WHEN IT UPHELD THE APPLICATION BY THE HONORABLE DIRECTOR OF THE BUREAU OF LABOR RELATIONS OF THE PROVISIONS OF REPUBLIC ACT NO. 6728 TO THE ₱42 MILLION CBA PACKAGE OF ECONOMIC BENEFITS OBTAINED BY THE UST FACULTY UNION FROM THE UNIVERSITY OF SANTO TOMAS.

II.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS ERROR AND GRAVELY ABUSED ITS DISCRETION WHEN IT DISALLOWED THE LUMP-SUM CHECK-OFF AMOUNTING TO ₱4.2 MILLION BY RULING THAT THE ₱42 MILLION CBA ECONOMIC PACKAGE OBTAINED BY THE UST FACULTY UNION WAS MERELY AN ALLOCATION OF THE SEVENTY PER CENT (70%) OF THE TUITION INCREASES AUTHORIZED BY LAW AND THE DEPARTMENT OF EDUCATION, CULTURE AND SPORTS.

III.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS ERROR AND GRAVELY ABUSED ITS DISCRETION WHEN IT DISREGARDED THE PROVISIONS ON ELECTION OF UNION OFFICERS IN THE CONSTITUTION AND BY-LAWS OF THE UST FACULTY UNION AND INSTEAD UPHELD THE DIRECTIVE OF THE HONORABLE DIRECTOR OF THE BUREAU OF LABOR RELATIONS TO CONDUCT THE ELECTION OF UNION OFFICERS UNDER THE CONTROL AND SUPERVISION OF THE REGIONAL DIRECTOR FOR THE NATIONAL CAPITAL REGION OF THE DEPARTMENT OF LABOR AND EMPLOYMENT.

Essentially, in order to arrive at a final disposition of the instant case, this Court is tasked to determine the following: (1) the nature of the ₱42 million economic benefits package granted by UST to USTFU; (2) the legality of the 10% check-off collected by the Mariño Group from the ₱42 million economic

benefits package; and (3) the validity of the BLR order for USTFU to conduct election of union officers under the control and supervision of the DOLE-NCR Regional Director.

II

RULING

(1) The ₱42 million economic benefits package

Petitioners argue that the ₱42 million economic benefits package granted to the covered faculty members were additional benefits, which resulted from a long and arduous process of negotiations between the Mariño Group and UST. The BLR and the Court of Appeals were in error for considering the said amount as purely sourced from the allocation by UST of 70% percent of the incremental proceeds of tuition fee increases, in accordance with Republic Act No. 6728. Said law was improperly applied as a general law that decrees the allocation by all private schools of 70% of their tuition fee increases to the payment of salaries, wages, allowances and other benefits of their teaching & non-teaching personnel. It is clear from the title of the law itself that it only covers government assistance to students and teachers in private education. Section 5 of Republic Act No. 6728 unequivocally limits the scope of the law to tuition fee supplements and subsidies extended by the Government to students in private high schools. Thus, the petitioners maintain that Republic Act No. 6728 has no application to the MOA executed on 10 September 1992 between UST and USTFU, through the efforts of the Mariño Group.

The Court disagrees with petitioners' stance.

The provisions of Republic Act No. 6728 were not arbitrarily applied by the DOLE-NCR Regional Director, the BLR, or the Court of Appeals to the ₱42 million economic benefits package granted by UST to USTFU, considering that the parties themselves stipulated in Section 7 of the MOA they signed on 10 September 1992 that:

7.0. **It is clearly understood and agreed upon that the aggregate sum of ₱42 million is chargeable against the share of the faculty members**

in the incremental proceeds of tuition fees collected and still to be collected[;] Provided, however, that he (sic) commitment of the UNIVERSITY to pay the aggregate sum of ₱42 million shall subsist even if the said amount exceeds the proportionate share that may accrue to the faculty members in the tuition fee increases that the UNIVERSITY may be authorized to collect in School–Year 1992-1993, and, Provided, finally, that the covered faculty members shall still be entitled to their proportionate share in any undistributed portion of the incremental proceeds of the tuition fee increases in School-Year 1992-1993, and **which incremental proceeds are, by law and pertinent Department of Education Culture and Sports (DECS) regulations, required to be allotted for the payment of salaries, wages, allowances and other benefits of teaching and non-teaching personnel for the UNIVERSITY**.[44] (Emphases supplied.)

The "law" in the aforequoted Section 7 of the MOA can only refer to Republic Act No. 6728, otherwise known as the "Government Assistance to Students and Teachers in Private Education Act." Republic Act No. 6728 was enacted in view of the declared policy of the State, in conformity with the mandate of the Constitution, to promote and make quality education accessible to all Filipino citizens, as well as the recognition of the State of the complementary roles of public and private educational institutions in the educational system and the invaluable contribution that the private schools have made and will make to education.[45] The said statute primarily grants various forms of financial aid to private educational institutions such as tuition fee supplements, assistance funds, and scholarship grants.[46]

One such form of financial aid is provided under Section 5 of Republic Act No. 6728, which states:

SEC. 5. *Tuition Fee Supplement for Student in Private High School.* – (1) Financial assistance for tuition for students in private high schools shall be provided by the government through a voucher system in the following manner:

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[44] CA *rollo*, p. 87.

[45] Republic Act No. 6728, Section 2.

[46] *Id.*, Section 4.

(a) For students enrolled in schools charging less than one thousand five hundred pesos (₱1,500) per year in tuition and other fees during school year 1988-89 or such amount in subsequent years as may be determined from time to time by the State Assistance Council: **The Government shall provide them with a voucher equal to two hundred ninety pesos ₱290.00**: *Provided*, That the student pays in the 1989-1990 school year, tuition and other fees equal to the tuition and other fees paid during the preceding academic year: *Provided, further*, That the Government shall reimburse the vouchers from the schools concerned within sixty (60) days from the close of the registration period: *Provided, furthermore*, That the student's family resides in the same city or province in which the high school is located unless the student has been enrolled in that school during the previous academic year.

(b) For students enrolled in schools charging above one thousand five hundred pesos (₱1,500) per year in tuition and other fees during the school year 1988-1989 or such amount in subsequent years as may be determined from time to time by the State Assistance Council, **no assistance for tuition fees shall be granted by the Government**: *Provided, however,* **That the schools concerned may raise their tuition fee subject to Section 10 hereof**.

(2) **Assistance under paragraph (1), subparagraphs (a) and (b) shall be granted and tuition fees under subparagraph (c) may be increased, on the condition that seventy percent (70%) of the amount subsidized, allotted for tuition fee or of the tuition fee increases shall go to the payment of salaries, wages, allowances and other benefits of teaching and non-teaching personnel** except administrators who are principal stockholders of the school, **and may be used to cover increases as provided for in the collective bargaining agreements existing or in force at the time when this Act is approved and made effective**: *Provided,* That government subsidies are not used directly for salaries of teachers of nonsecular subjects. At least twenty percent (20%) shall go to the improvement or modernization of buildings, equipment, libraries, laboratories, gymnasia and similar facilities and to the payment of other costs of operation. For this purpose, schools shall maintain a separate record of accounts for all assistance received from the government, any tuition fee increase, and the detailed disposition and use thereof, which record shall be made available for periodic inspection as may be determined by the State Assistance Council, during business hours, by the faculty, the non-teaching personnel, students of the school

concerned, and Department of Education, Culture and Sports and other concerned government agencies. (Emphases ours.)

Although Section 5 of Republic Act No. 6728 does speak of government assistance to students in private high schools, it is not limited to the same. Contrary to petitioners' puerile claim, Section 5 likewise grants an unmistakable authority to private high schools to increase their tuition fees, subject to the condition that seventy (70%) percent of the tuition fee increases shall go to the payment of the salaries, wages, allowances, and other benefits of their teaching and non-teaching personnel. The said allocation may also be used to cover increases in the salaries, wages, allowances, and other benefits of school employees as provided for in the CBAs existing or in force at the time when Republic Act No. 6728 was approved and made effective.

Contrary to petitioners' argument, the right of private schools to increase their tuition fee — with their corresponding obligation to allocate 70% of said increase to the payment of the salaries, wages, allowances, and other benefits of their employees — is not limited to private high schools. Section 9[47] of Republic Act No. 6728, on "Further Assistance to Students in Private Colleges and Universities," is crystal clear in providing that:

d) Government assistance and tuition increases as described in this Section shall be governed by the same conditions as provided under Section 5 (2).

Indeed, a private educational institution under Republic Act No. 6728 still has the discretion on the disposition of 70% of the tuition fee increase. It enjoys the privilege of determining how much increase in salaries to grant and the kind and amount of allowances and other benefits to give. The only precondition is that 70% percent of the incremental tuition fee increase goes

[47] SEC. 9. *Further Assistance to Students in Private Colleges and Universities* – Tuition fee supplements for non-freshmen students of private colleges and universities in priority course programs determined by the Department of Education, Culture and Sports shall be provided by the government through a voucher system x x x.

to the payment of salaries, wages, allowances and other benefits of teaching and non-teaching personnel.[48]

In this case, UST and USTFU stipulated in their 10 September 1992 MOA that the ₱42 million economic benefits package granted by UST to the members of the collective bargaining unit represented by USTFU, was chargeable against the 70% allotment from the proceeds of the tuition fee increases collected and still to be collected by UST. As observed by the DOLE-NCR Regional Director, and affirmed by both the BLR and the Court of Appeals, there is no showing that any portion of the ₱42 million economic benefits package was derived from sources other than the 70% allotment from tuition fee increases of UST.

Given the lack of evidence to the contrary, it can be conclusively presumed that the entire ₱42 million economic benefits package extended to USTFU came from the 70% allotment from tuition fee increases of UST. Preceding from this presumption, any deduction from the ₱42 million economic benefits package, such as the ₱4.2 million claimed by the Mariño Group as attorney's/agency fees, should not be allowed, because it would ultimately result in the reduction of the statutorily mandated 70% allotment from the tuition fee increases of UST.

The other reasons for disallowing the ₱4.2 million attorney's/agency fees collected by the Mariño Group from the ₱42 million economic benefits package are discussed in the immediately succeeding paragraphs.

(2) The ₱4.2 Million Check-off

Petitioners contend that the ₱4.2 million check-off, from the ₱42 million economic benefits package, was lawfully made since the requirements of Article 222(b) of the Labor Code, as amended, were complied with by the Mariño Group. The individual paychecks of the covered faculty employees were not reduced and the ₱4.2 million deducted from the ₱42 million economic

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[48] *Cebu Institute of Medicine v. Cebu Institute of Medicine Employees' Union-National Federation of Labor,* 413 Phil. 32, 38 (2001).

benefits package became union funds, which were then used to pay attorney's fees, negotiation fees, and similar charges arising from the CBA. In addition, the ₱4.2 million constituted a special assessment upon the USTFU members, the requirements for which were properly observed. The special assessment was authorized in writing by the general membership of USTFU during a meeting in which it was included as an item in the agenda. Petitioners fault the Court of Appeals for disregarding the authorization of the special assessment by USTFU members. There is no law that prohibits the insertion of a written authorization for the special assessment in the same instrument for the ratification of the 10 September 1992 MOA. Neither is there a law prescribing a particular form that needs to be accomplished for the authorization of the special assessment. The faculty members who signed the ratification of the MOA, which included the authorization for the special assessment, have high educational attainment, and there is ample reason to believe that they affixed their signatures thereto with full comprehension of what they were doing.

Again, the Court is not persuaded.

The pertinent legal provisions on a check-off are found in Articles 222(b) and 241(n) and (o) of the Labor Code, as amended.

Article 222(b) states:

(b) No attorney's fees, negotiation fees or similar charges of any kind arising from any collective bargaining negotiations or conclusion of the collective agreement shall be imposed on any individual member of the contracting union: Provided, however, that attorney's fees may be charged against unions funds in an amount to be agreed upon by the parties. Any contract, agreement or arrangement of any sort to the contrary shall be null and void.

Article 241(n) reads:

(n) No special assessment or other extraordinary fees may be levied upon the members of a labor organization unless authorized by a written resolution of a majority of all the members at a general membership meeting duly called for the purpose. The secretary of

the organization shall record the minutes of the meeting including the list of all members present, the votes cast, the purpose of the special assessment or fees and the recipient of such assessment or fees. The record shall be attested to by the president.

And Article 241(o) provides:

(o) Other than for mandatory activities under the Code, no special assessments, attorney's fees, negotiation fees or any other extraordinary fees may be checked off from any amount due to an employee without an individual written authorization duly signed by the employee. The authorization should specifically state the amount, purpose and beneficiary of the deduction.

Article 222(b) of the Labor Code, as amended, prohibits the payment of attorney's fees only when it is effected through forced contributions from the employees from their own funds as distinguished from union funds.[49] Hence, the general rule is that attorney's fees, negotiation fees, and other similar charges may only be collected from union funds, not from the amounts that pertain to individual union members. As an exception to the general rule, special assessments or other extraordinary fees may be levied upon or checked off from any amount due an employee for as long as there is proper authorization by the employee.

A check-off is a process or device whereby the employer, on agreement with the Union, recognized as the proper bargaining representative, or on prior authorization from the employees, deducts union dues or agency fees from the latter's wages and remits them directly to the Union. Its desirability in a labor organization is quite evident. The Union is assured thereby of continuous funding. As this Court has acknowledged, the system of check-off is primarily for the benefit of the Union and, only indirectly, for the individual employees.[50]

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[49] *Bank of the Philippine Islands Employees Union-Associated Labor Unions (BPIEU-ALU) v. National Labor Relations Commission*, G.R. Nos. 69746-47, 31 March 1989, 171 SCRA 556, 569.

[50] *ABS-CBN Supervisors Employees Union Members v. ABS-CBN Broadcasting Corp.*, 364 Phil. 133, 142 (1999).

The Court finds that, in the instant case, the ₱42 million economic benefits package granted by UST did not constitute union funds from whence the ₱4.2 million could have been validly deducted as attorney's fees. The ₱42 million economic benefits package was not intended for the USTFU coffers, but for all the members of the bargaining unit USTFU represented, whether members or non-members of the union. A close reading of the terms of the MOA reveals that after the satisfaction of the outstanding obligations of UST under the 1986 CBA, the balance of the ₱42 million was to be distributed to the covered faculty members of the collective bargaining unit in the form of salary increases, returns on paycheck deductions; and increases in hospitalization, educational, and retirement benefits, and other economic benefits. The deduction of the ₱4.2 million, as alleged attorney's/agency fees, from the ₱42 million economic benefits package effectively decreased the share from said package accruing to each member of the collective bargaining unit.

Petitioners' line of argument – that the amount of ₱4.2 million became union funds after its deduction from the ₱42 million economic benefits package and, thus, could already be used to pay attorney's fees, negotiation fees, or similar charges from the CBA – is absurd. Petitioners' reasoning is evidently flawed since the attorney's fees may only be paid from union funds; yet the amount to be used in paying for the same does not become union funds until it is actually deducted as attorney's fees from the benefits awarded to the employees. It is just a roundabout argument. What the law requires is that the funds be already deemed union funds even before the attorney's fees are deducted or paid therefrom; it does not become union funds after the deduction or payment. To rule otherwise will also render the general prohibition stated in Article 222(b) nugatory, because all that the union needs to do is to deduct from the total benefits awarded to the employees the amount intended for attorney's fees and, thus, "convert" the latter to union funds, which could then be used to pay for the said attorney's fees.

The Court further determines that the requisites for a valid levy and check-off of special assessments, laid down by Article 241(n) and (o), respectively, of the Labor Code, as amended,

have not been complied with in the case at bar. To recall, these requisites are: (1) an authorization by a written resolution of the majority of all the union members at the general membership meeting duly called for the purpose; (2) secretary's record of the minutes of the meeting; and (3) individual written authorization for check-off duly signed by the employee concerned.[51]

Additionally, Section 5, Rule X of the USTFU Constitution and By-Laws mandates that:

> Section 5. Special assessments or other extraordinary fees such as for payment of attorney's fees shall be made only upon a resolution duly ratified by the general membership by secret balloting.

In an attempt to comply with the foregoing requirements, the Mariño Group caused the majority of the general membership of USTFU to individually sign a document, which embodied the ratification of the MOA between UST and USTFU, dated 10 September 1992, as well as the authorization for the check-off of ₱4.2 million, from the ₱42 million economic benefits package, as payment for attorney's fees. As held by the Court of Appeals, however, the said documents constitute unsatisfactory compliance with the requisites set forth in the Labor Code, as amended, and in the USTFU Constitution and By-Laws, even though individually signed by a majority of USTFU members.

The inclusion of the authorization for a check-off of union dues and special assessments for the Labor Education Fund and attorney's fees, in the same document for the ratification of the 10 September 1992 MOA granting the ₱42 million economic benefits package, necessarily vitiated the consent of USTFU members. For sure, it is fairly reasonable to assume that no individual member of USTFU would casually turn down the substantial and lucrative award of ₱42 million in economic benefits under the MOA. However, there was no way for any individual union member to separate his or her consent to the ratification of the MOA from his or her authorization of the check-off of union dues and special assessments. As it were, the ratification

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[51] *Id.*

of the MOA carried with it the automatic authorization of the check-off of union dues and special assessments in favor of the union. Such a situation militated against the legitimacy of the authorization for the ₱4.2 million check-off by a majority of USTFU membership. Although the law does not prescribe a particular form for the written authorization for the levy or check-off of special assessments, the authorization must, at the very least, embody the genuine consent of the union member.

The failure of the Mariño Group to strictly comply with the requirements set forth by the Labor Code, as amended, and the USTFU Constitution and By-Laws, invalidates the questioned special assessment. Substantial compliance is not enough in view of the fact that the special assessment will diminish the compensation of the union members. Their express consent is required, and this consent must be obtained in accordance with the steps outlined by law, which must be followed to the letter. No shortcuts are allowed.[52]

Viewed in this light, the Court does not hesitate to declare as illegal the check-off of ₱4.2 million, from the ₱42 million economic benefits package, for union dues and special assessments for the Labor Education Fund and attorney's fees. Said amount rightfully belongs to and should be returned by petitioners to the intended beneficiaries thereof, *i.e.*, members of the collective bargaining unit, whether or not members of USTFU. This directive is without prejudice to the right of petitioners to seek reimbursement from the other USTFU officers and directors, who were part of the Mariño Group, and who were equally responsible for the illegal check-off of the aforesaid amount.

(3) Election of new officers

Having been overtaken by subsequent events, the Court need no longer pass upon the issue of the validity of the order of BLR for USTFU to conduct its long overdue election of union

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[52] *Palacol v. Ferrer-Calleja*, G.R. No. 85333, 26 February 1990, 182 SCRA 710, 717.

officers, under the control and supervision of the DOLE-NCR Regional Director.

The BLR issued such an order since USTFU then had two groups, namely, the Mariño Group and the Gamilla Group, each claiming to be the legitimate officers of USTFU.

The DOLE-NCR Regional Director, in his Decision dated 27 May 1999, decreed that the Mariño Group be expelled from their positions as USTFU officers. But then, the BLR, in its Decision promulgated on 9 March 2000, declared that the change of officers could best be decided, not by expulsion, but by the general membership of the union through the conduct of election, under the control and supervision of the DOLE-NCR Regional Director. In its assailed Decision dated 16 March 2001, the Court of Appeals agreed with the BLR judgment in its ruling that the conduct of an election, under the control and supervision of the DOLE-NCR Regional Director, is necessary to settle the question of who, as between the officers of the Mariño Group and of the Gamilla Group, are the legitimate officers of the USTFU.

The Court points out, however, that neither the Decision of the BLR nor of the Court of Appeals took into account the fact that an election of USTFU officers was already conducted on 14 January 2000, which was won by the Gamilla Group. There is nothing in the records to show that the said election was contested or made the subject of litigation. The Gamilla Group had exercised their powers as USTFU officers during their elected term. Since the term of union officers under the USTFU Constitution and By-Laws was only for three years, then the term of the Gamilla Group already expired in 2003. It is already beyond the jurisdiction of this Court, in the present Petition, to still look into the subsequent elections of union officers held after 2003.

The election of the Gamilla Group as union officers in 2000 should have already been recognized by the BLR and the Court of Appeals. The order for USTFU to conduct another election was only a superfluity. The issue of who between the officers of the Mariño Group and of the Gamilla Group are the legitimate USTFU officers has been rendered moot by the succeeding events in the case.

WHEREFORE, premises considered, the Petition for Review under Rule 45 of the Rules of Court is hereby *DENIED*. The Decision dated 16 March 2001 and the Resolution dated 30 August 2001 of the Court of Appeals in CA-G.R. SP No. 60657, are hereby *AFFIRMED WITH MODIFICATIONS*. Petitioners are hereby *ORDERED* to reimburse, jointly and severally, to the faculty members of the University of Sto. Tomas, belonging to the collective bargaining unit, the amount of ₱4.2 million checked-off as union dues and special assessments for the Labor Education Fund and attorney's fees, with legal interest of 6% per annum from 15 December 1994, until the finality of this decision. The order for the conduct of election for the officers of the University of Sto. Tomas Faculty Union, under the control and supervision of the Regional Director of the Department of Labor and Employment-National Capital Region, is hereby *DELETED*. No costs.

SO ORDERED.

Ynares-Santiago (Chairperson), Carpio,[*] *Velasco, Jr.,* and *Nachura, JJ.* concur.

SECOND DIVISION

[G.R. No. 157607. July 7, 2009]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **ROWENA O. PADEN,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF ADMINISTRATIVE AGENCIES AFFIRMED BY THE COURT

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[*] Associate Justice Antonio T. Carpio was designated to sit as additional member replacing Associate Justice Eduardo M. Peralta per Raffle dated 1 July 2009.

OF APPEALS, RESPECTED. — The settled rule is that factual findings of administrative agencies, such as the CSC, when affirmed by the CA and if supported by substantial evidence, are accorded respect and even finality by this Court.

2. ID.; CIVIL PROCEDURE; APPEALS; ONLY ERRORS OF LAW ARE ALLOWED; EXCEPTIONS. — Our review of a petition for review on *certiorari* under Rule 45 of the Rules of Court is limited to the review of errors of law, unless the following exceptions occur: (a) when the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (b) when the inference made is manifestly mistaken, absurd or impossible; (c) when there is a grave abuse of discretion; (d) when the judgment is based on a misapprehension of facts; (e) when the findings of fact are conflicting; (f) when the CA, in making its findings, went beyond the issue of the case and the same is contrary to the admission of both appellant and appellee; (g) when the findings of the CA are contrary to those of the trial court; (h) when the findings of fact are conclusions without citation of specific evidence on which they are based; (i) 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; (j) when the finding of fact of the CA is premised on the supposed absence of evidence but is contradicted by the evidence on record; and (k) when the CA manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion. Petitioner failed to convince us that any of these exceptions applies to the present case.

3. POLITICAL LAW; CONSTITUTIONAL LAW; CONSTITUTIONAL COMMISSIONS; CIVIL SERVICE COMMISSION; THAT PUBLIC SERVANT SHALL BE REMOVED OR SUSPENDED ONLY FOR CAUSE PROVIDED BY LAW; PROBATIONARY EMPLOYEE MAY BE TERMINATED FOR UNSATISFACTORY CONDUCT OR WANT OF CAPACITY. — Article IX (B), Section 2(3) of the 1987 Constitution expressly provides that **"[n]o officer or employee of the civil service shall be removed or suspended except for cause provided by law."** At the outset, we emphasize that the aforementioned constitutional provision *does not distinguish between a regular employee and a probationary employee.* In the recent case of *Daza v. Lugo* we ruled that:

The Constitution provides that "[N]o officer or employee of the civil service shall be removed or suspended except for cause provided by law." Sec. 26, par. 1, Chapter 5, Book V, Title I-A of the Revised Administrative Code of 1987 states: All such persons (appointees who meet all the requirements of the position) must serve a probationary period of six months following their original appointment and shall undergo a thorough character investigation in order to acquire permanent civil service status. **A probationer may be dropped from the service for unsatisfactory conduct or want of capacity any time before the expiration** of the probationary period; *Provided*, That such action is appealable to the Commission. Thus, the *s***ervices of respondent as a probationary employee may only be terminated for a just cause,** that is, unsatisfactory conduct or want of capacity.

4. ID.; ID.; ID.; ID.; ID.; PROCEDURAL AND SUBSTANTIVE DUE PROCESS OF LAW MUST BE COMPLIED WITH. — The constitutional guaranty of security of tenure in the civil service has two legal ramifications. In *Tria v. Chairman Patricia Sto. Tomas, et al.,* we held that the prohibition against suspension or dismissal of an officer or employee of the Civil Service "except for cause provided by law" is **"a guaranty of both procedural and substantive due process."** "Not only must removal or suspension be in accordance with the *procedure prescribed* by law, but also they can only be made on the basis of a *valid cause* provided by law." Procedural due process basically requires that suspension or dismissal comes only after notice and hearing. Thus, the minimum requirements of due process are: (1) that the *employees or officers must be informed of the charges preferred against them,* and the formal way by which the employees or officers are informed is by furnishing them with a copy of the charges made against them; and (2) that they must have a reasonable opportunity to present their side of the matter, that is to say, their defenses against the charges and to present evidence in support of their defenses.

5. ID.; ID.; ID.; ID.; RATES ON PROBATIONARY PERIOD FOR PERMANENT APPOINTMENT IN THE CAREER SERVICE; NOTICE OF TERMINATION OF SERVICE. — As part of its mandate to prescribe and enforce rules and regulations for carrying into effect the provisions of Civil Service Laws and other pertinent laws, the CSC issued Memorandum Circular

No. 3, Series of 2005, which lays down the Rules on Probationary Period for Permanent Appointment in the Career Service. Section 12 of the rules states: Section 12. Notice of Termination of Service. The new appointees or probationers shall be issued **notice of termination of service by the appointing authority within ten (10) days** immediately after it was proven that they have **demonstrated unsatisfactory conduct or want of capacity during the probationary period. Such notice shall state, among other things, the reasons for the termination of service** and shall be supported by at least two of the following: a) Performance Evaluation Report; b) Report of the immediate supervisor (rater) on job-related critical and unusual incidents and on unsatisfactory conduct or behavior of the appointee; or c) Other valid documents that may support the notice of termination of service.

6. ID.; ID.; ID.; ID.; ID.; ID.; SUBSTANTIVE DUE PROCESS REQUIRES THAT SUSPENSION OR DISMISSAL BE "FOR CAUSE." — Substantive due process requires that the suspension or dismissal be "for cause." *Delos Santos v. Mallare* best expresses what is *for cause provided by law:* It means for reasons which the law and sound public policy recognize as sufficient for removal, that is legal cause, and not merely causes which the appointing power in the exercise of discretion may deem sufficient. It is implied that officers may not be removed at the mere will of those vested with the power of removal or without cause. **Moreover, the cause must relate to and affect the administration of the office, and must be restricted to something of a substantial nature directly affecting the rights and interests of the public.** The constitutional guaranty of substantial due process for probationary officers or employees in the civil service is implemented in Section 2, Rule VII of the Omnibus Rules Implementing Book V of the Revised Administrative Code of 1987, which states: Sec. 2. Original appointment refers to initial entry into the career service under a permanent status of a person who meets all the requirements of the position including the civil service eligibility. (a) All such persons must serve a probationary period of six (6) months following their original appointment and shall undergo a thorough character investigation. **A probationer may be dropped from the service for unsatisfactory conduct or want of capacity any time before the expiration of the probationary**

period. Provided that such action is appealable to the Commission. (b) all original appointments of qualified persons to the position in the career service shall henceforth be proposed as permanent. It is understood that the first six (6) months will be probationary in nature. **However, if no notice of termination of unsatisfactory conduct or want of capacity is given by the appointing authority to the employee before the expiration of the six month probationary period, the appointment automatically becomes permanent.** Of course, the just causes for termination of employment available against regular employees also apply to probationary employees.

7. ID.; ID.; ID.; ID.; ID.; ID.; WANT OF CAPACITY AND UNSATISFACTORY CONDUCT; DEFINED. — The grounds for dropping a probationary employee from the service are either for *unsatisfactory conduct* or for *want of capacity*. Although the Revised Administrative Code of 1987 does not define nor delineate these two grounds, resort can be had to the CSC Rules on Probationary Period for Permanent Appointment in the Career Service which defines unsatisfactory conduct or want of capacity as follows: Section 2. Definition of Terms. For these rules on probationary period, the terms used shall be defined as follows: x x x (c) ***Want of capacity*** refers to the **failure of the appointee during the probationary period to perform the duties and responsibilities** based on standards of work outputs agreed upon and reflected in the duly signed performance targets. (d) ***Unsatisfactory conduct*** refers to the failure of the appointees to observe the propriety in their acts, behavior and human/ public relations, and to irregular punctuality and attendance **while performing their duties and responsibilities during the probationary period**.

8. ID.; ID.; ID.; ID.; ID.; ID.; ID.; UNSATISFACTORY CONDUCT REFERS TO THAT EXHIBITED DURING THE PROBATIONARY PERIOD. — As aptly found by the CSC, **the unsatisfactory conduct must necessarily relate to conduct exhibited during the probationary period and should not refer to conduct prior to entering the civil service**. The reason for this is simple given the *nature and consequences* o*f probationary employment*. Thus, we explained in the recent case of *Woodridge School v. Pe Benito*: A probationary employee is one who, for a given period of time, is being observed and evaluated to determine whether or not he

is qualified for permanent employment. A probationary appointment affords the employer an opportunity to observe the skill, competence and attitude of a probationer. *The* **word " probationary," as used to describe the period of employment, implies the purpose of the term or period.** While the employer observes the fitness, propriety and efficiency of a probationer to ascertain whether he is qualified for permanent employment, the probationer at the same time, seeks to prove to the employer that he has the qualifications to meet the reasonable standards for permanent employment. Since probationary employees are evaluated for their fitness to assume permanent employment only for a specific term or period, it necessarily follows that the parameters for which the appointing authority must gauge whether probationary employees committed an unsatisfactory conduct should refer only to conduct while performing their duties and responsibilities during the probationary period.

9. ID.; ID.; ID.; ID.; ID.; ID.; ID.; ID.; ID.; DISHONESTY AND FALSIFICATION OF OFFICIAL DOCUMENTS MERIT DISMISSAL FROM SERVICE, BUT THE MATTER IS NOT IN ISSUE IN CASE AT BAR. — We are not unmindful of the petitioner's contention that the respondent's designation of her child out of wedlock as her sister in submitted documents merits the supreme penalty of dismissal from service for dishonesty and falsification of official documents. We significantly note that dishonesty and falsification of official documents are both classified as grave offenses that merit the extreme penalty of dismissal from the service, even if committed as a first offense. However, the respondent's administrative liabilities for dishonesty and falsification of official documents are not the matters before us now. They may be the proper subjects of separate administrative disciplinary proceedings which this Decision does not foreclose since the issue here is confined to the validity of the respondent's termination as a probationary employee.

APPEARANCES OF COUNSEL

Miguel M. Gonzales, Rosemarie M. Osoteo and Ferdinand F. Collao for petitioner.

Reynaldo S. Hermosisima for respondent.

D E C I S I O N

BRION, *J.*:

Before us is the Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court filed by the Land Bank of the Philippines (*petitioner*). It seeks to set aside:

(a) the Decision[2] of the Court of Appeals (*CA*) dated November 27, 2002 which affirmed Resolution No. 000896[3] and Resolution No. 00-1995,[4] both issued by the Civil Service Commission (*CSC*) ordering the reinstatement of Rowena O. Paden (*respondent*) to her former position as Executive Assistant I.

(b) the Resolution of the CA dated March 11, 2003[5] which denied the motion for reconsideration that the petitioner subsequently filed.

THE FACTUAL ANTECEDENTS

On March 13, 1995, the petitioner hired the respondent as Contractual Secretary III in its Bansalan Branch in Davao del Sur. On **September 1, 1997**, prior to her regularization, the respondent assumed the position of Executive Assistant I as a ***probationary employee*** pending receipt of the background investigation on her. As a requirement to her assumption of the position of Executive Assistant I, the respondent executed an *Affidavit with Waiver of Rights*[6] dated August 7, 1997, whose relevant portions provide:

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[1] *Rollo*, pp. 7-29.

[2] Penned by Associate Justice B.A. Adefuin-De la Cruz (retired), with Associate Justice Mercedes Gozo-Dadole (retired) and Associate Justice Mariano C. Del Castillo, concurring; *id.*, p. 30.

[3] *Id.*, pp. 79-85.

[4] *Id.*, pp. 92-95.

[5] *Id.*, p. 40.

[6] *Id.*, p. 106.

1. That I will be appointed as Executive Assistant I pursuant to Board Resolution No. 09-009 dated 02/16/90;

2. That on September 1, 1997, I will assume the duties of the position pending receipt of my GSIS Medical Evaluation, NBI Clearance, Reference Check and other requested clearances;

3. That should there be derogatory information against me as later determined in my GSIS Medical Evaluation, NBI Clearance, Reference Check and other required clearances, I hereby waive my right to the aforementioned position as well as to all the benefits and privileges appurtenant thereto except for compensation for services rendered (actual number of days) by me;

4. That this affidavit is being executed for purpose of assuming the position and reporting for work pending receipt of corporate requirements for new hires.

In the documents that she submitted to support her application, the respondent indicated that she had no children and designated one Cyril Rose O. Paden (*Cyril Rose*) as her sister.[7] A subsequent background investigation revealed that Cyril Rose is not the respondent's sister but is really her daughter. Shortly thereafter, the respondent, in an *Affidavit*[8] dated October 20, 1997, sought to explain the discrepancy by stating the following:

1. I am an employee of the Land Bank of the Philippines assigned in Bansalan, Davao del Sur;

2. I have been employed with Land Bank (DBPSC Contractual) as secretary since March 13, 1995. I assumed my present position, Executive Assistant I, on September 1, 1997;

3. On August 22, 1997, I submitted my bio-data sheet to the Personnel Department of Land Bank. In said bio-data sheet, I included the name of one Cyril Rose Paden as one of my sister [sic];

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[7] Personal Data Sheet, Statement of Assets and Liabilities and Application for Membership/Designation of Dependents/Beneficiaries for LBP Mutual Aid Benefit Program/Life and Disability Benefit Plan; *id.*, pp. 108-110.

[8] *Id.,* p. 107.

4. This Cyril Rose Paden was actually my daughter out of wedlock. Since her birth and until now however, it was my mother who stood as mother to Cyril Rose Paden. Shortly after giving birth to her (Cyril Rose), I left Bansalan, my hometown and worked in Davao City. I seldom went home to Bansalan;

5. The following Monday, after realizing my mistake, I immediately called up Personnel Department and was able to talk with Ms. Jojo Amarillo. I told her that Cyril Rose was actually my daughter;

6. It was my mother who made it appear in our community that Cyril Rose Paden is her own daughter and unwittingly, I also considered Cyril Rose as a sister;

7. It was my mother who caused the registration of the Birth of Cyril Rose with the Office of the Local Civil Registrar;

Based on this affidavit, the petitioner gave notice to the respondent on February 25, 1998 that she would be dropped from the rolls effective March 1, 1998.[9] The notice states in full:

Dear Ms. Paden:

Please be informed that you will be dropped from the rolls of the Bank effective March 1, 1998 – the expiration of your probationary period.

For your information.

Very truly yours,

ETHEL B. BALAALDIA
Assistant Vice President
Personnel Department

The respondent received this notice on February 27, 1998 from Alfredo G. Cabiguin, the Branch Manager of the petitioner's Bansalan branch where the respondent was based.

[9] *Id.,* p. 41.

In a letter[10] dated March 2, 1998 sent by fax, the petitioner informed the respondent that she had been officially dropped from the rolls effective March 1, 1998. The pertinent portions of the letter are quoted herein as follows:

Dear Ms. Paden:

Please be informed that you have been officially dropped from the rolls of the Bank effective March 1, 1998 – the expiration of your probationary period.

For your information.

Very truly yours,

ETHEL B. BALAALDIA
Assistant Vice President
Personnel Department

The respondent sought reconsideration, but the petitioner denied her request on May 20, 1998. Three months after she received a copy of the petitioner's denial of her motion for reconsideration, the respondent filed an appeal with the CSC. The CSC dismissed the appeal outright through Resolution No. 983104[11] for having been filed beyond the reglementary period, and for failure to pay the appeal fee.[12] The respondent filed a

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

[11] *Id.*, pp. 48-50.

[12] Section 49 of the Uniform Rules in the Conduct of Administrative Investigation in the Civil Service Commission (CSC Resolution No. 94-0521, January 25, 1994):

> Section 49. Complaint or Appeal to the Commission. – Other personnel actions, such as separation from the service due to unsatisfactory or poor performance, dropping from the rolls, disapproval of appointments, claims for back salaries and other benefits, may be brought to the Commission by means of a formal complaint or appeal subject to the following:
>
> x x x x x x x x x
>
> (d) A complaint/appeal involving non-disciplinary actions shall be dismissed outright on any of the following grounds:

motion for reconsideration arguing that the filing of the appeal beyond the reglementary period and the nonpayment of the appeal fee are light omissions when compared to the grave offense committed against her by the petitioner for illegally dismissing her without the benefit of any information or supporting papers informing her of the cause for her dismissal; the respondent argued that the petitioner failed to accord her due process.

The CSC, through Resolution No. 992039[13] dated September 15, 1999, resolved to grant the respondent's motion for reconsideration and to give due course to the appeal.

In its *Comment* submitted to the CSC, the petitioner argued that the respondent was dropped from the rolls based on the findings of the background investigation conducted on the respondent; the investigation revealed that the respondent misrepresented Cyril Rose as her sister, when in fact, Cyril Rose was her daughter.[14] The petitioner also stated that the respondent's misrepresentation also led her to make false entries in official and public documents; it was only after a thorough and painstaking discussion among the members of its selection board that it was decided that the respondent should be dropped from the rolls effective March 1, 1998, the expiration of her probationary period. The petitioner cited *Section 2, Rule VII of the Omnibus Rules Implementing Book V of Executive Order No. 292 (Revised Administrative Code of 1987)* as its basis in dropping the respondent from its rolls; the section states:

All such persons must serve a probationary period of six months following their original appointment and shall undergo a thorough character investigation. A probationer may be dropped from the service

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x x x x x x x x x

(2) The appeal is filed beyond the reglementary period; and

(3) No appeal fee is paid.

[13] *Rollo,* pp. 61-63.

[14] *Id.,* pp. 64-73.

for unsatisfactory conduct or want of capacity any time before the expiration of the probationary period.

The petitioner went even further to argue that since the respondent "acknowledges that her appointment as Executive Assistant I had to undergo a six-month probationary period, **her status as such divests her of the constitutional security of tenure against removal without cause during the said period of time.**"[15] Lastly, the petitioner emphasized that the respondent was informed of her being dropped from the service on February 25, 1998, which was before the expiration of her probationary period.

In her *Answer* to the petitioner's *Comment*, the respondent reiterated that her termination from the service was illegal, since it was done without due process for failure of the petitioner to inform her of the reason why she was being terminated from the service; the notice merely stated that she was being dropped from the rolls effective March 1, 1998.[16] The respondent also asserted that her appointment was deemed permanent on March 1, 1998 by reason of the lapse of the six months probationary period.

The CSC Ruling

The CSC, through Resolution No. 000896[17] dated March 30, 2000, resolved the appeal in favor of the respondent and ordered her reinstatement to her former position as Executive Assistant I under permanent status, without prejudice to the proper administrative charges that may be filed against her. The CSC held:

> The issue in this case is whether or not there is a ground for dropping from the rolls/dismissal from the service while undergoing probationary period.

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[15] *Id.*, p. 68.

[16] *Id.*, pp. 74-78.

[17] *Id.*, pp. 79-85.

Section 2(a), Rule VII of the Revised Omnibus Rules Implementing Book V of Executive Order No. 292 provides that:

> "*All such persons must serve a probationary period of six (6) months following their original appointment and shall undergo a thorough character investigation. A probationer may be dropped from the service for unsatisfactory conduct or want of capacity any time before the expiration of the probationary period.*"

Clearly, an employee undergoing probationary period of six (6) months may be dropped from the service anytime before the expiration of the probationary period on two grounds, to wit: 1) unsatisfactory conduct and (2) want of capacity.

Records show that Land Bank of the Philippines dropped Paden from the service on the ground of unsatisfactory conduct, that is, for having a child borne out of wedlock which was later admitted under oath by Paden.

The Commission, however, does not agree with the ground upon which the termination was based. **The ground relied upon by the Land Bank of the Philippines is misplaced. The unsatisfactory conduct must be related to the conduct exhibited by Paden during her probationary period. Needless to say, the same should not refer to her conduct before entering the civil service.**

Records further show that Paden was informed of her termination only on March 1, 1998 and the same was effective on the same date. It can be recalled that Paden was proposed for regularization and assumed the position of Executive Assistant on September 1, 1997 as probationary employee. Paden has six (6) months or until February 28, 1998 to serve her probationary period.

> The Omnibus Rules provides, *viz*:
>
> However, if no notice of termination or unsatisfactory conduct is given by the appointing authority to the employee before the expiration of the six-month probationary period, the appointment automatically becomes permanent.

Records clearly reveal that Paden was informed only after the expiration of her probationary period, March 1, 1998. Consequently, Paden's appointment automatically becomes regular.

The submission by the LBP that Paden was actually informed of the denial of the "proposal to consider her for permanent status" on February 25, 1998 as recommended by Alfred G. Cabiguin, Acting Head, LBP Bansalan Branch, is immaterial to the instant case. The same does not amount to a notice of termination of service nor a notice of unsatisfactory conduct. Further, it is not the form of notice contemplated by law.

Clear also is the admission by the LBP in its Comment that it is immaterial to inform Paden of her being dropped from the service for any way the unsatisfactory conduct is already existing. This contention, however, is an open and blatant denial of due process of law.

Such being the case, the appointment of Paden as Executive Assistant I becomes permanent after six (6) months.

It may be pertinent to stress that the least offense that could be charged against Paden is that of Disgraceful, Immoral, or Dishonest Conduct Prior to Entering the Service found in **Section 52 (C) (7), Rule IV of the Uniform Rules on Administrative Cases.**

In the sum, the dismissal of Paden from the service is bereft of legal basis. [Emphasis supplied]

The petitioner filed a motion for reconsideration before the CSC, but the same was denied through Resolution No. 00-1995 dated September 4, 2000. Aggrieved by the CSC's decision, the petitioner filed a petition for review before the CA assailing the resolutions issued by the CSC.

The CA Ruling

In a Decision dated November 27, 2002, the CA dismissed the petitioner's petition for review for lack of merit. The CA affirmed the findings of the CSC that the petitioner fell short of affording due process to the respondent when it removed her from the service. The CA agreed with the findings made by the CSC that the petitioner failed to give notice to the respondent of the reasons for her removal from the service, except for a faxed message which informed the respondent that she was being removed effective March 1, 1998. The CA further agreed with the conclusion reached by the CSC that the ground relied

upon by the petitioner for the respondent's termination of service is misplaced. The CA affirmed the CSC's ruling that unsatisfactory conduct, as ground for termination from service of a probationary employee, must relate to conduct exhibited during the probationary period, and does not pertain to conduct before entering the civil service.

In a Resolution dated March 11, 2003, the CA also denied the petitioner's motion for reconsideration for lack of merit.

The Petition

In the present petition, the petitioner faults the CA for:

1) declaring that the CSC was correct in giving due course to the respondent's appeal;

2) finding that the petitioner deprived the respondent of due process; and

3) dismissing its petition in complete disregard of applicable laws and existing jurisprudence respecting the facts and evidence presented by the petitioner.

THE COURT'S RULING

We do not find the petition meritorious.

The petitioner raises issues which are factual in nature. The settled rule is that factual findings of administrative agencies, such as the CSC, when affirmed by the CA and if supported by substantial evidence, are accorded respect and even finality by this Court.[18]

Our review of a petition for review on *certiorari* under Rule 45 of the Rules of Court is limited to the review of errors of law, unless the following exceptions occur: (a) when the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (b) when the inference made is manifestly mistaken, absurd or impossible; (c) when there is a grave abuse

[18] *Binay v. Odeña*, G.R. No. 163683, June 8, 2007, 524 SCRA 248, 256-257.

of discretion; (d) when the judgment is based on a misapprehension of facts; (e) when the findings of fact are conflicting; (f) when the CA, in making its findings, went beyond the issue of the case and the same is contrary to the admission of both appellant and appellee; (g) when the findings of the CA are contrary to those of the trial court; (h) when the findings of fact are conclusions without citation of specific evidence on which they are based; (i) 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; (j) when the finding of fact of the CA is premised on the supposed absence of evidence but is contradicted by the evidence on record; and (k) when the CA manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion.[19] Petitioner failed to convince us that any of these exceptions applies to the present case.

Specifically, we see no reason to depart from the findings of the CSC, as affirmed by the CA, that the petitioner did not give the respondent sufficient notice of termination or a notice of unsatisfactory conduct prior to the expiration of her probationary period, and that there was no basis to drop the respondent from the rolls on the cited ground.

To put the case in its proper perspective, we begin with a discussion on the respondent's right to security of tenure. Article IX (B), Section 2(3) of the 1987 Constitution expressly provides that **"[n]o officer or employee** of the civil service shall be removed or suspended **except for cause provided by law."** At the outset, we emphasize that the aforementioned constitutional provision *does not distinguish between a regular employee and a probationary employee.* In the recent case of *Daza v. Lugo*[20] we ruled that:

The Constitution provides that "[N]o officer or employee of the civil service shall be removed or suspended except for cause provided

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[19] *Mercury Drug Corporation v. Libunao,* G.R. No. 144458, July 14, 2004, 434 SCRA 413, 414.

[20] G.R. No. 168999, April 30, 2008, 553 SCRA 532, 537-538.

by law." Sec. 26, par. 1, Chapter 5, Book V, Title I-A of the Revised Administrative Code of 1987 states:

> All such persons (appointees who meet all the requirements of the position) must serve a probationary period of six months following their original appointment and shall undergo a thorough character investigation in order to acquire permanent civil service status. **A probationer may be dropped from the service for unsatisfactory conduct or want of capacity any time before the expiration** of the probationary period; *Provided*, That such action is appealable to the Commission.

Thus, the **services of respondent as a probationary employee may only be terminated for a just cause**, that is, unsatisfactory conduct or want of capacity. [Emphasis supplied]

The constitutional guaranty of security of tenure in the civil service has two legal ramifications. In *Tria v. Chairman Patricia Sto. Tomas, et al.*,[21] we held that the prohibition against suspension or dismissal of an officer or employee of the Civil Service "except for cause provided by law" is "**a guaranty of both procedural and substantive due process.**" "Not only must removal or suspension be in accordance with the *procedure prescribed* by law, but also they can only be made on the basis of a *valid cause* provided by law."[22]

Procedural due process basically requires that suspension or dismissal comes only after notice and hearing.[23] Thus, the minimum requirements of due process are: (1) that the *employees or officers must be informed of the charges preferred against them*, and the formal way by which the employees or officers are informed is by furnishing them with a copy of the charges made against them; and (2) that they must have a reasonable opportunity to present their side of the matter, that is to say,

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[21] G.R. No. 85670, July 31, 1991, 199 SCRA 833, 843-844.

[22] Bernas, Joaquin G., *The 1987 Philippine Constitution: A Reviewer Primer* (2006 ed.), p. 420.

[23] Bernas, Joaquin G., *The 1987 Constitution of the Republic of the Philippines: A Commentary* (1996 ed.), p. 914.

their defenses against the charges and to present evidence in support of their defenses.[24]

As part of its mandate to prescribe and enforce rules and regulations for carrying into effect the provisions of Civil Service Laws and other pertinent laws,[25] the CSC issued Memorandum Circular No. 3, Series of 2005,[26] which lays down the Rules on Probationary Period for Permanent Appointment in the Career Service. Section 12 of the rules states:

> Section 12. Notice of Termination of Service. The new appointees or probationers shall be issued **notice of termination of service by the appointing authority within ten (10) days** immediately after it was proven that they have **demonstrated unsatisfactory conduct or want of capacity during the probationary period**. **Such notice shall state, among other things, the reasons for the termination of service** and shall be supported by at least two of the following:
>
> a) Performance Evaluation Report;
>
> b) Report of the immediate supervisor (rater) on job-related critical and unusual incidents and on unsatisfactory conduct or behavior of the appointee; or
>
> c) Other valid documents that may support the notice of termination of service.

Measured against these standards, the February 25, 1998 notice to the respondent clearly *does not amount to a valid notice of termination,* as it merely stated that the respondent was being dropped from the rolls; **nowhere in the notice was a specification of the petitioner's factual and legal reasons for terminating the respondent's services.** This is a violation of due process since it strikes at its essence – the opportunity to be heard – or the opportunity for the respondent to adequately

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[24] *Government Service Insurance System v. Court of Appeals*, G.R. No. 86083, September 24, 1991, 201 SCRA 661, 671.

[25] REVISED ADMINISTRATIVE CODE of 1987, Book IV, Title 1, Subtitle A, Chapter 3, Section 12, No. 2.

[26] Dated January 12, 2005.

and intelligently mount a defense against the charges made by the petitioner. Thus, the respondent was completely left in the dark on why her services were being summarily terminated. In addition, the records of this case are bereft of any evidence that the petitioner's February 25, 1998 notice to the respondent was supported by any document justifying the notice of termination.

The petitioner was apparently under the mistaken impression that the services of a probationary employee can be terminated at will, *i.e.*, even without cause.[27] The petitioner of course labored under a misimpression as explained above;[28] the only difference between regular and probationary employees from the perspective of due process is that the latter's termination can be based on the wider ground of failure to comply with standards made known to them when they became probationary employees.[29]

Substantive due process on the other hand requires that the suspension or dismissal be "for cause."[30] *Delos Santos v. Mallare*[31] best expresses what is *for cause provided by law:*

> It means for reasons which the law and sound public policy recognize as sufficient for removal, that is legal cause, and not merely causes which the appointing power in the exercise of discretion may deem sufficient. It is implied that officers may not be removed at the mere will of those vested with the power of removal or without cause. **Moreover, the cause must relate to and affect the administration of the office, and must be restricted to something of a substantial nature directly affecting the rights and interests of the public**. [Emphasis supplied]

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[27] *Rollo*, p. 68.

[28] *Supra* note 20.

[29] Section 7 of the CSC MC No. 3, s. 2005, or the Rules on Probationary Period for Permanent Appointment in the Career Service provides for "performance targets and standards to facilitate the review and monitoring of employee performance" which "shall be set, agreed upon and duly signed by the probationer, the immediate supervisor (rater), and the head of agency within five (5) working days upon appointee's assumption to duty."

[30] *Supra* note 24.

[31] 87 Phil. 293 (1950).

The constitutional guaranty of substantial due process for probationary officers or employees in the civil service is implemented in Section 2, Rule VII of the Omnibus Rules Implementing Book V of the Revised Administrative Code of 1987, which states:

> Sec. 2. Original appointment refers to initial entry into the career service under a permanent status of a person who meets all the requirements of the position including the civil service eligibility.
>
> (a) All such persons must serve a probationary period of six (6) months following their original appointment and shall undergo a thorough character investigation. **A probationer may be dropped from the service for unsatisfactory conduct or want of capacity any time before the expiration of the probationary period.** Provided that such action is appealable to the Commission.
>
> (b) All original appointments of qualified persons to the position in the career service shall henceforth be proposed as permanent. It is understood that the first six (6) months will be probationary in nature. **However, if no notice of termination of unsatisfactory conduct or want of capacity is given by the appointing authority to the employee before the expiration of the six month probationary period, the appointment automatically becomes permanent.** [Emphasis supplied]

From the above-quoted provision of law, we draw the following conclusions:

First, that the probationary period of a civil service employee shall be for a period of six months, reckoned from the date of his or her original appointment. In the present case, the respondent was appointed to the position of Executive Assistant I on September 1, 1997; thus, her six-month probationary period lapsed on February 28, 1998.

Second, the grounds for dropping a probationary employee from the service are either for *unsatisfactory conduct* or for *want of capacity*. Although the Revised Administrative Code of 1987 does not define nor delineate these two grounds, resort can be had to the CSC Rules on Probationary Period for Permanent Appointment in the Career Service[32] which defines unsatisfactory conduct or want of capacity as follows:

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[32] *Supra* note 26.

Section 2. Definition of Terms. For these rules on probationary period, the terms used shall be defined as follows:

x x x x x x x x x

(c) ***Want of capacity*** refers to the **failure of the appointee during the probationary period to perform the duties and responsibilities** based on standards of work outputs agreed upon and reflected in the duly signed performance targets.

(d) ***Unsatisfactory conduct*** refers to the failure of the appointees to observe the propriety in their acts, behavior and human/public relations, and to irregular punctuality and attendance **while performing their duties and responsibilities during the probationary period**. [Emphasis and italics supplied]

Of course, the just causes for termination of employment available against regular employees also apply to probationary employees.

As aptly found by the CSC, **the unsatisfactory conduct must necessarily relate to conduct exhibited during the probationary period and should not refer to conduct prior to entering the civil service.** The reason for this is simple given the *nature and consequences* o*f probationary employment*. Thus, we explained in the recent case of *Woodridge School v. Pe Benito*:[33]

A probationary employee is one who, for a given period of time, is being observed and evaluated to determine whether or not he is qualified for permanent employment. A probationary appointment affords the employer an opportunity to observe the skill, competence and attitude of a probationer. **The word " probationary," as used to describe the period of employment, implies the purpose of the term or period**. While the employer observes the fitness, propriety and efficiency of a probationer to ascertain whether he is qualified for permanent employment, the probationer at the same time, seeks to prove to the employer that he has the qualifications to meet the reasonable standards for permanent employment. [Emphasis supplied]

Since probationary employees are evaluated for their fitness to assume permanent employment only for a specific term or

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[33] G.R. No. 160240**,** October 29, 2008.

period,[34] it necessarily follows that the parameters for which the appointing authority must gauge whether probationary employees committed an unsatisfactory conduct should refer only to conduct while performing their duties and responsibilities during the probationary period.

Third, should there be no notice of termination on the grounds of unsatisfactory conduct or want of capacity given to the probationary employee by the appointing authority prior to the expiration of the six months probationary period, the probationary employee's appointment to the position, by operation of law, becomes permanent. Since the petitioner's February 25, 1998 notice did not amount to a sufficient notice of termination or a notice of unsatisfactory conduct as previously explained, the respondent therefore attained permanent status on March 1, 1998 – the day after her probationary period expired.

We are not unmindful of the petitioner's contention that the respondent's designation of her child out of wedlock as her sister in submitted documents merits the supreme penalty of dismissal from service for dishonesty and falsification of official

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[34] Section 3 of the Rules on Probationary Period for Permanent Appointment in the Career Service states:

Section 3. ***Objectives of the Probationary Period***. The probationary period for permanent appointment in the career service shall have the following objectives:

(a) to serve as an on-the-job assessment of new appointee's knowledge, skills and attitudes necessary to perform the duties and responsibilities of the position as enumerated in the PDF and specified in the approved performance targets and work output standards;

(b) to provide the appointees with appropriate technical assistance through human resource interventions, such as training, coaching, mentoring and other applicable interventions; and to closely supervise and monitor their performance;

(c) to monitor and assess the conduct of the appointees and act appropriately on any incidence of unsatisfactory behavior; and

(d) to determine whether the appointees shall continue to hold permanent appointment or be separated from the service within or at the end of the probationary period due to want of capacity or unsatisfactory conduct.

documents. We significantly note that dishonesty and falsification of official documents are both classified as grave offenses that merit the extreme penalty of dismissal from the service, even if committed as a first offense.[35]

However, the respondent's administrative liabilities for dishonesty and falsification of official documents are not the matters before us now. They may be the proper subjects of separate administrative disciplinary proceedings which this Decision does not foreclose since the issue here is confined to the validity of the respondent's termination as a probationary employee.

In sum, we find that the ground the petitioner invoked is not sufficient basis for the respondent's dismissal, and that her dismissal was effected without the observance of both procedural and substantive due process. We therefore affirm the assailed CA decision and the underlying resolutions that this decision affirmed.

WHEREFORE, the petition is *DENIED*. The assailed decision of the Court of Appeals in CA-G.R. SP No. 60972 dated November 27, 2002 is hereby *AFFIRMED*.

SO ORDERED.

Quisumbing (Chairperson), Carpio Morales, Chico-Nazario,[*] and *Leonardo-de Castro,*[**] *JJ.,* concur.

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[35] CSC RESOLUTION NO. 991936, Rule IV, Section 52, par. A(1) and A(6).

[*] 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. 169878. July 7, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JESUS OBERO,** *accused-appellant.*

SYLLABUS

REMEDIAL LAW; PRINCIPLE OF IMMUTABILITY OF JUDGMENTS; APPLIED IN CASE AT BAR WHERE NO PETITION FOR REVIEW FILED AND JUDGMENT SOUGHT TO BE REVIEWED BECAME FINAL AND EXECUTORY. — As matters now stand, the CA judgment affirming the accused-appellant's conviction for two counts of rape is already final and executory. In light of this development, we can no longer disturb the assailed CA decision and resolution presently before us following the principle of immutability of judgments: once a judgment becomes final and executory, it becomes unalterable and can no longer be modified nor reversed even to correct what is perceived to be an erroneous conclusion of fact or law. We are compelled therefore to dismiss the present appeal. This conclusion is doubly strengthened by our finding that no compelling reason exists to disturb the assailed rulings.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Remigio D. Saladero, Jr. for accused-appellant.

D E C I S I O N

BRION, *J.*:

We review on appeal the decision[1] and resolution[2] of the Court of Appeals (*CA*)[3] which affirmed with modification the conviction

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[1] Dated February 21, 2005; *rollo*, pp. 3-59.

[2] Dated August 9, 2005; *id.*, pp. 60-61.

[3] Penned by Associate Justice Celia C. Librea-Leagogo, and concurred in by Associate Justice Andres B. Reyes, Jr. and Associate Justice Lucas P. Bersamin (now a Member of this Court).

of accused-appellant Jesus Obero (*accused-appellant*) for two counts of rape.[4] The dispositive portion of the assailed Decision reads:

> WHEREFORE, premises considered, the assailed Decision promulgated on 29 September 1998 of the Regional Trial Court of Morong, Rizal, Branch 79 convicting appellant **Jesus Obero of two (2) counts of rape and sentencing him to suffer the penalty of *RECLUSION PERPETUA*** in Crim. Case No. 2727-M, and the same penalty also in Crim. Case No. 2728 is hereby **AFFIRMED** with the **MODIFICATION** that the appellant is ordered to pay the victim **AAA**[5] the amount of Php 50,000.00 by way of moral damages for each count of rape, in addition to the award of Php 50,000.00 by way of civil indemnity for each count of rape.
>
> SO ORDERED.[6]

The accused-appellant's conviction arose from two (2) of the eight (8) Informations charging him with rape of a minor allegedly committed from September 1996 to November 1996. The accusatory portions of these Informations were similarly worded, as follows:

> x x x the above-named accused, with lewd designs and by means of force, violence and intimidation did, then and there willfully, unlawfully and feloniously have carnal knowledge of the complainant, said AAA, fifteen (15) year old girl, against the latter's will and consent x x x

The accused-appellant pleaded not guilty to all charges; the 8 cases were subsequently consolidated and jointly tried by

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[4] The appeal was docketed as CA-G.R. CR No. 00005.

[5] The real name of the victim as well as those of her immediate family members is withheld *per* Republic Act (R.A.) No. 7610 (An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and for Other Purposes) and R.A. No. 9262 (An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties therefor, and for Other Purposes).

[6] *Rollo*, pp. 54-55.

agreement of the parties. Along with the documentary evidence,[7] the prosecution presented four (4) witnesses to establish its case; the defense presented 8 witnesses.[8]

The prosecution's evidence showed that on 8 separate occasions while AAA was outside her house, the accused-appellant grabbed her and pulled her into his house. The accused-appellant then succeeded in having sexual intercourse with AAA against her will.

The medical examination thereafter conducted on AAA showed physical evidence consistent with her claim of sexual abuse – the presence of old lacerations located at the 3:00 and 7:00 positions in her hymen.[9] The medical examination also revealed AAA to be in a non-virgin state and that she could not have had sexual intercourse more than ten (10) times.[10]

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[7] The prosecution presented the following exhibits: (1) Memorandum/ Request dated December 9, 1996 of the PNP Crime Laboratory (Exhibit "A" with submarkings); (2) Brief History of the Case dated December 11, 1996 of the Crime Laboratory, Camp Crame, Quezon City (Exhibit "B"); (3) Medico-Legal Report No. M-3151-96 (Exhibit "C" with submarkings); (4) Letter dated December 9, 1996 (Exhibit "D" with submarkings); (5) *Barangay Salaysay* of AAA (Exhibit "E"); and (6) Affidavit of AAA (Exhibit "F").

On the part of the defense: (1)Brief History of the Case (Exhibit "1" with submarkings); (2) *Sinumpaang Salaysay* of AAA (Exhibit "2" with submarkings); (3) Affidavit of AAA (Exhibit "3" with submarkings); (4) Photographs of the door, lock of the door and cement wall (Exhibits "4" and "5" with submarkings); (5) *Salaysay* of Isaias Alex (Exhibit "6" with submarkings); (6) Handwritten statement of Isaias Alex (Exhibit "7" with submarkings); (7) *Sinumpaang Kontra-Salaysay* of Jesus Obero (Exhibit "8" with submarkings); (8) Minutes of Pre-investigation (Exhibit "9"); and (9) Police Blotter Entry No. 12-11-96-2230OH.

[8] The prosecution presented the following witnesses: (1) AAA; (2) Marilena Alex, (3) Dr. Anthony Joselito Llamas, and (4) Daniel Razo. In turn, the defense presented the following witnesses: (1) the accused-appellant; (2) SPO2 Danilo Pabularcon; (3) Nelia Garrovillas; (4) Ma. Adela T. Obero; (5) Julieta Beringuel; (6) Mara Jessie Obero; (7) Teodoro Trinidad, and (8) Isaias Alex.

[9] TSN, October 15, 1997, pp. 16-18.

[10] *Id.*, pp. 18 and 20.

The accused-appellant denied having sexual relations with AAA and claimed that the alleged rapes were very unlikely; he worked as a tricycle driver at those times the rapes allegedly occurred and his youngest child was also at home during noontime.[11] He averred that AAA's complaints were instigated by her family.[12] The accused-appellant further related that AAA was not in Balante, Morong, Rizal in September 1996; he did not know where she was at that time.[13]

To back the accused-appellant's claims, the defense presented Isaias Alex (*Isaias*),[14] Nelia C. Garrovillas (*Nelia*),[15] Julieta Beringuel,[16] Teodoro Trinidad,[17] Maria Adela T. Obero[18] and Mara Jessy T. Obero.[19] Isaias and Nelia, however, related that AAA was employed as a nanny in Lagundi, Morong, Rizal only during the last week of September 1996.[20]

SPO3 Danilo Pabularcon (*SPO3 Pabularcon*),[21] the police officer who investigated AAA, stated that he conducted the investigation in a normal manner using Tagalog, which AAA spoke and understood, and it did not take long for her to answer the questions.[22] He had also asked AAA to read her written statement before she signed it.[23] SPO3 Pabularcon testified

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[11] TSN, May 19, 1998, p. 2, and TSN, May 20, 1998, pp. 7, 9 and 10.

[12] *Id.*, TSN, May 19, 1998, pp. 2-4.

[13] *Supra* note 11, p. 11, TSN, May 20, 1998.

[14] TSN, April 21, 1998, pp. 21-22.

[15] TSN, February 11, 1998, pp. 22-23.

[16] *Id.*, February 18, 1998, pp. 11-13.

[17] TSN, April 15, 1998, pp. 3- 6.

[18] TSN, February 11, 1998, pp. 32-34.

[19] TSN, March 17, 1998, pp. 2-3.

[20] TSN, April 21, 1998, pp. 21-22, and TSN, February 11, 1998, pp.22-23.

[21] *Id.*, TSN, February 11, 1998, p. 4.

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

[23] *Ibid*.

that except for the facts stated in AAA's written statement which he prepared, he no longer had any recollection of how long it took AAA to supply the dates of the rapes.[24]

On September 29, 1998, the Regional Trial Court[25] (*RTC*), Branch 79, Morong, Rizal convicted the accused-appellant for the first and fourth rapes committed in September 1996, while he was acquitted with respect to the other rapes where the evidence was found to be *inadequate and grossly inefficient*.[26] The decretal portion of the RTC decision reads:

> WHEREFORE, accused Jesus Obero is hereby sentenced to suffer the penalty of *RECLUSION PERPETUA* in Criminal Case No. 2728 and the same penalty also in Criminal Case No. 2727; to indemnify AAA the amount of ₱50,000.00 in each case by way of civil indemnity.
>
> SO ORDERED.[27]

On appeal to the CA, accused-appellant assigned these errors committed by the RTC:

1. THE TRIAL COURT LEGALLY ERRED IN NOT HOLDING THAT IT HAS NO JURISDICTION OVER CRIM. CASE NO. 2728-M AND CRIM. CASE NO. 2727-M FOR WANT OF A VALID COMPLAINT DULY SIGNED BY THE COMPLAINING WITNESS FOR THE SAID CHARGES;

2. THE TRIAL COURT SERIOUSLY ERRED IN CONVICTING APPELLANT OF TWO RAPES WHICH NEVER EXISTED;

3. THE TRIAL COURT SERIOUSLY ERRED IN GIVING CREDENCE TO THE TESTIMONY OF COMPLAINING WITNESS AAA DESPITE HER LACK OF APPRECIATION OF THE SOLEMNITY OF AN OATH;

4. THE TRIAL COURT COMMITTED A SERIOUS ERROR IN HOLDING THAT WHATEVER LAPSES IN THE TESTIMONY

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[24] *Id.*, TSN, February 11, 1998, p. 16.

[25] Penned by Judge Alejandro A. Marquez; *CA rollo*, p. 129.

[26] *CA Rollo*, p. 62.

[27] *Id.*, p. 63.

OF THE COMPLAINING WITNESS WAS UNDERSTANDABLE SINCE SHE WAS UNSCHOOLED AND ILLITERATE;

5. THE TRIAL COURT ERRED IN FAILING TO REJECT THE TESTIMONY OF AAA DUE TO ITS GROSS IMPROBABILITIES AND FOR BEING CONTRARY TO THE COMMON EXPERIENCE OF MANKIND;

6. THE TRIAL COURT ERRED IN GIVING CREDENCE TO THE TESTIMONY OF AAA DESPITE ITS BEING RIDDLED WITH NUMEROUS CONTRADICTIONS AND INCONSISTENCIES ON HIGHLY MATERIAL POINTS; and

7. THE TRIAL COURT COMMITTED A SERIOUS ERROR IN NOT ACQUITTING ACCUSED-APPELLANT ON THE GROUND OF REASONABLE DOUBT.[28]

The CA turned down these arguments and affirmed his conviction for the two (2) counts of rape.

The Issue

The core issue is whether there is sufficient and competent evidence to support the accused-appellant's guilt beyond reasonable doubt of the two counts of rape. The accused-appellant contends that he cannot be held liable on the basis of the procedural and substantive grounds listed above.[29] He focuses mainly on the alleged deprivation of his constitutional right to be informed of the charges against him arising from the defects in both the sworn complaint and the two Informations on the discrepancy of the dates when the two rapes were committed. On the one hand, he was being held accountable under the sworn complaint for rapes allegedly committed within the period of October 1996 to November 28, 1996; on the other hand, he was convicted for two rapes which occurred in the first and fourth week of September 1996 as alleged in the Informations.

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[28] *CA Rollo,* pp. 86-87.

[29] Supplemental Brief for the Accused; *rollo,* pp. 73-79.

He also asserts the untrustworthiness of AAA's testimony because it was riddled with contradictions, inconsistencies, improbabilities; AAA, too, admitted that she did understand the meaning of the oath she took.

Our Ruling

We dismiss this appeal considering the supervening events in this case which made the conviction of the accused-appellant final and executory. We do so after closely examining the records of the case and after finding that, as above narrated, the lower courts are correct in their conclusions and that no reason exists for us to disturb their rulings.

A look into the records reveals that in assailing the CA judgment of conviction before this Court, the accused-appellant, through his counsel, Atty. Remigio D. Saladero, Jr. (*Atty. Saladero*), availed of two modes of review. The first one was by filing a motion for extension of time to file a petition for review on *certiorari* (docketed as G.R. No. 169249) under Rule 45 of the Rules of Court within fifteen (15) days from receipt of the CA resolution. The second one was by appealing the CA decision and resolution (previously docketed as G.R. Nos. 138684-91) pursuant to Section 3 (c), Rule 122 of the 2000 Revised Rules of Criminal Procedure, within the same day the motion for extension of time to file a petition for review on *certiorari* was filed.

In G.R. No. 169249, we granted, through our Third Division, the accused-appellant and counsel's motion for extension of time to file a petition for review on *certiorari*. Subsequently, we declared the case closed and terminated in a *Minute* Resolution dated March 22, 2006 for the following reason:

> … the Court RESOLVES to **INFORM** the Court of Appeals and the parties that no petition has been filed in this case and that the judgment sought to be reviewed has now become final and executory, and to **DECLARE** this case **CLOSED** and **TERMINATED**.

A copy of this *Minute* Resolution was received by Atty. Saladero on April 17, 2006. On May 3, 2006, an Entry

of Judgment was made; Atty. Saladero received a copy of the Entry of Judgment on November 30, 2006.

Subsequently, Atty. Saladero filed a Manifestation and Motion (With Profuse Apologies) to set aside this Entry of Judgment on the ground of the lapses he had committed in handling his client's appeal.[30] On March 5, 2007, the Court denied Atty. Saladero's motion notwithstanding the points he raised.

As matters now stand, the CA judgment affirming the accused-appellant's conviction for two counts of rape is already final and executory. In light of this development, we can no longer disturb the assailed CA decision and resolution presently before us following the principle of immutability of judgments: once a judgment becomes final and executory, it becomes unalterable and can no longer be modified nor reversed even to correct what is perceived to be an erroneous conclusion of fact or law.[31] We are compelled therefore to dismiss the present appeal.[32] This conclusion is doubly strengthened by our finding that no compelling reason exists to disturb the assailed rulings.

WHEREFORE, in light of the foregoing, we hereby *DISMISS* the present appeal by accused-appellant Jesus Obero from the Decision dated February 21, 2005 and the Resolution dated August 9, 2005 of the Court of Appeals in CA-G.R. CR No. 00005.

SO ORDERED.

Quisumbing (Chairperson), Carpio Morales, Chico-Nazario,[*] and *Leonardo-de Castro,*[**] *JJ.,* concur.

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[30] G.R. No. 169249, *rollo*, pp. 118-121.

[31] *Information Technology of the Philippines v. Commission on Elections*, G.R. No. 159139, June 15, 2005, 460 SCRA 291, 303.

[32] *People v. Pajo*, G.R. Nos. 135109-13, December 18, 2000, 348 SCRA 492, 525, and *People v. Alay-ay*, G.R. Nos. 137199-230, August 23, 2001, 363 SCRA 603, 620.

[*] 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. 174238. July 7, 2009]

ANITA CHENG, *petitioner, vs.* **SPOUSES WILLIAM SY and TESSIE SY,** *respondents.*

SYLLABUS

1. CRIMINAL LAW; ESTAFA AND BP BLG. 22 CASES; RULE WHERE THE CRIMINAL ACTION FILED WITHOUT PRIOR WAIVER, RESERVATION OR INSTITUTION OF THE CORRESPONDING CIVIL ACTION. — The rule is that upon the filing of the estafa and BP Blg. 22 cases against respondents, where the petitioner has not made any waiver, express reservation to litigate separately, or has not instituted the corresponding civil action to collect the amount of ₱600,000.00 and damages prior to the criminal action, the civil action is deemed instituted with the criminal cases. This rule applies especially with the advent of the 2000 Revised Rules on Criminal Procedure. Thus, during the pendency of both the estafa and the BP Blg. 22 cases, the action to recover the civil liability was impliedly instituted and remained pending before the respective trial courts. This is consonant with our ruling in *Rodriguez v. Ponferrada* that the possible single civil liability arising from the act of issuing a bouncing check can be the subject of both civil actions deemed instituted with the estafa case and the prosecution for violation of BP Blg. 22, simultaneously available to the complaining party, without traversing the prohibition against forum shopping. Prior to the judgment in either the estafa case or the BP Blg. 22 case, petitioner, as the complainant, cannot be deemed to have elected either of the civil actions both impliedly instituted in the said criminal proceedings to the exclusion of the other.

2. ID.; ID.; ID.; DISMISSAL OF ESTAFA CASE WITHOUT RULING AS TO THE CIVIL LIABILITY, OR RULING THAT THE LIABILITY WAS ONLY CIVIL IN NATURE; EFFECT THEREOF. — The dismissal of the estafa cases for failure of the prosecution to prove the elements of the crime beyond reasonable doubt—where in Criminal Case No. 98-969952 there was no pronouncement as regards the civil liability of the

accused and in Criminal Case No. 98-969953 where the trial court declared that the liability of the accused was only civil in nature—produced the legal effect of a reservation by the petitioner of her right to litigate separately the civil action impliedly instituted with the estafa cases, following Article 29 of the Civil Code.

3. REMEDIAL LAW; CRIMINAL PROCEDURE; RETROACTIVE APPLICATION TO PENDING ACTIONS. — Petitioner is in error when she insists that the 2000 Rules on Criminal Procedure should not apply because she filed her BP Blg. 22 complaints in 1999. It is now settled that rules of procedure apply even to cases already pending at the time of their promulgation. The fact that procedural statutes may somehow affect the litigants' rights does not preclude their retroactive application to pending actions. It is axiomatic that the retroactive application of procedural laws does not violate any right of a person who may feel that he is adversely affected, nor is it constitutionally objectionable. The reason for this is that, as a general rule, no vested right may attach to, nor arise from, procedural laws. Be it remembered that rules governing procedure before the courts, while not cast in stone, are for the speedy, efficient, and orderly dispensation of justice and should therefore be adhered to in order to attain this objective.

4. CRIMINAL LAW; BP BLG. 22; CRIMINAL ACTION FOR VIOLATION THEREOF INCLUDES THE CORRESPONDING CIVIL ACTION. — Indeed, under the present revised Rules, the criminal action for violation of BP Blg. 22 includes the corresponding civil action to recover the amount of the checks. It should be stressed, this policy is intended to discourage the separate filing of the civil action. In fact, the Rules even prohibits the reservation of a separate civil action, *i.e.*, one can no longer file a separate civil case after the criminal complaint is filed in court. The only instance when separate proceedings are allowed is when the civil action is filed ahead of the criminal case. Even then, the Rules encourages the consolidation of the civil and criminal cases. Thus, where petitioner's rights may be fully adjudicated in the proceedings before the court trying the BP Blg. 22 cases, resort to a separate action to recover civil liability is clearly unwarranted on account of *res judicata*, for failure of petitioner to appeal the civil aspect of the cases.

In view of this special rule governing actions for violation of BP Blg. 22, Article 31 of the Civil Code is not applicable.

5. ID.; ID.; ID.; DISMISSAL OF THE BP BLG. 22 CASE AND FAILURE TO APPEAL THE CIVIL ACTION THEREIN WITHIN THE LEGAL PERIOD IS WAIVER OF THE CIVIL ACTION; GROSS MISTAKE OF COUNSEL MADE DEVIATION FROM THE RULE PROPER. — Faced with the dismissal of the BP Blg. 22 cases, petitioner's recourse pursuant to the prevailing rules of procedure would have been to appeal the civil action to recover the amount loaned to respondents corresponding to the bounced checks. Hence, the said civil action may proceed requiring only a preponderance of evidence on the part of petitioner. Her failure to appeal within the reglementary period was tantamount to a waiver altogether of the remedy to recover the civil liability of respondents. However, due to the gross mistake of the prosecutor in the BP Blg. 22 cases, we are constrained to digress from this rule.

6. LEGAL ETHICS; LAWYERS; CLIENTS BOUND BY THE MISTAKES, NEGLIGENCE AND OMISSION OF COUNSEL; EXCEPTIONS. — It is true that clients are bound by the mistakes, negligence and omission of their counsel. But this rule admits of exceptions – (1) where the counsel's mistake is so great and serious that the client is prejudiced and denied his day in court, or (2) where the counsel is guilty of gross negligence resulting in the client's deprivation of liberty or property without due process of law. Tested against these guidelines, we hold that petitioner's lot falls within the exceptions.

7. ID.; ID.; DUTY TO BE WELL-INFORMED OF THE LAWS AND RULES; GOVERNMENT LAWYERS EXPECTED TO BE MORE CONSCIENTIOUS OF THEIR PUBLIC DUTIES; VIOLATION OF THESE DUTIES IN CASE AT BAR DENIED PETITIONER OF A DAY IN COURT. — It is an oft-repeated exhortation to counsels to be well-informed of existing laws and rules and to keep abreast with legal developments, recent enactments and jurisprudence. Unless they faithfully comply with such duty, they may not be able to discharge competently and diligently their obligations as members of the Bar. Further, lawyers in the government service are expected to be more conscientious in the performance of their duties as they are subject to public

scrutiny. They are not only members of the Bar but are also public servants who owe utmost fidelity to public service. Apparently, the public prosecutor neglected to equip himself with the knowledge of the proper procedure for BP Blg. 22 cases under the 2000 Rules on Criminal Procedure such that he failed to appeal the civil action impliedly instituted with the BP Blg. 22 cases, the only remaining remedy available to petitioner to be able to recover the money she loaned to respondents, upon the dismissal of the criminal cases on demurrer. By this failure, petitioner was denied her day in court to prosecute the respondents for their obligation to pay their loan.

8. CIVIL LAW; PERSONS; HUMAN RELATIONS; PRINCIPLE OF UNJUST ENRICHMENT. — There is unjust enrichment when (1) a person is unjustly benefited, and (2) such benefit is derived at the expense of or with damages to another. This doctrine simply means that a person shall not be allowed to profit or enrich himself inequitably at another's expense. One condition for invoking this principle of unjust enrichment is that the aggrieved party has no other recourse based on contract, quasi-contract, crime, quasi-delict or any other provision of law.

9. REMEDIAL LAW; LIBERAL INTERPRETATION OF THE RULES, UPHELD IN THE INTEREST OF SUBSTANTIAL JUSTICE. — Court litigations are primarily designed to search for the truth, and a liberal interpretation and application of the rules which will give the parties the fullest opportunity to adduce proof is the best way to ferret out the truth. The dispensation of justice and vindication of legitimate grievances should not be barred by technicalities. For reasons of substantial justice and equity, as the complement of the legal jurisdiction that seeks to dispense justice where courts of law, through the inflexibility of their rules and want of power to adapt their judgments to the special circumstances of cases, are incompetent to do so, we thus rule, *pro hac vice*, in favor of petitioner.

APPEARANCES OF COUNSEL

James Dennis C. Gumpal for petitioner.
Felipe G. Pacquing 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 Order dated January 2, 2006[2] of the Regional Trial Court (RTC), Branch 18, Manila in Civil Case No. 05-112452 entitled *Anita Cheng v. Spouses William Sy and Tessie Sy*.

The antecedents are as follows—

Petitioner Anita Cheng filed two (2) estafa cases before the RTC, Branch 7, Manila against respondent spouses William and Tessie Sy (Criminal Case No. 98-969952 against Tessie Sy and Criminal Case No. 98-969953 against William Sy) for issuing to her Philippine Bank of Commerce (PBC) Check Nos. 171762 and 71860 for ₱300,000.00 each, in payment of their loan, both of which were dishonored upon presentment for having been drawn against a closed account.

Meanwhile, based on the same facts, petitioner, on January 20, 1999, filed against respondents two (2) cases for violation of *Batas Pambansa Bilang* (BP Blg.) 22 before the Metropolitan Trial Court (MeTC), Branch 25, Manila (Criminal Case Nos. 341458-59).

On March 16, 2004, the RTC, Branch 7, Manila dismissed the estafa cases for failure of the prosecution to prove the elements of the crime. The Order dismissing Criminal Case No. 98-969952 contained no declaration as to the civil liability of Tessie Sy.[3] On the other hand, the Order in Criminal Case No. 98-969953 contained a statement, "Hence, if there is any liability of the accused, the same is purely 'civil,' not criminal in nature."[4]

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[1] *Rollo*, pp. 3-19.

[2] *Id.* at 22-27.

[3] *Id.* at 45-47.

[4] *Id.* at 48-50.

Later, the MeTC, Branch 25, Manila, dismissed, on demurrer, the BP Blg. 22 cases in its Order[5] dated February 7, 2005 on account of the failure of petitioner to identify the accused respondents in open court. The Order also did not make any pronouncement as to the civil liability of accused respondents.

On April 26, 2005, petitioner lodged against respondents before the RTC, Branch 18, Manila, a complaint[6] for collection of a sum of money with damages (Civil Case No. 05-112452) based on the same loaned amount of ₱600,000.00 covered by the two PBC checks previously subject of the estafa and BP Blg. 22 cases.

In the assailed Order[7] dated January 2, 2006, the RTC, Branch 18, Manila, dismissed the complaint for lack of jurisdiction, ratiocinating that the civil action to collect the amount of ₱600,000.00 with damages was already impliedly instituted in the BP Blg. 22 cases in light of Section 1, paragraph (b) of Rule 111 of the Revised Rules of Court.

Petitioner filed a motion for reconsideration[8] which the court denied in its Order[9] dated June 5, 2006. Hence, this petition, raising the sole legal issue –

> Whether or not Section 1 of Rule 111 of the 2000 Rules of Criminal Procedure and Supreme Court Circular No. 57-97 on the Rules and Guidelines in the filing and prosecution of criminal cases under BP Blg. 22 are applicable to the present case where the nature of the order dismissing the cases for bouncing checks against the respondents was [based] on the failure of the prosecution to identify both the accused (respondents herein)?[10]

Essentially, petitioner argues that since the BP Blg. 22 cases were filed on January 20, 1999, the 2000 Revised Rules on

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[5] *Id.* at 42-44.
[6] *Id.* at 51-53.
[7] *Supra* note 2.
[8] *Rollo,* pp. 28-38.
[9] *Id.* at 41.
[10] *Id.* at 6.

Criminal Procedure promulgated on December 1, 2000 should not apply, as it must be given only prospective application. She further contends that her case falls within the following exceptions to the rule that the civil action correspondent to the criminal action is deemed instituted with the latter—

(1) additional evidence as to the identities of the accused is necessary for the resolution of the civil aspect of the case;

(2) a separate complaint would be just as efficacious as or even more expedient than a timely remand to the trial court where the criminal action was decided for further hearings on the civil aspect of the case;

(3) the trial court failed to make any pronouncement as to the civil liability of the accused amounting to a reservation of the right to have the civil liability litigated in a separate action;

(4) the trial court did not declare that the facts from which the civil liability might arise did not exist;

(5) the civil complaint is based on an obligation *ex-contractu* and not *ex-delicto* pursuant to Article 31[11] of the Civil Code; and

(6) the claim for civil liability for damages may be had under Article 29[12] of the Civil Code.

Petitioner also points out that she was not assisted by any private prosecutor in the BP Blg. 22 proceedings.

The rule is that upon the filing of the estafa and BP Blg. 22 cases against respondents, where the petitioner has not made any waiver, express reservation to litigate separately, or has

[11] Art. 31. When the civil action is based on an obligation not arising from the act or omission complained of as a felony, such civil action may proceed independently of the criminal proceedings and regardless of the result of the latter.

[12] Art. 29. When the accused in a criminal prosecution is acquitted on the ground that his guilt has not been proved beyond reasonable doubt, a civil action for damages for the same act or omission may be instituted. Such action requires only a preponderance of evidence. Upon motion of the defendant, the court may require the plaintiff to file a bond to answer for damages in case the complaint should be found to be malicious.

not instituted the corresponding civil action to collect the amount of ₱600,000.00 and damages prior to the criminal action, the civil action is deemed instituted with the criminal cases.[13]

This rule applies especially with the advent of the 2000 Revised Rules on Criminal Procedure. Thus, during the pendency of both the estafa and the BP Blg. 22 cases, the action to recover the civil liability was impliedly instituted and remained pending before the respective trial courts. This is consonant with our ruling in *Rodriguez v. Ponferrada*[14] that the possible single civil liability arising from the act of issuing a bouncing check can be the subject of both civil actions deemed instituted with the estafa case and the prosecution for violation of BP Blg. 22, simultaneously available to the complaining party, without

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[13] **Section 1.** ***Institution of criminal and civil actions.*** *– When a criminal action is instituted, the civil action for the recovery of civil liability is impliedly instituted with the criminal action, unless the offended party waives the civil action, reserves his right to institute it separately, or institutes the civil action prior to the criminal action.*

Such civil action includes recovery of indemnity under the Revised Penal Code, and damages under Articles 32, 33, 34 and 2176 of the Civil Code of the Philippines arising from the same act or omission of the accused.

A waiver of any of the civil actions extinguishes the others. The institution of, or the reservation of the right to file, any of said civil actions separately waives the others.

The reservation of the right to institute the separate civil actions shall be made before the prosecution starts to present its evidence and under circumstances affording the offended party a reasonable opportunity to make such reservation.

In no case may the offended party recover damages twice for the same act or omission of the accused.

When the offended party seeks to enforce civil liability against the accused by way of moral, nominal, temperate or exemplary damages, the filing fees for such civil action as provided in these Rules shall constitute a first lien on the judgment except in an award for actual damages.

In cases wherein the amount of damages, other than actual, is alleged in the complaint or information, the corresponding filing fees shall be paid by the offended party upon the filing thereof in court for trial. (Rule 111, 1988 Rules on Criminal Procedure)

[14] G.R. Nos. 155531-34, July 29, 2005, 465 SCRA 338.

traversing the prohibition against forum shopping.[15] Prior to the judgment in either the estafa case or the BP Blg. 22 case, petitioner, as the complainant, cannot be deemed to have elected either of the civil actions both impliedly instituted in the said criminal proceedings to the exclusion of the other.[16]

The dismissal of the estafa cases for failure of the prosecution to prove the elements of the crime beyond reasonable doubt—where in Criminal Case No. 98-969952 there was no pronouncement as regards the civil liability of the accused and in Criminal Case No. 98-969953 where the trial court declared that the liability of the accused was only civil in nature—produced the legal effect of a reservation by the petitioner of her right to litigate separately the civil action impliedly instituted with the estafa cases, following Article 29 of the Civil Code.[17]

However, although this civil action could have been litigated separately on account of the dismissal of the estafa cases on reasonable doubt, the petitioner was deemed to have also elected that such civil action be prosecuted together with the BP Blg. 22 cases in light of the *Rodriguez v. Ponferrada* ruling.

With the dismissal of the BP Blg. 22 cases for failure to establish the identity of the accused, the question that arises is whether such dismissal would have the same legal effect as the dismissed estafa cases. Put differently, may petitioner's action to recover respondents' civil liability be also allowed to prosper separately after the BP Blg. 22 cases were dismissed?

Section 1 (b), Rule 111 of the 2000 Revised Rules on Criminal Procedure states –

Section 1. *Institution of criminal and civil actions.* –

xxx xxx xxx

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[15] *Rodriguez v. Ponferrada, id.* at 350.

[16] *Ibid.*

[17] *Jarantilla v. Court of Appeals*, 253 Phil. 425, 433 (1989), citing *Bernaldes, Jr. v. Bohol Land Transportation, Inc.*, 117 Phil. 288, 291-292 (1963) and *Bachrach Motors Co. v. Gamboa*, 101 Phil. 1219 (1957).

(b) The criminal action for violation of Batas Pambansa Blg. 22 shall be deemed to include the corresponding civil action. No reservation to file such civil action separately shall be allowed.

Upon filing of the joint criminal and civil actions, the offended party shall pay in full the filing fees based on the amount of the check involved, which shall be considered as the actual damages claimed. Where the complaint or information also seeks to recover liquidated, moral, nominal, temperate or exemplary damages, the offended party shall pay the filing fees based on the amounts alleged therein. If the amounts are not so alleged but any of these damages [is] subsequently awarded by the court, the filing fees based on the amount awarded shall constitute a first lien on the judgment.

Where the civil action has been filed separately and trial thereof has not yet commenced, it may be consolidated with the criminal action upon application with the court trying the latter case. If the application is granted, the trial of both actions shall proceed in accordance with Section 2 of this Rule governing consolidation of the civil and criminal actions.

Petitioner is in error when she insists that the 2000 Rules on Criminal Procedure should not apply because she filed her BP Blg. 22 complaints in 1999. It is now settled that rules of procedure apply even to cases already pending at the time of their promulgation. The fact that procedural statutes may somehow affect the litigants' rights does not preclude their retroactive application to pending actions. It is axiomatic that the retroactive application of procedural laws does not violate any right of a person who may feel that he is adversely affected, nor is it constitutionally objectionable. The reason for this is that, as a general rule, no vested right may attach to, nor arise from, procedural laws.[18]

Indeed, under the present revised Rules, the criminal action for violation of BP Blg. 22 includes the corresponding civil action to recover the amount of the checks. It should be stressed, this policy is intended to discourage the separate filing of the civil action. In fact, the Rules even prohibits the reservation of a separate civil action, *i.e.*, one can no longer file a separate

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[18] *Tan, Jr. v. Court of Appeals*, 424 Phil. 556, 559 (2002).

civil case after the criminal complaint is filed in court. The only instance when separate proceedings are allowed is when the civil action is filed ahead of the criminal case. Even then, the Rules encourages the consolidation of the civil and criminal cases. Thus, where petitioner's rights may be fully adjudicated in the proceedings before the court trying the BP Blg. 22 cases, resort to a separate action to recover civil liability is clearly unwarranted on account of *res judicata*, for failure of petitioner to appeal the civil aspect of the cases. In view of this special rule governing actions for violation of BP Blg. 22, Article 31 of the Civil Code is not applicable.[19]

Be it remembered that rules governing procedure before the courts, while not cast in stone, are for the speedy, efficient, and orderly dispensation of justice and should therefore be adhered to in order to attain this objective.[20]

However, in applying the procedure discussed above, it appears that petitioner would be left without a remedy to recover from respondents the ₱600,000.00 allegedly loaned from her. This could prejudice even the petitioner's Notice of Claim involving the same amount filed in Special Proceedings No. 98-88390 (*Petition for Voluntary Insolvency by Kolin Enterprises, William Sy and Tessie Sy*), which case was reportedly archived for failure to prosecute the petition for an unreasonable length of time.[21] Expectedly, respondents would raise the same defense that petitioner had already elected to litigate the civil action to recover the amount of the checks along with the BP Blg. 22 cases.

It is in this light that we find petitioner's contention that she was not assisted by a private prosecutor during the BP Blg. 22 proceedings critical. Petitioner indirectly protests that the public prosecutor failed to protect and prosecute her cause when he

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[19] *Hyatt Industrial Manufacturing Corp. v. Asia Dynamic Electrix Corp.*, G.R. No. 163597, July 29, 2005, 465 SCRA 454, 461-462.

[20] *Id.*

[21] *Rollo*, p. 23.

failed to have her establish the identities of the accused during the trial and when he failed to appeal the civil action deemed impliedly instituted with the BP Blg. 22 cases. On this ground, we agree with petitioner.

Faced with the dismissal of the BP Blg. 22 cases, petitioner's recourse pursuant to the prevailing rules of procedure would have been to appeal the civil action to recover the amount loaned to respondents corresponding to the bounced checks. Hence, the said civil action may proceed requiring only a preponderance of evidence on the part of petitioner. Her failure to appeal within the reglementary period was tantamount to a waiver altogether of the remedy to recover the civil liability of respondents. However, due to the gross mistake of the prosecutor in the BP Blg. 22 cases, we are constrained to digress from this rule.

It is true that clients are bound by the mistakes, negligence and omission of their counsel.[22] But this rule admits of exceptions – (1) where the counsel's mistake is so great and serious that the client is prejudiced and denied his day in court, or (2) where the counsel is guilty of gross negligence resulting in the client's deprivation of liberty or property without due process of law.[23] Tested against these guidelines, we hold that petitioner's lot falls within the exceptions.

It is an oft-repeated exhortation to counsels to be well-informed of existing laws and rules and to keep abreast with legal developments, recent enactments and jurisprudence. Unless they faithfully comply with such duty, they may not be able to discharge competently and diligently their obligations as members of the Bar.[24] Further, lawyers in the government service are expected to be more conscientious in the performance of their duties as they are subject to public scrutiny. They are not only

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[22] *Lynx Industries Contractor, Inc. v. Tala,* G.R. No. 164333, August 24, 2007, 531 SCRA 169, 176.

[23] *Ceniza-Manantan v. People,* G.R. No. 156248, August 28, 2007, 531 SCRA 364, 380.

[24] *Santiago v. Atty. Rafanan,* 483 Phil. 94, 105 (2004).

members of the Bar but are also public servants who owe utmost fidelity to public service.[25] Apparently, the public prosecutor neglected to equip himself with the knowledge of the proper procedure for BP Blg. 22 cases under the 2000 Rules on Criminal Procedure such that he failed to appeal the civil action impliedly instituted with the BP Blg. 22 cases, the only remaining remedy available to petitioner to be able to recover the money she loaned to respondents, upon the dismissal of the criminal cases on demurrer. By this failure, petitioner was denied her day in court to prosecute the respondents for their obligation to pay their loan.

Moreover, we take into consideration the trial court's observation when it dismissed the estafa charge in Criminal Case No. 98-969953 that if there was any liability on the part of respondents, it was civil in nature. Hence, if the loan be proven true, the inability of petitioner to recover the loaned amount would be tantamount to unjust enrichment of respondents, as they may now conveniently evade payment of their obligation merely on account of a technicality applied against petitioner.

There is unjust enrichment when (1) a person is unjustly benefited, and (2) such benefit is derived at the expense of or with damages to another. This doctrine simply means that a person shall not be allowed to profit or enrich himself inequitably at another's expense. One condition for invoking this principle of unjust enrichment is that the aggrieved party has no other recourse based on contract, quasi-contract, crime, quasi-delict or any other provision of law.[26]

Court litigations are primarily designed to search for the truth, and a liberal interpretation and application of the rules which will give the parties the fullest opportunity to adduce proof is the best way to ferret out the truth. The dispensation of justice and vindication of legitimate grievances should not be barred by technicalities.[27]

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[25] *Ramos v. Imbang*, A.C. No. 6788, August 23, 2007, 530 SCRA 759, 768.

[26] *Chieng v. Santos*, G.R. No. 169647, August 31, 2007, 531 SCRA 730, 747-748.

[27] *LCK Industries, Inc. v. Planters Development Bank*, G.R. No. 170606, November 23, 2007, 538 SCRA 634, 653.

For reasons of substantial justice and equity, as the complement of the legal jurisdiction that seeks to dispense justice where courts of law, through the inflexibility of their rules and want of power to adapt their judgments to the special circumstances of cases, are incompetent to do so,[28] we thus rule, *pro hac vice*, in favor of petitioner.

WHEREFORE, the petition is *GRANTED***.** Civil Case No. 05-112452 entitled *Anita Cheng v. Spouses William Sy and Tessie Sy* is hereby ordered *REINSTATED*. No pronouncement as to costs.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 174986. July 7, 2009]

ARMAND O. RAQUEL-SANTOS and ANNALISSA MALLARI, *petitioners, vs.* **COURT OF APPEALS and FINVEST SECURITIES CO., INC.,** *respondents.*

[G.R. No. 175071. July 7, 2009]

PHILIPPINE STOCK EXCHANGE, INC., *petitioner, vs.* **FINVEST SECURITIES CO., INC.,** *respondent.*

[G.R. No. 181415. July 7, 2009]

FINVEST SECURITIES CO., INC., *petitioner, vs.* **TRANS-PHIL MARINE ENT., INC. and ROLAND H. GARCIA,** *respondents.*

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[28] *Id.* at 652.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; APPEALED DECISION BECOMES FINAL AS TO THE PARTY WHO DOES NOT APPEAL; MAY ONLY OPPOSE ANY MODIFICATION AS TO THE DECISION. — A party who does not appeal from a judgment can no longer seek modification or reversal of the same. He may oppose the appeal of the other party only on grounds consistent with the judgment. The appealed decision becomes final as to the party who does not appeal. Although petitioners may no longer seek affirmative relief from the trial court's decision, they may, however, oppose any modification of, or advance such arguments as may be necessary to uphold or maintain, the said decision. Considering that the order directing the payment of unliquidated cash advances is a modification of the trial court's decision, petitioners have every right to oppose the same.

2. ID.; ID.; PLEADINGS; PRAYER FOR SPECIFIC RELIEF; ABSENCE THEREOF WILL NOT DETER THE GRANT WHERE THE SAME IS WARRANTED. — It is true that lack of prayer for a specific relief will not deter the court from granting that specific relief. Even without the prayer for a particular remedy, proper relief may be granted by the court if the facts alleged in the complaint and the evidence adduced so warrant. The prayer in the complaint for other reliefs equitable and just in the premises justifies the grant of a relief not otherwise specifically prayed for. Admittedly, even if an issue has not been raised in the complaint but evidence has been presented thereon, the trial court may grant relief on the basis of such evidence. A court may rule and render judgment on the basis of the evidence before it, even though the relevant pleading has not been previously amended, provided that no surprise or prejudice to the adverse party is thereby caused. So long as the basic requirements of fair play have been met, as where litigants were given full opportunity to support their respective contentions and to object to or refute each other's evidence, the court may validly treat the pleadings as if they have been amended to conform to the evidence and proceed to adjudicate on the basis of all the evidence before it.

3. ID.; ID.; APPEALS; ISSUE RAISED FOR THE FIRST TIME ON APPEAL, NOT PROPER. — A question that was never raised

in courts below cannot be allowed to be raised for the first time on appeal without offending basic rules of fair play, justice and due process.

4. CIVIL LAW; OBLIGATIONS AND CONTRACTS; CONTRACTS HAVE THE FORCE OF LAW BETWEEN THE CONTRACTING PARTIES. — Article 1159 of the Civil Code provides that contracts have the force of law between the contracting parties and should be complied with in good faith. Being the primary law between the parties, the contract governs the adjudication of their rights and obligations. A court has no alternative but to enforce the contractual stipulations in the manner they have been agreed upon and written.

5. ID.; SPECIAL CONTRACTS; PLEDGE; PLEDGEE HAS RIGHT TO SELL THE THING PLEDGED IN CASE PLEDGOR'S OBLIGATION NOT SATISFIED IN DUE TIME. — Article 2112 of the Civil Code gives the pledgee the right to sell the thing pledged in case the pledgor's obligation is not satisfied in due time. Under the law on contracts, *mora solvendi* or debtor's default is defined as a delay in the fulfillment of an obligation, by reason of a cause imputable to the debtor. There are three requisites necessary for a finding of default. *First,* the obligation is demandable and liquidated; s*econd,* the debtor delays performance; and *third,* the creditor judicially or extrajudicially requires the debtor's performance.

6. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FACTUAL FINDINGS OF TRIAL COURT AFFIRMED BY THE COURT OF APPEALS, RESPECTED. — Factual findings of the trial court, particularly when affirmed by the CA, are generally binding on the Court. This is because the trial court's findings of fact are deemed conclusive and we are not duty-bound to analyze and weigh all over again the evidence already considered in the proceedings below. The Court is not a trier of facts and does not normally undertake a re-examination of the evidence presented by the contending parties during the trial of the case. The Court's jurisdiction over a petition for review on *certiorari* is limited to reviewing only errors of law, not of fact, unless the factual findings complained of are devoid of support from the evidence on record or the assailed judgment is based on a misapprehension of facts.

7. CIVIL LAW; OBLIGATIONS AND CONTRACTS; WHEN DEBT IS LIQUIDATED. — A debt is liquidated when the amount is known or is determinable by inspection of the terms and conditions of relevant documents. Under the attendant circumstances, it cannot be said that Finvest's debt is liquidated.

8. ID.; ID.; BREACH OF CONTRACT; REMEDIES; RESCISSION OF OBLIGATIONS. — The CA was correct in applying Article 1191 of the Civil Code, which indicates the remedies of the injured party in case there is a breach of contract: ART. 1191. The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him. The injured party may choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible. The right of a party to rescission under Article 1191 of the Civil Code is predicated on a breach of faith by the other party who violates the reciprocity between them. In a contract of sale, the seller obligates itself to transfer the ownership of and deliver a determinate thing, and the buyer to pay therefor a price certain in money or its equivalent.

9. COMMERCIAL LAW; CORPORATION CODE; SALE OF SHARES OF STOCK; PHYSICAL DELIVERY OF STOCK CERTIFICATE REQUIRED FOR THE TRANSFER OF STOCK OWNERSHIP. — In the sale of shares of stock, physical delivery of a stock certificate is one of the essential requisites for the transfer of ownership of the stocks purchased. Section 63 of the Corporation Code provides thus: SEC. 63. *Certificate of stock and transfer of shares*. — The capital stock of stock corporations shall be divided into shares for which certificates signed by the president or vice-president, countersigned by the secretary or assistant secretary, and sealed with the seal of the corporation shall be issued in accordance with the by-laws. Shares of stock so issued are personal property and may be transferred *by delivery of the certificate or certificates indorsed by the owner or his attorney-in-fact or other person legally authorized to make the transfer*. No transfer, however, shall be valid, except as between the parties, until the transfer is recorded in the books of the corporation so as to show the names of the parties to the transaction, the date of the transfer, the number of the certificate or certificates and the number of

shares transferred. No shares of stock against which the corporation holds any unpaid claim shall be transferable in the books of the corporation. For a valid transfer of stocks, the requirements are as follows: (a) there must be delivery of the stock certificate; (b) the certificate must be endorsed by the owner or his attorney-in-fact or other persons legally authorized to make the transfer; and (c) to be valid against third parties, the transfer must be recorded in the books of the corporation.

10. CIVIL LAW; OBLIGATIONS AND CONTRACTS; RESCISSIBLE CONTRACTS; RESCISSION CREATES THE OBLIGATION TO RETURN THE OBJECT OF THE CONTRACT. — Rescission creates the obligation to return the object of the contract. This is evident from Article 1385 of the Civil Code which provides: ART. 1385. Rescission creates the obligation to return the things which were the object of the contract, together with their fruits, and the price with its interest; consequently, it can be carried out only when he who demands rescission can return whatever he may be obliged to restore. Neither shall rescission take place when the things which are the object of the contract are legally in the possession of third persons who did not act in bad faith. In this case, indemnity for damages may be demanded from the person causing the loss. To rescind is to declare a contract void at its inception and to put an end to it as though it never was. Rescission does not merely terminate the contract and release the parties from further obligations to each other, but abrogates it from the beginning and restores the parties to their relative positions as if no contract has been made. Mutual restitution entails the return of the benefits that each party may have received as a result of the contract.

APPEARANCES OF COUNSEL

Efren C. Carag for Armand O. Raquel-Santos, *et al.*

Rodrigo Berenguer & Guno for Philippine Stock Exchange, Inc.

Martinez and Perez Law Offices for Finvest Securities, Co., Inc.

Marlon B. Mercado for Trans-Phil Marine Ent., Inc., *et al.*

D E C I S I O N

NACHURA, *J.*:

Three petitions, arising from related events, were consolidated by this Court: G.R. Nos. 174986 and 175071 are petitions for review assailing the Court of Appeals (CA) Decision[1] in CA-G.R. CV No. 85176 dated August 9, 2006, and Resolution dated October 11, 2006; and G.R. No. 181415 is a petition for review assailing the CA Decision[2] in CA-G.R. CV No. 85430 dated September 3, 2007, and Resolution dated January 24, 2008. These cases cropped up from the failure of Finvest Securities Co., Inc. (Finvest) to meet its obligations to its clients and the Philippine Stock Exchange (PSE), allegedly caused by mishandling of Finvest's funds and property by its officers.

G.R. Nos. 174986 and 175071

Finvest is a stock brokerage corporation duly organized under Philippine laws and is a member of the PSE with one membership seat pledged to the latter. Armand O. Raquel-Santos (Raquel-Santos) was Finvest's President and nominee to the PSE from February 20, 1990 to July 16, 1998.[3] Annalissa Mallari (Mallari) was Finvest's Administrative Officer until December 31, 1998.[4]

In the course of its trading operations, Finvest incurred liabilities to PSE representing fines and penalties for non-payment of its clearing house obligations. PSE also received reports that Finvest was not meeting its obligations to its clients.[5] Consequently,

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[1] Penned by Associate Justice Ramon M. Bato, Jr., with Associate Justices Edgardo P. Cruz and Vicente Q. Roxas, concurring; *rollo* (G.R. No. 174986), pp. 29-39.

[2] Penned by Associate Justice Celia C. Librea-Leagogo, with Associate Justices Amelita G. Tolentino and Regalado E. Maambong, concurring; *rollo* (G.R. No. 181415), pp. 35-53.

[3] Records (Civil Case No. 00-1589), Vol. I, p. 1.

[4] *Id.* at 2.

[5] *Id.* at 19.

PSE indefinitely suspended Finvest from trading. The Securities and Exchange Commission (SEC) also suspended its license as broker.[6]

On June 17, 1998, PSE demanded from Finvest the payment of its obligations to the PSE in the amount of ₱4,267,339.99 and to its (Finvest's) clients within 15 days.[7] PSE also ordered Finvest to replace its nominee, Raquel-Santos.[8]

Upon failure of Finvest to settle its obligations, PSE sought authority from the SEC to take over the operations of Finvest in accordance with PSE's undertaking pursuant to Section 22(a)(5)[9] of the Revised Securities Act. On July 22, 1998, SEC acted favorably on PSE's request and authorized it to take over the operations of Finvest in order to continue preserving the latter's assets. Finvest was duly informed of the SEC's decision and was advised to refrain from making any payment, delivery of securities, or selling or otherwise encumbering any of its assets without PSE's approval.[10]

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[6] *Id.* at 18.

[7] *Id.* at 19.

[8] *Id.* at 29.

[9] Sec. 22(a)(5) of the Revised Securities Act (now Sec. 33.1[d] of The Securities Regulation Code) provides:

SEC. 22. *Registration of exchange.* — (a) Any exchange may be registered with the Commission as an exchange under the terms and conditions hereinafter provided in this Section, by filing a registration statement in such form as the Commission may prescribe, setting forth the information and accompanied by the following supporting documents below specified:

x x x x x x x x x

(5) An undertaking that in the event a member firm becomes insolvent or when the exchange shall have found that the financial condition of its member firm has so deteriorated that it cannot readily meet the demands of its customers for the delivery of securities and/or payment of sales proceeds, the exchange shall, upon order of the Commission, take over the operation of the insolvent member firm and immediately proceed to settle the member firm's liabilities to its customers: *Provided,* That stock exchanges in operation upon the effectivity of this Act shall have one year within which to submit the undertaking.

[10] Records (Civil Case No. 00-1589), Vol. I, pp. 117-119.

As of August 11, 1998, Finvest's total obligation to PSE, representing penalties, charges and fines for violations of pertinent rules, was pegged at ₱5,990,839.99.[11] Finvest promised to settle all obligations to its clients and to PSE subject to verification of the amount due, but Finvest requested a deadline of July 31, 1999.[12] PSE granted Finvest's request, with the warning that, should Finvest fail to meet the deadline, PSE might exercise its right to sell Finvest's membership seat and use the proceeds thereof to settle its obligations to the PSE, its member-brokers and its clients.[13] On the same day, Finvest requested an appointment with PSE's concerned officer to reconcile, confirm and update the amount of the penalties, charges and fines due PSE. Finvest also advised PSE that it would be represented by Mr. Ernesto Lee, its consultant, during the said meeting.[14] After consultation with Mr. Lee, PSE revised its computation of the penalties, charges and fines and reduced the amount due to ₱3,540,421.17.[15]

In a Letter dated September 8, 1998, Finvest appealed to PSE for the approval of the following: (1) that it be given a period of up to March 30, 1999 to settle claims of clients, subject to proper documents and verification of balance; and (2) that it be allowed to settle its liabilities to PSE at an amount lower than ₱4,212,921.13 (representing penalties, charges and fines at ₱3,540,421.17 plus sanctions for violation of rules at ₱675,500.00), considering that it had never unduly exposed PSE to any legal and financial risks in connection with its clearing accounts.[16]

In reply, PSE required Finvest to acknowledge within 30 days, in whole or in part, clients' claims that had been filed

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[11] *Id.* at 21.

[12] *Id.* at 22.

[13] *Id.* at 24-25.

[14] *Id.* at 27.

[15] *Id.* at 28.

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

with the PSE and to settle all duly acknowledged claims by December 31, 1998. PSE resolved to consider the request for a reduction of its liabilities to PSE only after it had settled all duly acknowledged claims of its clients.[17]

On February 3, 1999, PSE inquired from Finvest if it had already settled all duly acknowledged claims of its clients and its liabilities to PSE.[18] PSE also demanded that Finvest settle its liabilities to it not later than March 31, 1999. Finvest responded by proposing that the amount of assessed penalties, charges and fines be reduced to 10%, that is, ₱354,042.17; and that full payment of the clients' claims be deferred to June 30, 1999.[19] Previously, Finvest had also requested a written clearance from PSE for renewal of the registration of its brokers and dealers with the SEC.[20]

In its Letter of February 23, 1999, PSE informed Finvest that it would only issue a written clearance after Finvest had settled its obligations to PSE and paid all acknowledged liabilities to various clients.[21] In response, Finvest repeated its appeal to be allowed to fully operate again and to pay a reduced amount on the ground that it had no adequate funds because it had been the victim of fraud committed by its employees.[22]

On April 21, 1999, PSE again sent a demand letter to Finvest, reminding the latter of the March 31, 1999 deadline.[23]

On April 26, 1999, Finvest requested a hearing to determine the amount of its liability and to exhaust the possibility of arriving at a reasonable solution, and reiterated its appeal for the resumption of its operations.[24] PSE brushed aside Finvest's request, urging

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

[18] *Id.* at 121.

[19] *Id.* at 122.

[20] *Id.* at 36.

[21] *Id.* at 37.

[22] *Id.* at 38-39.

[23] *Id.* at 123.

[24] *Id.* at 44.

it instead to settle all of its obligations by May 31, 1999; otherwise, PSE would be forced to recommend to the SEC the liquidation of its assets and sell its seat at public auction,[25] pursuant to its Pledge Agreement with Finvest. Finvest protested the imposition of the deadline for being arbitrary on the ground that the claims against it had not yet been established.[26]

At this juncture, Finvest filed a Complaint with the SEC for accounting and damages with prayer for a temporary restraining order and/or preliminary injunction and *mandamus* against Raquel-Santos, Mallari and PSE. The complaint alleged that Raquel-Santos and Mallari took undue advantage of their positions by diverting to their personal use and benefit the unaccounted stock certificates and sales proceeds referred to in Annex "X" of the complaint, which was a list of the claims of Finvest's clients as of December 31, 1998. Finvest prayed that Raquel-Santos and Mallari be ordered to account for the missing stock certificates and sales proceeds and to pay the profits that would have accrued to Finvest. As against PSE, the complaint alleged that PSE violated Finvest's right to due process by illegally and arbitrarily suspending Finvest's operations, thus compounding its inability to meet the demands of its clients; and by unilaterally and arbitrarily imposing upon Finvest fines and penalties, without a hearing. The complaint prayed that an injunction be issued to prevent PSE from initiating the liquidation of Finvest and selling Finvest's seat at public auction.

Alleging that Raquel-Santos and Mallari failed to file their Answer within the reglementary period, Finvest moved for a partial judgment against them.[27] On February 4, 2000, SEC, through a Hearing Panel, rendered a Partial Judgment[28] against Raquel-Santos and Mallari, ordering them to account for the missing stock certificates and pay the damages that Finvest may sustain.

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[25] *Id.* at 45.

[26] *Id.* at 46-47.

[27] Records (Civil Case No. 00-1589), Vol. I, pp. 153-155.

[28] *Id.* at 157-162.

Raquel-Santos and Mallari filed separate motions to set aside the partial judgment, alleging non-receipt of summons. In an Order dated April 10, 2000, SEC denied due course to the two motions.[29] Thereafter, the SEC Hearing Panel issued a writ of execution.[30]

Consequently, notices of garnishment and sale were issued against Raquel-Santos' Manila Golf Shares and Sta. Elena Golf Shares.[31] Raquel-Santos moved for the cancellation of the notice of sale, arguing that there was no basis for the sale of his shares as there was no money judgment involved, only an accounting of the allegedly missing stock certificates. According to him, only after it is established that there were missing certificates should he be held accountable. In the same motion, Raquel-Santos also endeavored to make an accounting of the stock certificates through the following documents: (a) a 35-page Stock Ledger of an inventory of securities/stock certificates as of July 31, 1998; (b) a 24-page inventory as of July 31, 1998 of stocks in the vault of Finvest; and (c) a 5-page inventory of the securities on deposit with the Philippine Central Depository, Inc.[32]

On June 29, 2000, the parties entered into an Agreement,[33] approved by the SEC *en banc* in its Order[34] of July 11, 2000, to remand the case to the Securities Investigation and Clearing Division for service of summonses to Raquel-Santos and Mallari. In turn, Raquel-Santos and Mallari agreed not to dispose of or transfer the garnished properties in the meantime, but the writs of garnishment would remain in force during the pendency of the case.

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[29] *Id.* at 256.

[30] *Id.* at 268-271.

[31] *Id.* at 366-371.

[32] *Id.* at 392-394.

[33] Records (Civil Case No. 00-1589), Vol. II, p. 7.

[34] *Id.* at 6.

Meanwhile, on June 5, 2000, the SEC Hearing Panel granted Finvest's motion for the issuance of a preliminary injunction to enjoin PSE from initiating the liquidation of Finvest and from selling its membership seat. The SEC Hearing Panel ratiocinated that PSE's plan to sell Finvest's membership seat at public auction, despite the fact that its claims against Finvest were yet to be determined in these proceedings, was reason enough for the issuance of a preliminary injunction.[35] Upon posting of the required bond, the SEC Hearing Panel issued a writ of preliminary injunction on June 21, 2000.[36]

With the enactment of the Securities Regulation Code, the case was transferred to the Regional Trial Court (RTC), Makati City, and docketed as Civil Case No. 00-1589.

On October 2, 2001, the RTC issued an Order lifting the garnishment of Raquel-Santos' Manila Golf Club share on the ground that there must be a proper accounting to determine the amount for which Raquel-Santos and Mallari were to be held jointly and severally liable to Finvest before a writ of garnishment may be validly issued.[37] As a result, Finvest filed a motion for reconsideration and a motion to respect the SEC *en banc* Order dated July 11, 2000. The motions were denied by the RTC in its May 30, 2002 Order.[38] Through a petition for *certiorari,* the October 2, 2001 Order of the RTC was subsequently modified by the CA on December 9, 2002. The CA held that the sale of Raquel-Santos' share in Manila Golf Club was valid, subject to the outcome of the main case (Civil Case No. 00-1589). The parties were further enjoined to comply with their obligations under the July 11, 2000 Order of the SEC *en banc*.[39]

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[35] Records (Civil Case No. 00-1589), Vol. I, pp. 387-393.

[36] *Id.* at 457.

[37] Records (Civil Case No. 00-1589), Vol. II, pp. 61-66.

[38] *Id.* at 414.

[39] Records (Civil Case No. 00-1589), Vol. III, p. 251.

In the meantime, PSE filed a Motion to Dissolve the Writ of Preliminary Injunction and/or Motion for Reconsideration[40] on the ground that it had the legal obligation to make the appropriate recommendations to the SEC on whether or not it would be to the best interest of all concerned for Finvest to be liquidated at the soonest possible time.

On April 28, 2003, the RTC issued a judgment in Civil Case No. 00-1589 in favor of Finvest:

> WHEREFORE, judgment is rendered directing that the writ of preliminary injunction issued on June 21, 2000 be declared permanent. Respondents Raquel-Santos and Mallari are ordered to render an accounting of the stock certificates listed in Annex A of the Complaint.
>
> SO ORDERED.[41]

The trial court noted that Finvest had not been remiss in addressing its dispute with the PSE. When PSE manifested its intent to liquidate Finvest and sell its seat at public auction, the amount of Finvest's liability was still unsettled, which thus makes it doubtful whether Section 22(a)(5) would apply. On the issue between Finvest and its officers (Raquel-Santos and Mallari), the trial court held that Finvest could rightfully demand an accounting from them and hold them liable for unaccounted securities since Raquel-Santos exercised control and supervision over the trading operations of Finvest and he and Mallari had custody of all securities traded.

On September 12, 2003, Finvest sought a partial reconsideration of the RTC Judgment praying that: (a) Finvest's indefinite suspension by PSE be lifted; (b) Raquel-Santos and Mallari be ordered to render an accounting of the stock certificates within 60 days from receipt of the judgment, and upon failure to do so, to jointly and severally pay Finvest ₱18,184,855.89, the value of the stocks as of December 31, 1998; and (c) Raquel-Santos be ordered to liquidate his cash advances amounting to ₱3,143,823.63 within 60 days from receipt of the judgment or,

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[40] Records (Civil Case No. 00-1589), Vol. II, pp. 68-76.

[41] Records (Civil Case No. 00-1589), Vol. III, p. 285.

in case of failure to do so, to consider the same as unliquidated cash advances.[42]

On the prayer to lift the indefinite suspension of Finvest by PSE, the trial court found that there was, in fact, a need to allow Finvest's operation to continue to enable it to negotiate the terms and modes of payments with its claimants, settle its obligations and fully ascertain its financial condition. On the prayer to set a period within which to render the accounting, the trial court held that there was no need to set a period as Section 4, Rule 39 of the Rules on Civil Procedure already directs when such kind of judgment is enforceable. Accordingly, the RTC modified its earlier decision in its Order dated February 1, 2005, thus:

> WHEREFORE, plaintiff's Motion for Partial Reconsideration is partially granted as follows –
>
> a) The indefinite suspension of operation of plaintiff Finvest Corporation by the defendant Philippine Stock Exchange is lifted; and
>
> b) The "Annex A" in the dispositive portion of the Judgment dated April 28, 2003 is modified to read as "Annex X".
>
> All other reliefs are denied.[43]

PSE appealed to the CA. Finvest likewise filed a partial appeal. Raquel-Santos and Mallari also filed an appeal with the CA but the same was deemed abandoned when they failed to file their appellants' brief.[44] The appeals of Finvest and PSE were docketed as CA-G.R. CV No. 85176.

On August 9, 2006, the CA rendered a Decision granting Finvest's petition, thus:

> WHEREFORE, plaintiff-appellant Finvest's partial appeal of the April 28, 2003 Judgment of the Regional Trial Court of Makati City,

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[42] *Id.* at 290.

[43] CA *rollo* (CA G.R. CV No. 85176), p. 61.

[44] *Id.* at 162.

Branch 138 is hereby GRANTED to the effect that defendants-appellants Armand O. Raquel-Santos and Annalissa Mallari are hereby given a period of sixty (60) days from the finality of this decision to render an accounting and in the event that they will fail to do so, they are hereby ordered to jointly and severally pay Finvest the amount of eighteen million one hundred eighty-four thousand eight hundred fifty-five pesos and eighty-nine centavos (₱18,184,855.89), and for defendant-appellant Raquel-Santos to pay three million one hundred forty-three thousand eight hundred twenty-three pesos and sixty-three centavos (₱3,143,823.63). As for the appeal of defendant-appellant Philippine Stock Exchange, the same is hereby DENIED for lack of merit.

SO ORDERED.[45]

For expediency and in the interest of speedy disposition of justice, the CA set a 60-day period within which Raquel-Santos and Mallari would render an accounting. The appellate court agreed that Raquel-Santos and Mallari were guilty of gross negligence or bad faith for the wrongful disposition of the proceeds of the sale of the shares of stock that were in their custody. According to the CA, this circumstance justified the order for them to pay ₱18,184,855.89, representing the various claims of clients, and for Raquel-Santos to pay ₱3,143,823.63, representing unliquidated cash advances, in the event they failed to render the necessary accounting within the given period. Significantly, the CA also noted that Raquel-Santos and Mallari did not even dispute the affidavit of Mr. Ernesto Lee regarding the schedule of claims.

The CA opined that paragraph 5(a) of the Pledge Agreement, giving PSE the right to sell Finvest's seat in case of default, pertained to default in the payment of obligations already determined and established. The validity of the fines and penalties imposed by the PSE was yet to be substantiated. PSE could not insist on selling Finvest's seat unless its claims had been resolved with finality. It was, thus, proper to enjoin PSE from exercising whatever rights it had under the Pledge Agreement.

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[45] *Rollo* (G.R. No. 174986), p. 38.

In their motion for reconsideration,[46] Raquel-Santos and Mallari protested the CA's order to hold them jointly and severally liable for the claims of Finvest's clients on the ground that this relief was not even prayed for in Finvest's complaint. They insisted that the proper procedure to render an accounting was to specify the beginning balance, tack the values therefor, render an accounting, and adjudge them liable for the deficiency, if any. They averred that the beginning balance must be set out by the parties or, in case of dispute, by the courts. PSE likewise filed a motion for reconsideration[47] reiterating its arguments.

On October 11, 2006, the CA denied the respective motions for reconsideration of the PSE and Raquel-Santos and Mallari.[48] The CA dismissed PSE's motion for reconsideration for being a mere rehash of its arguments. As for the issues raised by Raquel-Santos and Mallari, the CA pronounced that its order to hold Raquel-Santos and Mallari liable for the claims in case they failed to account for them was well within the reliefs prayed for by Finvest in its Complaint. The CA added that Raquel-Santos and Mallari could follow the proposed accounting procedure when they rendered an accounting pursuant to the court's order.

Raquel-Santos and Mallari and the PSE filed separate petitions for review on *certiorari* with this Court, docketed as G.R. Nos. 174986 and 175071, respectively, assailing the August 9, 2006 CA Decision and October 11, 2006 Resolution. This Court directed the consolidation of the two petitions.

G.R. No. 181415

The Court likewise directed the consolidation of G.R. No. 181415, which stems from a case between Finvest and two of its clients, Trans-Phil Marine Enterprises, Inc. (TMEI) and Roland Garcia. The facts of the case are as follows:

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[46] CA *rollo* (CA G.R. CV No. 85176), pp. 181-184.

[47] *Id.* at 186-194.

[48] *Rollo* (G.R. No. 174986), pp. 41-42.

TMEI and Roland Garcia filed a complaint against Finvest with the SEC praying for the delivery of stock certificates and payment of dividends on the stocks they purchased. The Complaint alleged that, from February 4, 1997 to July 31, 1997, TMEI and Roland Garcia purchased shares of stock of Piltel Corporation through Finvest. In particular, TMEI purchased 63,720 shares for ₱1,122,863.13 while Garcia purchased 40,000 shares for ₱500,071.25. Finvest failed to deliver to them the stock certificates despite several demands. TMEI and Roland Garcia also claimed that they were entitled to the dividends declared by Piltel from the time they purchased the shares of stock.

In its Answer, Finvest asserted that it could not have complied with complainants' demand for the delivery of the stock certificates because it was under indefinite suspension since October 1997 and it had no means to verify or validate their claims.

During the pre-trial stage, TMEI amended its complaint by modifying its prayer for a refund of the value of the undelivered shares of stock, instead of the delivery of the stock certificates plus payment of dividends.[49] In the hearing conducted by the trial court for the purpose of determining the propriety of admitting the amended complaint, Finvest manifested that it had no objection to the admission of the amended complaint, and that it would no longer file an amended answer. Both parties manifested that they were no longer presenting any additional evidence; hence, the case was submitted for decision.[50]

On April 29, 2003, the RTC rendered a Decision in Civil Case No. 00-1579, the dispositive portion of which reads:

> WHEREFORE, judgment is rendered ordering the respondent to return to complainant Trans-[Phil] Marine Enterprises[,] Inc.[,] the value of the undelivered shares of stock of Piltel equivalent to ₱1,122,863.13 and to complainant Roland H. Garcia the value of the undelivered shares of stock of Piltel equivalent to ₱500,071.25, both

[49] Records (Civil Case No. 00-1579), pp. 120-121.

[50] *Id.* at 251.

with interest thereon at the legal rate from the date of the filing of the Complaint.

SO ORDERED.[51]

On June 6, 2005, the RTC modified its earlier decision. The amount of ₱1,122,863.13 in the dispositive portion was reduced to ₱1,078,313.13 based on evidence showing that 2,025 Piltel shares, equivalent to ₱44,550.00, had been delivered to TMEI, which fact was not denied by the latter.[52]

Finvest appealed to the CA. On September 3, 2007, the CA rendered a Decision[53] affirming the RTC Decision. Applying Article 1191 of the Civil Code, the CA declared that since Finvest failed to comply with its obligation to deliver to TMEI and Garcia the shares of stock, Finvest was bound to return the amounts paid by them.

On January 24, 2008, the CA denied Finvest's motion for reconsideration;[54] hence, the petition for review on *certiorari*, docketed as G.R. No. 181415.

The Petition in G.R. No. 174986

Petitioners Raquel-Santos and Mallari raise the following issues:

A. THE HONORABLE COURT OF APPEALS ERRED IN NOT FIXING A BEGINNING BALANCE FOR THE ACCOUNTING ORDERED.

B. THE HONORABLE COURT OF APPEALS HAD NO JURISDICTION TO ORDAIN THE PAYMENT OF THE SUPPOSED UNLIQUIDATED ADVANCES OF PETITIONER RAQUEL-SANTOS.[55]

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[51] *Rollo* (G.R. No. 181415), pp. 60-61.

[52] *Id.* at 63.

[53] *Supra* note 2.

[54] *Rollo* (G.R. No. 181415), pp. 57-58.

[55] *Rollo* (G.R. No. 174986), p. 171.

While conceding that they have to render an accounting of the claims stated in Annex "X", petitioners bewail the lack of statement of the beginning balance therefor. They aver that a sweeping order for them to answer all these claims does not meet the standards of fair play. They insist that, as pointed out in their motion for reconsideration filed with the CA, the proper procedure is to specify the beginning balance first.[56] Petitioners, therefore, pray that judgment be rendered fixing the beginning balance for the accounting ordered.

Petitioners further aver that the CA exceeded its jurisdiction when it ordered them to pay unliquidated cash advances. Petitioners point out that said unliquidated cash advances were not alleged, and payment thereof was not prayed for, in the complaint.[57] The alleged cash advances were only mentioned in the Supplemental Affidavit submitted by Mr. Ernesto Lee to the trial court.[58] They, therefore, pray that the order for Raquel-Santos to liquidate or pay his cash advances be deleted.

The Petition in G.R. No. 175071

PSE assigns the following errors:

I.

THE HONORABLE COURT OF APPEALS FAILED TO CONSIDER THE EVIDENCE CLEARLY SHOWING THAT THE AMOUNT OF LIABILITY OF RESPONDENT HAD ALREADY BEEN DETERMINED, SUBSTANTIATED AND ESTABLISHED NOT ONLY BY PETITIONER BUT ALSO WITH THE FULL KNOWLEDGE AND PARTICIPATION OF RESPONDENT.

II.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN ENJOINING PETITIONER PSE FROM ENFORCING AND EXERCISING ITS RIGHT UNDER THE PLEDGE AGREEMENT.

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[56] *Id.* at 171-173.

[57] *Id.* at 173-175.

[58] *Id.* at 175-176.

III.

APPEAL BY *CERTIORARI* UNDER RULE 45 IS PROPER CONSIDERING THAT THE HONORABLE COURT OF APPEALS MISAPPREHENDED THE FACTS OF THE CASE.[59]

PSE contends that appeal by *certiorari* is proper considering that the CA misapprehended the facts of the case. For one, the CA failed to consider the fact that PSE's claim against Finvest had been duly ascertained, computed and substantiated. PSE points out that it has made several demands on Finvest for the payment of its obligations and the amount due has been computed after consultation with Finvest's representative, Mr. Ernesto Lee. In fact, in his Letter dated September 8, 1998, Finvest's Chairman, Mr. Abelardo Licaros, already acknowledged the amount of Finvest's liabilities and obligations to PSE in the amount of ₱4,212,921.13. Finvest even proposed that its outstanding obligations to PSE be reduced to 10% of the total amount due and the deadline for its payment be extended. Considering, therefore, that Finvest already acknowledged and ascertained its obligations with PSE and yet it defaulted in the payment thereof, PSE had the right to sell at public auction Finvest's pledged seat pursuant to the Pledge Agreement and in accordance with Article 2112 of the Civil Code.

The Petition in G.R. No. 181415

In this petition, Finvest raises the following grounds:

I.

WITH ALL DUE RESPECT, THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE DECISION OF THE TRIAL COURT WHICH ORDERED THE RETURN OF THE VALUE OF THE UNDELIVERED SHARES OF STOCK AT THE TIME OF THE PURCHASE, WHICH AWARD OF DAMAGES HAVE NOT BEEN ESTABLISHED BY EVIDENCE.

II.

WITH ALL DUE RESPECT, THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN RENDERING THE DECISION WHICH TENDS

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[59] *Rollo* (G.R. No. 175071), pp. 201-202.

TO BE IN CONFLICT WITH ANOTHER DECISION OF THE HONORABLE COURT OF APPEALS (SPECIAL FOURTEENTH DIVISION) IN CA-G.R. CV NO. 85176 (NOW PENDING BEFORE THE HONORABLE SUPREME COURT AS G.R. NO. 174986) INSOFAR AS THE AWARD OF DAMAGES TO RESPONDENTS IS CONCERNED, WHICH CONFLICTING FINDING WAS THE SAME SITUATION HEREIN PETITIONER SOUGHT TO AVOID WHEN IT MOVED FOR THE CONSOLIDATION OF BOTH CASES BEFORE THE TRIAL COURT.[60]

Finvest insists that the trial court and the CA had no basis in awarding in favor of respondents damages equivalent to the value of the undelivered shares of stock purchased by TMEI and Garcia. Finvest posits that there was no evidence to show that respondents were entitled thereto.

Finvest further contends that the order for them to pay the said shares of stock is in conflict with the CA Decision in CA-G.R. CV No. 85176, ordering Finvest's officers to render an accounting or to pay the value of stock certificates that included those covering the shares of stock purchased by TMEI and Garcia. According to Finvest, the two judgments caused an apparent confusion as to who would ultimately be held liable for the subject shares.

Respondents counter that they have sufficiently proven the value of the shares of stock through the buy confirmation slips, vouchers and official receipts, which they presented in evidence. They submit that liability for these undelivered shares of stock of its officers is a corporate liability that Finvest may not pass on to its erring officers.

The Court's Ruling

G.R. No. 174986

The petition of Raquel-Santos and Mallari has no merit.

The CA properly shunned petitioners' prayer to further modify the assailed judgment to include a beginning balance for the

[60] *Rollo* (G.R. No. 181415), p. 21.

accounting ordered. It is well to note that petitioners' appeal from the decision of the lower court was deemed abandoned when they failed to file their appellants' brief. Not having filed an appeal, petitioners could not have obtained any affirmative relief from the appellate court other than what they obtained, if any, from the lower court. After all, a party who does not appeal from a judgment can no longer seek modification or reversal of the same. He may oppose the appeal of the other party only on grounds consistent with the judgment.[61] The appealed decision becomes final as to the party who does not appeal.

Moreover, we find no reason, at this point, to amend or modify the judgment of the CA just to include a statement of the beginning balance for the accounting ordered. This pertains to the manner in which petitioners would comply with the order to render an accounting upon its execution, which matter should not concern this Court at the moment.

In any case, the Court is not in a position to grant the relief prayed for since the proper beginning balance, if indeed necessary, is not determinable from the records. In fact, petitioners, being in possession of the records relative to the missing stock certificates, have the means to determine the beginning balance. In their motion for reconsideration of the CA Decision, petitioners themselves acknowledge that the parties must set the beginning balance and only in case of dispute will the courts be called upon to intervene.[62]

Although petitioners may no longer seek affirmative relief from the trial court's decision, they may, however, oppose any modification of, or advance such arguments as may be necessary to uphold or maintain, the said decision. Considering that the order directing the payment of unliquidated cash advances is a modification of the trial court's decision, petitioners have every right to oppose the same.

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[61] *Silliman University v. Fontelo-Paalan,* G.R. No. 170948, June 26, 2007, 525 SCRA 759, 771.

[62] CA *rollo* (CA G.R. CV No. 85176), p. 183.

To recall, respondent Finvest's cause of action against petitioners was for accounting and damages, arising from the allegedly missing stock certificates. In relation to such cause of action, Finvest alleged in the Complaint that petitioners had sole authority and custody of the stock certificates and that they took undue advantage of their positions in diverting to their personal benefit the proceeds from the sale of the shares of stock. Finvest, therefore, prayed that Raquel-Santos and Mallari be held "jointly and severally liable to account for and/or to pay for all missing stock certificates and payables listed in Annex X [of the Complaint] and for any other subsequent claims and the corresponding profits that could have accrued to the corporation"; and "damages that the corporation may sustain by reason of and/or in relation to such missing or unaccounted stock certificates, payables, and any other subsequent claims."

In refuting petitioners' stance that the CA erred in granting a relief not prayed for in the Complaint, respondent argues that the order for Raquel-Santos to liquidate or pay his cash advances was well within its prayer for the payment of damages that Finvest will sustain in relation to the missing stock certificates.

It is true that lack of prayer for a specific relief will not deter the court from granting that specific relief. Even without the prayer for a particular remedy, proper relief may be granted by the court if the facts alleged in the complaint and the evidence adduced so warrant. The prayer in the complaint for other reliefs equitable and just in the premises justifies the grant of a relief not otherwise specifically prayed for.[63]

Admittedly, even if an issue has not been raised in the complaint but evidence has been presented thereon, the trial court may grant relief on the basis of such evidence. A court may rule and render judgment on the basis of the evidence before it, even though the relevant pleading has not been

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[63] *United Overseas Bank of the Philippines v. Rosemoor Mining and Development Corporation,* G.R. No. 172651, October 2, 2007, 534 SCRA 528, 551.

previously amended, provided that no surprise or prejudice to the adverse party is thereby caused.[64] So long as the basic requirements of fair play have been met, as where litigants were given full opportunity to support their respective contentions and to object to or refute each other's evidence, the court may validly treat the pleadings as if they have been amended to conform to the evidence and proceed to adjudicate on the basis of all the evidence before it.[65]

Notably, the Complaint did not allege that petitioner Raquel-Santos obtained from Finvest cash advances that he failed to liquidate. The alleged cash advances were disclosed to the court in the Supplemental Affidavit[66] that Mr. Ernesto Lee submitted to the court. Attached to the Supplemental Affidavit were copies of disbursement vouchers and checks representing the cash advances made by petitioner Raquel-Santos.

We note that petitioner Raquel-Santos did not protest the order for him to pay the cash advances in his Motion for Reconsideration of the CA Decision. He raises the issue for the first time in this petition, which should not be allowed. A question that was never raised in courts below cannot be allowed to be raised for the first time on appeal without offending basic rules of fair play, justice and due process.[67] In any case, petitioner Raquel-Santos had every opportunity to refute the Supplemental Affidavit, together with the vouchers and checks, but he did not submit any counter evidence. Petitioner is clearly estopped from questioning the order for him to pay the cash advances.

G.R. No. 175071

PSE's petition is without merit.

Article 1159 of the Civil Code provides that contracts have the force of law between the contracting parties and should be

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[64] *Vlason Enterprises Corporation v. CA*, 369 Phil. 269, 304-305 (1999).

[65] *Talisay-Silay Milling Co., Inc. v Asociacion de Agricultores de Talisay-Silay, Inc.*, G.R. No. 91852, August 15, 1995, 247 SCRA 361, 378.

[66] Records, Vol. II, Civil Case No. 00-1589, pp. 250-260.

[67] *Ysmael v. Court of Appeals*, 376 Phil. 323, 335 (1999).

complied with in good faith. Being the primary law between the parties, the contract governs the adjudication of their rights and obligations. A court has no alternative but to enforce the contractual stipulations in the manner they have been agreed upon and written.[68]

The Pledge Agreement between PSE and Finvest was entered into pursuant to PSE's by-laws which requires a member to pledge its membership seat to secure the payment of all debts or obligations due PSE and its other members arising out of, or in connection with, the present or future contracts of such member with PSE and its members. In case of default in the payment of obligations, the Pledge Agreement explicitly grants PSE the right to sell Finvest's pledged seat, *viz.*:

> 5. Default. In the event of a default by the PLEDGOR in respect to the Obligations or upon the failure of the PLEDGOR to comply with any of the provisions of this Agreement, the PLEDGEE may
>
> (a) cause the public sale at any time as the PLEDGEE may elect at its place of business or elsewhere and the PLEDGEE may, in all allowable cases, acquire or purchase the Pledged Seat and hold the same thereafter in its own right free from any claim of the PLEDGOR;
>
> (b) apply, at its option, the proceeds of any said sale, as well as all sums received or collected by the PLEDGEE from or on account of such Pledged Seat to (i) the payment of expenses incurred or paid by the PLEDGEE in connection with any sale, transfer or delivery of the Pledged Seat, and (ii) payment of the Obligations and all unpaid interests, penalties, damages, expenses, and charges accruing on the Obligations or pursuant to the By-laws and this Agreement. The balance shall be returned to the PLEDGOR.[69]

Article 2112 of the Civil Code also gives the pledgee the same right to sell the thing pledged in case the pledgor's obligation is not satisfied in due time.

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[68] *Pryce Corporation v. Philippine Amusement and Gaming Corporation*, G.R. No. 157480, May 6, 2005, 458 SCRA 164, 175-176.

[69] *Rollo* (G.R. No. 175071), p. 93.

Under the law on contracts, *mora solvendi* or debtor's default is defined as a delay in the fulfillment of an obligation, by reason of a cause imputable to the debtor. There are three requisites necessary for a finding of default. *First*, the obligation is demandable and liquidated; s*econd*, the debtor delays performance; and *third*, the creditor judicially or extrajudicially requires the debtor's performance.[70]

In the present petition, PSE insists that Finvest's liability for fines, penalties and charges has been established, determined and substantiated, hence, liquidated.

We note however that both trial court and CA have ruled otherwise. Factual findings of the trial court, particularly when affirmed by the CA, are generally binding on the Court.[71] This is because the trial court's findings of fact are deemed conclusive and we are not duty-bound to analyze and weigh all over again the evidence already considered in the proceedings below.[72] The Court is not a trier of facts and does not normally undertake a re-examination of the evidence presented by the contending parties during the trial of the case.[73] The Court's jurisdiction over a petition for review on *certiorari* is limited to reviewing only errors of law, not of fact, unless the factual findings complained of are devoid of support from the evidence on record or the assailed judgment is based on a misapprehension of facts.[74]

The findings of fact of both the trial court and the CA are fully supported by the records. They plainly show that the parties were negotiating to determine the exact amount of Finvest's

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[70] *Selegna Management and Development Corporation v. United Coconut Planters Bank*, G.R. No. 165662, May 3, 2006, 489 SCRA 125, 138.

[71] *Titan Construction Corporation v. Uni-Field Enterprises, Inc.*, G.R. No. 153874, March 1, 2007, 517 SCRA 180, 186.

[72] *Calicdan v. Cendaña*, G.R. No. 155080, February 5, 2004, 422 SCRA 272, 276.

[73] *Delos Santos v. Elizalde*, G.R. Nos. 141810, February 2, 2007, 514 SCRA 14, 33.

[74] *Concepcion v. Court of Appeals*, 381 Phil. 90, 96 (2000).

obligations to PSE, during which period PSE repeatedly moved the deadlines it imposed for Finvest to pay the fines, penalties and charges, apparently to allow for more time to thresh out the details of the computation of said penalties. In the middle of those talks, PSE unceremoniously took steps to sell the pledged seat at public auction, without allowing the negotiations to come to a conclusion. This sudden decision of PSE deprived Finvest a sporting chance to settle its accountabilities before forfeiting its seat in the stock exchange. Without that seat, Finvest will lose its standing to trade and do business in the stock exchange.

A debt is liquidated when the amount is known or is determinable by inspection of the terms and conditions of relevant documents.[75] Under the attendant circumstances, it cannot be said that Finvest's debt is liquidated. At the time PSE left the negotiating table, the exact amount of Finvest's fines, penalties and charges was still in dispute and as yet undetermined. Consequently, Finvest cannot be deemed to have incurred in delay in the payment of its obligations to PSE. It cannot be made to pay an obligation the amount of which was not fully explained to it. The public sale of the pledged seat would, thus, be premature.

G.R. No. 181415

Finvest's petition is denied.

The CA was correct in applying Article 1191 of the Civil Code, which indicates the remedies of the injured party in case there is a breach of contract:

> ART. 1191. The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.
>
> The injured party may choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible.

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[75] *Selegna Management and Development Corporation v. United Coconut Planters Bank*, *supra* note 72, at 141.

Initially, respondents sought the fulfillment of Finvest's obligation to deliver the stock certificates, instead of a rescission. They changed their minds later and amended the prayer in their complaint and opted for a refund of the purchase price plus damages. The trial court allowed the amendment, there being no objection from Finvest.

The right of a party to rescission under Article 1191 of the Civil Code is predicated on a breach of faith by the other party who violates the reciprocity between them.[76] In a contract of sale, the seller obligates itself to transfer the ownership of and deliver a determinate thing, and the buyer to pay therefor a price certain in money or its equivalent. In some contracts of sale, such as the sale of real property, prior physical delivery of the thing sold or its representation is not legally required, as the execution of the Deed of Sale effectively transfers ownership of the property to the buyer through constructive delivery. Hence, delivery of the certificate of title covering the real property is not necessary to transfer ownership.

In the sale of shares of stock, physical delivery of a stock certificate is one of the essential requisites for the transfer of ownership of the stocks purchased. Section 63 of the Corporation Code provides thus:

> SEC. 63. *Certificate of stock and transfer of shares.* — The capital stock of stock corporations shall be divided into shares for which certificates signed by the president or vice-president, countersigned by the secretary or assistant secretary, and sealed with the seal of the corporation shall be issued in accordance with the by-laws. Shares of stock so issued are personal property and may be transferred *by delivery of the certificate or certificates indorsed by the owner or his attorney-in-fact or other person legally authorized to make the transfer*. No transfer, however, shall be valid, except as between the parties, until the transfer is recorded in the books of the corporation so as to show the names of the parties to the transaction, the date of the transfer, the number of the certificate or certificates and the number of shares transferred.

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[76] *Sps. Velarde v. Court of Appeals*, 413 Phil. 360, 373 (2001).

No shares of stock against which the corporation holds any unpaid claim shall be transferable in the books of the corporation.[77]

For a valid transfer of stocks, the requirements are as follows: (a) there must be delivery of the stock certificate; (b) the certificate must be endorsed by the owner or his attorney-in-fact or other persons legally authorized to make the transfer; and (c) to be valid against third parties, the transfer must be recorded in the books of the corporation.[78]

Clearly, Finvest's failure to deliver the stock certificates representing the shares of stock purchased by TMEI and Garcia amounted to a substantial breach of their contract which gave rise to a right to rescind the sale.

Rescission creates the obligation to return the object of the contract. This is evident from Article 1385 of the Civil Code which provides:

ART. 1385. Rescission creates the obligation to return the things which were the object of the contract, together with their fruits, and the price with its interest; consequently, it can be carried out only when he who demands rescission can return whatever he may be obliged to restore.

Neither shall rescission take place when the things which are the object of the contract are legally in the possession of third persons who did not act in bad faith.

In this case, indemnity for damages may be demanded from the person causing the loss.

To rescind is to declare a contract void at its inception and to put an end to it as though it never was. Rescission does not merely terminate the contract and release the parties from further obligations to each other, but abrogates it from the beginning and restores the parties to their relative positions as if no contract has been made.[79]

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[77] Emphasis supplied.

[78] *Bitong v. CA,* 354 Phil. 516, 541 (1998).

[79] *Sps. Velarde v. Court of Appeals, supra* note 75, at 375.

Mutual restitution entails the return of the benefits that each party may have received as a result of the contract. In this case, it is the purchase price that Finvest must return. The amount paid was sufficiently proven by the buy confirmation receipts, vouchers, and official/provisional receipts that respondents presented in evidence. In addition, the law awards damages to the injured party, which could be in the form of interest on the price paid,[80] as the trial court did in this case.

Lastly, we address respondents' concern over Finvest's attempt to pass its liability for the undelivered stock certificates to its officers. We find that, contrary to Finvest's stance, the CA Decision in CA-G.R. CV No. 85176, which is the subject of the two other petitions for review before this Court, is not in conflict with our present resolution. While the decision in the other case adjudges Finvest's officers liable to Finvest for the missing stock certificates, the assailed decision in this petition makes Finvest directly responsible to its clients for undelivered stock certificates. Moreover, even if Finvest's officers are blameworthy, we cannot hold them solidarily liable, as they were not impleaded as parties to this case. Consolidation of cases does not make the parties to one case parties to the other.

WHEREFORE, the petitions in G.R. No. 174986 and G.R. No. 175071 are *DENIED***.** The CA Decision in CA-G.R. CV No. 85176 dated August 9, 2006 and Resolution dated October 11, 2006 are *AFFIRMED*.

The petition in G.R. No. 181415 is likewise *DENIED*. The CA Decision in CA-G.R. CV No. 85430 dated September 3, 2007 and Resolution dated January 24, 2008 are AFFIRMED.

SO ORDERED.

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

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[80] See *Congregation of the Religious of the Virgin Mary v. Orola,* G.R. No. 169790, April 30, 2008, 553 SCRA 578.

THIRD DIVISION

[G.R. No. 177181. July 7, 2009]

RABAJA RANCH DEVELOPMENT CORPORATION, *petitioner, vs.* **AFP RETIREMENT AND SEPARATION BENEFITS SYSTEM,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; QUESTIONS OF FACT, NOT PROPER; EXCEPTIONS; WHERE FACTUAL FINDINGS OF LOWER COURT IN CONFLICT WITH THOSE OF THE APPELLATE COURT. — While this Court, is not a trier of facts and is not required to examine or contrast the oral and documentary evidence *de novo*, nonetheless, it may review and, in proper cases, reverse the factual findings of lower courts when the findings of fact of the trial court are in conflict with those of the appellate court.

2. POLITICAL LAW; HOMESTEAD PATENT; FRAUD; ELUCIDATED. — Petitioner seeks relief before this Court on the main contention that the registered Homestead Patent from which respondent derived its title, is fake and spurious, and is, therefore, void *ab initio* because it was not issued, at all, by the Government. We are not convinced. Our ruling in *Republic v. Guerrero*, is instructive: Fraud is of two kinds: actual or constructive. Actual or positive fraud proceeds from an intentional deception practiced by means of the misrepresentation or concealment of a material fact. Constructive fraud is construed as a fraud because of its detrimental effect upon public interests and public or private confidence, even though the act is not done with an actual design to commit positive fraud or injury upon other persons. Fraud may also be either extrinsic or intrinsic. Fraud is regarded as intrinsic where the fraudulent acts pertain to an issue involved in the original action, or where the acts constituting the fraud were or could have been litigated therein. The fraud is extrinsic if it is employed to deprive parties of their day in court and thus prevent them from asserting their right to the property registered in the name of the applicant. The distinctions assume

significance because **only actual and extrinsic fraud had been accepted and is contemplated by the law as a ground to review or reopen a decree of registration**. Thus, relief is granted to a party deprived of his interest in land where the fraud consists in a deliberate misrepresentation that the lots are not contested when in fact they are; or in willfully misrepresenting that there are no other claims; or in deliberately failing to notify the party entitled to notice; or in inducing him not to oppose an application; or in misrepresenting about the identity of the lot to the true owner by the applicant causing the former to withdraw his application. In all these examples, the overriding consideration is that the fraudulent scheme of the prevailing litigant prevented a party from having his day in court or from presenting his case. The fraud, therefore, is one that affects and goes into the jurisdiction of the court. We have repeatedly held that relief on the ground of fraud will not be granted where the alleged fraud goes into the merits of the case, is intrinsic and not collateral, and has been controverted and decided. Thus, we have underscored the denial of relief where it appears that the fraud consisted in the presentation at the trial of a supposed forged document, or a false and perjured testimony, or in basing the judgment on a fraudulent compromise agreement, or in the alleged fraudulent acts or omissions of the counsel which prevented the petitioner from properly presenting the case. No actual and extrinsic fraud existed in this case. In our jurisdiction, fraud is never presumed. Mere allegations of fraud are not enough. Intentional acts to deceive and deprive another of his right, or in some manner, injure him must be specifically alleged and proved.

3. ID.; PROPERTY REGISTRATION DECREE (P.D. NO. 1529); REVIEW OF DECREE OF REGISTRATION; INNOCENT PURCHASER FOR VALUE; EXPLAINED. — Section 32 of P.D. No. 1529, states: SECTION 32. *Review of decree of registration; Innocent purchaser for value*. — The decree of registration shall not be reopened or revised by reason of absence, minority, or other disability of any person adversely affected thereby, nor by any proceeding in any court for reversing judgment, subject, however, to the right of any person, including the government and the branches thereof, deprived of land or of any estate or interest therein by such adjudication or confirmation of title obtained by **actual fraud**, to file in the proper

Court of First Instance a petition for reopening and review of the decree of registration not later than one year from and after the date of the entry of such decree of registration, **but in no case shall such petition be entertained by the court where an innocent purchaser for value has acquired the land or an interest therein whose rights may be prejudiced. Whenever the phrase "innocent purchaser for value" or an equivalent phrase occurs in this Decree, it shall be deemed to include an innocent lessee, mortgagee, or other encumbrancer for value**. Upon the expiration of said period of one year, the decree of registration and the certificate of title issued shall become incontrovertible. Any person aggrieved by such decree of registration in any case may pursue his remedy by action for damages against the applicant or any other person responsible for the fraud. Settled is the rule that no valid TCT can issue from a void TCT, unless an innocent purchaser for value had intervened. An innocent purchaser for value is one who buys the property of another, without notice that some other person has a right to or interest in the property, for which a full and fair price is paid by the buyer at the time of the purchase or before receipt of any notice of the claims or interest of some other person in the property. The protection given to innocent purchasers for value is necessary to uphold a certificate of title's efficacy and conclusiveness, which the Torrens system ensures.

4. ID.; HOMESTEAD PATENT; DISTINGUISHED FROM A FREE PATENT. — In *Republic v. Court of Appeals*, this Court distinguished a Homestead Patent from a Free Patent, to wit: Homestead Patent and Free Patent are some of the land patents granted by the government under the Public Land Act. While similar, they are not exactly the same. A Homestead Patent is one issued to: any citizen of this country; over the age of 18 years or the head of a family; who is not the owner of more than twenty-four (24) hectares of land in the Philippines or has not had the benefit of any gratuitous allotment of more than twenty-four (24) hectares of land since the occupation of the Philippines by the United States. The applicant must show that he has complied with the residence and cultivation requirements of the law; must have resided continuously for at least one year in the municipality where the land is situated; and must have cultivated at least one-fifth of the land applied for. On the other hand, a Free Patent may be issued where the applicant

is a natural-born citizen of the Philippines; not the owner of more than twelve (12) hectares of land; that he has continuously occupied and cultivated, either by himself or through his predecessors-in-interests, a tract or tracts of agricultural public lands subject to disposition for at least 30 years prior to the effectivity of Republic Act No. 6940; and that he has paid the real taxes thereon while the same has not been occupied by any person.

5. ID.; ID.; REGISTRATION UNDER THE LAND REGISTRATION ACT RENDERS THE HOMESTEAD PATENT INDEFEASIBLE AS A TORRENS TITLE. — It bears stressing that a Homestead Patent, once registered under the Land Registration Act, becomes as indefeasible as a Torrens Title. Verily, Section 103 of P.D. No. 1529 mandates the registration of patents, and such registration is the operative act to convey the land to the patentee, thus: Sec. 103. . . The deed, grant, patent or instrument of conveyance from the Government to the grantee shall not take effect as a conveyance or bind the land but shall operate only as a contract between the Government and the grantee and as evidence of authority to the Register of Deeds to make registration. **It is the act of registration that shall be the operative act to affect and convey the land, and in all cases under this Decree, registration shall be made in the office of the Register of Deeds of the province or city where the land lies. The fees for registration shall be paid by the grantee. After due registration and issuance of the certificate of title, such land shall be deemed to be registered land to all intents and purposes under this Decree.**

6. CIVIL LAW; LAND TITLES; TORRENS SYSTEM; INDEFEASIBILITY OF REGISTERED TITLE OF LAND, UPHELD. — The Torrens system is not a mode of acquiring titles to lands; it is merely a system of registration of titles to lands. However, justice and equity demand that the titleholder should not be made to bear the unfavorable effect of the mistake or negligence of the State's agents, in the absence of proof of his complicity in a fraud or of manifest damage to third persons. The real purpose of the Torrens system is to quiet title to land and put a stop forever to any question as to the legality of the title, except claims that were noted in the certificate at the time of the registration or that may arise subsequent thereto. Otherwise, the integrity of the Torrens system shall forever

be sullied by the ineptitude and inefficiency of land registration officials, who are ordinarily presumed to have regularly performed their duties. The general rule that the direct result of a previous void contract cannot be valid will not apply in this case as it will directly contravene the Torrens system of registration. Where innocent third persons, relying on the correctness of the certificate of title thus issued, acquire rights over the property, this Court cannot disregard such rights and order the cancellation of the certificate. The effect of such outright cancellation will be to impair public confidence in the certificate of title. The sanctity of the Torrens system must be preserved; otherwise, everyone dealing with the property registered under the system will have to inquire in every instance as to whether the title had been regularly or irregularly issued, contrary to the evident purpose of the law. Every person dealing with the registered land may safely rely on the correctness of the certificate of title issued therefor, and the law will, in no way, oblige him to go behind the certificate to determine the condition of the property.

APPEARANCES OF COUNSEL

Respicio Velasquez & Rodriguez Law Office for petitioner.
Rolando G. Borja for respondent.

D E C I S I O N

NACHURA, *J.*:

Before this Court is a Petition[1] for Review on *Certiorari* under Rule 45 of the Rules of Civil Procedure, seeking the reversal of the Court of Appeals (CA) Decision[2] dated June 29, 2006, which reversed and set aside the Decision[3] of the

[1] *Rollo*, pp. 8-19.

[2] Particularly docketed as CA-G.R. CV No. 83169, penned by Associate Justice Eliezer R. de Los Santos, with Associate Justices Fernanda Lampas Peralta and Myrna Dimaranan Vidal, concurring; *id.* at 39-45.

[3] Particularly docketed as Civil Case No. R-1441-98 and penned by Judge Normelito J. Ballocanag; *id.* at 21-36.

Regional Trial Court (RTC) of Pinamalayan, Oriental Mindoro, Branch 41, dated June 3, 2004.

The Facts

Petitioner Rabaja Ranch Development Corporation (petitioner), a domestic corporation, is a holder of Transfer Certificate of Title (TCT) No. T-88513[4] covering the subject property particularly identified as Lot 395, Pls 47, with an area of 211,372 square meters more or less, and located at Barangay (Brgy.) Conrazon, Bansud, Bongabon, Oriental Mindoro (subject property).

Respondent Armed Forces of the Philippines Retirement and Separation Benefits System (AFP-RSBS) is a government corporation, which manages the pension fund of the Armed Forces of the Philippines (AFP), and is duly organized under Presidential Decree (P.D.) No. 361,[5] as amended by P.D. No. 1656[6] (respondent). Respondent is a holder of TCT No. T-51382[7] covering the same subject property.

On September 1, 1998, petitioner filed a Complaint[8] for Quieting of Title and/or Removal of Cloud from Title before the RTC. Trial on the merits ensued.

Petitioner averred that on September 6, 1955, Free Patent No. V-19535[9] (Free Patent) was issued in the name of Jose Castromero (Jose). On June 1, 1982, the Free Patent was registered, and Original Certificate of Title (OCT) No. P-2612[10]

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[4] Records, pp. 8-9.

[5] Entitled: PROVIDING FOR AN ARMED FORCES RETIREMENT AND SEPARATION BENEFITS SYSTEM.

[6] Entitled: AMENDING PRESIDENTIAL DECREE NO. 361 RE THE ARMED FORCES RETIREMENT AND SEPARATION BENEFITS SYSTEM.

[7] Records, p. 17.

[8] *Id.* at 1-6.

[9] *Id.* at 302.

[10] *Id.* at 14-15.

covering the subject property was issued in the name of Jose. Sometime in the first half of 1982, Jose sold the subject property to Spouses Sigfriedo and Josephine Veloso[11] (spouses Veloso), and TCT No. T-17104[12] was issued in favor of the latter. Spouses Veloso, in turn, sold the subject property to petitioner for the sum of ₱634,116.00 on January 17, 1997,[13] and TCT No. T-88513 was issued in petitioner's name. Petitioner alleged that it was the lawful owner and possessor of the subject property.

Traversing the complaint, respondent, in its Answer,[14] claimed that its title over the subject property was protected by the Torrens system, as it was a buyer in good faith and for value; and that it had been in continuous possession of the subject property since November 1989, way ahead of petitioner's alleged possession in February 1997.

Respondent stated that on April 30, 1966, Homestead Patent No. 113074 (Homestead Patent) was issued in the name of Charles Soguilon (Charles). On May 27, 1966, the Homestead Patent was registered[15] and OCT No. RP-110 (P-6339)[16] was issued in Charles's name, covering the same property. On October 18, 1982, Charles sold the subject property to JMC Farm Incorporated (JMC), which was then issued TCT No. 18529.[17] On August 30, 1985, JMC obtained a loan from respondent in the amount of ₱7,000,000.00, with real estate mortgage over several parcels of land including the subject property.[18] JMC failed to pay; hence, after extra-judicial foreclosure and public sale, respondent, being the highest bidder, acquired the subject property and was issued TCT No. T-51382

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[11] TSN, July 12, 1999, pp. 6-7.

[12] Records, pp. 10-10A.

[13] *Id.* at 312-314.

[14] *Id.* at 26-30.

[15] *Id.* at 652.

[16] *Id.* at 652-653.

[17] *Id.* at 635-636.

[18] *Id.* at 636.

in its name. Respondent contended that from the time it was issued a title, it took possession of the subject property until petitioner disturbed respondent's possession thereof sometime in 1997. Thus, respondent sent petitioner a Demand Letter[19] asking the latter to vacate the subject property. Petitioner replied that it was not aware of respondent's claim.[20] Presently, the subject property is in the possession of the petitioner.[21]

The RTC's Ruling

On June 3, 2004, the RTC ruled in favor of the petitioner on the ground that petitioner's title emanated from a title older than that of the respondent. Moreover, the RTC held that there were substantial and numerous infirmities in the Homestead Patent of Charles. The RTC found that there was no record in the Bureau of Lands that Charles was a homestead applicant or a grantee of Homestead Patent No. 113074. Upon inquiry, the RTC also found that a similar Homestead Patent bearing *No. V-113074* was actually issued in favor of one Mariano Costales over a parcel of land with an area of 8.7171 hectares and located in Bunawan, Agusan in Mindanao, per Certification[22] issued by the Lands Management Bureau dated February 18, 1998. Thus, the RTC held that Charles' Homestead Patent was fraudulent and spurious, and respondent could not invoke the protection of the Torrens system, because the system does not protect one who committed fraud or misrepresentation and holds title in bad faith. The RTC disposed of the case in this wise:

IN VIEW OF ALL THE FOREGOING, judgment is hereby rendered in favor of the plaintiff and against the defendant, as follows:

1. DECLARING as valid OCT No. P-2612, in the name of Jose Castromero, and the subsequent TCT No. T-17104 in the name of the spouses, Siegfriedo A. Veloso and Josephine

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[19] *Id.* at 361.

[20] *Id.* at 362.

[21] TSN, November 19, 2003, p. 14.

[22] Records, p. 306.

Sison Veloso and TCT No. T-88513, in the name of plaintiff Rabaja Ranch & Development Corporation;

2. DECLARING plaintiff as the true and lawful owner of the lot in question covered by TCT No. T-88513;

3. DECLARING as null and void OCT No. RP-110 (P-6339) in the name of Charles Soguilon and its derivative titles, TCT No. T-18529 registered in the name of J.M.C. Farm Incorporated and TCT No. T-51392, in the name of the defendant AFP Retirement Separation and Benefits System;

4. DIRECTING the Register of Deeds, City of Calapan, Oriental Mindoro, to cancel TCT No. T-51392, in the name of defendant AFP Retirement Separation & Benefits System and its registration from the Records of the Registry of Deeds;

5. NO PRONOUNCEMENT as to damages and attorney's fees for plaintiff and defendant's counterclaim is hereby dismissed. No Cost.

SO ORDERED.

Aggrieved, respondent appealed to the CA.[23]

The CA's Ruling

On June 29, 2006, the CA reversed and set aside the RTC's Decision upon the finding that Charles' Homestead Patent was earlier registered than Jose's Free Patent. The CA held that Jose slept on his rights, and thus, respondent had a better right over the subject property. Further, the CA opined that while "it is interesting to note that petitioner's claim that Homestead Patent *No. V-113074* was issued to Mariano Costales, per Certification issued by the Lands Management Bureau, there is nothing on record which would show that said Homestead Patent No. *V-113074* and Homestead Patent No. 113074 granted to Charles were one and the same."

Petitioner filed a Motion for Reconsideration,[24] which the CA, however, denied in its Resolution[25] dated March 26, 2007.

[23] *Id.* at 670.

[24] CA *rollo,* pp. 93-98.

[25] *Id.* at 112-113.

The Issues

Hence, this Petition based on the following grounds:

a) The CA decided a question of substance not in accordance with existing law and jurisprudence.

b) The CA Decision was based on a gross misapprehension or non-apprehension of facts.

Petitioner asseverates that Homestead Patent No. 113074 is not found in the files of the Land Management Bureau, nor does Charles' name appear as an applicant or a patentee; that, similarly, Homestead Patent *No. V-113074* was actually issued to Mariano Costales over a parcel of land in Mindanao and not in Mindoro; that, being fake and spurious, Charles' Homestead Patent is void *ab initio* and, as such, does not produce or transmit any right; that the CA completely ignored the RTC's factual findings based on documentary and testimonial evidence, particularly of the invalidity and infirmities of the Homestead Patent; that said Homestead Patent does not legally exist, hence, is not registrable; that respondent's assertion — that since the issuance of the Homestead Patent in 1966, records and documents have not been properly kept — should be discarded, as petitioner's Free Patent which was issued way back in 1955 is still intact and is of record; that a Homestead Patent, being a contract between the Government and the grantee, must bear the consent of the Government; and, Charles' Homestead Patent being a simulation, cannot transmit any right; that the earlier registration of the Homestead Patent has no legal effect, as the same is merely simulated; and that OCT No. No. RP-110 (P-6339) and all derivative titles issued, including respondent's title, are null and void. Petitioner submits that it has a better right over the subject property than respondent.[26]

Respondent takes issue with petitioner's claim that the Homestead Patent is spurious or fake, the same being a question of fact not proper in a petition for review on *certiorari* before

[26] *Rollo,* pp. 101-116.

this Court. Respondent also posits that the factual findings of the CA are conclusive and binding on this Court, as such findings are based on record; that respondent has a better right over the subject property because only the certified copy and not the original copy of the Free Patent was transcribed and registered with the Register of Deeds of Calapan, Oriental Mindoro; that the Homestead Patent was duly transcribed on May 27, 1966, way ahead of the registration of the Free Patent on June 1, 1982; that the CA was correct in ruling that Section 122[27] of Act No. 496 (The Land Registration Act) as amended by Section 103[28] of P.D. No. 1529 (The Property Registration Decree)

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[27] SECTION 122. Whenever public lands in the Philippine Islands belonging to the Government of the United States or to the Government of the Philippine Islands are alienated, granted, or conveyed to persons or to public or private corporations, the same shall be brought forthwith under the operation of this Act and shall become registered lands. It shall be the duty of the official issuing the instrument of alienation, grant, or conveyance in behalf of the Government to cause such instrument, before its delivery to the grantee, to be filed with the register of deeds for the province where the land lies and to be there registered like other deeds and conveyances, whereupon a certificate shall be entered as in other cases of registered land, and an owner's duplicate certificate issued to the grantee. The deed, grant, or instrument of conveyance from the Government to the grantee shall not take effect as a conveyance or bind the land, but shall operate as a contract between the Government and the grantee and as evidence of authority to the clerk or register of deeds to make registration. The act of registration shall be the operative act to convey and affect the lands, and in all cases under this Act registration shall be made in the office of the register of deeds for the province where the land lies. The fees for registration shall be paid by the grantee. After due registration and issue of the certificate and owner's duplicate such land shall be registered land for all purposes under this Act.

[28] SECTION 103. *Certificates of title pursuant to patents.* — Whenever public land is by the Government alienated, granted or conveyed to any person, the same shall be brought forthwith under the operation of this Decree. It shall be the duty of the official issuing the instrument of alienation, grant, patent or conveyance in behalf of the Government to cause such instrument to be filed with the Register of Deeds of the province or city where the land lies, and to be there registered like other deeds and conveyance, whereupon a certificate of title shall be entered as in other cases of registered land, and an owner's duplicate issued to the grantee. The deed, grant, patent or instrument of conveyance from the Government to the grantee shall not

provides that registration of the Patent with the Register of Deeds is the operative act to affect and convey the land; and that the fact that the Homestead Patent was duly registered, said Patent became indefeasible as a Torrens Title. Moreover, respondent avers that the petitioner failed to prove by preponderance of evidence that the Homestead Patent is spurious or fake. Respondent maintains that it is the Free Patent which is spurious since what was registered was only the certified and not the original copy of the Free Patent.[29]

The issues may, thus, be summed up in the sole question of —

WHETHER OR NOT RESPONDENT'S TITLE WHICH ORIGINATED FROM A FAKE AND SPURIOUS HOMESTEAD PATENT, IS SUPERIOR TO PETITIONER'S TITLE WHICH ORIGINATED FROM A VALID AND EXISTING FREE PATENT.[30]

Simply put, the issue is who, between the petitioner and respondent, has a better right over the subject property.

Our Ruling

The instant Petition is bereft of merit.

While this Court, is not a trier of facts and is not required to examine or contrast the oral and documentary evidence *de novo*, nonetheless, it may review and, in proper cases, reverse the factual findings of lower courts when the findings of fact of the trial court are in conflict with those of the appellate court.[31] In this case, we see the need to review the records.

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take effect as a conveyance or bind the land, but shall operate only as a contract between the Government and the grantee and as evidence of authority to the Register of Deeds to make registration.

It is the act of registration that shall be the operative act to affect and convey the land, and in all cases under this Decree, registration shall be made in the office of the Register of Deeds of the province or city where the land lies. The fees for registration shall be paid by the grantee. After due registration and issuance of the certificate of title, such land shall be deemed to be registered land to all intents and purposes under this Decree.

[29] *Rollo,* pp. 156-170.

[30] *Supra* note 1 at 13.

[31] *Tan v. Court of Appeals*, 421 Phil. 134, 141 (2001).

The special circumstances attending this case cannot be disregarded. Two certificates of title were issued covering the very same property, deriving their respective authorities from two different special patents granted by the Government. The Free Patent was issued to Jose on September 6, 1955 as opposed to the Homestead Patent which was issued to Charles on April 30, 1966. The latter was registered on May 27, 1966, ahead of the former which was registered only on June 1, 1982. Each patent generated a certificate of title issued to a different set of individuals. Over the years, the subject property was eventually sold to the contending parties herein, who both appear to be buyers in good faith and for value.

Petitioner now seeks relief before this Court on the main contention that the registered Homestead Patent from which respondent derived its title, is fake and spurious, and is, therefore, void *ab initio* because it was not issued, at all, by the Government.

We are not convinced.

Our ruling in *Republic v. Guerrero*,[32] is instructive:

> Fraud is of two kinds: actual or constructive. Actual or positive fraud proceeds from an intentional deception practiced by means of the misrepresentation or concealment of a material fact. Constructive fraud is construed as a fraud because of its detrimental effect upon public interests and public or private confidence, even though the act is not done with an actual design to commit positive fraud or injury upon other persons.
>
> Fraud may also be either extrinsic or intrinsic. Fraud is regarded as intrinsic where the fraudulent acts pertain to an issue involved in the original action, or where the acts constituting the fraud were or could have been litigated therein. The fraud is extrinsic if it is employed to deprive parties of their day in court and thus prevent them from asserting their right to the property registered in the name of the applicant.
>
> The distinctions assume significance because **only actual and extrinsic fraud had been accepted and is contemplated by the law as a ground to review or reopen a decree of registration**. Thus, relief

[32] G.R. No. 133168, March 28, 2006, 485 SCRA 424.

is granted to a party deprived of his interest in land where the fraud consists in a deliberate misrepresentation that the lots are not contested when in fact they are; or in willfully misrepresenting that there are no other claims; or in deliberately failing to notify the party entitled to notice; or in inducing him not to oppose an application; or in misrepresenting about the identity of the lot to the true owner by the applicant causing the former to withdraw his application. In all these examples, the overriding consideration is that the fraudulent scheme of the prevailing litigant prevented a party from having his day in court or from presenting his case. The fraud, therefore, is one that affects and goes into the jurisdiction of the court.

We have repeatedly held that relief on the ground of fraud will not be granted where the alleged fraud goes into the merits of the case, is intrinsic and not collateral, and has been controverted and decided. Thus, we have underscored the denial of relief where it appears that the fraud consisted in the presentation at the trial of a supposed forged document, or a false and perjured testimony, or in basing the judgment on a fraudulent compromise agreement, or in the alleged fraudulent acts or omissions of the counsel which prevented the petitioner from properly presenting the case.[33]

No actual and extrinsic fraud existed in this case. In our jurisdiction, fraud is never presumed.[34] Mere allegations of fraud are not enough. Intentional acts to deceive and deprive another of his right, or in some manner, injure him must be specifically alleged and proved.[35] The burden of proof rests on petitioner, and the petitioner failed to discharge the burden. Petitioner did not convincingly show that the Homestead Patent issued to Charles is indeed spurious. More importantly, petitioner failed to prove that respondent took part in the alleged fraud which dated back as early as 1966 when Charles supposedly secured the fake and spurious Homestead Patent.

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[33] *Id.* at 436-438. (Emphasis supplied)

[34] *Asia's Emerging Dragon Corporation v. Department of Transportation and Communication*, G.R. Nos. 169914 and 174166, April 18, 2008, 552 SCRA 59, 111.

[35] *Barrera v. Court of Appeals*, 423 Phil. 559, 566 (2001).

In *Estate of the Late Jesus S. Yujuico v. Republic*,[36] citing *Republic v. Court of Appeals*,[37] this Court stressed the fact that it was never proven that private respondent St. Jude was a party to the fraud that led to the increase in the area of the property after it was sub-divided. In the same case, citing *Republic v. Umali*,[38] we held that, in a reversion case, even if the original grantee of a patent and title has obtained the same through fraud, reversion will no longer prosper as the land had become private land and the fraudulent acquisition cannot affect the titles of innocent purchasers for value.

This conclusion rests very firmly on Section 32 of P.D. No. 1529, which states:

SECTION 32. *Review of decree of registration; Innocent purchaser for value*. — The decree of registration shall not be reopened or revised by reason of absence, minority, or other disability of any person adversely affected thereby, nor by any proceeding in any court for reversing judgment, subject, however, to the right of any person, including the government and the branches thereof, deprived of land or of any estate or interest therein by such adjudication or confirmation of title obtained by **actual fraud**, to file in the proper Court of First Instance a petition for reopening and review of the decree of registration not later than one year from and after the date of the entry of such decree of registration, **but in no case shall such petition be entertained by the court where an innocent purchaser for value has acquired the land or an interest therein whose rights may be prejudiced. Whenever the phrase "innocent purchaser for value" or an equivalent phrase occurs in this Decree, it shall be deemed to include an innocent lessee, mortgagee, or other encumbrancer for value**.

Upon the expiration of said period of one year, the decree of registration and the certificate of title issued shall become incontrovertible. Any person aggrieved by such decree of registration in any case may pursue his remedy by action for damages against the applicant or any other person responsible for the fraud. (Underscoring ours)

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[36] G.R. No. 168661, October 26, 2007, 537 SCRA 513, 530-531.

[37] *Republic of the Philippines v. Court of Appeals*, 361 Phil. 319, 337 (1999).

[38] G.R. No. 80687, April 10, 1989, 171 SCRA 647, 653.

Settled is the rule that no valid TCT can issue from a void TCT, unless an innocent purchaser for value had intervened. An innocent purchaser for value is one who buys the property of another, without notice that some other person has a right to or interest in the property, for which a full and fair price is paid by the buyer at the time of the purchase or before receipt of any notice of the claims or interest of some other person in the property. The protection given to innocent purchasers for value is necessary to uphold a certificate of title's efficacy and conclusiveness, which the Torrens system ensures.[39]

Clearly, respondent is an innocent purchaser in good faith and for value. Thus, as far as respondent is concerned, TCT No. 18529, shown to it by JMC, was free from any flaw or defect that could give rise to any iota of doubt that it was fake and spurious, or that it was derived from a fake or spurious Homestead Patent. Likewise, respondent was not under any obligation to make an inquiry beyond the TCT itself when, significantly, a foreclosure sale was conducted and respondent emerged as the highest bidder.

In *Republic v. Court of Appeals*,[40] this Court distinguished a Homestead Patent from a Free Patent, to wit:

> Homestead Patent and Free Patent are some of the land patents granted by the government under the Public Land Act. While similar, they are not exactly the same. A Homestead Patent is one issued to: any citizen of this country; over the age of 18 years or the head of a family; who is not the owner of more than twenty-four (24) hectares of land in the Philippines or has not had the benefit of any gratuitous allotment of more than twenty-four (24) hectares of land since the occupation of the Philippines by the United States. The applicant must show that he has complied with the residence and cultivation requirements of the law; must have resided continuously for at least one year in the municipality where the land is situated; and must have cultivated at least one-fifth of the land applied for.

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[39] *Eastworld Motor Industries Corporation v. Skunac Corporation*, G.R. No. 163994, December 16, 2005, 478 SCRA 420, 427-428. (Citations omitted)

[40] 406 Phil. 597 (2001).

On the other hand, a Free Patent may be issued where the applicant is a natural-born citizen of the Philippines; not the owner of more than twelve (12) hectares of land; that he has continuously occupied and cultivated, either by himself or through his predecessors-in-interests, a tract or tracts of agricultural public lands subject to disposition for at least 30 years prior to the effectivity of Republic Act No. 6940; and that he has paid the real taxes thereon while the same has not been occupied by any person.[41]

It bears stressing that a Homestead Patent, once registered under the Land Registration Act, becomes as indefeasible as a Torrens Title.[42] Verily, Section 103 of P.D. No. 1529 mandates the registration of patents, and such registration is the operative act to convey the land to the patentee, thus:

> Sec. 103. . . . . The deed, grant, patent or instrument of conveyance from the Government to the grantee shall not take effect as a conveyance or bind the land but shall operate only as a contract between the Government and the grantee and as evidence of authority to the Register of Deeds to make registration. **It is the act of registration that shall be the operative act to affect and convey the land, and in all cases under this Decree, registration shall be made in the office of the Register of Deeds of the province or city where the land lies. The fees for registration shall be paid by the grantee. After due registration and issuance of the certificate of title, such land shall be deemed to be registered land to all intents and purposes under this Decree**. (Emphasis supplied)

The Torrens system is not a mode of acquiring titles to lands; it is merely a system of registration of titles to lands. However, justice and equity demand that the titleholder should not be made to bear the unfavorable effect of the mistake or negligence of the State's agents, in the absence of proof of his complicity in a fraud or of manifest damage to third persons. The real purpose of the Torrens system is to quiet title to land and put a stop forever to any question as to the legality of the title, except claims that were noted in the certificate at the time of the registration or that may

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[41] *Id.* at 606. (Citations omitted)

[42] *Portes, Sr. v. Arcala*, G.R. No. 145264, August 30, 2005, 468 SCRA 343, 353, citing *Republic of the Phil. v. CA*, 346 Phil. 637 (1997).

arise subsequent thereto. Otherwise, the integrity of the Torrens system shall forever be sullied by the ineptitude and inefficiency of land registration officials, who are ordinarily presumed to have regularly performed their duties.[43]

The general rule that the direct result of a previous void contract cannot be valid will not apply in this case as it will directly contravene the Torrens system of registration. Where innocent third persons, relying on the correctness of the certificate of title thus issued, acquire rights over the property, this Court cannot disregard such rights and order the cancellation of the certificate. The effect of such outright cancellation will be to impair public confidence in the certificate of title. The sanctity of the Torrens system must be preserved; otherwise, everyone dealing with the property registered under the system will have to inquire in every instance as to whether the title had been regularly or irregularly issued, contrary to the evident purpose of the law. Every person dealing with the registered land may safely rely on the correctness of the certificate of title issued therefor, and the law will, in no way, oblige him to go behind the certificate to determine the condition of the property.[44]

Respondent's transfer certificate of title, having been derived from the Homestead Patent which was registered under the Torrens system on May 27, 1966, was thus vested with the habiliments of indefeasibility.

WHEREFORE, the instant Petition is *DENIED* and the assailed Court of Appeals Decision is *AFFIRMED*. No costs.

SO ORDERED.

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

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[43] *Republic v. Guerrero*; *supra* note 32 at 445.

[44] *Republic v. Orfinada, Sr.*, G.R. No. 141145, November 12, 2004, 442 SCRA 342, 359, citing *Heirs of Spouses Benito Gavino and Juana Euste v. Court of Appeals*, 291 SCRA 495, 509 (1998).

[*] In lieu of Associate Justice Diosdado M. Peralta per raffle dated July 1, 2009.

THIRD DIVISION

[G.R. No. 178490. July 7, 2009]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **BANK OF THE PHILIPPINE ISLANDS,** *respondent.*

SYLLABUS

1. TAXATION; NATIONAL INTERNAL REVENUE CODE OF 1997; SECTION 76 (FINAL ADJUSTMENT RETURN); OPTION TO CARRY-OVER EXCESS TAX; IRREVOCABILITY RULE, CONSTRUED. — Section 79 of the NIRC of 1985 was reproduced as Section 76 of the **NIRC of 1997,** with the addition of one important sentence, which laid down the **irrevocability rule:** Section 76. *Final Adjustment Return*. – Every corporation liable to tax under Section 24 shall file a final adjustment return covering the total net income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable net income of that year the corporation shall either: (a) Pay the excess tax still due; or (b) Be refunded the excess amount paid, as the case may be. In case the corporation is entitled to a **refund** of the excess estimated quarterly income taxes paid, the refundable amount shown on its final adjustment return may be **credited** against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years. **Once the option to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for tax refund or issuance of a tax credit certificate shall be allowed therefor.** x x x The Court categorically declared in *Philam* that: **"Section 76 remains clear and unequivocal. Once the carry-over option is taken, actually or constructively, it becomes irrevocable."** It mentioned no exception or qualification to the *irrevocability rule*. Hence, the controlling factor for the operation of the *irrevocability rule* is that the taxpayer chose an option; and once it had already done so, it could no longer make another one. Consequently, after the

taxpayer opts to carry-over its excess tax credit to the following taxable period, the question of whether or not it actually gets to apply said tax credit is irrelevant. Section 76 of the NIRC of 1997 is explicit in stating that once the option to carry over has been made, "no application for tax refund or issuance of a tax credit certificate shall be allowed therefor." The last sentence of Section 76 of the NIRC of 1997 reads: "Once the option to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years has been made, such option **shall be considered irrevocable for that taxable period** and no application for tax refund or issuance of a tax credit certificate shall be allowed therefor." The phrase "for that taxable period" merely identifies the excess income tax, subject of the option, by referring to the taxable period when it was acquired by the taxpayer. x x x The evident intent of the legislature, in adding the last sentence to Section 76 of the NIRC of 1997, is to keep the taxpayer from flip-flopping on its options, and avoid confusion and complication as regards said taxpayer's excess tax credit.

2. ID.; ID.; ID.; ID.; DENIAL OF THE CLAIM FOR TAX REFUND IS NOT UNJUST ENRICHMENT FOR THE GOVERNMENT; SUSTAINED. —The Court similarly disagrees in the declaration of the Court of Appeals that to deny the claim for refund of BPI, because of the *irrevocability rule*, would be tantamount to unjust enrichment on the part of the government. The Court addressed the very same argument in *Philam*, where it elucidated that there would be no unjust enrichment in the event of denial of the claim for refund under such circumstances, because there would be no forfeiture of any amount in favor of the government. The amount being claimed as a refund would remain in the account of the taxpayer until utilized in succeeding taxable years, as provided in Section 76 of the NIRC of 1997. It is worthy to note that unlike the option for refund of excess income tax, which prescribes after two years from the filing of the FAR, there is no prescriptive period for the carrying over of the same. Therefore, the excess income tax credit of BPI, which it acquired in 1998 and opted to carry over, may be repeatedly carried over to succeeding taxable years, *i.e.*, to 1999, 2000, 2001, and so on and so forth, until actually applied or credited to a tax liability of BPI.

3. ID.; ID.; ID.; ID.; AS TO WHICH OPTION THE TAXPAYER CHOSE IS GENERALLY A MATTER OF EVIDENCE; RATIONALE. — Failure of the taxpayer to make an appropriate marking of its option in the ITR does not automatically mean that the taxpayer has opted for a tax credit. The Court ratiocinated in G.R. No. 156637 of *Philam*: One cannot get a tax refund and a tax credit at the same time for the same excess income taxes paid. **Failure to signify one's intention in the FAR does not mean outright barring of a valid request for a refund, should one still choose this option later on**. A tax credit should be construed merely as an alternative remedy to a tax refund under Section 76, subject to prior verification and approval by respondent. **The reason for requiring that a choice be made in the FAR upon its filing is to ease tax administration,** particularly the self-assessment and collection aspects. A taxpayer that makes a choice expresses certainty or preference and thus demonstrates clear diligence. Conversely, a taxpayer that makes no choice expresses uncertainty or lack of preference and hence shows simple negligence or plain oversight. x x x Despite the failure of [Philam] to make the appropriate marking in the BIR form, the **filing of its written claim effectively serves as an expression of its choice to request a tax refund,** instead of a tax credit. To assert that any future claim for a tax refund will be instantly hindered by a failure to signify one's intention in the FAR is to render nugatory the clear provision that allows for a two-year prescriptive period. *Philam* reveals a meticulous consideration by the Court of the evidence submitted by the parties and the circumstances surrounding the taxpayer's option to carry over or claim for refund. When circumstances show that a choice has been made by the taxpayer to carry over the excess income tax as credit, it should be respected; but when indubitable circumstances clearly show that another choice – a tax refund – is in order, it should be granted. "Technicalities and legalisms, however exalted, should not be misused by the government to keep money not belonging to it and thereby enrich itself at the expense of its law-abiding citizens." Therefore, as to which option the taxpayer chose is generally a matter of evidence. It is axiomatic that a claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund. Tax refunds, like tax exemptions, are construed strictly against the taxpayer.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Benedicto Versoza Felipe and Burkely Law Offices for respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

This is a Petition for Review assailing the Decision[1] dated 29 April 2005 and the Resolution dated 20 April 2007 of the Court of Appeals in CA-G.R. SP No. 77655, which annulled and set aside the Decision dated 12 March 2003 of the Court of Tax Appeals (CTA) in CTA Case No. 6276, wherein the CTA held that respondent Bank of the Philippine Islands (BPI) already exercised the irrevocable option to carry over its excess tax credits for the year 1998 to the succeeding years 1999 and 2000 and was, therefore, no longer entitled to claim the refund or issuance of a tax credit certificate for the amount thereof.

On 15 April 1999, BPI filed with the Bureau of Internal Revenue (BIR) its final adjusted Corporate Annual Income Tax Return (ITR) for the taxable year ending on **31 December 1998**, showing a taxable income of ₱1,773,236,745.00 and a total tax due of **₱602,900,493.00**.

For the same taxable year 1998, BPI already made income tax payments for the first three quarters, which amounted to **₱563,547,470.46**.[2] The bank also received income in 1998

[1] Penned by Associate Justice Bienvenido L. Reyes with Associate Justices Godardo A. Jacinto and Rosalinda Asuncion-Vicente, concurring. *Rollo,* pp. 25-33.

[2] Computed as follows:

Quarter covered	Date filed	Quarterly Income Tax Paid
1st Quarter	06-01-98	378,564,898.34
2nd Quarter	08-31-98	184,982,572.12
3rd Quarter	11-27-98	-----
Total		563,547,470.46

from various third persons, which, were already subjected to expanded withholding taxes amounting to **₱7,685,887.90**. BPI additionally acquired foreign tax credit when it paid the United States government taxes in the amount of $151,467.00, or the equivalent of **₱6,190,014.46**, on the operations of former's New York Branch. Finally, respondent BPI had carried over excess tax credit from the prior year, 1997, amounting to **₱59,424,222.00**.

Crediting the aforementioned amounts against the total tax due from it at the end of 1998, BPI computed an overpayment to the BIR of income taxes in the amount of **₱33,947,101.00**. The computation of BPI is reproduced below:

Total Income Taxes Due		₱602,900,493.00
Less: Tax Credits:		
Prior year's tax credits	₱59,424,222.00	
Quarterly payments	563,547,470.46	
Creditable taxes withheld	7,685,887.90	
Foreign tax credit	6,190,014.00	636,847,594.00
Net Tax Payable/(Refundable)		₱(33,947,101.00)

BPI opted to carry over its 1998 excess tax credit, in the amount of ₱33,947,101.00, to the succeeding taxable year ending **31 December 1999**.[3] For 1999, however, respondent BPI ended up with (1) a net loss in the amount of **₱615,742,102.00**; (2) its still unapplied excess tax credit carried over from 1998, in the amount of **₱33,947,101.00;** and (3) more excess tax credit, acquired in 1999, in the sum of **₱12,975,750.00**. So in 1999, the total excess tax credits of BPI increased to **₱46,922,851.00**, which it once more opted to carry over to the following taxable year.

For the taxable year ending **31 December 2000**, respondent BPI declared in its Corporate Annual ITR: (1) **zero** taxable income; (2) excess tax credit carried over from 1998 and 1999, amounting to **₱46,922,851.00**; and (3) even more excess tax

[3] Exhibit "A-2".

credit, gained in 2000, in the amount of **₱25,207,939.00**. This time, BPI failed to indicate in its ITR its choice of whether to carry over its excess tax credits or to claim the refund of or issuance of a tax credit certificate for the amounts thereof.

On 3 April 2001, BPI filed with petitioner Commissioner of Internal Revenue (CIR) an administrative claim for refund in the amount of **₱33,947,101.00**, representing its excess creditable income tax for 1998.

The CIR failed to act on the claim for tax refund of BPI. Hence, BPI filed a Petition for Review before the CTA, docketed as CTA Case No. 6276.

The CTA promulgated its Decision in CTA Case No. 6276 on 12 March 2003, ruling therein that since BPI had opted to carry over its 1998 excess tax credit to 1999 and 2000, it was barred from filing a claim for the refund of the same.

The CTA relied on the *irrevocability rule* laid down in Section 76 of the National Internal Revenue Code (NIRC) of 1997, which states that once the taxpayer opts to carry over and apply its excess income tax to succeeding taxable years, its option shall be irrevocable for that taxable period and no application for tax refund or issuance of a tax credit shall be allowed for the same.

The CTA Decision adjudged:

> A close scrutiny of the 1998 income tax return of [BPI] reveals that it opted to carry over its excess tax credits, the amount subject of this claim, to the succeeding taxable year by placing an "x" mark on the corresponding box of said return (Exhibits A-2 & 3-a). For the year 1999, [BPI] again manifested its intention to carry over to the succeeding taxable period the subject claim together with the current excess tax credits (Exhibit J). Still unable to apply its prior year's excess credits in 1999 as it ended up in a net loss position, petitioner again carried over the said excess credits in the year 2000 (Exhibit K).
>
> The court already categorically ruled in a number of cases that once the option to carry-over and apply the excess quarterly income tax against the income tax due for the taxable quarters of the

succeeding taxable years has been made, such option shall be considered irrevocable and no application for cash refund or issuance of a tax credit certificate shall be allowed therefore (*Pilipinas Transport Industries vs. Commissioner of Internal Revenue*, CTA Case No. 6073, dated March 1, 2002; *Pilipinas Hino, Inc. vs. Commissioner of Internal* Revenue, CTA Case No. 6074, dated April 19, 2002; *Philam Asset Management, Inc. vs. Commissioner of Internal Revenue,* CTA Case No. 6210, dated May 2, 2002; *The Philippine Banking Corporation (now known as Global Business Bank, Inc.) vs. Commissioner of Internal Revenue*, CTA Resolution, CTA Case No. 6280, August 16, 2001. Since [BPI] already exercised the irrevocable option to carry over its excess tax credits for the year 1998 to the succeeding years 1999 and 2000, it is, therefore, no longer entitled to claim for a refund or issuance of a tax credit certificate.[4]

In the end, the CTA decreed:

IN VIEW OF ALL THE FOREGOING, the instant petition for review is hereby DENIED for lack of merit.[5]

BPI filed a Motion for Reconsideration of the foregoing Decision, but the CTA denied the same in a Resolution dated 3 June 2003.

BPI filed an appeal with the Court of Appeals, docketed as CA-G.R. SP No. 77655. On 29 April 2005, the Court of Appeals rendered its Decision, reversing that of the CTA and holding that BPI was entitled to a refund of the excess income tax it paid for 1998.

The Court of Appeals conceded that BPI indeed opted to carry over its excess tax credit in 1998 to 1999 by placing an "x" mark on the corresponding box of its 1998 ITR. Nonetheless, there was no actual carrying over of the excess tax credit, given that BPI suffered a net loss in 1999, and was not liable for any income tax for said taxable period, against which the 1998 excess tax credit could have been applied.

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[4] CA *rollo*, pp. 28-29.

[5] CA *rollo*, p. 29.

The Court of Appeals added that even if Section 76 was to be construed strictly and literally, the *irrevocability rule* would still not bar BPI from seeking a tax refund of its 1998 excess tax credit despite previously opting to carry over the same. The phrase "for that taxable period" qualified the irrevocability of the option of BIR to carry over its 1998 excess tax credit to only the 1999 taxable period; such that, when the 1999 taxable period expired, the irrevocability of the option of BPI to carry over its excess tax credit from 1998 also expired.

The Court of Appeals further reasoned that the government would be unjustly enriched should the appellate court hold that the *irrevocability rule* barred the claim for refund of a taxpayer, who previously opted to carry-over its excess tax credit, but was not able to use the same because it suffered a net loss in the succeeding year.

Finally, the appellate court cited *BPI-Family Savings Bank, Inc. v. Court of Appeals*[6] wherein this Court held that if a taxpayer suffered a net loss in a year, thus, incurring no tax liability to which the tax credit from the previous year could be applied, there was no reason for the BIR to withhold the tax refund which rightfully belonged to the taxpayer.[7]

In a Resolution dated 20 April 2007, the Court of Appeals denied the Motion for Reconsideration of the CIR.[8]

Hence, the CIR filed the instant Petition for Review, alleging that:

I

THE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR IN HOLDING THAT THE "IRREVOCABILITY RULE" UNDER SECTION 76 OF THE TAX CODE DOES NOT OPERATE TO BAR PETITIONER FROM ASKING FOR A TAX REFUND.

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[6] 386 Phil. 719 (2000).

[7] *Id.* at 727.

[8] *Rollo*, pp. 34-39.

II

THE COURT OF APPEALS COMMITTED GRAVE ERROR WHEN IT REVERSED AND SET ASIDE THE DECISION OF THE COURT OF TAX APPEALS AND HELD THAT RESPONDENT IS ENTITLED TO THE CLAIMED TAX REFUND.

The Court finds merit in the instant Petition.

The Court of Appeals erred in relying on *BPI-Family*, missing significant details that rendered said case inapplicable to the one at bar.

In *BPI-Family*, therein petitioner BPI-Family declared in its Corporate Annual ITR for 1989 excess tax credits of ₱185,001.00 from 1988 and ₱112,491.00 from 1989, totaling ₱297,492.00. BPI-Family clearly indicated in the same ITR that it was carrying over said excess tax credits to the following year. But on 11 October 1990, BPI-Family filed a claim for refund of its ₱112,491.00 tax credit from 1989. When no action from the BIR was forthcoming, BPI-Family filed its claim with the CTA. The CTA denied the claim for refund of BPI-Family on the ground that, since the bank declared in its 1989 ITR that it would carry over its tax credits to the following year, it should be presumed to have done so. In its Motion for Reconsideration filed with the CTA, BPI-Family submitted its final adjusted ITR for 1989 showing that it incurred ₱52,480,173.00 net loss in 1990. Still, the CTA denied the Motion for Reconsideration of BPI-Family. The Court of Appeals likewise denied the appeal of BPI-Family and merely affirmed the judgment of the CTA. The Court, however, reversed the CTA and the Court of Appeals.

This Court decided to grant the claim for refund of BPI-Family after finding that the bank had presented sufficient evidence to prove that it incurred a net loss in 1990 and, thus, had no tax liability to which its tax credit from 1989 could be applied. The Court stressed in *BPI Family* that "the undisputed fact is that [BPI-Family] suffered a net loss in 1990; accordingly, it incurred no tax liability to which the tax credit could be applied. Consequently, there is no reason for the BIR and this Court to withhold the tax refund which rightfully belongs to the [BPI-

Family]." It was on the basis of this fact that the Court granted the appeal of BPI-Family, brushing aside all procedural and technical objections to the same through the following pronouncements:

> Finally, respondents argue that tax refunds are in the nature of tax exemptions and are to be construed *strictissimi juris* against the claimant. Under the facts of this case, we hold that [BPI-Family] has established its claim. [BPI-Family] may have failed to strictly comply with the rules of procedure; it may have even been negligent. These circumstances, however, should not compel the Court to disregard this cold, undisputed fact: that petitioner suffered a net loss in 1990, and that it could not have applied the amount claimed as tax credits.
>
> Substantial justice, equity and fair play are on the side of [BPI-Family]. Technicalities and legalisms, however exalted, should not be misused by the government to keep money not belonging to it and thereby enrich itself at the expense of its law-abiding citizens. If the State expects its taxpayers to observe fairness and honesty in paying their taxes, so must it apply the same standard against itself in refunding excess payments of such taxes. Indeed, the State must lead by its own example of honor, dignity and uprightness.[9]

It is necessary for this Court, however, to emphasize that *BPI-Family* involved tax credit acquired by the bank in 1989, which it initially opted to carry over to 1990. The prevailing tax law then was the **NIRC of 1985**, Section 79[10] of which provided:

> Sec. 79. *Final Adjustment Return.* – Every corporation liable to tax under Section 24 shall file a final adjustment return covering the total net income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable net income of that year the corporation shall either:

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[9] *BPI-Family Savings Bank, Inc. v. Court of Appeals, supra* note 6 at 728-729.

[10] The provision was erroneously cited as Section 69 in *BPI-Family*. While the said provision was indeed Section 69 of the NIRC of 1977, it was already re-numbered as Section 79 of the NIRC of 1985.

(a) Pay the excess tax still due; or

(b) Be refunded the excess amount paid, as the case may be.

In case the corporation is entitled to a **refund** of the excess estimated quarterly income taxes-paid, the refundable amount shown on its final adjustment return may be **credited** against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable year. (Emphases ours.)

By virtue of the afore-quoted provision, the taxpayer with excess income tax was given the option to either (1) refund the amount; or (2) credit the same to its tax liability for succeeding taxable periods.

Section 79 of the NIRC of 1985 was reproduced as Section 76 of the **NIRC of 1997**,[11] with the addition of one important sentence, which laid down the ***irrevocability rule***:

Section 76. *Final Adjustment Return*. – Every corporation liable to tax under Section 24 shall file a final adjustment return covering the total net income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable net income of that year the corporation shall either:

(a) Pay the excess tax still due; or

(b) Be refunded the excess amount paid, as the case may be.

In case the corporation is entitled to a **refund** of the excess estimated quarterly income taxes paid, the refundable amount shown on its final adjustment return may be **credited** against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years. **Once the option to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for tax refund or issuance of a tax credit certificate shall be allowed therefor.** (Emphases ours.)

When *BPI-Family* was decided by this Court, it did not yet have the *irrevocability rule* to consider. Hence, *BPI-Family* cannot be cited as a precedent for this case.

[11] Took effect on 1 January 1998.

The factual background of *Philam Asset Management, Inc. v. Commissioner of Internal Revenue*,[12] cited by the CIR, is closer to the instant Petition. Both involve tax credits acquired and claims for refund filed more than a decade after those in *BPI-Family*, to which Section 76 of the NIRC of 1997 already apply.

The Court, in *Philam*, recognized the two options offered by Section 76 of the NIRC of 1997 to a taxable corporation whose total quarterly income tax payments in a given taxable year exceeds its total income tax due. These options are: (1) filing for a *tax refund* or (2) availing of a *tax credit*. The Court further explained:

> The first option is relatively simple. Any tax on income that is paid in excess of the amount due the government may be refunded, provided that a taxpayer properly applies for the refund.
>
> The second option works by applying the refundable amount, as shown on the [Final Adjustment Return (FAR)] of a given taxable year, against the estimated quarterly income tax liabilities of the succeeding taxable year.
>
> **These two options under Section 76 are alternative in nature. The choice of one precludes the other.** Indeed, in *Philippine Bank of Communications v. Commissioner of Internal Revenue*, the Court ruled that a corporation must signify its intention — whether to request a tax refund or claim a tax credit — by marking the corresponding option box provided in the FAR. While a taxpayer is required to mark its choice in the form provided by the BIR, this requirement is only for the purpose of facilitating tax collection.
>
> One cannot get a tax refund and a tax credit at the same time for the same excess income taxes paid.[13] x x x

The Court categorically declared in *Philam* that: "**Section 76 remains clear and unequivocal. Once the carry-over option is taken, actually or constructively, it becomes irrevocable.**" It mentioned no exception or qualification to the *irrevocability rule*.

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[12] G.R. No. 156637 and No. 162004, 14 December 2005, 477 SCRA 761.

[13] *Id*. at 772.

Hence, the controlling factor for the operation of the *irrevocability rule* is that the taxpayer chose an option; and once it had already done so, it could no longer make another one. Consequently, after the taxpayer opts to carry-over its excess tax credit to the following taxable period, the question of whether or not it actually gets to apply said tax credit is irrelevant. Section 76 of the NIRC of 1997 is explicit in stating that once the option to carry over has been made, "no application for tax refund or issuance of a tax credit certificate shall be allowed therefor."

The last sentence of Section 76 of the NIRC of 1997 reads: "Once the option to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years has been made, such option **shall be considered irrevocable for that taxable period** and no application for tax refund or issuance of a tax credit certificate shall be allowed therefor." The phrase "for that taxable period" merely identifies the excess income tax, subject of the option, by referring to the taxable period when it was acquired by the taxpayer. In the present case, the excess income tax credit, which BPI opted to carry over, was acquired by the said bank during the taxable year 1998. The option of BPI to carry over its 1998 excess income tax credit is irrevocable; it cannot later on opt to apply for a refund of the very same 1998 excess income tax credit.

The Court of Appeals mistakenly understood the phrase "for that taxable period" as a prescriptive period for the *irrevocability rule*. This would mean that since the tax credit in this case was acquired in 1998, and BPI opted to carry it over to 1999, then the irrevocability of the option to carry over expired by the end of 1999, leaving BPI free to again take another option as regards its 1998 excess income tax credit. This construal effectively renders nugatory the *irrevocability rule*. The evident intent of the legislature, in adding the last sentence to Section 76 of the NIRC of 1997, is to keep the taxpayer from flip-flopping on its options, and avoid confusion and complication as regards said taxpayer's excess tax credit. The interpretation

of the Court of Appeals only delays the flip-flopping to the end of each succeeding taxable period.

The Court similarly disagrees in the declaration of the Court of Appeals that to deny the claim for refund of BPI, because of the *irrevocability rule*, would be tantamount to unjust enrichment on the part of the government. The Court addressed the very same argument in *Philam*, where it elucidated that there would be no unjust enrichment in the event of denial of the claim for refund under such circumstances, because there would be no forfeiture of any amount in favor of the government. The amount being claimed as a refund would remain in the account of the taxpayer until utilized in succeeding taxable years,[14] as provided in Section 76 of the NIRC of 1997. It is worthy to note that unlike the option for refund of excess income tax, which prescribes after two years from the filing of the FAR, there is no prescriptive period for the carrying over of the same. Therefore, the excess income tax credit of BPI, which it acquired in 1998 and opted to carry over, may be repeatedly carried over to succeeding taxable years, *i.e.*, to 1999, 2000, 2001, and so on and so forth, until actually applied or credited to a tax liability of BPI.

Finally, while the Court, in *Philam*, was firm in its position that the choice of option as regards the excess income tax shall be irrevocable, it was less rigid in the determination of which option the taxpayer actually chose. It did not limit itself to the indication by the taxpayer of its option in the ITR.

Thus, failure of the taxpayer to make an appropriate marking of its option in the ITR does not automatically mean that the taxpayer has opted for a tax credit. The Court ratiocinated in G.R. No. 156637[15] of *Philam*:

> One cannot get a tax refund and a tax credit at the same time for the same excess income taxes paid. **Failure to signify one's intention**

[14] *Philam Asset Management, Inc. v. Commissioner of Internal Revenue, supra* note 12 at 768.

[15] *Philam* actually involved two consolidated cases, G.R. No. 156637 and G.R. No. 162004. In **G.R. No. 156637**, therein petitioner *Philam* paid

in the FAR does not mean outright barring of a valid request for a refund, should one still choose this option later on. A tax credit should be construed merely as an alternative remedy to a tax refund under Section 76, subject to prior verification and approval by respondent.

The reason for requiring that a choice be made in the FAR upon its filing is to ease tax administration, particularly the self-assessment and collection aspects. A taxpayer that makes a choice expresses certainty or preference and thus demonstrates clear diligence. Conversely, a taxpayer that makes no choice expresses uncertainty or lack of preference and hence shows simple negligence or plain oversight.

x x x x x x x x x

x x x Despite the failure of [Philam] to make the appropriate marking in the BIR form, the **filing of its written claim effectively serves as an expression of its choice to request a tax refund**, instead of a tax credit. To assert that any future claim for a tax refund will be instantly hindered by a failure to signify one's intention in the FAR is to render nugatory the clear provision that allows for a two-year prescriptive period.[16] (Emphases ours.)

Philam reveals a meticulous consideration by the Court of the evidence submitted by the parties and the circumstances surrounding the taxpayer's option to carry over or claim for refund. When circumstances show that a choice has been made by the taxpayer to carry over the excess income tax as credit,

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excess income tax for 1997. It did not indicate its option to carry over or refund said excess income tax in its ITR for 1997. On 11 September 1998, however, it filed a claim for refund of the same. In **G.R. No. 162004**, *Philam* incurred a net loss in 1998 and had unapplied excess creditable income tax for the same period in the amount of ₱459,756.07. In its ITR for the succeeding year of 1999, *Philam* reported a tax due of only ₱80,042.00, creditable withholding tax of ₱915,995.00, and excess credit carried over from 1998 of ₱459,756.07. On 14 November 2000, Philam filed a claim for tax refund, alleging that its tax liability for 1999 was deducted from its creditable withholding tax for the same taxable period; leaving its excess tax credit carried over from 1998 still unapplied.

[16] *Philam Asset Management, Inc. v. Commissioner of Internal Revenue, supra* note 12 at 772, 776. See also *Commissioner of Internal Revenue v. PERF Realty Corporation***,** G.R. No. 163345, 4 July 2008.

it should be respected; but when indubitable circumstances clearly show that another choice – a tax refund – is in order, it should be granted. "Technicalities and legalisms, however exalted, should not be misused by the government to keep money not belonging to it and thereby enrich itself at the expense of its law-abiding citizens."

Therefore, as to which option the taxpayer chose is generally a matter of evidence. It is axiomatic that a claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund. Tax refunds, like tax exemptions, are construed strictly against the taxpayer.[17]

In the Petition at bar, BPI was unable to discharge the burden of proof necessary for the grant of a refund. BPI expressly indicated in its ITR for 1998 that it was carrying over, instead of refunding, the excess income tax it paid during the said taxable year. BPI consistently reported the said amount in its ITRs for 1999 and 2000 as credit to be applied to any tax liability the bank may incur; only, no such opportunity arose because it suffered a net loss in 1999 and incurred zero tax liability in 2000. In G.R. No. 162004 of *Philam*, the Court found:

> First, the fact that it filled out the portion "Prior Year's Excess Credits" in its 1999 FAR means that it categorically availed itself of the carry-over option. In fact, the line that precedes that phrase in the BIR form clearly states "Less: Tax Credits/Payments." The contention that it merely filled out that portion because it was a requirement – and that to have done otherwise would have been tantamount to falsifying the FAR – is a long shot.
>
> The FAR is the most reliable firsthand evidence of corporate acts pertaining to income taxes. In it are found the itemization and summary of additions to and deductions from income taxes due. These entries are not without rhyme or reason. They are required, because they facilitate the tax administration process.[18]

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[17] *Paseo Realty and Development Corporation v. Court of Appeals*, G.R. No. 119286, 13 October 2004, 440 SCRA 235, 247.

[18] *Philam Asset Management, Inc. v. Commissioner of Internal Revenue*, *supra* note 12 at 778.

BPI itself never denied that its original intention was to carry over the excess income tax credit it acquired in 1998, and only chose to refund the said amount when it was unable to apply the same to any tax liability in the succeeding taxable years. There can be no doubt that BPI opted to carry over its excess income tax credit from 1998; it only subsequently changed its mind – which it was barred from doing by the *irrevocability rule*.

The choice by BPI of the option to carry over its 1998 excess income tax credit to succeeding taxable years, which it explicitly indicated in its 1998 ITR, is irrevocable, regardless of whether it was able to actually apply the said amount to a tax liability. The reiteration by BPI of the carry over option in its ITR for 1999 was already a superfluity, as far as its 1998 excess income tax credit was concerned, given the irrevocability of the initial choice made by the bank to carry over the said amount. For the same reason, the failure of BPI to indicate any option in its ITR for 2000 was already immaterial to its 1998 excess income tax credit.

WHEREFORE, the instant Petition for Review of the Commissioner for Internal Revenue is *GRANTED*. The Decision dated 29 April 2005 and the Resolution dated 20 April 2007 of the Court of Appeals in CA-G.R. SP No. 77655 are *REVERSED* and *SET ASIDE*. The Decision dated 12 March 2003 of the Court of Tax Appeals in CTA Case No. 6276, denying the claim of respondent Bank of the Philippine Islands for the refund of its 1998 excess income tax credits, is *REINSTATED*. No costs.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 180066. July 7, 2009]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **PHILIPPINE AIRLINES, INC.,** *respondent.*

SYLLABUS

1. TAXATION; PRESIDENTIAL DECREE NO. 1590 (FRANCHISE OF PHILIPPINE AIRLINES, INC. (PAL); PROVIDES FOR THE RULES ON THE TAXATION OF PAL. — Presidential Decree No. 1590, the franchise of PAL, the taxation of PAL, during the lifetime of its franchise, shall be governed by two fundamental rules, particularly: (1) PAL shall pay the Government either basic corporate income tax or franchise tax, whichever is lower; and (2) the tax paid by PAL, under either of these alternatives, shall be in lieu of all other taxes, duties, royalties, registration, license, and other fees and charges, except only real property tax. The basic corporate income tax of PAL shall be based on its annual net taxable income, computed in accordance with the National Internal Revenue Code (NIRC). Presidential Decree No. 1590 also explicitly authorizes PAL, in the computation of its basic corporate income tax, to (1) depreciate its assets twice as fast the normal rate of depreciation; and (2) carry over as a deduction from taxable income any net loss incurred in any year up to five years following the year of such loss. Franchise tax, on the other hand, shall be two per cent (2%) of the gross revenues derived by PAL from all sources, whether transport or nontransport operations. However, with respect to international air-transport service, the franchise tax shall only be imposed on the gross passenger, mail, and freight revenues of PAL from its outgoing flights. x x x Hence, a domestic corporation must pay whichever is higher of: (1) the income tax under Section 27(A) of the NIRC of 1997, computed by applying the tax rate therein to the taxable income of the corporation; or (2) the MCIT under Section 27(E), also of the NIRC of 1997, equivalent to 2% of the gross income of the corporation. Although this may be the general rule in determining the income tax due from a domestic corporation under the NIRC of 1997, it can only be applied to PAL to the extent allowed by

the provisions in the franchise of PAL specifically governing its taxation. x x x Section 13 of Presidential Decree No. 1520 permits PAL to pay *whichever is lower* of the basic corporate income tax or the franchise tax; and the tax so paid shall be *in lieu of all other taxes*, except only real property tax. Hence, under its franchise, PAL is to pay the least amount of tax possible. Section 13 of Presidential Decree No. 1520 is not unusual. A public utility is granted special tax treatment (including tax exceptions/exemptions) under its franchise, as an inducement for the acceptance of the franchise and the rendition of public service by the said public utility. In this case, in addition to being a public utility providing air-transport service, PAL is also the official flag carrier of the country.

2. ID.; ID.; ID.; THE SPECIAL LAW SHALL PREVAIL OVER GENERAL LAW WHICH SHALL BE RESORTED TO ONLY TO SUPPLY DEFICIENCIES OF THE FORMER; APPLICATION IN CASE AT BAR. — Presidential Decree No. 1590 explicitly allows PAL, in computing its basic corporate income tax, to carry over as deduction any net loss incurred in any year, up to five years following the year of such loss. Therefore, Presidential Decree No. 1590 does not only consider the possibility that, at the end of a taxable period, PAL shall end up with **zero annual net taxable income** (when its deductions exactly equal its gross income), as what happened in the case at bar, but also the likelihood that PAL shall incur **net loss** (when its deductions exceed its gross income). If PAL is subjected to MCIT, the provision in Presidential Decree No. 1590 on net loss carry-over will be rendered nugatory. Net loss carry-over is material only in computing the annual net taxable income to be used as basis for the basic corporate income tax of PAL; but PAL will never be able to avail itself of the basic corporate income tax option when it is in a net loss position, because it will always then be compelled to pay the necessarily higher MCIT. x x x Between Presidential Decree No. 1520, on one hand, which is a special law specifically governing the franchise of PAL, issued on 11 June 1978; and the NIRC of 1997, on the other, which is a general law on national internal revenue taxes, that took effect on 1 January 1998, the former prevails. The rule is that on a specific matter, the special law shall prevail over the general law, which shall be resorted to only to supply deficiencies in the former. In

addition, where there are two statutes, the earlier special and the later general – the terms of the general broad enough to include the matter provided for in the special – the fact that one is special and the other is general creates a presumption that the special is to be considered as remaining an exception to the general, one as a general law of the land, the other as the law of a particular case. It is a canon of statutory construction that a later statute, general in its terms and not expressly repealing a prior special statute, will ordinarily not affect the special provisions of such earlier statute. x x x While Section 16 of Presidential Decree No. 1590 provides that the franchise is granted to PAL with the understanding that it shall be subject to amendment, alteration, or repeal by competent authority when the public interest so requires, Section 24 of the same Decree also states that the franchise or any portion thereof may only be modified, amended, or repealed expressly by a **special law or decree** that shall specifically modify, amend, or repeal said franchise or any portion thereof. x x x For two decades following the grant of its franchise by Presidential Decree No. 1590 in 1978, PAL was only being held liable for the basic corporate income tax or franchise tax, whichever was lower; and its payment of either tax was in lieu of all other taxes, except real property tax, in accordance with the plain language of Section 13 of the charter of PAL. Therefore, the exemption of PAL from "all other taxes" was not just a presumption, but a previously established, accepted, and respected fact, even for the BIR. The MCIT was a new tax introduced by Republic Act No. 8424. Under the doctrine of strict interpretation, the burden is upon the CIR to primarily prove that the new MCIT provisions of the NIRC of 1997, clearly, expressly, and unambiguously extend and apply to PAL, despite the latter's existing tax exemption. To do this, the CIR must convince the Court that the MCIT is a basic corporate income tax, and is not covered by the "in lieu of all other taxes" clause of Presidential Decree No. 1590. Since the CIR failed in this regard, the Court is left with no choice but to consider the MCIT as one of "all other taxes," from which PAL is exempt under the explicit provisions of its charter. Not being liable for MCIT in FY 2000-2001, it necessarily follows that PAL need not apply for relief from said tax as the CIR maintains.

3. ID.; NATIONAL INTERNAL REVENUE CODE OF 1997; TAXABLE INCOME; DEFINITION THEREOF CONSTRUED IN RELATION TO THE PROVISIONS OF PRESIDENTIAL DECREE NO. 1590. — Section 13(a) of Presidential Decree No. 1590 further provides that the basic corporate income tax of PAL shall be based on its annual net taxable income. This is consistent with Section 27(A) of the NIRC of 1997, which provides that the rate of basic corporate income tax, which is 32% beginning 1 January 2000, shall be imposed on the *taxable income* of the domestic corporation. Taxable income is defined under Section 31 of the NIRC of 1997 as the **pertinent items of gross income specified in the said Code, less the deductions and/or personal and additional exemptions, if any, authorized for such types of income by the same Code or other special laws.** The gross income, referred to in Section 31, is described in Section 32 of the NIRC of 1997 as income from whatever source, including compensation for services; the conduct of trade or business or the exercise of profession; dealings in property; interests; rents; royalties; dividends; annuities; prizes and winnings; pensions; and a partner's distributive share in the net income of a general professional partnership. Pursuant to the NIRC of 1997, the taxable income of a domestic corporation may be arrived at by subtracting from gross income deductions authorized, not just by the NIRC of 1997, but also by special laws. Presidential Decree No. 1590 may be considered as one of such special laws authorizing PAL, in computing its annual net taxable income, on which its basic corporate income tax shall be based, to deduct from its gross income the following: (1) depreciation of assets at twice the normal rate; and (2) net loss carry-over up to five years following the year of such loss.

4. ID.; ID.; MINIMUM CORPORATE INCOME TAX (MCIT); GROSS INCOME, CONSTRUED. — In comparison, the 2% MCIT under Section 27(E) of the NIRC of 1997 shall be based on the **gross income** of the domestic corporation. The Court notes that gross income, as the basis for MCIT, is given a special definition under Section 27(E)(4) of the NIRC of 1997, different from the general one under Section 34 of the same Code. According to the last paragraph of Section 27(E)(4) of the NIRC of 1997, gross income of a domestic corporation engaged in the sale of service means **gross receipts, less sales returns, allowances, discounts and cost of services. "Cost of services" refers to all direct**

cost and expenses necessarily incurred to provide the services required by the customers and clients including (a) salaries and employee benefits of personnel, consultants, and specialists directly rendering the service; and (b) cost of facilities directly utilized in providing the service, such as depreciation or rental of equipment used and cost of supplies. Noticeably, inclusions in and exclusions/deductions from gross income for MCIT purposes are limited to those directly arising from the conduct of the taxpayer's business. It is, thus, more limited than the gross income used in the computation of basic corporate income tax. There is an apparent distinction under the NIRC of 1997 between taxable income, which is the basis for basic corporate income tax under Section 27(A); and gross income, which is the basis for the MCIT under Section 27(E). The two terms have their respective technical meanings, and cannot be used interchangeably. The same reasons prevent this Court from declaring that the basic corporate income tax, for which PAL is liable under Section 13(a) of Presidential Decree No. 1590, also covers MCIT under Section 27(E) of the NIRC of 1997, since the basis for the first is the annual net taxable income, while the basis for the second is gross income.

5. ID.; ID.; REVENUE MEMORANDUM CIRCULAR (RMC); ADMINISTRATIVE RULES AND REGULATIONS ONLY OPERATES PROSPECTIVELY; VIOLATION IN CASE AT BAR. — It is significant to note that RMC No. 66-2003 was issued only on 14 October 2003, more than two years after FY 2000-2001 of PAL ended on 31 March 2001. This violates the well-entrenched principle that statutes, including administrative rules and regulations, operate prospectively only, unless the legislative intent to the contrary is manifest by express terms or by necessary implication. Moreover, despite the claims of the CIR that RMC No. 66-2003 is just a clarificatory and internal issuance, the Court observes that RMC No. 66-2003 does more than just clarify a previous regulation and goes beyond mere internal administration. It effectively increases the tax burden of PAL and other taxpayers who are similarly situated, making them liable for a tax for which they were not liable before. Therefore, RMC No. 66-2003 cannot be given effect without previous notice or publication to those who will be affected thereby.

6. ID.; COURT OF TAX APPEALS (CTA); WHEN NOT BOUND BY THE CONSTRUCTION OF THE STATUTE MADE BY THE COMMISSIONER OF INTERNAL REVENUE (CIR); APPLICATION IN CASE AT BAR. — Even conceding that the construction of a statute by the CIR is to be given great weight, the courts, which include the CTA, are not bound thereby if such construction is erroneous or is clearly shown to be in conflict with the governing statute or the Constitution or other laws. "It is the role of the Judiciary to refine and, when necessary, correct constitutional (and/or statutory) interpretation, in the context of the interactions of the three branches of the government." It is furthermore the rule of long standing that this Court will not set aside lightly the conclusions reached by the CTA which, by the very nature of its functions, is dedicated exclusively to the resolution of tax problems and has, accordingly, developed an expertise on the subject, unless there has been an abuse or improvident exercise of authority. In the Petition at bar, the CTA *en banc* and in division both adjudged that PAL is not liable for MCIT under Presidential Decree No. 1590, and this Court has no sufficient basis to reverse them. As to the assertions of the CIR that exemption from tax is not presumed, and the one claiming it must be able to show that it indubitably exists, the Court recalls its pronouncements in *Commissioner of Internal Revenue v. Court of Appeals*: We disagree. Petitioner Commissioner of Internal Revenue erred in applying the principles of tax exemption without first applying the well-settled **doctrine of strict interpretation in the imposition of taxes. It is obviously both illogical and impractical to determine who are exempted without first determining who are covered by the aforesaid provision.** The Commissioner should have determined first if private respondent was covered by Section 205, applying the rule of strict interpretation of laws imposing taxes and other burdens on the populace, before asking Ateneo to prove its exemption therefrom. The Court takes this occasion to reiterate the hornbook doctrine in the interpretation of tax laws that "(a) statute will not be construed as imposing a tax unless it does so clearly, expressly, and unambiguously. x x x (A) tax cannot be imposed without clear and express words for that purpose. Accordingly, **the general rule of requiring adherence to the letter in construing statutes applies with peculiar strictness to tax laws and the provisions of a taxing act are not to be extended by implication." Parenthetically,**

in answering the question of who is subject to tax statutes, it is basic that "in case of doubt, such statutes are to be construed most strongly against the government and in favor of the subjects or citizens because burdens are not to be imposed nor presumed to be imposed beyond what statutes expressly and clearly import."

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Eduardo R. Ceniza and *Oscar C. Ventanilla, Jr.* for respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

Before this Court is a Petition for Review on *Certiorari*, under Rule 45 of the Revised Rules of Court, seeking the reversal and setting aside of the Decision[1] dated 9 August 2007 and Resolution[2] dated 11 October 2007 of the Court of Tax Appeals (CTA) *en banc* in CTA E.B. No. 246. The CTA *en banc* affirmed the Decision[3] dated 31 July 2006 of the CTA Second Division in C.T.A. Case No. 7010, ordering the cancellation and withdrawal of Preliminary Assessment Notice (PAN) No. INC FY-3-31-01-000094 dated 3 September 2003 and Formal Letter of Demand dated 12 January 2004, issued by the Bureau of Internal Revenue (BIR) against respondent Philippine Airlines, Inc. (PAL), for the payment of Minimum Corporate Income Tax (MCIT) in the amount of ₱272,421,886.58.

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[1] Penned by Associate Justice Erlinda P. Uy with Presiding Justice Ernesto D. Acosta and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Caesar A. Casanova, and Olga Palanca-Enriquez, concurring; *rollo*, pp. 43-56.

[2] *Id.* at 67-68.

[3] Penned by Associate Justice Juanito C. Castañeda with Associate Justices Erlinda P. Uy and Olga Palanca-Enriquez, concurring, *id.* at 70-90.

There is no dispute as to the antecedent facts of this case.

PAL is a domestic corporation organized under the corporate laws of the Republic of the Philippines; declared the national flag carrier of the country; and the grantee under Presidential Decree No. 1590[4] of a franchise to establish, operate, and maintain transport services for the carriage of passengers, mail, and property by air, in and between any and all points and places throughout the Philippines, and between the Philippines and other countries.[5]

For its fiscal year ending 31 March 2001 (FY 2000-2001), PAL allegedly incurred zero taxable income,[6] which left it with unapplied creditable withholding tax[7] in the amount of ₱2,334,377.95. PAL did not pay any MCIT for the period.

In a letter dated 12 July 2002, addressed to petitioner Commissioner of Internal Revenue (CIR), PAL requested for the refund of its unapplied creditable withholding tax for FY 2000-2001. PAL attached to its letter the following: (1) Schedule of Creditable Tax Withheld at Source for FY 2000-2001; (2) Certificates of Creditable Taxes Withheld; and (3) Audited Financial Statements.

Acting on the aforementioned letter of PAL, the Large Taxpayers Audit and Investigation Division 1 (LTAID 1) of the BIR Large Taxpayers Service (LTS), issued on 16 August 2002, Tax Verification Notice No. 00201448, authorizing Revenue Officer Jacinto Cueto, Jr. (Cueto) to verify the supporting documents and pertinent records relative to the claim of PAL for refund of its unapplied creditable withholding tax for FY

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[4] An Act Granting a New Franchise to Philippine Airlines, Inc. to Establish, Operate, and Maintain Air-Transport Services in the Philippines and Other Countries.

[5] Section 1 of Presidential Decree No. 1590.

[6] According to the Annual Income Tax Return of PAL for the fiscal year in question, its allowable deductions exactly equalled its total gross income of ₱39,470,862,232.00, thus, leaving zero taxable income.

[7] Withheld at source, meaning, it was previously deducted and withheld by various withholding agents from the income payments made to PAL.

2000-20001. In a letter dated 19 August 2003, LTAID 1 Chief Armit S. Linsangan invited PAL to an informal conference at the BIR National Office in Diliman, Quezon City, on 27 August 2003, at 10:00 a.m., to discuss the results of the investigation conducted by Revenue Officer Cueto, supervised by Revenue Officer Madelyn T. Sacluti.

BIR officers and PAL representatives attended the scheduled informal conference, during which the former relayed to the latter that the BIR was denying the claim for refund of PAL and, instead, was assessing PAL for deficiency MCIT for FY 2000-2001. The PAL representatives argued that PAL was not liable for MCIT under its franchise. The BIR officers then informed the PAL representatives that the matter would be referred to the BIR Legal Service for opinion.

The LTAID 1 issued, on 3 September 2003, PAN No. INC FY-3-31-01-000094, which was received by PAL on 23 October 2003. LTAID 1 assessed PAL for ₱262,474,732.54, representing deficiency MCIT for FY 2000-2001, plus interest and compromise penalty, computed as follows:

Sales/Revenues from Operation	₱ 38,798,721,685.00
Less: Cost of Services	30,316,679,013.00
Gross Income from Operation	8,482,042,672.00
Add: Non-operating income	465,111,368.00
Total Gross Income for MCIT purposes	9,947,154,040.00[8]
Rate of Tax	2%
Tax Due	178,943,080.80
Add: 20% interest (8-16-00 to 10-31-03)	83,506,651.74
Compromise Penalty	25,000.00
Total Amount Due	₱ 262,474,732.54[9]

PAL protested PAN No. INC FY-3-31-01-000094 through a letter dated 4 November 2003 to the BIR LTS.

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[8] Should be ₱8,947,154,040.00.

[9] *Rollo*, p. 105.

On 12 January 2004, the LTAID 1 sent PAL a Formal Letter of Demand for deficiency MCIT for FY 2000-2001 in the amount of ₱271,421,886.58, based on the following calculation:

Sales/Revenues from Operation		₱ 38,798,721,685.00
Less: Cost of Services		
Direct Costs -	₱ 30,749,761,017.00	
Less: Non-deductible interest expense	433,082,004.00	30,316,679,013.00
Gross Income from Operation		₱ 8,482,042,672.00
Add: Non-operating Income		465,111,368.00
Total Gross Income for MCIT purposes		₱ 9,947,154,040.00
MCIT tax due		₱ 178,943,080.80
Interest – 20% per annum – 7/16/01 to 02/15/04		92,453,805.78
Compromise Penalty		25,000.00
Total MCIT due and demandable		₱ 271,421,886.58[10]

PAL received the foregoing Formal Letter of Demand on 12 February 2004, prompting it to file with the BIR LTS a formal written protest dated 13 February 2004.

The BIR LTS rendered on 7 May 2004 its Final Decision on Disputed Assessment, which was received by PAL on 26 May 2004. Invoking Revenue Memorandum Circular (RMC) No. 66-2003, the BIR LTS denied with finality the protest of PAL and reiterated the request that PAL immediately pay its deficiency MCIT for FY 2000-2001, inclusive of penalties incident to delinquency.

PAL filed a Petition for Review with the CTA, which was docketed as C.T.A. Case No. 7010 and raffled to the CTA Second Division. The CTA Second Division promulgated its Decision on 31 July 2006, ruling in favor of PAL. The dispositive portion of the judgment of the CTA Second Division reads:

> WHEREFORE, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, Assessment Notice No. INC FY-3-31-01-000094 and Formal Letter of Demand for the payment of deficiency Minimum Corporate Income Tax in the amount of ₱272,421,886.58 are hereby **CANCELLED** and **WITHDRAWN**.[11]

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[10] *Id.* at 114.

[11] *Id.* at 89.

In a Resolution dated 2 January 2007, the CTA Second Division denied the Motion for Reconsideration of the CIR.

It was then the turn of the CIR to file a Petition for Review with the CTA *en banc*, docketed as C.T.A. E.B. No. 246. The CTA *en banc* found that "the cited legal provisions and jurisprudence are teeming with life with respect to the grant of tax exemption too vivid to pass unnoticed," and that "the Court in Division correctly ruled in favor of the respondent [PAL] granting its petition for the cancellation of Assessment Notice No. INC FY-3-31-01-000094 and Formal Letter of Demand for the deficiency MCIT in the amount of ₱272,421,886.58."[12] Consequently, the CTA *en banc* denied the Petition of the CIR for lack of merit. The CTA *en banc* likewise denied the Motion for Reconsideration of the CIR in a Resolution dated 11 October 2007.

Hence, the CIR comes before this Court via the instant Petition for Review on *Certiorari*, based on the grounds stated hereunder:

THE COURT OF TAX APPEALS ERRED ON A QUESTION OF LAW IN ITS ASSAILED DECISION BECAUSE:

(1) [PAL] CLEARLY OPTED TO BE COVERED BY THE INCOME TAX PROVISION OF THE NATIONAL INTERNAL REVENUE CODE OF 1997 (NIRC OF 1997). (sic) AS AMENDED; HENCE, IT IS COVERED BY THE MCIT PROVISION OF THE SAME CODE.

(2) THE MCIT DOES NOT BELONG TO THE CATEGORY OF "OTHER TAXES" WHICH WOULD ENABLE RESPONDENT TO AVAIL ITSELF OF THE "IN LIEU" (sic) OF ALL OTHER TAXES" CLAUSE UNDER SECTION 13 OF P.D. NO. 1590 ("CHARTER").

(3) THE MCIT PROVISION OF THE NIRC OF 1997 IS NOT AN AMENDMENT OF [PAL'S] CHARTER.

(4) PAL IS NOT ONLY GIVEN THE PRIVILEGE TO CHOOSE BETWEEN WHAT WILL GIVE IT THE BENEFIT OF A LOWER TAX, BUT ALSO THE RESPONSIBILITY OF PAYING ITS SHARE OF THE TAX BURDEN, AS IS EVIDENT IN SECTION 22 OF RA NO. 9337.

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[12] *Id*. at 55.

(5) A CLAIM FOR EXEMPTION FROM TAXATION IS NEVER PRESUMED; [PAL] IS LIABLE FOR THE DEFICIENCY MCIT.[13]

There is only one vital issue that the Court must resolve in the Petition at bar, *i.e.*, whether PAL is liable for deficiency MCIT for FY 2000-2001.

The Court answers in the negative.

Presidential Decree No. 1590, the franchise of PAL, contains provisions specifically governing the taxation of said corporation, to wit:

> **Section 13.** In consideration of the franchise and rights hereby granted, the grantee shall pay to the Philippine Government during the life of this franchise **whichever of subsections (a) and (b) hereunder will result in a lower tax**:
>
> (a) The **basic corporate income tax** based on the **grantee's annual net taxable income** computed in accordance with the provisions of the National Internal Revenue Code; or
>
> (b) A **franchise tax** of two per cent (2%) of the gross revenues derived by the grantee from all sources, without distinction as to transport or nontransport operations; provided, that with respect to international air-transport service, only the gross passenger, mail, and freight revenues from its outgoing flights shall be subject to this tax.
>
> The tax paid by the grantee under either of the above alternatives shall be **in lieu of all other** taxes, duties, royalties, registration, license, and other fees and charges of any kind, nature, or description, imposed, levied, established, assessed, or collected by any municipal, city, provincial, or national authority or government agency, now or in the future, including but not limited to the following:
>
> 1. All taxes, duties, charges, royalties, or fees due on local purchases by the grantee of aviation gas, fuel, and oil, whether refined or in crude form, and whether such taxes, duties, charges, royalties, or fees are directly due from or imposable upon the purchaser or the seller, producer, manufacturer, or importer of said petroleum products but are billed or passed on to the grantee either as part of the price or cost thereof or by mutual agreement or other arrangement;

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[13] *Id.* at 17-18.

provided, that all such purchases by, sales or deliveries of aviation gas, fuel, and oil to the grantee shall be for exclusive use in its transport and nontransport operations and other activities incidental thereto;

2. All taxes, including compensating taxes, duties, charges, royalties, or fees due on all importations by the grantee of aircraft, engines, equipment, machinery, spare parts, accessories, commissary and catering supplies, aviation gas, fuel, and oil, whether refined or in crude form and other articles, supplies, or materials; provided, that such articles or supplies or materials are imported for the use of the grantee in its transport and nontransport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality, or price;

3. All taxes on lease rentals, interest, fees, and other charges payable to lessors, whether foreign or domestic, of aircraft, engines, equipment, machinery, spare parts, and other property rented, leased, or chartered by the grantee where the payment of such taxes is assumed by the grantee;

4. All taxes on interest, fees, and other charges on foreign loans obtained and other obligations incurred by the grantee where the payment of such taxes is assumed by the grantee;

5. All taxes, fees, and other charges on the registration, licensing, acquisition, and transfer of aircraft, equipment, motor vehicles, and all other personal and real property of the grantee; and

6. The corporate development tax under Presidential Decree No. 1158-A.

The grantee, shall, however, pay the **tax on its real property** in conformity with existing law.

For purposes of **computing the basic corporate income tax** as provided herein, the grantee is authorized:

(a) To **depreciate** its assets to the extent of not more than **twice as fast** the normal rate of depreciation; and

(b) To **carry over** as a deduction from taxable income any **net loss** incurred in any year up to five years following the year of such loss.

Section 14. The grantee shall pay either the franchise tax or the basic corporate income tax on quarterly basis to the Commissioner of Internal Revenue. Within sixty (60) days after the end of each of the first three quarters of the taxable calendar or fiscal year, the quarterly franchise or income-tax return shall be filed and payment of either the franchise or income tax shall be made by the grantee.

A final or an adjustment return covering the operation of the grantee for the preceding calendar or fiscal year shall be filed on or before the fifteenth day of the fourth month following the close of the calendar or fiscal year. The amount of the final franchise or income tax to be paid by the grantee shall be the balance of the total franchise or income tax shown in the final or adjustment return after deducting therefrom the total quarterly franchise or income taxes already paid during the preceding first three quarters of the same taxable year.

Any excess of the total quarterly payments over the actual annual franchise of income tax due as shown in the final or adjustment franchise or income-tax return shall either be refunded to the grantee or credited against the grantee's quarterly franchise or income-tax liability for the succeeding taxable year or years at the option of the grantee.

The term **"gross revenues"** is herein defined as the total gross income earned by the grantee from; (a) transport, nontransport, and other services; (b) earnings realized from investments in money-market placements, bank deposits, investments in shares of stock and other securities, and other investments; (c) total gains net of total losses realized from the disposition of assets and foreign-exchange transactions; and (d) gross income from other sources. (Emphases ours.)

According to the afore-quoted provisions, the taxation of PAL, during the lifetime of its franchise, shall be governed by two fundamental rules, particularly: (1) PAL shall pay the Government either basic corporate income tax or franchise tax, whichever is lower; and (2) the tax paid by PAL, under either of these alternatives, shall be in lieu of all other taxes, duties, royalties, registration, license, and other fees and charges, except only real property tax.

The basic corporate income tax of PAL shall be based on its annual net taxable income, computed in accordance with the National Internal Revenue Code (NIRC). Presidential Decree

No. 1590 also explicitly authorizes PAL, in the computation of its basic corporate income tax, to (1) depreciate its assets twice as fast the normal rate of depreciation;[14] and (2) carry over as a deduction from taxable income any net loss incurred in any year up to five years following the year of such loss.[15]

Franchise tax, on the other hand, shall be two per cent (2%) of the gross revenues derived by PAL from all sources, whether transport or nontransport operations. However, with respect to international air-transport service, the franchise tax shall only be imposed on the gross passenger, mail, and freight revenues of PAL from its outgoing flights.

In its income tax return for FY 2000-2001, filed with the BIR, PAL reported no net taxable income for the period, resulting in zero basic corporate income tax, which would necessarily be lower than any franchise tax due from PAL for the same period.

The CIR, though, assessed PAL for MCIT for FY 2000-2001. It is the position of the CIR that the MCIT is income tax for which PAL is liable. The CIR reasons that Section 13(a) of Presidential Decree No. 1590 provides that the corporate income tax of PAL shall be computed in accordance with the NIRC. And, since the NIRC of 1997 imposes MCIT, and PAL has not applied for relief from the said tax, then PAL is subject to the same.

The Court is not persuaded. The arguments of the CIR are contrary to the plain meaning and obvious intent of Presidential Decree No. 1590, the franchise of PAL.

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[14] As a general rule, there shall be allowed as a depreciation deduction a reasonable allowance for the exhaustion, wear and tear (including reasonable allowance for obsolescence) of property used in the trade or business. (Section 34(F)(1) of the NIRC of 1997)

[15] In general, losses shall be deducted from gross income in the same taxable year said losses were incurred. The recognized exception under Section 39(D) of the NIRC of 1997, allowing net capital loss carryover, may only be availed of by a taxpayer "other than a corporation."

Income tax on domestic corporations is covered by Section 27 of the NIRC of 1997,[16] pertinent provisions of which are reproduced below for easy reference:

SEC. 27. *Rates of Income Tax on Domestic Corporations.* –

(A) *In General* – Except as otherwise provided in this Code, an income tax of **thirty-five percent (35%)** is hereby imposed upon the **taxable income** derived during each taxable year from all sources within and without the Philippines by every corporation, as defined in Section 22(B) of this Code and taxable under this Title as a corporation, organized in, or existing under the laws of the Philippines: *Provided*, That effective January 1, 1998, the rate of income tax shall be thirty-four percent (34%); effective January 1, 1999, the rate shall be thirty-three percent (33%); and effective January 1, 2000 and thereafter, the rate shall be thirty-two percent (32%).

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(E) *Minimum Corporate Income Tax on Domestic Corporations.* –

(1) *Imposition of Tax.* – A minimum corporate income tax of **two percent (2%) of the gross income** as of the end of the taxable year, as defined herein, is hereby imposed on a corporation taxable under this Title, beginning on the fourth taxable year immediately following the year in which such corporation commenced its business operations, when the minimum income tax is greater than the tax computed under Subsection (A) of this Section for the taxable year.

Hence, a domestic corporation must pay whichever is higher of: (1) the income tax under Section 27(A) of the NIRC of 1997, computed by applying the tax rate therein to the taxable income of the corporation; or (2) the MCIT under Section 27(E), also of the NIRC of 1997, equivalent to 2% of the gross income of the corporation. Although this may be the general rule in determining the income tax due from a domestic corporation under the NIRC of 1997, it can only be applied to PAL to the extent allowed by the provisions in the franchise of PAL specifically governing its taxation.

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[16] Prior to its amendment by Republic Act No. 9337, which was signed into law on 24 May 2005 and took effect on 1 July 2005.

After a conscientious study of Section 13 of Presidential Decree No. 1590, in relation to Sections 27(A) and 27(E) of the NIRC of 1997, the Court, like the CTA *en banc* and Second Division, concludes that PAL cannot be subjected to MCIT for FY 2000-2001.

First, Section 13(a) of Presidential Decree No. 1590 refers to **"basic corporate income tax."** In *Commissioner of Internal Revenue v. Philippine Airlines, Inc.*,[17] the Court already settled that the "basic corporate income tax," under Section 13(a) of Presidential Decree No. 1590, relates to the general rate of 35% (reduced to 32% by the year 2000) as stipulated in Section 27(A) of the NIRC of 1997.

Section 13(a) of Presidential Decree No. 1590 requires that the basic corporate income tax be computed in accordance with the NIRC. This means that PAL shall compute its basic corporate income tax using the rate and basis prescribed by the NIRC of 1997 for the said tax. There is nothing in Section 13(a) of Presidential Decree No. 1590 to support the contention of the CIR that PAL is subject to the entire Title II of the NIRC of 1997, entitled "Tax on Income."

Second, Section 13(a) of Presidential Decree No. 1590 further provides that the basic corporate income tax of PAL shall be based on its **annual net taxable income**. This is consistent with Section 27(A) of the NIRC of 1997, which provides that the rate of basic corporate income tax, which is 32% beginning 1 January 2000, shall be imposed on the **taxable income** of the domestic corporation.

Taxable income is defined under Section 31 of the NIRC of 1997 as the **pertinent items of gross income specified in the said Code, less the deductions and/or personal and additional exemptions, if any, authorized for such types of income by the same Code or other special laws.** The gross income, referred to in Section 31, is described in Section 32 of the NIRC of 1997 as income from whatever source,

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[17] G.R. No. 160528, 9 October 2006, 504 SCRA 90, 100.

including compensation for services; the conduct of trade or business or the exercise of profession; dealings in property; interests; rents; royalties; dividends; annuities; prizes and winnings; pensions; and a partner's distributive share in the net income of a general professional partnership.

Pursuant to the NIRC of 1997, the taxable income of a domestic corporation may be arrived at by subtracting from gross income deductions authorized, not just by the NIRC of 1997,[18] but also by special laws. Presidential Decree No. 1590 may be considered as one of such special laws authorizing PAL, in computing its annual net taxable income, on which its basic corporate income tax shall be based, to deduct from its gross income the following: (1) depreciation of assets at twice the normal rate; and (2) net loss carry-over up to five years following the year of such loss.

In comparison, the 2% MCIT under Section 27(E) of the NIRC of 1997 shall be based on the **gross income** of the domestic corporation. The Court notes that gross income, as the basis for MCIT, is given a special definition under Section 27(E)(4) of the NIRC of 1997, different from the general one under Section 34 of the same Code.

According to the last paragraph of Section 27(E)(4) of the NIRC of 1997, gross income of a domestic corporation engaged in the sale of service means **gross receipts, less sales returns, allowances, discounts and cost of services**. "Cost of services" refers to all **direct costs and expenses** necessarily incurred to provide the services required by the customers and clients including (a) salaries and employee benefits of personnel, consultants, and specialists directly rendering the service; and (b) cost of facilities directly utilized in providing the service, such as depreciation or rental of equipment used and cost of supplies.[19] Noticeably, inclusions in and exclusions/deductions from gross income for MCIT purposes are limited to those directly

[18] Section 34 of the NIRC of 1997 enumerates the allowable deductions, while Section 35 identifies the personal and additional exemptions.

[19] Section 27(E)(4) of the NIRC of 1997.

arising from the conduct of the taxpayer's business. It is, thus, more limited than the gross income used in the computation of basic corporate income tax.

In light of the foregoing, there is an apparent distinction under the NIRC of 1997 between taxable income, which is the basis for basic corporate income tax under Section 27(A); and gross income, which is the basis for the MCIT under Section 27(E). The two terms have their respective technical meanings, and cannot be used interchangeably. The same reasons prevent this Court from declaring that the basic corporate income tax, for which PAL is liable under Section 13(a) of Presidential Decree No. 1590, also covers MCIT under Section 27(E) of the NIRC of 1997, since the basis for the first is the annual net taxable income, while the basis for the second is gross income.

Third, even if the basic corporate income tax and the MCIT are both income taxes under Section 27 of the NIRC of 1997, and one is paid in place of the other, the two are distinct and separate taxes.

The Court again cites *Commissioner of Internal Revenue v. Philippine Airlines, Inc.*,[20] wherein it held that income tax on the passive income[21] of a domestic corporation, under Section 27(D) of the NIRC of 1997, is different from the basic corporate income tax on the taxable income of a domestic corporation, imposed by Section 27(A), also of the NIRC of 1997. Section 13 of Presidential Decree No. 1590 gives PAL the option to pay basic corporate income tax or franchise tax, whichever is lower; and the tax so paid shall be in lieu of all other taxes, except real property tax. The income tax on the passive income

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[20] *Supra* note 17 at 98, 100.

[21] Passive income includes interest from deposits and yield or any other monetary benefit from deposit substitutes and from trust funds and similar arrangements and royalties [Section 27(D)(1) of the Tax Code of 1997]; capital gains from the sale of shares of stock not traded in the stock exchange [Section 27(D)(2); income derived under the Expanded Foreign Currency Deposit System [Section 27(D)(3)]; intercorporate dividends [Section 27(D)(4)]; and capital gains realized from sale, exchange or disposition of lands and/or buildings [Section 27(D)(5)].

of PAL falls within the category of "all other taxes" from which PAL is exempted, and which, if already collected, should be refunded to PAL.

The Court herein treats MCIT in much the same way. Although both are income taxes, the MCIT is different from the basic corporate income tax, not just in the rates, but also in the bases for their computation. Not being covered by Section 13(a) of Presidential Decree No. 1590, which makes PAL liable only for basic corporate income tax, then MCIT is included in "all other taxes" from which PAL is exempted.

That, under general circumstances, the MCIT is paid in place of the basic corporate income tax, when the former is higher than the latter, does not mean that these two income taxes are one and the same. The said taxes are merely paid in the alternative, giving the Government the opportunity to collect the higher amount between the two. The situation is not much different from Section 13 of Presidential Decree No. 1590, which reversely allows PAL to pay, whichever is lower of the basic corporate income tax or the franchise tax. It does not make the basic corporate income tax indistinguishable from the franchise tax.

Given the fundamental differences between the basic corporate income tax and the MCIT, presented in the preceding discussion, it is not baseless for this Court to rule that, pursuant to the franchise of PAL, said corporation is subject to the first tax, yet exempted from the second.

Fourth, the evident intent of Section 13 of Presidential Decree No. 1520 is to extend to PAL tax concessions not ordinarily available to other domestic corporations. Section 13 of Presidential Decree No. 1520 permits PAL to pay **whichever is lower** of the basic corporate income tax or the franchise tax; and the tax so paid shall be **in lieu of all other taxes**, except only real property tax. Hence, under its franchise, PAL is to pay the least amount of tax possible.

Section 13 of Presidential Decree No. 1520 is not unusual. A public utility is granted special tax treatment (including tax

exceptions/exemptions) under its franchise, as an inducement for the acceptance of the franchise and the rendition of public service by the said public utility.[22] In this case, in addition to being a public utility providing air-transport service, PAL is also the official flag carrier of the country.

The imposition of MCIT on PAL, as the CIR insists, would result in a situation that contravenes the objective of Section 13 of Presidential Decree No. 1590. In effect, PAL would not just have two, but three tax alternatives, namely, the basic corporate income tax, MCIT, or franchise tax. More troublesome is the fact that, as between the basic corporate income tax and the MCIT, PAL shall be made to pay **whichever is higher**, irrefragably, in violation of the avowed intention of Section 13 of Presidential Decree No. 1590 to make PAL pay for the lower amount of tax.

Fifth, the CIR posits that PAL may not invoke in the instant case the "in lieu of all other taxes" clause in Section 13 of Presidential Decree No. 1520, if it did not pay anything at all as basic corporate income tax or franchise tax. As a result, PAL should be made liable for "other taxes" such as MCIT. This line of reasoning has been dubbed as the Substitution Theory, and this is not the first time the CIR raised the same. The Court already rejected the Substitution Theory in *Commissioner of Internal Revenue v. Philippine Airlines, Inc.*,[23] to wit:

"Substitution Theory" of the CIR Untenable

A careful reading of Section 13 rebuts the argument of the CIR that the "in lieu of all other taxes" proviso is a mere incentive that applies only when PAL actually pays something. It is clear that PD 1590 intended to give respondent the option to avail itself of Subsection (a) or (b) as consideration for its franchise. Either option excludes the payment of other taxes and dues imposed or collected by the national or the local government. PAL has the option to choose

[22] See *Carcar Electric and Ice Plant Co., Inc. v. Collector of Internal Revenue*, 100 Phil. 50, 54 (1956).

[23] *Supra* note 17 at 100-101.

the alternative that results in lower taxes. **It is not the fact of tax payment that exempts it, but the exercise of its option.**

Under Subsection (a), the basis for the tax rate is respondent's annual net taxable income, which (as earlier discussed) is computed by subtracting allowable deductions and exemptions from gross income. By basing the tax rate on the annual net taxable income, PD 1590 necessarily recognized the situation in which taxable income may result in a negative amount and thus translate into a zero tax liability.

Notably, PAL was owned and operated by the government at the time the franchise was last amended. It can reasonably be contemplated that PD 1590 sought to assist the finances of the government corporation in the form of lower taxes. When respondent operates at a loss (as in the instant case), no taxes are due; in this instances, it has a lower tax liability than that provided by Subsection (b).

The fallacy of the CIR's argument is evident from the fact that the payment of a measly sum of one peso would suffice to exempt PAL from other taxes, whereas a zero liability arising from its losses would not. There is no substantial distinction between a zero tax and a one-peso tax liability. (Emphasis ours.)

Based on the same ratiocination, the Court finds the Substitution Theory unacceptable in the present Petition.

The CIR alludes as well to Republic Act No. 9337, for reasons similar to those behind the Substitution Theory. Section 22 of Republic Act No. 9337, more popularly known as the Expanded Value Added Tax (E-VAT) Law, abolished the franchise tax imposed by the charters of particularly identified public utilities, including Presidential Decree No. 1590 of PAL. PAL may no longer exercise its options or alternatives under Section 13 of Presidential Decree No. 1590, and is now liable for both corporate income tax and the 12% VAT on its sale of services. The CIR alleges that Republic Act No. 9337 reveals the intention of the Legislature to make PAL share the tax burden of other domestic corporations.

The CIR seems to lose sight of the fact that the Petition at bar involves the liability of PAL for MCIT for the fiscal year ending **31 March 2001**. Republic Act No. 9337, which took

effect on **1 July 2005**, cannot be applied retroactively[24] and any amendment introduced by said statute affecting the taxation of PAL is immaterial in the present case.

And sixth, Presidential Decree No. 1590 explicitly allows PAL, in computing its basic corporate income tax, to carry over as deduction any net loss incurred in any year, up to five years following the year of such loss. Therefore, Presidential Decree No. 1590 does not only consider the possibility that, at the end of a taxable period, PAL shall end up with **zero annual net taxable income** (when its deductions exactly equal its gross income), as what happened in the case at bar, but also the likelihood that PAL shall incur **net loss** (when its deductions exceed its gross income). If PAL is subjected to MCIT, the provision in Presidential Decree No. 1590 on net loss carry-over will be rendered nugatory. Net loss carry-over is material only in computing the annual net taxable income to be used as basis for the basic corporate income tax of PAL; but PAL will never be able to avail itself of the basic corporate income tax option when it is in a net loss position, because it will always then be compelled to pay the necessarily higher MCIT.

Consequently, the insistence of the CIR to subject PAL to MCIT cannot be done without contravening Presidential Decree No. 1520.

Between Presidential Decree No. 1520, on one hand, which is a special law specifically governing the franchise of PAL, issued on 11 June 1978; and the NIRC of 1997, on the other, which is a general law on national internal revenue taxes, that took effect on 1 January 1998, the former prevails. The rule is that on a specific matter, the special law shall prevail over the general law, which shall be resorted to only to supply deficiencies in the former. In addition, where there are two statutes, the earlier special and the later general – the terms of the general broad enough to include the matter provided for in the special – the fact that one is special and the other is

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[24] Article 4 of the Civil Code provides that "Laws shall have no retroactive effect, unless the contrary is provided."

general creates a presumption that the special is to be considered as remaining an exception to the general, one as a general law of the land, the other as the law of a particular case. It is a canon of statutory construction that a later statute, general in its terms and not expressly repealing a prior special statute, will ordinarily not affect the special provisions of such earlier statute.[25]

Neither can it be said that the NIRC of 1997 repealed or amended Presidential Decree No. 1590.

While Section 16 of Presidential Decree No. 1590 provides that the franchise is granted to PAL with the understanding that it shall be subject to amendment, alteration, or repeal by competent authority when the public interest so requires, Section 24 of the same Decree also states that the franchise or any portion thereof may only be modified, amended, or repealed expressly by a **special law or decree** that shall specifically modify, amend, or repeal said franchise or any portion thereof. No such special law or decree exists herein.

The CIR cannot rely on Section 7(B) of Republic Act No. 8424, which amended the NIRC in 1997 and reads as follows:

> Section 7. *Repealing Clauses.* –
>
> xxx xxx xxx
>
> (B) The provisions of the National Internal Revenue Code, as amended, and all other laws, **including charters of government-owned or controlled corporations**, decrees, orders, or regulations or parts thereof, that are inconsistent with this Act are hereby repealed or amended accordingly.

The CIR reasons that PAL was a government-owned and controlled corporation when Presidential Decree No. 1590, its franchise or charter, was issued in 1978. Since PAL was still operating under the very same charter when Republic Act No. 8424 took effect in 1998, then the latter can repeal or amend the former by virtue of Section 7(B).

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[25] *Commissioner of Internal Revenue v. Central Luzon Drug Corporation*, G.R. No. 159647, 15 April 2005, 456 SCRA 414, 449.

The Court disagrees.

A brief recount of the history of PAL is in order. PAL was established as a private corporation under the general law of the Republic of the Philippines in February 1941. In **November 1977**, the government, through the Government Service Insurance System (GSIS), acquired the majority shares in PAL. PAL was privatized in **January 1992** when the local consortium PR Holdings acquired a 67% stake therein.[26]

It is true that when Presidential Decree No. 1590 was issued on **11 June 1978**, PAL was then a government-owned and controlled corporation; but when Republic Act No. 8424, amending the NIRC, took effect on **1 January 1998**, PAL was already a private corporation for six years. The repealing clause under Section 7(B) of Republic Act No. 8424 simply refers to charters of government-owned and controlled corporations, which would simply and plainly mean corporations under the ownership and control of the government **at the time of effectivity** of said statute. It is already a stretch for the Court to read into said provision charters, issued to what were then government-owned and controlled corporations that are now private, but still operating under the same charters.

That the Legislature chose not to amend or repeal Presidential Decree No. 1590, even after PAL was privatized, reveals the intent of the Legislature to let PAL continue enjoying, as a private corporation, the very same rights and privileges under the terms and conditions stated in said charter. From the moment PAL was privatized, it had to be treated as a private corporation, and its charter became that of a private corporation. It would be completely illogical to say that PAL is a private corporation still operating under a charter of a government-owned and controlled corporation.

The alternative argument of the CIR – that the imposition of the MCIT is pursuant to the amendment of the NIRC, and not of Presidential Decree No. 1590 – is just as specious. As has already been settled by this Court, the basic corporate income

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[26] http://www.philippineairlines.com/about_pal/milestones/milestones.jsp

tax under Section 13(a) of Presidential Decree No. 1590 relates to the general tax rate under Section 27(A) of the NIRC of 1997, which is 32% by the year 2000, imposed on taxable income. Thus, only provisions of the NIRC of 1997 necessary for the computation of the basic corporate income tax apply to PAL. And even though Republic Act No. 8424 amended the NIRC by introducing the MCIT, in what is now Section 27(E) of the said Code, this amendment is actually irrelevant and should not affect the taxation of PAL, since the MCIT is clearly distinct from the basic corporate income tax referred to in Section 13(a) of Presidential Decree No. 1590, and from which PAL is consequently exempt under the "in lieu of all other taxes" clause of its charter.

The CIR calls the attention of the Court to RMC No. 66-2003, on "Clarifying the Taxability of Philippine Airlines (PAL) for Income Tax Purposes As Well As Other Franchise Grantees Similarly Situated." According to RMC No. 66-2003:

> Section 27(E) of the Code, as implemented by Revenue Regulations No. 9-98, provides that MCIT of two percent (2%) of the gross income as of the end of the taxable year (whether calendar or fiscal year, depending on the accounting period employed) is imposed upon any domestic corporation beginning the 4th taxable year immediately following the taxable year in which such corporation commenced its business operations. The MCIT shall be imposed whenever such corporation has zero or negative taxable income or whenever the amount of MCIT is greater than the normal income tax due from such corporation.
>
> With the advent of such provision beginning January 1, 1998, it is certain that domestic corporations subject to normal income tax as well as those choose to be subject thereto, such as PAL, are bound to pay income tax regardless of whether they are operating at a profit or loss.
>
> Thus, in case of operating loss, PAL may either opt to subject itself to minimum corporate income tax or to the 2% franchise tax, whichever is lower. On the other hand, if PAL is operating at a profit, the income tax liability shall be the lower amount between:
>
> (1) normal income tax or MCIT whichever is higher; and

(2) 2% franchise tax.

The CIR attempts to sway this Court to adopt RMC No. 66-2003 since the "[c]onstruction by an executive branch of government of a particular law although not binding upon the courts must be given weight as the construction comes from the branch of the government called upon to implement the law."[27]

But the Court is unconvinced.

It is significant to note that RMC No. 66-2003 was issued only on 14 October 2003, more than two years after FY 2000-2001 of PAL ended on 31 March 2001. This violates the well-entrenched principle that statutes, including administrative rules and regulations, operate prospectively only, unless the legislative intent to the contrary is manifest by express terms or by necessary implication.[28]

Moreover, despite the claims of the CIR that RMC No. 66-2003 is just a clarificatory and internal issuance, the Court observes that RMC No. 66-2003 does more than just clarify a previous regulation and goes beyond mere internal administration. It effectively increases the tax burden of PAL and other taxpayers who are similarly situated, making them liable for a tax for which they were not liable before. Therefore, RMC No. 66-2003 cannot be given effect without previous notice or publication to those who will be affected thereby. In *Commissioner of Internal Revenue v. Court of Appeals*,[29] the Court ratiocinated that:

> It should be understandable that when an administrative rule is merely interpretative in nature, its applicability needs nothing further than its bare issuance for it gives no real consequence more than what the law itself has already prescribed. **When, upon the other**

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[27] Memorandum of the CIR, *rollo*, p. 264.

[28] *BPI Leasing Corporation v. Court of Appeals*, 461 Phil. 451, 460 (2003).

[29] 329 Phil. 987, 1007-1009 (1996).

hand, the administrative rule goes beyond merely providing for the means that can facilitate or render least cumbersome the implementation of the law but substantially adds to or increases the burden of those governed, it behooves the agency to accord at least to those directly affected a chance to be heard, and thereafter to be duly informed, before that new issuance is given the force and effect of law.

A reading of RMC 37-93, particularly considering the circumstances under which it has been issued, convinces us that the circular cannot be viewed simply as a corrective measure (revoking in the process the previous holdings of past Commissioners) or merely as construing Section 142(c)(1) of the NIRC, as amended, but has, in fact and most importantly, been made in order to place "Hope Luxury," "Premium More" and "Champion" within the classification of locally manufactured cigarettes bearing foreign brands and to thereby have them covered by RA 7654. Specifically, the new law would have its amendatory provisions applied to locally manufactured cigarettes which at the time of its effectivity were not so classified as bearing foreign brands. Prior to the issuance of the questioned circular, "Hope Luxury," "Premium More," and "Champion" cigarettes were in the category of locally manufactured cigarettes not bearing foreign brand subject to 45% *ad valorem* tax. Hence, without RMC 37-93, the enactment of RA 7654, would have had no new tax rate consequence on private respondent's products. Evidently, in order to place "Hope Luxury," "Premium More," and "Champion" cigarettes within the scope of the amendatory law and subject them to an increased tax rate, the now disputed RMC 37-93 had to be issued. **In so doing, the BIR not simply interpreted the law; verily, it legislated under its quasi-legislative authority. The due observance of the requirements of notice, of hearing, and of publication should not have been then ignored.**

Indeed, the BIR itself, in its **RMC 10-86**, has observed and provided:

> "RMC NO. 10-86
>
> Effectivity of Internal Revenue Rules and Regulations "It has been observed that one of the problem areas bearing on compliance with Internal Revenue Tax rules and regulations is lack or insufficiency of due notice to the tax paying public. **Unless there is due notice, due compliance therewith may not be reasonably expected.** And most importantly, their strict

enforcement could possibly suffer from legal infirmity in the light of the constitutional provision on 'due process of law' and the essence of the Civil Code provision concerning effectivity of laws, whereby due notice is a basic requirement (Sec. 1, Art. IV, Constitution; Art. 2, New Civil Code).

"In order that there shall be a just enforcement of rules and regulations, **in conformity with the basic element of due process, the following procedures are hereby prescribed** for the drafting, issuance and implementation of the said Revenue Tax Issuances:

"(1). This Circular shall apply only to (a) Revenue Regulations; (b) Revenue Audit Memorandum Orders; and (c) **Revenue Memorandum Circulars** and Revenue Memorandum Orders bearing on internal revenue tax rules and regulations.

"(2). Except when the law otherwise expressly provides, the aforesaid internal revenue tax issuances **shall not begin to be operative until after due notice thereof may be fairly presumed**.

"Due notice of the said issuances may be fairly presumed only after the following procedures have been taken:

"xxx xxx xxx "(5). Strict compliance with the foregoing procedures is enjoined.13

Nothing on record could tell us that it was either impossible or impracticable for the BIR to observe and comply with the above requirements before giving effect to its questioned circular. (Emphases ours.)

The Court, however, stops short of ruling on the validity of RMC No. 66-2003, for it is not among the issues raised in the instant Petition. It only wishes to stress the requirement of prior notice to PAL before RMC No. 66-2003 could have become effective. Only after RMC No. 66-2003 was issued on 14 October 2003 could PAL have been given notice of said circular, and only following such notice to PAL would RMC No. 66-2003 have taken effect. Given this sequence, it is not possible to say that RMC No. 66-2003 was already in effect and should have been strictly complied with by PAL for its fiscal year which ended on 31 March 2001.

Even conceding that the construction of a statute by the CIR is to be given great weight, the courts, which include the CTA, are not bound thereby if such construction is erroneous or is clearly shown to be in conflict with the governing statute or the Constitution or other laws. "It is the role of the Judiciary to refine and, when necessary, correct constitutional (and/or statutory) interpretation, in the context of the interactions of the three branches of the government."[30] It is furthermore the rule of long standing that this Court will not set aside lightly the conclusions reached by the CTA which, by the very nature of its functions, is dedicated exclusively to the resolution of tax problems and has, accordingly, developed an expertise on the subject, unless there has been an abuse or improvident exercise of authority.[31] In the Petition at bar, the CTA *en banc* and in division both adjudged that PAL is not liable for MCIT under Presidential Decree No. 1590, and this Court has no sufficient basis to reverse them.

As to the assertions of the CIR that exemption from tax is not presumed, and the one claiming it must be able to show that it indubitably exists, the Court recalls its pronouncements in *Commissioner of Internal Revenue v. Court of Appeals*[32]:

> We disagree. Petitioner Commissioner of Internal Revenue erred in applying the principles of tax exemption without first applying the well-settled **doctrine of strict interpretation in the imposition of taxes**. **It is obviously both illogical and impractical to determine who are exempted without first determining who are covered by the aforesaid provision.** The Commissioner should have determined first if private respondent was covered by Section 205, applying the rule of strict interpretation of laws imposing taxes and other burdens on the populace, before asking Ateneo to prove its exemption therefrom.

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[30] *Philippine Scout Veterans Security and Investigation Agency, Inc. v. National Labor Relations Commission,* 330 Phil. 665, 676 (1996).

[31] *Commissioner of Internal Revenue v. Philippine National Bank,* G.R. No. 161997, 25 October 2005, 474 SCRA 303, 320; *Commissioner of Internal Revenue v. Manila Mining Corporation,* G.R. No. 153204, 31 August 2005, 468 SCRA 571, 593-594.

[32] 338 Phil. 322, 330-331 (1997).

The Court takes this occasion to reiterate the hornbook doctrine in the interpretation of tax laws that "(a) statute will not be construed as imposing a tax unless it does so clearly, expressly, and unambiguously. x x x (A) tax cannot be imposed without clear and express words for that purpose. Accordingly, **the general rule of requiring adherence to the letter in construing statutes applies with peculiar strictness to tax laws and the provisions of a taxing act are not to be extended by implication." Parenthetically, in answering the question of who is subject to tax statutes, it is basic that "in case of doubt, such statutes are to be construed most strongly against the government and in favor of the subjects or citizens because burdens are not to be imposed nor presumed to be imposed beyond what statutes expressly and clearly import."** (Emphases ours.)

For two decades following the grant of its franchise by Presidential Decree No. 1590 in 1978, PAL was only being held liable for the basic corporate income tax or franchise tax, whichever was lower; and its payment of either tax was in lieu of all other taxes, except real property tax, in accordance with the plain language of Section 13 of the charter of PAL. Therefore, the exemption of PAL from "all other taxes" was not just a presumption, but a previously established, accepted, and respected fact, even for the BIR.

The MCIT was a new tax introduced by Republic Act No. 8424. Under the doctrine of strict interpretation, the burden is upon the CIR to primarily prove that the new MCIT provisions of the NIRC of 1997, clearly, expressly, and unambiguously extend and apply to PAL, despite the latter's existing tax exemption. To do this, the CIR must convince the Court that the MCIT is a basic corporate income tax,[33] and is not covered by the "in lieu of all other taxes" clause of Presidential Decree No. 1590. Since the CIR failed in this regard, the Court is left with no choice but to consider the MCIT as one of "all other taxes," from which PAL is exempt under the explicit provisions of its charter.

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[33] Since it is readily apparent that the MCIT does not constitute the alternative franchise tax.

Not being liable for MCIT in FY 2000-2001, it necessarily follows that PAL need not apply for relief from said tax as the CIR maintains.

WHEREFORE, premises considered, the instant Petition for Review is hereby *DENIED*, and the Decision dated 9 August 2007 and Resolution dated 11 October 2007 of the Court of Tax Appeals *en banc* in CTA E.B. No. 246 is hereby *AFFIRMED*. No costs.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 185389. July 7, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **BENJIE RESURRECCION,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; RAPE; THREE GUIDING PRINCIPLES TO ASCERTAIN GUILT OR INNOCENCE OF THE ACCUSED.— To ascertain the guilt or innocence of the accused in cases of rape, the courts have been traditionally guided by three settled principles, namely: (a) an accusation for rape is easy to make, difficult to prove and even more difficult to disprove; (b) in view of the intrinsic nature of the crime, the testimony of the complainant must be scrutinized with utmost caution; and (c) the evidence of the prosecution must stand on its own merits and cannot draw strength from the weakness of the evidence for the defense. Since the crime of rape is essentially one committed in relative isolation or even secrecy, it is usually only the victim who can testify with regard to the fact of the forced *coitus.* In its prosecution, 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.

2. ID.; ID.; ELEMENTS OF STATUTORY RAPE; EXPLAINED. — Under the law and prevailing jurisprudence, the "gravamen of the offense of statutory rape as provided under Article 335, paragraph 3 of the Revised Penal Code is the carnal knowledge of a woman below twelve years old." "The only elements of statutory rape are: (1) that the offender had carnal knowledge of a woman; and (2) that such woman is under 12 years of age. It is not necessary to prove that the victim was intimidated or that force was used against her because in statutory rape the law presumes that the victim, on account of her tender age, does not and cannot have a will of her own." Although the prosecution inadvertently proposed during the pre-trial conference the admission of the age of the victim as being 12 years old, the pre-trial order was silent on whether the defense concurred in such proposal. Such being the case, there was no categorical admission as to the age of the victim. During trial, the prosecution insisted on its stance that the victim was only 11 years old at the time of the commission of the crime. Without the objection of the defense, the prosecution presented the oral testimony of the victim and her birth certificate tending to prove her age. Since the prosecution alleged in the information and successfully proved during trial that the victim was below 12 years old, the alleged crime can be categorized as statutory rape.

3. ID.; ID.; ABSENCE OF SPERMATOZOA IN THE VICTIM'S GENITALIA DOES NOT NEGATE RAPE; APPLICATION IN CASE AT BAR. — The absence of spermatozoa in the victim's genitalia does not negate rape, the slightest penetration even without emission being sufficient to constitute and consummate the offense. The mere touching of the labia of the woman's pudendum or lips of the female organ by the male sexual organ consummates the act. Where the victim is a child, the fact that there was no deep penetration of her vagina and that her hymen was still intact does not negate the commission of rape. Furthermore, the absence of fresh lacerations in the hymen cannot be a firm indication that she was not raped. Hymenal lacerations are not an element of rape. In this case, therefore,

the medical finding of the absence of lacerations and sperm cells in the victim's organ cannot affect the fact that sexual molestation took place, taking into account the prosecution's sufficient establishment of the commission of sexual abuse.

4. ID.; ID.; PENALTY AND DAMAGES, AFFIRMED. — Likewise affirmed is the penalty imposed by the RTC and the Court of Appeals. There being no aggravating or mitigating circumstance, the RTC and the Court of Appeals correctly imposed upon Benjie the penalty of *reclusion perpetua*. The award of damages imposed, which the Court of Appeals fixed at ₱50,000.00 for the civil indemnity and another ₱50,000.00 for the moral damages, are in order.

5. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; POSITIVE DECLARATION OF THE VICTIM WHO WAS OF TENDER AGE DESERVES GREATER CREDENCE; CASE AT BAR. — Between the self-serving testimony of Benjie, uncorroborated by any witnesses or documents, and the positive declaration of the victim who was of tender age, the latter deserves greater credence. As the Court of Appeals pointed out, Benjie's baseless allegations — that the charge of rape was prompted by his constant bickering with AAA and aggravated by her family's anger at his alleged stealing of ₱8,000.00 from the family business — were too flimsy and beg the Court's credulity. Oft repeated is the truism that being a woman of tender age, shy and ignorant of the sophistication of a man's world, by no stretch of imagination can we believe that considering her innate modesty, humility and purity as a young Filipina, AAA would have permitted herself to be the object of public ridicule, shame and obloquy as a victim of sexual assault or debauchery. It takes an extreme sense of moral depravity for a very young girl to accuse someone of a heinous crime, such as rape, and expose him to the perils attendant to a criminal conviction for such feeble reasons. No parent would expose his or her own daughter to the shame and scandal of having undergone such debasing defilement of her chastity if the charges were not true. It is unnatural for a parent to use his own offspring as an engine of malice, especially if it will subject a daughter to embarrassment and even stigma.

6. ID.; ID.; ID.; FINDINGS OF THE TRIAL COURT THEREON, ACCORDED GREAT RESPECT; EXCEPTION; NOT PRESENT

IN CASE AT BAR. — 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 accused-appellant Benjie guilty of the charge. 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. Such is not the case here.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

CHICO-NAZARIO, *J.*:

Before Us is an appeal from the Decision[1] of the Court of Appeals filed by Benjie Resurreccion (Benjie), dated 24 March 2008, which affirmed with modifications the Decision[2] of the Regional Trial Court (RTC) of Malaybalay, Bukidnon, Branch 8, finding him guilty of Simple Rape.

On 20 June 2001, Benjie was charged before the RTC with Rape under Article 266-A of the Revised Penal Code, as amended by Republic Act No. 8353. The accusatory portion of the Information reads:

That on or about the 5th day of December, 2000 in the afternoon, at Purok XXX, Barangay XXX, Municipality of XXX, Province of XXX, Philippines and within the jurisdiction of this Honorable Court the above-named accused being the domestic helper of the parents of AAA,[3]

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[1] Penned by Associate Justice Elihu A. Ybañez with Associate Justices Romulo V. Borja and Mario V. Lopez, concurring; *rollo,* pp. 3-20.

[2] Penned by Judge Rolanda S. Venadas, Sr., CA *rollo,* pp. 19-33.

[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.

prompted by lewd designs, grabbed the hands of AAA an 11 year old girl and forcibly brought the latter inside the room of AAA, cover her mouth did then and there willfully, unlawfully and criminally undress AAA and have sexual intercourse with AAA against her will, to the damage and prejudice of AAA in such amount as may be allowed by law.[4]

When arraigned on 2 October 2001, Benjie, with the assistance of his counsel *de oficio*, pleaded not guilty to the charge.[5] In the Pre-Trial Order dated 20 November 2001, which was signed by AAA's counsel, Benjie, and Benjie's lawyer, the prosecution offered for admission, among other matters, the following:

2) That the private complainant, AAA, was only 12 years old at the time of the alleged incident of 5 December 2000, as evidenced by her Certificate of Live Birth x x x.[6]

Thereafter, trial on the merits ensued.

The evidence of the prosecution — as culled from the testimonies of the victim (AAA), the victim's aunt (BBB), and Dr. Marlyn Valdez-Agbayani (City Health Officer who examined the victim), as well as the documentary evidence — are as follows:

AAA was born on 26 December 1988[7] and was only 11 years old when the subject incident took place. Benjie lived in the house of the victim as a helper. In the late afternoon of 5 December 2000, when AAA was going downstairs after she had just closed the windows in the second floor of their house, Benjie suddenly grabbed her arm and immediately covered her mouth using his right hand. Benjie then forcibly dragged her to her room and pinned her down to her bed with her hands at her back. Benjie removed AAA's short pants, panty and T-shirt. AAA struggled to free herself from Benjie by kicking

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[4] Records, p. 19.

[5] *Id.* at 26.

[6] *Id.* at 32-A.

[7] Exhibit "A", the Birth Certificate of AAA; *id.* at 4.

the latter. Her attempt to escape from Benjie proved futile, as the latter succeeded in inserting his penis into her vagina (*gi-iyot*).[8] AAA felt pain when Benjie's organ was still inside her.

Right after the coitus, Benjie warned AAA not to tell the incident to anyone; otherwise, something would happen to her.

On 6 December 2000, scared that Benjie would ravish her again, and considering that her mother was not around at that time, AAA decided to report her sexual molestation to her aunt BBB. BBB, in turn, related the incident to AAA's mother who arrived a little later. The incident was reported to the police station. Thereafter, AAA was taken to the Health Center for medical examination. Since the physician was not around on that day, the medical examination was conducted only on 7 December 2000, or two days after the alleged incident.

Dr. Marlyn Valdez-Agbayani examined AAA and found that the victim had no laceration in her external organ or her hymen. The former also testified that there were no spermatozoa in the victim's vagina. Despite these findings, Dr. Valdez-Agbayani clarified that if the hymen of a woman is elastic and so thin, as in AAA's case, laceration may not be present.[9] As to the absence of spermatozoa in the victim's vagina, Dr. Valdez-Agbayani said that it was possible that the victim washed her genitalia, especially since she was examined only after two days following the alleged rape incident.[10]

The defense, on the other hand, raised the defense of denial and presented the oral testimony of its lone witness, Benjie.

Benjie denied raping AAA. He claimed AAA and her parents falsely accused him since he often quarreled with her and was often scolded for this. Benjie claimed that the false accusation against him was a retribution of AAA's parents since they suspected him of stealing ₱8,000.00 from them.

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[8] TSN, 30 September 2002, p. 11.

[9] TSN, 9 December 2002, pp 6-7, 13.

[10] *Id.* at 12.

In a Decision dated 30 August 2005, the RTC found Benjie guilty of the crime of simple rape and imposed upon him the penalty of *reclusion perpetua*. Benjie was also ordered to pay the victim ₱50,000.00 as damages. The decretal portion of the RTC decision reads:

> WHEREFORE, the Court finds the accused GUILTY of the crime of simple rape only beyond reasonable doubt and accordingly sentences him to the penalty of *RECLUSION PERPETUA* with all its accessories penalties and to pay the offended party the sum of ₱50,000.00 as damages and the costs of this suit.[11]

Unfazed, Benjie appealed the RTC decision to the Court of Appeals. In a Decision dated 24 March 2008, the Court of Appeals affirmed the conviction of Benjie and the penalty imposed. It, however, modified the award of damages by ordering him to pay ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages. The dispositive part of the Decision of the Court of Appeals states:

> WHEREFORE, the appealed Decision of the Regional Trial Court, Branch 8 in Malaybalay City finding appellant Benjie Resurreccion guilty beyond reasonable doubt of Rape, is AFFIRMED WITH MODIFICATION, in that appellant is further ORDERED to pay AAA the amount of ₱50,000.00 as civil indemnity, in addition to the amount of ₱50,000.00 as moral damages.[12]

Hence, the instant recourse.

Benjie contends that the RTC erred in convicting him of rape, considering that the prosecution failed to present evidence to warrant a finding of conviction. Benjie strongly objects to the RTC's giving credence to the victim's testimony as to how the rape was committed, which, according to him, was improbable. Benjie insists that it is too difficult to imagine how he could have effectively had sexual intercourse with AAA considering that, as the latter testified, his left hand was covering her mouth and his right hand was pinning her down; thereby,

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[11] Records, pp. 78-79.

[12] CA *rollo*, p. 147.

he was left with no hand to neutralize the legs of the victim, which were violently kicking at him.

Benjie insists that there is a great possibility that he did not commit the charge against him, since the medical findings reveal no traces of sperm cells in AAA's vagina. Likewise, Benjie stresses that AAA's parents had ill motive in accusing him, since the imputation came right after he was being suspected of stealing their money.

To ascertain the guilt or innocence of the accused in cases of rape, the courts have been traditionally guided by three settled principles, namely: (a) an accusation for rape is easy to make, difficult to prove and even more difficult to disprove; (b) in view of the intrinsic nature of the crime, the testimony of the complainant must be scrutinized with utmost caution; and (c) the evidence of the prosecution must stand on its own merits and cannot draw strength from the weakness of the evidence for the defense.[13]

Since the crime of rape is essentially one committed in relative isolation or even secrecy, it is usually only the victim who can testify with regard to the fact of the forced *coitus*.[14] In its prosecution, therefore, the credibility of the victim is almost always the single and most important issue to deal with.[15] If her testimony meets the test of credibility, the accused can justifiably be convicted on the basis thereof; otherwise, he should be acquitted of the crime.[16]

Under the law and prevailing jurisprudence, the "gravamen of the offense of statutory rape as provided under Article 335, paragraph 3 of the Revised Penal Code is the carnal knowledge of a woman below twelve years old."[17] "The only elements of

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[13] *People v. Orquina*, 439 Phil. 359, 365-366 (2002).

[14] *People v. Baylen*, 431 Phil. 106, 118 (2002).

[15] *People v. Quijada*, 377 Phil. 202, 209 (1999).

[16] *People v. Babera*, 388 Phil. 44, 53 (2000).

[17] *People v. Apostol*, 378 Phil. 61, 76 (1999).

statutory rape are: (1) that the offender had carnal knowledge of a woman; and (2) that such woman is under 12 years of age. It is not necessary to prove that the victim was intimidated or that force was used against her because in statutory rape the law presumes that the victim, on account of her tender age, does not and cannot have a will of her own."[18] Although the prosecution inadvertently proposed during the pre-trial conference the admission of the age of the victim as being 12 years old, the pre-trial order was silent on whether the defense concurred in such proposal. Such being the case, there was no categorical admission as to the age of the victim. During trial, the prosecution insisted on its stance that the victim was only 11 years old at the time of the commission of the crime. Without the objection of the defense, the prosecution presented the oral testimony of the victim and her birth certificate tending to prove her age. Since the prosecution alleged in the information and successfully proved during trial that the victim was below 12 years old, the alleged crime can be categorized as statutory rape. Having established the age of the victim, the only remaining question is whether Benjie had carnal knowledge of her.

Here, after an assiduous evaluation of the victim's testimony, the RTC found that AAA was indeed abused by Benjie. The RTC was convinced of the trustworthiness of AAA's declarations, thus:

> The Court has scrutinized carefully and in detail the testimony of the private-complainant x x x and it is convinced that she is telling the truth, which the accused failed to controvert by overwhelming contrary evidence to establish his innocence.[19]

This Court itself, in its desire to unveil the truth as borne out by the records, has painstakingly pored over the transcripts of stenographic notes of this case, and like the RTC, finds the victim's testimony of the incident candid and straightforward, indicative of an untainted and realistic narration of what transpired on that fateful day. She related the sexual assault in this manner:

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[18] *Id.*

[19] Records, p. 76.

Q: On December 5, year 2000, in the early afternoon, can you recall where were you?
A: I was in our house.

xxx xxx xxx

Q: You said that you were in your house in that afternoon on December 5, year 2000, who were your companions, if any, in your house?
A: Inside our house aside from me was Benjie Resurreccion, because my other younger brothers were outside the house playing.

Q: Now, what kind of a house do you have, is it a two (2) storey house or one floor only?
A: Our house is a two storey house.

Q: You said that you and Benjie Resurreccion, you mean Benjie Resurreccion, the accused in this case?
A: Yes.

Q: Now, where was he particularly in your house at that time?
A: In our kitchen.

Q: How about you, where were you particularly in your house during that time?
A: I was already going inside in order to close our windows in the second floor and first floor as it was already getting late.

xxx xxx xxx

Q: Now, after you closed the windows, what happened, if any?
A: I was on my way to the first floor when Benjie grabbed me.

Q: Earlier you said that you were closing the windows, windows of what portion of your house, upper part of your house or first floor?
A: The second storey, Your Honor.

Q: So after as you said you were able to close the windows of the upper storey, what happened next?

A: I was then going down and on my way, I was suddenly grabbed by Benjie Resurreccion.

xxx xxx xxx

Q: You said that you were suddenly grabbed by Benjie, in what particular place were you grabbed by Benjie?
A: When I was on the first step of the stairs going down.

Q: After you were grabbed by Benjie, what did he do next, if any?
A: He then strongly covered my mouth and pulled me towards my own room.

xxx xxx xxx

Q: After you arrived inside your room, what happened next, if any?
A: He then took me to the bed and he undressed me but at the same time he was still covering my mouth with his hand.

Q: Now, after you were brought to the bed, what did he do next, if any?
A: He then undressed me, he removed my shorts including my T-shirt.

xxx xxx xxx

Q: What happened next, after your shorts and T-shirt were removed?
A: He laid me down and then he molested me. (*gi-iyot ko niya*).

COURT:

Q: Earlier you stated that in the room he undressed you, meaning, by way of taking off your shorts and T-shirt, does the Court understand that your panty was not removed?
A: My panty was also removed, Your Honor.

PROS. TORIBIO

Q: Now, was his penis able to enter into your vagina, Miss AAA?
A: Yes.

Q: What did you feel when the penis of the accused was already inside your vagina?
A: I felt pain.

Q: After that, what did the accused do next, if any?
A: After he was through, he told me that I should not divulge the matter because if I will do it, something is going to happen to me.[20]

The testimony of AAA adequately proved beyond reasonable doubt that she was subjected to a bestial act by her tormentor on 5 December 2000. It was an ordinary day for AAA. AAA was doing the usual chores in her house unsuspecting that at the heart of her home a predator was lurking, ready to devour her. As she was descending from the second floor of the house, Benjie was waiting downstairs and without warning clutched her and carried her towards her room. AAA could not shout since Benjie covered her mouth. She tried to escape, but she was not strong enough to do so. Benjie defiled her amidst her all-out resistance. Ignorant of the world of men, she felt excruciating pain when, for the first time in her life, her womanhood was violated. The overpowering trepidation that the same horrible act would be repeated empowered AAA to ask help from her aunt, despite the threat instilled in her by the perpetrator.

In stark contrast to the damning evidence adduced by the prosecution, what Benjie could rally was only a defense of denial. Between the self-serving testimony of Benjie, uncorroborated by any witnesses or documents, and the positive declaration of the victim who was of tender age, the latter deserves greater credence. As the Court of Appeals pointed out, Benjie's baseless allegations — that the charge of rape

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[20] TSN, 30 September 2002, pp. 6-12.

was prompted by his constant bickering with AAA and aggravated by her family's anger at his alleged stealing of ₱8,000.00 from the family business — were too flimsy and beg the Court's credulity. Oft repeated is the truism that being a woman of tender age, shy and ignorant of the sophistication of a man's world, by no stretch of imagination can we believe that considering her innate modesty, humility and purity as a young Filipina, AAA would have permitted herself to be the object of public ridicule, shame and obloquy as a victim of sexual assault or debauchery.[21] It takes an extreme sense of moral depravity for a very young girl to accuse someone of a heinous crime, such as rape, and expose him to the perils attendant to a criminal conviction for such feeble reasons. No parent would expose his or her own daughter to the shame and scandal of having undergone such debasing defilement of her chastity if the charges were not true.[22] It is unnatural for a parent to use his own offspring as an engine of malice, especially if it will subject a daughter to embarrassment and even stigma.[23]

Benjie tries to discredit the victim's testimony by questioning the odd position at which the rape was done. While Benjie's position, *i.e.*, covering AAA's mouth with his left hand and pinning her down with the right hand, may be considered difficult, such does not exclude the possibility that rape can be consummated under said situation. Depraved individuals stop at nothing in order to accomplish their purpose. Perverts are not used to the easy way of satisfying their wicked cravings. It should be noted that the victim was a very young and fragile 11-year-old, who was easy to be subdued by an abuser who was used to manual labor and was already 18 or 19 years old.

In his last-ditch effort to be exculpated, Benjie calls this Court's attention to the medical findings that no sperm cells were present in the victim's vagina just two days following the rape. He intimates that no rape occurred because of the absence of the sperm cells.

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[21] *People v. Cana,* 431 Phil. 152, 164 (2002).

[22] *People v. Monteron*, 428 Phil. 401, 410 (2002).

[23] *Id*.

This contention is not well-taken. The absence of spermatozoa in the victim's genitalia does not negate rape, the slightest penetration even without emission being sufficient to constitute and consummate the offense.[24] The mere touching of the labia of the woman's pudendum or lips of the female organ by the male sexual organ consummates the act.[25] Where the victim is a child, the fact that there was no deep penetration of her vagina and that her hymen was still intact does not negate the commission of rape.[26] Furthermore, the absence of fresh lacerations in the hymen cannot be a firm indication that she was not raped.[27] Hymenal lacerations are not an element of rape.[28] In this case, therefore, the medical finding of the absence of lacerations and sperm cells in the victim's organ cannot affect the fact that sexual molestation took place, taking into account the prosecution's sufficient establishment of the commission of sexual abuse. In fact, Dr. Valdez-Agbayani explained that if a woman's hymen is elastic and thin, penetration may not cause any lacerations to it. Dr. Valdez-Agbayani opined that the absence of hymenal lacerations in the victim was largely due to the fact that her hymen was elastic and thin. The absence of sperm cells can also be attributed to the fact that the medical examination of AAA happened two days after the molestation took place.

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 accused-appellant Benjie guilty of the charge. 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

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[24] *People v. Lozano*, 423 Phil. 20, 27 (2001).

[25] *Id*.

[26] *Id*.

[27] *Id*.

[28] *Id*.

materially affect the result of the case.[29] Such is not the case here.

Likewise affirmed is the penalty imposed by the RTC and the Court of Appeals. There being no aggravating or mitigating circumstance, the RTC and the Court of Appeals correctly imposed upon Benjie the penalty of *reclusion perpetua*.[30]

The award of damages imposed, which the Court of Appeals fixed at ₱50,000.00[31] for the civil indemnity and another ₱50,000.00[32] for the moral damages, are in order.

WHEREFORE, premises considered, the instant appeal is *DENIED*. The Decision of the Court of Appeals dated 24 March 2008, finding accused-appellant Benjie Resurreccion *GUILTY* beyond reasonable doubt of simple rape, sentencing him to suffer the penalty of *RECLUSION PERPETUA* and ordering him to pay the victim ₱50,000.00 as civil indemnity and another ₱50,000.00 as moral damages, is *AFFIRMED***.**

SO ORDERED.

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

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[29] *People v. Dagpin*, 400 Phil. 728, 739 (2000); *People v. Velazquez*, 399 Phil. 506, 515 (2000).

[30] *People v. Garcia*, 395 Phil. 722, 741 (2000).

[31] *People v. Biong*, 450 Phil. 432, 449 (2003).

[32] *People v. Pagsanjan*, 442 Phil. 667, 688 (2002).

FIRST DIVISION

[G.R. No. 162738. July 8, 2009]

SPS. ELIZABETH S. TAGLE & ERNESTO R. TAGLE, *petitioners, vs.* **HON. COURT OF APPEALS, RTC, QUEZON CITY, BRANCH 97, SPS. FEDERICO and ROSAMYRNA CARANDANG and SHERIFF CAROL BULACAN,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; NOTICE OF JUDGMENT; PERSONAL SERVICE; EXPLAINED. — Verily, following Section 6, Rule 13, the written notice of sale to the judgment obligor need not be personally served on the judgment obligor himself. It may be served on his counsel, or by leaving the notice in his office with his clerk or a person having charge thereof. If there is no one found at the judgment obligor's or his counsel's office or if such office is not known/inexistent, it may be served at the residence of the judgment obligor or his counsel and may be received by any person of sufficient age and discretion residing therein.

2. ID.; EVIDENCE; DISPUTABLE PRESUMPTIONS; SHERIFF ENJOYS THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF THE FUNCTION OF HIS OFFICE. — We need not emphasize that the sheriff enjoys the presumption of regularity in the performance of the functions of his office. This presumption prevails in the absence of substantial evidence to the contrary and cannot be overcome by bare and self-serving allegations. There was no showing that there was any irregularity in the report submitted by the sheriff, neither was there evidence that the sheriff was remiss in his duty to issue the said notices.

3. REMEDIAL LAW; CIVIL PROCEDURE; THE PARTY WHO MADE THE ALLEGATION HAS THE BURDEN OF PROVING THE SAME; APPLICATION IN CASE AT BAR. — In civil cases, he who alleges a fact has the burden of proving it. Having made such allegation that the proceeds of the sale were grossly inadequate, the burden of proof was upon them. Mere allegation is not evidence and is not equivalent to proof. While this Court

> is not unaware of petitioner Ernesto Tagle's reputation as a known artist and painter, mere claim of his renown in artistic circles is not proof of the purported high value of his artwork and pieces that were auctioned or of the inadequacy of the price when such works were sold during the questioned auction sales. We note that the Tagles presented several receipts to show the prices at which some of petitioner Ernesto Tagle's artworks had allegedly been sold. However, there was no evidence that the artworks auctioned on execution were of the same kind or worth as those sold to the buyers indicated in the said receipts. Ergo, there were no bases for comparison for the value of the works mentioned in the said receipts and the value of those sold at the execution sales questioned herein. What was incumbent upon petitioners was to produce independent, competent and credible valuations or appraisals of the artwork sold during the assailed public auctions in order to substantiate their claim that the prices at which said paintings and artwork were sold were indeed grossly inadequate.

APPEARANCES OF COUNSEL

Balgos and Perez for petitioners.
Renato T. Nuguid for private respondents.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Before the Court is a petition for *certiorari* assailing the August 4, 2003 Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 75707, upholding the Orders issued by the Regional Trial Court (RTC) of Quezon City, Branch 97, dated October 25, 2001[2] and December 16, 2002[3] which respectively denied petitioners' *Motion to Set Aside /Annul Public Auctions*

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[1] Penned by Associate Justice Eugenio S. Labitoria (ret.) with Associate Justices Andres B. Reyes and Regalado E. Maambong (ret.), concurring; *rollo*, pp. 168-174.

[2] *Id*. at 142-143.

[3] *Id*. at 148.

dated July 18, 2002 and *Motion for Reconsideration* dated November 27, 2002.

The present controversy stemmed from the execution of a favorable judgment in the civil case for rescission of contract filed by respondent spouses Federico and Rosamyrna Carandang (the Carandangs) against petitioner spouses Ernesto and Elizabeth Tagle (the Tagles). As culled from the records, the factual and procedural antecedents of this case follow:

Sometime in 1984, the Carandangs mortgaged several properties with the Philippine Banking Corporation (PBC). Among those mortgaged and subject of the present controversy is a house and lot located in White Plains, Quezon City. Unable to pay their mortgage obligation, the Carandangs ceded or assigned the subject property, among others, to PBC by way of a *Dacion En Pago* with Right to Repurchase.[4] Under the said agreement, the Carandangs were given the right or option to repurchase the property within two (2) years from the date of the agreement but this period was later extended by the bank until February 16, 1990.

On January 26, 1989, the parties herein executed a *Contract to Sell*[5] involving the White Plains property for ₱ 4.5 million and thereupon the Tagles issued a check for ₱1 million in favor of the Carandangs. The Carandangs, in turn, delivered said amount to PBC as partial payment of the redemption/repurchase price and surrendered possession of the property to the Tagles.

Since the property was still to be redeemed from PBC, the parties executed another contract on March 31, 1989, this time, the Carandangs, by virtue of a *Deed of Assignment*,[6] sold the right to repurchase the subject property to the Tagles. The Deed of Assignment superseded the Contract to Sell. Hence, pursuant to the Deed of Assignment, the Tagles would be able

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[4] CA *rollo*, pp. 25-28.

[5] *Id.* at 46-48.

[6] *Id*. at 53-55.

to acquire title to the property upon payment of the redemption price as they would step into the shoes of the Carandangs.

The Carandangs submitted the Deed of Assignment to PBC for acceptance and approval and in a letter[7] dated April 4, 1989, PBC conveyed its acceptance and approval of the same.

However, the sale and conveyance of the title to the property were protracted by several factors one of which was the fact that the title of the subject property needed to be reconstituted because it was among those gutted by the fire which razed the Office of the Register of Deeds in Quezon City.

Upon reconstitution of the title in June 1991, a meeting was held among PBC and the parties to discuss the payment scheme. At this point, the Tagles insisted that the *dacion* be registered and a Deed of Sale executed between them and PBC. They said they would pay PBC directly but asked for a more liberal term of payment because they did not have sufficient funds to pay the bank the full amount.

On March 20, 1992, PBC and the Tagles executed a Deed of Absolute Sale,[8] whereby the former sold the White Plains property to the latter for the price of ₱2,934,884.96. This deed made no mention of the parties' prior Deed of Assignment because the Tagles refused to sign unless any reference thereto was removed.

Having dealt with PBC directly, the Tagles refused to honor their obligation to the Carandangs under the Deed of Assignment. Hence, on September 26, 1991, the Carandangs filed a complaint for rescission of contract against the Tagles in the RTC of Quezon City which was docketed as Civil Case No. Q91-10092. The complaint sought payment of the balance of their obligation to the Carandangs under the Deed of Assignment.

After trial, the RTC decided in favor of petitioners and ordered respondents to reimburse the down payment given to them.

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[7] *Id.* at 36.

[8] *Id.* at 152-153.

However, on appeal, the CA reversed the decision of the RTC and declared that the Tagles were bound by the parties' Deed of Assignment.[9] The CA decision in CA G.R. CV No. 46256 was disposed as follows:

> WHEREFORE, the judgment herein appealed from is hereby REVERSED, and in lieu thereof, judgment is hereby rendered ordering the defendant-appellees [Tagles] to pay to the plaintiffs-appellants [Carandangs] the sum of FOUR HUNDRED FORTY FIVE THOUSAND ONE HUNDRED FIFTEEN AND 04/100 PESOS (₱445,115.04), with interest thereon at the legal rate from the date of the filing of the complaint until fully paid. (Words in brackets ours)
>
> SO ORDERED.

The Tagles' subsequent motion for reconsideration having been denied by the CA, they elevated the case to this Court through a petition for review on *certiorari*. In a Resolution dated October 29, 1998,[10] the Court denied said petition for being insufficient in form and substance. This resolution became **final and executory** on December 9, 1998 and entry of judgment was made in due course.[11]

Upon motion of the Carandangs, the RTC ordered the issuance of a writ of execution. Thereafter, the branch clerk of court ordered the sheriff to implement the final and executory decision in CA G.R. CV No. 46256. In the process, certain personal properties of the Tagles consisting of various paintings and artworks of petitioner Ernesto R. Tagle were sold at public auction on August 9, 2000 for the amount of ₱62,000.00 which resulted in the issuance of a certificate of sale to the Carandangs as the only bidder. It was followed by another auction sale on September 27, 2000 of Tagle's properties, again consisting of various paintings and artworks which were sold for the amount of ₱189,500.00.

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[9] *Rollo,* pp. 99-112.

[10] *Id.* at 113.

[11] *Id.* at 114.

On August 3, 2001, the Tagles filed an urgent motion and opposition to execution, praying for the return of the artworks levied upon and in lieu thereof, to accept payment of ₱400,000.00 as satisfaction of the CA decision in CA G.R. CV No. 46256, but this motion was denied by the RTC in a resolution dated December 7, 2001.

On June 3, 2002, the Carandangs filed a motion to fix balance of the Tagles's judgment debt by submitting certain guidelines in computing the judgment debt.

Meanwhile, on June 5, 2002, the sheriff issued a notice of sale on execution of a parcel of land covered by TCT No. 59497 in the name of the Tagles.

On July 18, 2002, the Tagles filed a comment/opposition to the motion to fix balance of their judgment debt with motion to set aside/annul public auctions.

On October 25, 2002, the RTC fixed the Tagles' judgment debt at ₱558,461.00, but denied their motion to set aside/annul auction sale.

A motion for an order directing the sale of the property under execution was filed and granted in an order dated January 17, 2003.

Displeased, the Tagles filed a petition for *certiorari* with the CA arguing that the RTC gravely abused its discretion when it upheld the regularity and validity of the August 9, 2000 and September 27, 2000 public auctions despite (a) the alleged lack of written notice to them in violation of Section 15, Rule 39 of the 1997 Rules of Civil Procedure (the "Rules") and (b) the shockingly inadequate proceeds thereof.

In the decision dated August 4, 2003, the CA dismissed the petition declaring, in essence, that the Tagles were duly notified of the questioned auction sales and the purported inadequacy of the sale price in such auction sales is immaterial to the validity of the sale.

Hence, the Tagles appeal to this Court via the present petition. Unfortunately, we cannot uphold their claims therein.

First, petitioners assert that they never received written notices of the August 9, 2000 and September 27, 2000 public auctions as required by the Rules. However, their denial is belied by the record.

With respect to the August 9, 2000 public auction, petitioners argue that the written notice of sale served on their private secretary is invalid. According to petitioners, the notice served on their secretary was in violation of Section 15, Rule 39 of the Rules which purportedly requires that the notice of sale be given to the judgment debtor and no other person.

We do not agree. Section 15, Rule 39 states:

SEC. 15. Notice of sale of property on execution. Before the sale of property on execution, notice thereof must be given as follows:

(a) In case of perishable property, by posting written notice of the time and place of the sale in three (3) public places, preferably in conspicuous areas of the municipal or city hall, post office and public market in the municipality or city where the sale is to take place, for such time as may be reasonable, considering the character and condition of the property;

(b) In case of other personal property, by posting a similar notice in the three (3) public places above-mentioned for not less than five (5) days;

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

(d) In all cases, **written notice of the sale shall be given to the judgment obligor**, at least three (3) days before the sale,

except as provided in paragraph (a) hereof where notice shall be given at any time before the sale, **in the same manner as personal service of pleadings and other papers as provided by Section 6 of Rule 13**.

x x x x x x x x x (emphasis ours)

Section 15(d) of Rule 39, cited by petitioners must be read in relation to Section 6, Rule 13, which in turn provides:

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

Verily, following Section 6, Rule 13, the written notice of sale to the judgment obligor need not be personally served on the judgment obligor himself. It may be served on his counsel, or by leaving the notice in his office with his clerk or a person having charge thereof. If there is no one found at the judgment obligor's or his counsel's office or if such office is not known/ inexistent, it may be served at the residence of the judgment obligor or his counsel and may be received by any person of sufficient age and discretion residing therein. Thus, petitioners' theory (that only written notice of sale served on petitioners' themselves would be valid) is utterly bereft of merit.

Other circumstances on record further support the finding that petitioners were duly notified of the August 9, 2000 auction sale. It can be gleaned from the Sheriff's Report[12] dated August 11, 2000 that a notice of sale was first issued on March 20, 2000. This was a notice for the public auction of various personal properties initially set on March 28, 2000 but the sale on said date was postponed upon the request of the parties (including petitioners) for time to come up with an amicable settlement.

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[12] CA *rollo*, p. 117.

When no amicable settlement was reached, the sheriff issued on July 31, 2000 another notice of sale which was set for August 9, 2000. The report further states that on the auction sale eventually conducted on August 9, 2000, the Tagles' son, Eric Tagle, was present. The Sheriff's Report is *prima facie* evidence of the facts stated therein. Indeed, the fact that petitioners were represented during the auction sale by their son confirmed that they had actual notice of the said auction sale.

We need not emphasize that the sheriff enjoys the presumption of regularity in the performance of the functions of his office.[13] This presumption prevails in the absence of substantial evidence to the contrary and cannot be overcome by bare and self-serving allegations. There was no showing that there was any irregularity in the report submitted by the sheriff, neither was there evidence that the sheriff was remiss in his duty to issue the said notices.

As for the September 27, 2000 auction, the written notice thereof was served and signed by petitioner Ernesto Tagle himself.[14] In the light of these circumstances, the Tagles could not credibly feign ignorance of the contested auction sales.

Second, petitioners contend that the proceeds of the auction sale were grossly inadequate.

In civil cases, he who alleges a fact has the burden of proving it. Having made such allegation that the proceeds of the sale were grossly inadequate, the burden of proof was upon them. Mere allegation is not evidence and is not equivalent to proof. While this Court is not unaware of petitioner Ernesto Tagle's reputation as a known artist and painter, mere claim of his renown in artistic circles is not proof of the purported high value of his artwork and pieces that were auctioned or of the inadequacy of the price when such works were sold during the questioned auction sales. We note that the Tagles presented several receipts to show the prices at which some of petitioner Ernesto Tagle's artworks had allegedly been sold. However,

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[13] Rules of Court, Rule 131, Section 3(m).

[14] CA *rollo,* p. 170.

there was no evidence that the artworks auctioned on execution were of the same kind or worth as those sold to the buyers indicated in the said receipts. Ergo, there were no bases for comparison for the value of the works mentioned in the said receipts and the value of those sold at the execution sales questioned herein. What was incumbent upon petitioners was to produce independent, competent and credible valuations or appraisals of the artwork sold during the assailed public auctions in order to substantiate their claim that the prices at which said paintings and artwork were sold were indeed grossly inadequate.

Accordingly, the Court finds no grave abuse of discretion was committed by the CA in upholding the regularity and validity of the challenged August 9, 2000 and September 27, 2000 public auction sales.

WHEREFORE, petition is hereby *DISMISSED*.

Costs against petitioners.

SO ORDERED.

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

[*] Additional member in lieu of Justice Lucas P. Bersamin as per raffle dated June 29, 2009.

EN BANC

[G.R. No. 179271. July 8, 2009]

BARANGAY ASSOCIATION FOR NATIONAL ADVANCEMENT AND TRANSPARENCY (BANAT), *petitioner, vs.* **COMMISSION ON ELECTIONS (sitting as the National Board of Canvassers),** *respondent.*

ARTS BUSINESS AND SCIENCE PROFESSIONALS, *intervenor.*

AANGAT TAYO, *intervenor.*

COALITION OF ASSOCIATIONS OF SENIOR CITIZENS IN THE PHILIPPINES, INC. (SENIOR CITIZENS), *intervenor.*

[G.R. No. 179295. July 8, 2009]

BAYAN MUNA, ADVOCACY FOR TEACHER EMPOWERMENT THROUGH ACTION, COOPERATION AND HARMONY TOWARDS EDUCATIONAL REFORMS, INC., and ABONO, *petitioners, vs.* **COMMISSION ON ELECTIONS,** *respondent.*

SYLLABUS

1. POLITICAL LAW; LEGISLATIVE DEPARTMENT; THE LEGISLATURE HAS THE OPTION TO CHOOSE WHETHER THE INCREASE IN THE NUMBER OF MEMBERS OF THE HOUSE OF REPRESENTATIVES IS DONE BY PIECEMEAL LEGISLATION OR BY ENACTMENT OF A LAW AUTHORIZING A GENERAL INCREASE. — The 1987 Constitution fixes the maximum number of members of the House of Representatives at 250. However, the 1987 Constitution expressly allows for an increase in the number of members of

the House of Representatives provided a law is enacted for the purpose. This is clear from the phrase "**unless otherwise provided by law**" in Section 5(1), Article VI of the 1987 Constitution. The Legislature has the option to choose whether the increase in the number of members of the House of Representatives is done by piecemeal legislation or by enactment of a law authorizing a general increase. Legislation that makes piecemeal increases of the number of district representatives is no less valid than legislation that makes a general increase.

2. ID.; ID.; RATIO OF THE PARTY-LIST REPRESENTATIVES TO THE DISTRICT REPRESENTATIVES IS FIXED BY THE CONSTITUTION; CONSTRUED. — The 1987 Constitution fixes the ratio of party-list representatives to district representatives. This ratio automatically applies whenever the number of district representatives is increased by law. The mathematical formula for determining the number of seats available to party-list representatives is Number of seats available to legislative districts .80 x .20 = Number of seats available to party-list representatives. As we stated in our Decision of 21 April 2009, "**[t]his formula allows for the corresponding increase in the number of seats available for party-list representatives whenever a legislative district is created by law.**" Thus, for every four district representatives, the 1987 Constitution mandates that there shall be one party-list representative. There is no need for legislation to create an additional party-list seat whenever four additional legislative districts are created by law. Section 5(2), Article VI of the 1987 Constitution automatically creates such additional party-list seat.

3. ID.; ID.; ID.; THRESHOLD FOR THE ALLOCATION OF THE PARTY LIST SEATS; CLARIFIED. — Actual occupancy of the party-list seats depends on the number of participants in the party-list election. If only ten parties participated in the 2007 party-list election, then, despite the availability of 54 seats, the maximum possible number of occupied party-list seats would only be 30 because of the three-seat cap. In such a case, the three-seat cap prevents the mandatory allocation of all the 54 available seats. Under Section 11(b) of R.A. No. 7941, garnering 2% of the total votes cast guarantees a party one seat. This 2% threshold for the first round of seat allocation does not violate any provision of the 1987 Constitution. Thus, the Court

upholds this 2% threshold for the guaranteed seats as a valid exercise of legislative power. In the second round allocation of additional seats, there is no minimum vote requirement to obtain a party-list seat because the Court has struck down the application of the 2% threshold in the allocation of additional seats. Specifically, the provision in Section 11(b) of the Party-List Act stating that "those garnering more than two percent (2%) of the votes shall be entitled to additional seats in the proportion to their total number of votes" can no longer be given any effect. Otherwise, the 20 percent party-list seats in the total membership of the House of Representatives as provided in the 1987 Constitution will mathematically be impossible to fill up. However, a party-list organization has to obtain a sufficient number of votes to gain a seat in the second round of seat allocation. What is deemed a sufficient number of votes is dependent upon the circumstances of each election, such as the number of participating parties, the number of available party-list seats, and the number of parties with guaranteed seats received in the first round of seat allocation. To continue the example above, if only ten parties participated in the 2007 party-list election and each party received only one thousand votes, then each of the ten parties would receive 10% of the votes cast. All are guaranteed one seat, and are further entitled to receive two more seats in the second round of seat allocation.

4. ID.; ID.; LEGISLATIVE DISTRICTS; EXPLAINED. — The phrase "**legislative districts** apportioned among the provinces, cities, and the Metropolitan Manila area in accordance with the number of their respective inhabitants, and on the basis of a uniform and progressive ratio" in Section 5(1) of Article VI requires that **legislative districts** shall be apportioned according to proportional representation. However, this principle of proportional representation applies only to **legislative districts,** not to the party-list system. The allocation of seats under the party-list system is governed by the last phrase of Section 5(1), which states that the party-list representatives shall be "those who, as provided by law, shall be elected through a party-list system," giving the Legislature wide discretion in formulating the allocation of party-list seats. Clearly, there is no constitutional requirement for absolute proportional representation in the allocation of party-list seats in the House

of Representatives. Section 2, on Declaration of Policy, of R.A. No. 7941 provides that the "State shall promote proportional representation in the election of representatives to the House of Representatives through a party-list system of registered national, regional and sectoral parties or organizations or coalitions thereof x x x." However, this proportional representation in Section 2 is qualified by Section 11(b) of the **same law** which mandates a three-seat cap, which is intended to bar any single party-list organization from dominating the party-list system. Section 11(b) also qualifies this proportional representation by imposing a two percent cut-off for those entitled to the guaranteed seats. These statutory qualifications are valid because they do not violate the Constitution, which does not require absolute proportional representation for the party-list system.

5. ID.; ID.; PARTY-LIST SYSTEM; FOUR PARAMETERS IN THE COMPUTATION THEREOF. — To summarize, there are four parameters in a Philippine-style party-list election system: 1. Twenty percent of the total number of the membership of the House of Representatives is the maximum number of seats available to party-list organizations, such that there is automatically one party-list seat for every four existing legislative districts. 2. Garnering two percent of the total votes cast in the party-list elections guarantees a party-list organization one seat. The guaranteed seats shall be distributed in a first round of seat allocation to parties receiving at least two percent of the total party-list votes. 3. The additional seats, that is, the remaining seats after allocation of the guaranteed seats, shall be distributed to the party-list organizations including those that received less than two percent of the total votes. The continued operation of the two percent threshold as it applies to the allocation of the additional seats is now unconstitutional because this threshold mathematically and physically prevents the filling up of the available party-list seats. The additional seats shall be distributed to the parties in a second round of seat allocation according to the two-step procedure laid down in the Decision of 21 April 2009 as clarified in this Resolution. 4. The three-seat cap is constitutional. The three-seat cap is intended by the Legislature to prevent any party from dominating the party-list system. There is no violation of the Constitution because the 1987 Constitution does not

require absolute proportionality for the party-list system. The well-settled rule is that courts will not question the wisdom of the Legislature as long as it is not violative of the Constitution. These four parameters allow the mathematical and practical fulfillment of the Constitutional provision that party-list representatives shall comprise twenty percent of the members of the House of Representatives. At the same time, these four parameters uphold as much as possible the Party-List Act, striking down only that provision of the Party-List Act that could not be reconciled anymore with the 1987 Constitution.

NACHURA, *J., separate opinion*:

POLITICAL LAW; LEGISLATIVE DEPARTMENT; REPUBLIC ACT NO. 7941 (PARTY-LIST SYSTEM ACT); TWO PERCENT (2%) THRESHOLD VOTE TO ENTITLE A PARTY, SECTORAL ORGANIZATION OR COALITION TO A SEAT IN THE HOUSE OF REPRESENTATIVE UNDER THE PARTY-LIST REPRESENTATIVE UNDER THE PARTY-LIST SYSTEM, UNCONSTITUTIONAL; REMEDY. — I concurred in the April 24, 2009 *ponencia* of the Honorable Justice Antonio T. Carpio subject to my submission that **Section 11,** Republic Act No. 7941 or the Party-List System Act, insofar as it requires a two percent (2%) threshold vote to entitle a party, sectoral organization or coalition to a seat in the House of Representatives under the party-list system, is **unconstitutional**. As explained in my Separate Opinion, **the 2% minimum vote requirement poses an insurmountable barrier to the full implementation of Section 5 (2), Article VI of the Philippine Constitution. My advocacy, however, does not extend to the complete disregard of a threshold vote.** I expressed full agreement with [now Chief] Justice Reynato S. Puno who, in his Separate Concurring Opinion in *Veterans Federation Party v. Commission on Elections*, validated the need for a minimum vote requirement, in order — 1. to avoid a situation where the candidate will just use the party-list system as a fallback position; 2. to discourage nuisance candidates or parties, who are not ready and whose chances are very low, from participating in the elections; 3. to avoid the reserve seat system from opening up the system; 4. to encourage the marginalized sectors to organize, work hard and earn their seats within the system; 5. to enable sectoral representatives to rise to the same majesty as that of the elective representatives in the legislative body,

rather than owing to some degree their seats in the legislative body either to an outright constitutional gift or to an appointment by the President of the Philippines; 6. if no threshold is imposed, this will actually proliferate political party groups and those who have not really been given by the people sufficient basis for them to represent their constituents and, in turn, they will be able to get to the Parliament through the backdoor under the name of the party-list system; and 7. to ensure that only those with a more or less substantial following can be represented. Thus, we proposed that, until Congress shall have effected an acceptable amendment to Section 11, R.A. 7941, we should abide by the sensible standard of "proportional representation" and **adopt a gradually regressive threshold vote requirement, inversely proportional to the increase in the number of party-list seats.** Expressed differently, we do not propose that Section 11 or a paragraph thereof be scrapped for being unconstitutional. **It is only the ratio of 2% that we find as unconstitutional**—the steady increase in the party-list seat allotment as it keeps pace with the creation of additional legislative districts, and the foreseeable growth of party-list groups, the fixed 2% vote requirement/ratio is no longer viable. It does not adequately respond to the inevitable changes that come with time; and it is, in fact, inconsistent with the Constitution, because it prevents the fundamental law from ever being fully operative. Obviously, the *ponencia* did not fully accept our submission. It declared as unconstitutional the 2% threshold vote only with respect to the second round of allocating party-list seats (on the additional seats); it continued to apply the 2% minimum vote requirement for entitlement to a seat under the first round of allocating (on the guaranteed seats). This, clearly, was not the intent of our modified concurrence to the *ponencia*, as expressed in our Separate Opinion.

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R E S O L U T I O N

CARPIO, *J.*:

The House of Representatives, represented by Speaker Prospero C. Nograles, filed a motion for leave to intervene in G.R. Nos. 179271 and 179295. The House of Representatives filed a motion for clarification in intervention and enumerated the issues for clarification as follows:

A. There are only 219 legislative districts and not 220. Accordingly, the alloted seats for party-list representation should only be 54 and not 55. The House of Representatives seeks clarification on which of the party-list representatives shall be admitted to the Roll of Members considering that the Court declared as winners 55 party-list representatives.

B. The House of Representatives wishes to be guided on whether it should enroll in its Roll of Members the 32 named party-list representatives enumerated in Table 3 or only such number of representatives that would complete the 250 member maximum prescribed by Article VI, Sec. 5(1) of the Constitution. In the event that it is ordered to admit all 32, will this act not violate the above-cited Constitutional provision considering that the total members would now rise to 270.

C. The Court declared as unconstitutional the 2% threshold only in relation to the distribution of additional seats as found in the second clause of Section 11(b) of R.A. No. 7941. Yet, it distributed first seats to party-list groups which did not attain the minimum number

of votes that will entitle them to one seat. Clarification is, therefore, sought whether the term "additional seats" refer to 2nd and 3rd seats only or all remaining available seats. Corollary thereto, the House of Representatives wishes to be clarified whether there is no more minimum vote requirement to qualify as a party-list representative.

D. For the guidance of the House of Representatives, clarification is sought as to whether the principle laid down in Veterans that "the filling up of the allowable seats for party-list representatives is not mandatory," has been abandoned.[1]

On the other hand, Armi Jane Roa-Borje (Roa-Borje), third nominee of Citizens' Battle Against Corruption (CIBAC), filed a motion for leave for partial reconsideration-in-intervention, alleging that:

The Supreme Court, in ruling on the procedure for distribution of seats, has deprived without due process and in violation of the equal protection clause, parties with more significant constituencies, such as CIBAC, Gabriela and APEC, in favor of parties who did not even meet the 2% threshold.[2]

Following the Court's Decision of 21 April 2009, the Commission on Elections (COMELEC) submitted to this Court on 27 April 2009 National Board of Canvassers (NBC) Resolution No. 09-001. NBC Resolution No. 09-001 updated the data used by this Court in its Decision of 21 April 2009. The total votes for party-list is now 15,723,764 following the cancellation of the registration of party-list group Filipinos for Peace, Justice and Progress Movement (FPJPM). Moreover, the total number of legislative districts is now 219 following the annulment of Muslim Mindanao Autonomy Act No. 201 creating the province of Shariff Kabunsuan. Thus, the percentage and ranking of the actual winning party-list groups are different from Table 3 of the Decision in G.R. Nos. 179271 and 179295.

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[1] Urgent Motion for Clarification in Intervention, pp. 6-17.

[2] Motion for Partial Reconsideration-in-Intervention, p. 11.

The Number of Members of the House of Representatives in the 2007 Elections

Section 5(1), Article VI of the 1987 Constitution reads:

> The House of Representatives shall be composed of not more than two hundred and fifty members, **unless otherwise fixed by law**, who shall be elected from legislative districts apportioned among the provinces, cities, and the Metropolitan Manila area in accordance with the number of their respective inhabitants, and on the basis of a uniform and progressive ratio, and those who, as provided by law, shall be elected through a party-list system of registered national, regional, and sectoral parties or organizations. (Emphasis supplied)

The 1987 Constitution fixes the maximum number of members of the House of Representatives at 250. However, the 1987 Constitution expressly allows for an increase in the number of members of the House of Representatives provided a law is enacted for the purpose. This is clear from the phrase "**unless otherwise provided by law**" in Section 5(1), Article VI of the 1987 Constitution. The Legislature has the option to choose whether the increase in the number of members of the House of Representatives is done by piecemeal legislation or by enactment of a law authorizing a general increase. Legislation that makes piecemeal increases of the number of district representatives is no less valid than legislation that makes a general increase.

In 1987, there were only 200 legislative districts. Twenty legislative districts were added by piecemeal legislation after the ratification of the 1987 Constitution:

	Republic Act	Year Signed into Law	Legislative District
1	7160	1992	Biliran
2	7675	1994	Mandaluyong City
3	7854	1994	Makati (2nd District)
4	7878	1995	Apayao
5	7896 and 7897	1995	Guimaras

6	7926	1995	Muntinlupa City
7	8470	1998	Compostela Valley
8	8487	1998	Taguig City (2nd District)
9	8526	1998	Valenzuela City (2nd District)
10	9229	2003	Parañaque (2nd District)
11	9230	2003	San Jose del Monte City
12	8508 and 9232	1998 and 2003	Antipolo (1st District)
13	9232	2003	Antipolo (2nd District)
14	9269	2004	Zamboanga City (2nd District)
15	9355	2006	Dinagat Island
16	9357	2006	Sultan Kudarat (2nd District)
17	9360	2006	Zamboanga Sibugay (2nd District)
18	9364	2006	Marikina City (2nd District)
19	9371	2007	Cagayan de Oro (2nd District)
20	9387	2007	Navotas City

Thus, for purposes of the 2007 elections, there were only 219 district representatives. Navotas City became a separate district on 24 June 2007, more than a month after the 14 May 2007 elections.

The Number of Party-List Seats in the 2007 Elections

Section 5(2), Article VI of the 1987 Constitution reads in part:

> The party-list representatives shall constitute twenty *per centum* of the total number of representatives including those under the party-list. x x x

The 1987 Constitution fixes the ratio of party-list representatives to district representatives. This ratio automatically applies whenever the number of district representatives is increased by law. The mathematical formula for determining the number of seats available to party-list representatives is

$$\frac{\text{Number of seats available to legislative districts}}{.80} \times .20 = \text{Number of seats available to party-list representatives.}$$

As we stated in our Decision of 21 April 2009, "**[t]his formula allows for the corresponding increase in the number of seats available for party-list representatives whenever a legislative district is created by law**." Thus, for every four district representatives, the 1987 Constitution mandates that there shall be one party-list representative. There is no need for legislation to create an additional party-list seat whenever four additional legislative districts are created by law. Section 5(2), Article VI of the 1987 Constitution automatically creates such additional party-list seat.

We use the table below to illustrate the relationship between the number of legislative districts and the number of party-list seats for every election year after 1987.

Election Year	Number of Legislative Districts	Number of Party-List Seats	Total Number of Members of the House of Representatives
1992	200	50	250
1995	206 *New Districts:* Biliran Mandaluyong City Makati (2nd District) Apayao Guimaras Muntinlupa City	51	257
1998	209 *New Districts:* Compostela Valley Taguig City (2nd District) Valenzuela City (2nd District)	52	261

2001	209	52	261
2004	214 *New Districts:* Parañaque City (2nd District) San Jose del Monte City Antipolo (1st District) Antipolo (2nd District) Zamboanga City (2nd District)	53	267
2007	219 *New Districts:* Dinagat Island Sultan Kudarat (2nd District) Zamboanga Sibugay (2nd District) Marikina City (2nd District) Cagayan de Oro (2nd District)	54	273
2010	220 *New District:* Navotas City (assuming no additional districts are created)	55	275

We see that, as early as the election year of 1995, the total number of members of the House of Representatives is already beyond the initial maximum of 250 members as fixed in the 1987 Constitution.

Any change in the number of legislative districts brings a corresponding change in the number of party-list seats. However, the increase in the number of members of the House of Representatives went unnoticed as the available seats for party-list representatives have never been filled up before. As of the oral arguments in G.R. Nos. 179271 and 179295, there were 220 legislative districts. Fifty-five party-list seats were thus allocated. However, the number of legislative districts was subsequently reduced

to 219 with our ruling on 16 July 2008 declaring void the creation of the Province of Sharif Kabunsuan.[3] Thus, in the 2007 elections, the number of party-list seats available for distribution should be correspondingly reduced from 55 to 54.

The filling-up of all available party-list seats is not mandatory. Actual occupancy of the party-list seats depends on the number of participants in the party-list election. If only ten parties participated in the 2007 party-list election, then, despite the availability of 54 seats, the maximum possible number of occupied party-list seats would only be 30 because of the three-seat cap. In such a case, the three-seat cap prevents the mandatory allocation of all the 54 available seats.

Under Section 11(b) of R.A. No. 7941, garnering 2% of the total votes cast guarantees a party one seat. This 2% threshold for the first round of seat allocation does not violate any provision of the 1987 Constitution. Thus, the Court upholds this 2% threshold for the guaranteed seats as a valid exercise of legislative power.

In the second round allocation of additional seats, there is no minimum vote requirement to obtain a party-list seat because the Court has struck down the application of the 2% threshold in the allocation of additional seats. Specifically, the provision in Section 11(b) of the Party-List Act stating that "those garnering more than two percent (2%) of the votes shall be entitled to additional seats in the proportion to their total number of votes" can no longer be given any effect. Otherwise, the 20 percent party-list seats in the total membership of the House of Representatives as provided in the 1987 Constitution will mathematically be impossible to fill up.

However, a party-list organization has to obtain a sufficient number of votes to gain a seat in the second round of seat allocation. What is deemed a sufficient number of votes is dependent upon the circumstances of each election, such as the number of participating parties, the number of available

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[3] *Bai Sandra S.A. Sema v. Commission on Elections, et al.*, G.R. Nos. 177597 & 178628, 16 July 2008, 558 SCRA 700.

party-list seats, and the number of parties with guaranteed seats received in the first round of seat allocation. To continue the example above, if only ten parties participated in the 2007 party-list election and each party received only one thousand votes, then each of the ten parties would receive 10% of the votes cast. All are guaranteed one seat, and are further entitled to receive two more seats in the second round of seat allocation.

Similarly, a presidential candidate may win the elections even if he receives only one thousand votes as long as all his opponents receive less than one thousand votes. A winning presidential candidate only needs to receive more votes than his opponents. The same policy applies in every election to public office, from the presidential to the *barangay* level. Except for the guaranteed party-list seat, there is no minimum vote requirement before a candidate in any election, for any elective office, can be proclaimed the winner. Of course, the winning candidate must receive at least one vote, assuming he has no opponents or all his opponents do not receive a single vote.

In the absence of a minimum vote requirement in the second round of party-list seat allocation, there is no need to belabor the disparity between the votes obtained by the first and last ranked winning parties in the 2007 party-list elections. In the same manner, no one belabors the disparity between the votes obtained by the highest and lowest ranked winners in the senatorial elections. However, for those interested in comparing the votes received by party-list representatives *vis-a-vis t*he votes received by district representatives, the 162,678 votes cast in favor of TUCP, the last party to obtain a party-list seat, is significantly higher than the votes received by 214 of the 218 elected district representatives.[4]

The Actual Number of Party-List Representatives in the 2007 Elections

The data used in Table 3 of our Decision promulgated on 21 April 2009 was based on the submissions of the parties. We used the figures from Party-List Canvass Report No. 32,

[4] *Rollo* (G.R. No. 179271), pp. 1148-1163.

as of 6:00 p.m. of 31 August 2007. The NBC issued NBC Report No. 33 on 11 June 2008, updating the 31 August 2007 report. **The parties did not furnish this Court with a copy of NBC Report No. 33.** In any case, we stated in the dispositive portion of our Decision that "[t]he allocation of additional seats under the Party-List System shall be in accordance with **the procedure** used in Table 3 of this decision." Party-List Canvass Report No. 32 is not part of the procedure.

The computation of the COMELEC in NBC No. 09-001 applying the procedure laid down in our Decision requires correction for purposes of accuracy. Instead of multiplying the percentage of votes garnered over the total votes for party-list by 36, the COMELEC multiplied the percentage by 37. Thirty-six is the proper multiplier as it is the difference between 54, the number of available party-list seats, and 18, the number of guaranteed seats. Only the figures in column (C) are affected. **The allocation of seats to the winning party-list organizations, however, remains the same as in NBC No. 09-001**. Our modification of the COMELEC's computation in NBC No. 09-001 is shown below:

Rank	Party	Votes Garnered	Votes Garnered over Total Votes for Party List, in % *(A)*	Guaranteed Seat (First Round) *(B)*	Additional Seats (Second Round) *(C)*	(B) plus (C), in whole integers *(D)*	Applying the three seat cap *(E)*
1	BUHAY	1,169,338	7.44%	1	2.68	3	N.A.
2	BAYAN MUNA	979,189	6.23%	1	2.24	3	N.A.
3	CIBAC	755,735	4.81%	1	1.73	2	N.A.
4	GABRIELA	621,266	3.95%	1	1.42	2	N.A.
5	APEC	619,733	3.94%	1	1.42	2	N.A.
6	A Teacher	490,853	3.12%	1	1.12	2	N.A.
7	AKBAYAN	466,448	2.97%	1	1.07	2	N.A.

8[5]	ALAGAD	423,165	2.69%	1	1	2	N.A.
9	COOP-NATCCO	409,987	2.61%	1	1	2	N.A.
10	BUTIL	409,168	2.60%	1	1	2	N.A.
11	BATAS	385,956	2.45%	1	1	2	N.A.
12	ARC	374,349	2.38%	1	1	2	N.A.
13	ANAKPAWIS	370,323	2.36%	1	1	2	N.A.
14	AMIN	347,527	2.21%	1	1	2	N.A.
15	ABONO	340,002	2.16%	1	1	2	N.A.
16	YACAP	331,623	2.11%	1	1	2	N.A.
17	AGAP	328,814	2.09%	1	1	2	N.A.
18	AN WARAY	321,516	2.04%	1	1	2	N.A.
19	UNI-MAD	251,804	1.60%	0	1	1	N.A.
20	ABS	235,152	1.50%	0	1	1	N.A.
21	ALIF	229,267	1.46%	0	1	1	N.A.
22	KAKUSA	229,036	1.46%	0	1	1	N.A.
23	KABATAAN	228,700	1.45%	0	1	1	N.A.
24	ABA-AKO	219,363	1.40%	0	1	1	N.A.
25	SENIOR CITIZENS	213,095	1.36%	0	1	1	N.A.
26	AT	200,030	1.27%	0	1	1	N.A.
27	VFP	196,358	1.25%	0	1	1	N.A.
28	ANAD	188,573	1.20%	0	1	1	N.A.
29	BANAT	177,068	1.13%	0	1	1	N.A.
30	ANG KASANGGA	170,594	1.08%	0	1	1	N.A.
31	BANTAY	169,869	1.08%	0	1	1	N.A.
32	ABAKADA	166,897	1.06%	0	1	1	N.A.
33	1-UTAK	165,012	1.05%	0	1	1	N.A.
34	TUCP	162,678	1.03%	0	1	1	N.A.
35	COCOFED	156,007	0.99%	0	0	0	N.A.
Total				**18**			**5 4**

[5] The product of the percentage and the remaining available seats of all parties ranked eight and below is less than one.

Bagong Alyansang Tagapagtaguyod ng Adhikaing Sambayanan (BATAS) and Ang Laban ng Indiginong Filipino (ALIF) both have pending cases before the COMELEC. The COMELEC correctly deferred the proclamation of both BATAS and ALIF as the outcome of their cases may affect the final composition of party-list representatives. The computation and allocation of seats may still be modified in the event that the COMELEC decides against BATAS and/or ALIF.

To address Roa-Borje's motion for partial reconsideration-in-intervention and for purposes of computing the results in future party-list elections, we reiterate that in the second step of the second round of seat allocation, the preference in the distribution of seats should be in accordance with the higher percentage and higher rank, without limiting the distribution to parties receiving two-percent of the votes.[6] To limit the distribution of seats to the two-percenters would mathematically prevent the filling up of all the available party-list seats.

In the table above, CIBAC cannot claim a third seat from the seat allocated to TUCP, the last ranked party allocated with a seat. CIBAC's 2.81% (from the percentage of 4.81% less the 2% for its guaranteed seat) has a lower fractional

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[6] In our Decision of 21 April 2009, we stated: "[W]e do not limit our allocation of additional seats in Table 3 below to the two-percenters. The percentage of votes garnered by each party-list candidate is arrived at by dividing the number of votes garnered by each party by 15,950,900 [now 15,723,764], the total number of votes cast for party-list candidates. There are two steps in the second round of seat allocation. First, the percentage is multiplied by the remaining available seats, 38 [now 37], which is the difference between the 55 [now 54] maximum seats reserved under the Party-List System and the 17 guaranteed seats of the two-percenters. The whole integer of the product of the percentage and of the remaining available seats corresponds to a party's share in the remaining available seats. Second, we assign one party-list seat to each of the parties next in rank until all available seats are completely distributed. We distributed all of the remaining 38 [now 37] seats in the second round of seat allocation. Finally, we apply the three-seat cap to determine the number of seats each qualified party-list candidate is entitled."

seat value after the allocation of its second seat compared to TUCP's 1.03%. CIBAC's fractional seat after receiving two seats is only 0.03 compared to TUCP's 0.38 fractional seat. Multiplying CIBAC's 2.81% by 37, the additional seats for distribution in the second round, gives 1.03 seat, leaving 0.03 fractional seat. Multiplying TUCP's 1.03% by 37 gives a fractional seat of 0.38, higher than CIBAC's fractional seat of 0.03. The fractional seats become material only in the second step of the second round of seat allocation to determine the ranking of parties. Thus, for purposes of the second step in the second round of seat allocation,[7] TUCP has a higher rank than CIBAC.

Roa-Borje's position stems from the perceived need for absolute proportionality in the allocation of party-list seats. However, the 1987 Constitution does not require absolute proportionality in the allocation of party-list seats. Section 5(1), Article VI of the 1987 Constitution provides:

> (1) The House of Representatives shall be composed of not more than two hundred and fifty members, unless otherwise fixed by law, who shall be elected from **legislative districts apportioned among the provinces, cities, and the Metropolitan Manila area in accordance with the number of their respective inhabitants, and on the basis of a uniform and progressive ratio**, *and those who, as provided by law, shall be elected through a party-list system of registered national, regional, and sectoral parties and organizations*. (Boldfacing and italicization supplied)

The phrase "**legislative districts** apportioned among the provinces, cities, and the Metropolitan Manila area in accordance with the number of their respective inhabitants, and on the basis of a uniform and progressive ratio" in Section 5(1) of Article VI requires that **legislative districts** shall be apportioned according to proportional representation. However, this principle of proportional representation applies only to **legislative districts**, not to the party-list system. The allocation of seats under the party-list system is governed by the last phrase of

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[7] *Id*.

Section 5(1), which states that the party-list representatives shall be "**those who, as provided by law, shall be elected through a party-list system,**" giving the Legislature wide discretion in formulating the allocation of party-list seats. Clearly, there is no constitutional requirement for absolute proportional representation in the allocation of party-list seats in the House of Representatives.

Section 2, on Declaration of Policy, of R.A. No. 7941 provides that the "State shall promote proportional representation in the election of representatives to the House of Representatives through a party-list system of registered national, regional and sectoral parties or organizations or coalitions thereof x x x." However, this proportional representation in Section 2 is qualified by Section 11(b)[8] of the **same law** which mandates a three-seat cap, which is intended to bar any single party-list organization from dominating the party-list system. Section 11(b) also qualifies this proportional representation by imposing a two percent cut-off for those entitled to the guaranteed seats. These statutory qualifications are valid because they do not violate the Constitution, which does not require absolute proportional representation for the party-list system.

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[8] SECTION 11. Number of Party-List Representatives. — The party-list representatives shall constitute twenty per centum (20%) of the total number of the members of the House of Representatives including those under the party-list.

x x x x x x x x x

In determining the allocation of seats for the second vote, the following procedure shall be observed:

(a) The parties, organizations, and coalitions shall be ranked from the highest to the lowest based on the number of votes they garnered during the elections.

(b) **The parties, organizations, and coalitions receiving at least two percent (2%) of the total votes cast for the party-list system shall be entitled to one seat each: Provided, That those garnering more than two percent (2%) of the votes shall be entitled to additional seats in proportion to their total number of votes: Provided, finally, That each party, organization, or coalition shall be entitled to not more than three (3) seats.** (Emphasis supplied)

To summarize, there are four parameters in a Philippine-style party-list election system:

1. Twenty percent of the total number of the membership of the House of Representatives is the maximum number of seats available to party-list organizations, such that there is automatically one party-list seat for every four existing legislative districts.

2. Garnering two percent of the total votes cast in the party-list elections guarantees a party-list organization one seat. The guaranteed seats shall be distributed in a first round of seat allocation to parties receiving at least two percent of the total party-list votes.

3. The additional seats, that is, the remaining seats after allocation of the guaranteed seats, shall be distributed to the party-list organizations including those that received less than two percent of the total votes. The continued operation of the two percent threshold as it applies to the allocation of the additional seats is now unconstitutional because this threshold mathematically and physically prevents the filling up of the available party-list seats. The additional seats shall be distributed to the parties in a second round of seat allocation according to the two-step procedure laid down in the Decision of 21 April 2009 as clarified in this Resolution.

4. The three-seat cap is constitutional. The three-seat cap is intended by the Legislature to prevent any party from dominating the party-list system. There is no violation of the Constitution because the 1987 Constitution does not require absolute proportionality for the party-list system. The well-settled rule is that courts will not question the wisdom of the Legislature as long as it is not violative of the Constitution.

These four parameters allow the mathematical and practical fulfillment of the Constitutional provision that party-list representatives shall comprise twenty percent of the members of the House of Representatives. At the same time, these four

parameters uphold as much as possible the Party-List Act, striking down only that provision of the Party-List Act that could not be reconciled anymore with the 1987 Constitution.

WHEREFORE, the Court's Decision of 21 April 2009 in the present case is clarified accordingly.

SO ORDERED.

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

Nachura, J., see separate opinion.

SEPARATE OPINION

NACHURA, *J.*:

This will clarify my position in these consolidated cases.

I concurred in the April 24, 2009 *ponencia* of the Honorable Justice Antonio T. Carpio subject to my submission that **Section 11**,[1] Republic Act No.

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[1] The provision reads in full:

Section 11. *Number of Party-List Representatives.* The party-list representatives shall constitute twenty per centum (20%) of the total number of the members of the House of Representatives including those under the party-list.

For purposes of the May 1998 elections, the first five (5) major political parties on the basis of party representation in the House of Representatives at the start of the Tenth Congress of the Philippines shall not be entitled to participate in the party-list system.

In determining the allocation of seats for the second vote, the following procedure shall be observed:

(a) The parties, organizations, and coalitions shall be ranked from the highest to the lowest based on the number of votes they garnered during the elections.

(b) **The parties, organizations, and coalitions receiving at least two percent (2%) of the total votes cast for the party-list system shall be entitled to one seat each: Provided, That those garnering more than two percent (2%) of the votes shall be entitled to additional seats in proportion to their total number of votes: Provided, finally, That each party,**

7941[2] or the Party-List System Act, insofar as it requires a two percent (2%) threshold vote to entitle a party, sectoral organization or coalition to a seat in the House of Representatives under the party-list system, is **unconstitutional**. As explained in my Separate Opinion, **the 2% minimum vote requirement poses an insurmountable barrier to the full implementation of Section 5 (2), Article VI of the Philippine Constitution.**

My advocacy, however, does not extend to the complete disregard of a threshold vote. I expressed full agreement with [now Chief] Justice Reynato S. Puno who, in his Separate Concurring Opinion in *Veterans Federation Party v. Commission on Elections*,[3] validated the need for a minimum vote requirement, in order—

1. to avoid a situation where the candidate will just use the party-list system as a fallback position;
2. to discourage nuisance candidates or parties, who are not ready and whose chances are very low, from participating in the elections;
3. to avoid the reserve seat system from opening up the system;
4. to encourage the marginalized sectors to organize, work hard and earn their seats within the system;
5. to enable sectoral representatives to rise to the same majesty as that of the elective representatives in the legislative body, rather than owing to some degree their seats in the legislative body either to an outright constitutional gift or to an appointment by the President of the Philippines;
6. if no threshold is imposed, this will actually proliferate political party groups and those who have not really been given by the people sufficient basis for them to represent their constituents and, in turn, they will be able to get to the

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organization, or coalition shall be entitled to not more than three (3) seats. [Emphasis supplied]

[2] Entitled "AN ACT PROVIDING FOR THE ELECTION OF PARTY-LIST REPRESENTATIVES THROUGH THE PARTY-LIST SYSTEM, AND APPROPRIATING FUNDS THEREFOR"; approved on March 3, 1995.

[3] G.R. No. 136781, October 6, 2000, 342 SCRA 244.

Parliament through the backdoor under the name of the party-list system; and

7. to ensure that only those with a more or less substantial following can be represented.[4]

Thus, we proposed that, until Congress shall have effected an acceptable amendment to Section 11, R.A. 7941, we should abide by the sensible standard of "proportional representation" and **adopt a gradually regressive threshold vote requirement, inversely proportional to the increase in the number of party-list seats**. Expressed differently, we do not propose that Section 11 or a paragraph thereof be scrapped for being unconstitutional. **It is only the ratio of 2% that we find as unconstitutional—**the steady increase in the party-list seat allotment as it keeps pace with the creation of additional legislative districts, and the foreseeable growth of party-list groups, the fixed 2% vote requirement/ratio is no longer viable. It does not adequately respond to the inevitable changes that come with time; and it is, in fact, inconsistent with the Constitution, because it prevents the fundamental law from ever being fully operative.

Obviously, the *ponencia* did not fully accept our submission. It declared as unconstitutional the 2% threshold vote only with respect to the second round of allocating party-list seats (on the additional seats); it continued to apply the 2% minimum vote requirement for entitlement to a seat under the first round of allocation (on the guaranteed seats). This, clearly, was not the intent of our modified concurrence to the *ponencia*, as expressed in our Separate Opinion.

As expressed in that opinion, the formula which must be adopted—**scrapping only the 2% ratio but still adopting a threshold vote requirement**, is as follows:

$$\frac{100\%}{\text{(Total number of votes cast for party-list)}} = 1.8518\%$$
$$\text{54 party-list seats (as clarified)}$$

[4] *Id*. at 290.

Clearly, the minimum vote requirement will gradually lessen as the number of party-list seats increases. Thus, in a scenario in which there are 100 party-list seats, the threshold vote is computed as follows:

$$\frac{\text{100\%}}{\text{(Total number of votes cast for party-list)}} = 1\%$$
$$\text{100 party-list seats}$$

This is the more logical and equitable formula. It would judiciously respond to the inevitable changes in the composition of the House of Representatives; it would open opportunities for the broadest people's representation in the House of Representatives; and more importantly, it would not violate the Constitution. Moreover, the threshold vote requirement, as enacted by Congress and as validated by this Court in *Veterans*, is maintained.

Additionally, the formula will not be discriminatory as it will not only apply in the first round of allocation of seats, but will also be applicable in the second round. While I do not wish to belabor the point, the erroneous application by the *ponencia* of a threshold vote (2%) in the first round of allocation of seats, and its disregard in the second round, might cause an unintended transgression of the equal protection clause, which requires that all persons or things similarly situated should be treated alike, both as to the rights conferred and responsibilities imposed.[5]

Thus, as I have expressed before, with respect to the fixed threshold vote of **2%** (only the ratio) in Section 11 of R.A. No. 7941, I join the Court in declaring it unconstitutional, since all enactments inconsistent with the Constitution should be invalidated.

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[5] *Philippine Judges Association v. Prado*, *supra* note 11, at 711-712.

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