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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

SECOND DIVISION

[G.R. Nos. 170615-16. July 9, 2009]

THE REPUBLIC OF THE PHILIPPINES, represented by the OFFICE OF THE OMBUDSMAN, MA. MERCEDITAS N. GUTIERREZ, in her capacity as the Ombudsman, *petitioner, vs.* **RUFINO V. MIJARES, ROBERTO G. FERRERA, ALFREDO M. RUBA and ROMEO QUERUBIN,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; SUFFICIENCY OF EVIDENCE; SUBSTANTIAL EVIDENCE, PROOF REQUIRED IN ADMINISTRATIVE PROCEEDINGS; CONSTRUED. — It bears stressing that in administrative proceedings, the complainant has the burden of proving, by substantial evidence, the allegations in the complaint. Substantial evidence does not necessarily import preponderance of evidence as is required in an ordinary civil case; rather, it is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.

2. POLITICAL LAW; NATIONAL ECONOMY AND PATRIMONY; REP. ACT NO. 7279 (URBAN DEVELOPMENT AND HOUSING ACT OF 1992), P.D. NO. 1096 (NATIONAL BUILDING CODE OF THE PHILIPPINES) AND P.D. NO. 1845, AS AMENDED BY P.D. NO. 1848 (DECLARING THE AREA SURROUNDING THE SATELLITE EARTH STATION IN

BARAS, RIZAL, A SECURITY ZONE) DISTINGUISHED; APPLICATION IN CASE AT BAR. — Rep. Act No. 7279 (Urban Development and Housing Act of 1992) covers lands in urban and urbanizable areas, including existing areas for priority development, zonal improvement sites, slum improvement and resettlement sites, and in other areas that may be identified by the local government units as suitable for socialized housing. On the other hand, P.D. No. 1096 (National Building Code of the Philippines) applies to the design, location, sitting, construction, alteration, repair, conversion, use, occupancy, maintenance, moving, demolition of, and addition to public and private buildings and structures, except traditional indigenous family dwellings as defined therein. The parcel of land involved in this case hosts the Philippine Space Communications Center which consists of a satellite earth station that serves as the communications gateway of the Philippines to more than two-thirds of the world. It was declared by P.D. No. 1845, (Declaring the Area within a Radius of Three Kilometers Surrounding the Satellite Earth Station in Baras, Rizal, a Security Zone) as amended by P.D. No. 1848, as a security zone to ensure its security and uninterrupted operation considering the vital role of the earth station in the country's telecommunications and national development. The law also placed it under the jurisdiction of the Ministry (now Department) of National Defense which has the power and the authority to determine who can occupy the areas within the security zone, and how the lands shall be utilized. Clearly, P.D. Nos. 1845 and 1848 should govern notwithstanding the provisions of Rep. Act No. 7279 and P.D. No. 1096 since the former laws have specific reference to the use and occupation of the parcel of land in this case. x x x If under Rep. Act No. 7279, demolition and eviction are allowed when individuals have been identified as professional squatters and squatting syndicates or when they occupy danger areas and other public places, and under P.D. No. 1096, they construct dangerous and ruinous buildings or structures, then with more reason the SPFMPCI members should be summarily evicted and their structures and dwellings demolished. The parcel of land involved in this case is a security zone whose operations must be protected from any form of disruption. It must be protected from all types of squatters, including the SPFMPCI members, who might create danger to a very important national telecommunications facility.

3. ID.; ADMINISTRATIVE LAW; PUBLIC OFFICERS; WHEN LIABLE FOR GRAVE MISCONDUCT; NOT PRESENT IN CASE AT BAR. — Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer. And when the elements of corruption, clear intent to violate the law or flagrant disregard of established rule are manifest, the public officer shall be liable for grave misconduct. Respondents rightfully determined the occupation by the SPFMPCI members unauthorized (albeit on a different basis). As the Court of Appeals observed, respondents also presented a list of settlers who were affected by the demolition. The production of such list was made to support their claim that they notified the SPFMPCI members of the demolition and that a conference was held prior thereto. Had respondents been impelled by ill motive, they would not have taken measures to properly identify who were legal occupants and who were squatters in the parcel of land in this case. Clearly, respondents acted within the limits of the law when they implemented the demolition.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Ricardo Valmonte for Mijares, Ferrera & Ruba.
Jose De G. Ferrer for Engr. Romeo Querubin.

D E C I S I O N

QUISUMBING, *J.*:

For review on *certiorari* are the Decision[1] dated June 23, 2005, and the Resolution[2] dated November 25, 2005, of the Court of Appeals in CA-G.R. SP Nos. 76700 and 76484. The

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[1] *Rollo*, pp. 46-65. Penned by Associate Justice Delilah Vidallon-Magtolis, with Associate Justices Perlita J. Tria Tirona and Jose C. Reyes, Jr., concurring.

[2] *Id.* at 66-67. Penned by Associate Justice Delilah Vidallon-Magtolis, with Associate Justices Regalado E. Maambong and Jose C. Reyes, Jr., concurring.

appellate court had reversed and set aside the Decision[3] dated March 5, 2002, of the Office of the Ombudsman in OMB-ADM-0-00-0336 and ordered (1) the reinstatement of respondents Romeo Querubin and Rufino V. Mijares to their respective positions in the government service with full payment of backwages and other benefits, and (2) the full payment of backwages and other benefits of respondent Alfredo M. Ruba.

The administrative case against respondents stemmed from a controversy involving a parcel of land owned by the Philippine Communications Satellite Corporation (PHILCOMSAT) located in Barangay Pinugay, Baras, Rizal. Claiming that the subject land is covered by the Comprehensive Agrarian Reform Program (CARP), members of the Southern Pinugay Farmers Multi-Purpose Cooperative, Inc. (SPFMPCI) occupied about 100 hectares thereof. They introduced improvements such as houses, fruit-bearing trees, vegetables, *palay* and other crops.

PHILCOMSAT filed a protest before the Department of Agrarian Reform (DAR) claiming that the land was exempt from CARP coverage since it was an integral part of the Philippine Space Communications Operation. The DAR denied the protest. PHILCOMSAT then filed a petition for review with the Court of Appeals.

During the pendency of the petition, respondent Mayor Roberto G. Ferrera issued an order[4] directing respondent Engr. Romeo Querubin to demolish the said houses and improvements. Meanwhile, in a pending case between PHILCOMSAT and SPFMPCI before the Commission on the Settlement of Land Problems, respondent Commissioner Rufino V. Mijares issued an order[5] interposing no objection to the order of demolition. Ferrera then directed Querubin to implement the order. He also sought police assistance.

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[3] CA *rollo* (CA-G.R. SP No. 76484), pp. 48-64.

[4] *Id.* at 27.

[5] *Id.* at 26.

On March 24, 2000, the houses and improvements on the subject land were demolished and destroyed. As a result, SPFMPCI filed an administrative case for grave misconduct and harassment against respondents before the Office of the Ombudsman.

In their Joint Counter-Affidavit,[6] respondents argued that the SPFMPCI members were not in the list of occupants/ potential farmer-beneficiaries of PHILCOMSAT landholdings on file with the Municipal Agrarian Reform Office (MARO) and Provincial Agrarian Reform Office (PARO). Thus, they were illegal entrants whose houses and improvements constituted a nuisance that may be abated. More importantly, the houses and improvements were constructed without the required building permits under Section 301[7] of Presidential Decree No. 1096 or the National Building Code.[8] Thus, its summary demolition was justified under Section 27,[9] Article

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[6] *Id.* at 44-47.

[7] **SECTION 301. Building Permits**

No person, firm or corporation, including any agency or instrumentality of the government shall erect, construct, alter, repair, move, convert or demolish any building or structure or cause the same to be done without first obtaining a building permit therefor from the Building Official assigned in the place where the subject building is located or the building work is to be done.

[8] Promulgated on February 19, 1977.

[9] SEC. 27. *Action Against Professional Squatters and Squatting Syndicates*.—The local government units, in cooperation with the Philippine National Police, the Presidential Commission for the Urban Poor (PCUP), and the PCUP-accredited urban poor organization in the area, shall adopt measures to identify and effectively curtail the nefarious and illegal activities of professional squatters and squatting syndicates, as herein defined.

Any person or group identified as such shall be summarily evicted and their dwellings or structures demolished, and shall be disqualified to avail of the benefits of the Program. A public official who tolerates or abets the commission of the abovementioned acts shall be dealt with in accordance with existing laws.

VII of Republic Act No. 7279 or the Urban Development and Housing Act of 1992.[10]

In the meantime, on November 23, 2001, the Court of Appeals rendered a decision in the petition for review of the DAR decision finding the subject land exempt from CARP coverage.[11] This was later affirmed by the Supreme Court in a Decision dated June 15, 2006.[12]

Meanwhile on March 5, 2002, the Office of the Ombudsman declared the demolition unjustified. It noted that the demolished houses and improvements were traditional indigenous family dwellings intended for the use and occupancy by the owner's family only and made of native materials, the total cost of which does not exceed ₱15,000 and deemed exempted from the payment of building permit fees. It added that the fact that the same were constructed without the necessary building permits do not automatically necessitate its demolition since only dangerous or ruinous buildings or structures may be ordered repaired, vacated or demolished under Section 215[13] of P.D. No. 1096. In this case, the demolished houses and improvements

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For purposes of this Act, professional squatters or members of squatting syndicates shall be imposed the penalty of six (6) years imprisonment or a fine of not less than Sixty thousand pesos (₱60,000) but not more than One hundred thousand pesos (₱100,000), or both, at the discretion of the court.

[10] AN ACT TO PROVIDE FOR A COMPREHENSIVE AND CONTINUING URBAN DEVELOPMENT AND HOUSING PROGRAM, ESTABLISH THE MECHANISM FOR ITS IMPLEMENTATION, AND FOR OTHER PURPOSES, approved on March 24, 1992.

[11] *Rollo*, p. 59; CA *rollo* (CA-G.R. SP No. 76484), p. 71.

[12] *Department of Agrarian Reform v. Philippine Communications Satellite Corp.*, G.R. No. 152640, June 15, 2006, 490 SCRA 729.

[13] **SECTION 215. Abatement of Dangerous Buildings**

When any building or structure is found or declared to be dangerous or ruinous, the Building Official shall order its repair, vacation or demolition depending upon the degree of danger to life, health, or safety. This is without prejudice to further action that may be taken under the provisions of Articles 482 and 694 to 707 of the Civil Code of the Philippines.

were neither dangerous nor ruinous. Further, the same cannot be summarily demolished under Section 27, Article VII of Rep. Act No. 7279 since the law does not apply to rural lands and lands under CARP coverage. In conclusion, the Office of the Ombudsman held respondents guilty of grave misconduct for their flagrant disregard of established rules, thus:

WHEREFORE, the foregoing premises considered, this Office hereby find[s]:

(1) Respondents **RUFINO V. MIJARES**, Commissioner, Commission on the Settlement of Land Problems with office address at Aries Bldg., 103 Quezon Avenue, Quezon City; **MAYOR ROBERT FERRERA**, Municipal Mayor, Baras, Rizal; **ENGR. ROMEO QUERUBIN**, Municipal Engineer, Baras, Rizal, and **ALFREDO RUBA**, Barangay Chairman of Barangay Pinugay, Baras, Rizal **GUILTY** of the administrative offense of **GRAVE MISCONDUCT** with the penalty of **DISMISSAL FROM THE SERVICE with FORFEITURE OF RETIREMENT BENEFITS, CANCELLATION OF ELIGIBILITY, AND THE PERPETUAL DISQUALIFICATION FOR REEMPLOYMENT IN THE GOVERNMENT SERVICE** pursuant to Section 25 of Republic Act No. 6770, otherwise known as the Ombudsman Act of 1989 and the pertinent provisions of Civil Service Commission Resolution No. 991936 otherwise known as the **"UNIFORM RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE."**

(2) Respondents **LUIZO TICMAN**, PNP Superintendent, Provincial Director of the Rizal Provincial Office and **ORLANDO PAZ**, Police Inspector, Baras, Rizal Police Station are hereby **EXONERATED** and the case against them **DISMISSED**.

(3) The Governor of the Province of Rizal, the Secretary of the Department of Interior and Local Government and the Secretary of the Department of Justice are hereby directed to immediately implement this Decision in accordance with law and to inform this Office of their action within thirty (30) days upon receipt [hereof].

SO ORDERED.[14]

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[14] CA *rollo* (CA-G.R. SP No. 76484), pp. 62-63.

Mijares, Ferrera and Ruba filed a joint motion for reconsideration while Querubin filed a separate motion for reconsideration. Both motions were denied. Thus, they filed petitions for review with the Court of Appeals which were later consolidated.

On June 23, 2005, the appellate court ruled that: *First*, the order of demolition was based solely on the failure of the SPFMPCI members to secure the necessary building permits to construct the houses and improvements. According to the order, this violated Section 301 of P.D. No. 1096 thereby warranting summary demolition under Section 27, Article VII of Rep. Act No. 7279. *Second*, respondents presented a list of the SPFMPCI members whose houses and improvements were demolished as well as a list of occupants/potential farmer-beneficiaries of PHILCOMSAT landholdings on file with the MARO and PARO. None of the SPFMPCI members was in the list of occupants/potential farmer-beneficiaries of PHILCOMSAT landholdings. Thus, they are not the owners or *bona fide* occupants of the subject land and may be summarily evicted therefrom. *Third*, Section 28[15] of Rep. Act No. 7279

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[15] SEC. 28. *Eviction and Demolition*.—Eviction or demolition as a practice shall be discouraged. Eviction or demolition, however, may be allowed under the following situations:

(a) When persons or entities occupy danger areas such as *esteros*, railroad tracks, garbage dumps, riverbanks, shorelines, waterways, and other public places such as sidewalks, roads, parks, and playgrounds;

(b) When government infrastructure projects with available funding are about to be implemented; or

(c) When there is a court order for eviction and demolition.

In the execution of eviction or demolition orders involving underprivileged and homeless citizens, the following shall be mandatory:

(1) Notice upon the affected persons or entities at least thirty (30) days prior to the date of eviction or demolition;

(2) Adequate consultations on the matter of resettlement with the duly designated representatives of the families to be resettled and the affected communities in the areas where they are to be relocated;

(3) Presence of local government officials or their representatives during eviction or demolition;

which sets the guidelines in executing eviction or demolition orders involving underprivileged and homeless citizens does not apply to the eviction or demolition of professional squatters. Neither are they entitled to the benefits of resettlement and/or relocation under Rep. Act No. 7279. The mere identification of persons or groups as professional squatters or squatting syndicates is sufficient authority for the local government unit concerned to summarily evict them and to demolish their dwellings or structures as well as to disqualify them from availing the benefits of Rep. Act No. 7279.

The decretal portion of the Court of Appeals' decision reads:

WHEREFORE, the petitions are ***GRANTED***. The assailed decision of the Office of the Ombudsman dated March 5, 2002, as well as the order dated February 17, 2003 in OMB-ADM-0-00-0336 are hereby

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(4) Proper identification of all persons taking part in the demolition;

(5) Execution of eviction or demolition only during regular office hours from Mondays to Fridays and during good weather, unless the affected families consent otherwise;

(6) No use of heavy equipment for demolition except for structures that are permanent and of concrete materials;

(7) Proper uniforms for members of the Philippine National Police who shall occupy the first line of law enforcement and observe proper disturbance control procedures; and

(8) Adequate relocation, whether temporary or permanent:*Provided, however*, That in cases of eviction and demolition pursuant to a court order involving underprivileged and homeless citizens, relocation shall be undertaken by the local government unit concerned and the National Housing Authority with the assistance of other government agencies within forty-five (45) days from service of notice of final judgment by the court, after which period the said order shall be executed:*Provided, further*, That should relocation not be possible within the said period, financial assistance in the amount equivalent to the prevailing minimum daily wage multiplied by sixty (60) days shall be extended to the affected families by the local government unit concerned.

The Department of the Interior and Local Government and the Housing and Urban Development Coordinating Council shall jointly promulgate the necessary rules and regulations to carry out the above provision.

REVERSED and SET ASIDE. Petitioners Romeo Querubin and Rufino V. Mijares are hereby ***REINSTATED*** immediately to their respective positions in the government service, more particularly in the Office of the Mayor, Municipality of Baras, Rizal and the Commission on the Settlement of Land Problems (COSLAP), with full payment of backwages and other benefits upon finality of this decision. Petitioner Alfredo Ruba, who was re-elected as Barangay Chairman of Pinugay, Baras, Rizal in the 2002 barangay election, is likewise entitled to full payment of backwages and other benefits upon the finality of this decision.[16]

SO ORDERED.[17]

Dissatisfied, the Office of the Ombudsman appealed to this Court raising the following issues:

I.

WHETHER OR NOT THE SUMMARY DEMOLITION OF THE HOUSES OWNED BY FARMER-MEMBERS OF THE SPFMPCI WAS VALID UNDER R.A. 7279 AND P.D. 1096.

II.

WHETHER OR NOT RESPONDENTS ARE GUILTY OF GRAVE MISCONDUCT.

III.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS' DECISION REVERSING THE DECISION OF THE OMBUDSMAN IS VALID.[18]

There are two issues for our resolution: *first*, whether the summary demolition of the houses and improvements was justified

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[16] Records show that at the time the Office of the Ombudsman rendered its decision on March 5, 2002 ordering respondents' dismissal from the service, Mayor Ferrera had already served his term as mayor. The COMELEC records also show that unlike Barangay Chairman Alfredo Ruba, Mayor Ferrera was not re-elected since it was Dionisio Donato T. Garciano who won the 2001 mayoralty race. Thus, there was no grant of any backwages and other benefits in favor of Mayor Ferrera.

[17] *Rollo*, pp. 64-65.

[18] *Id.* at 21.

under Rep. Act No. 7279 and P.D. No. 1096; and *second*, whether respondents were guilty of grave misconduct.

The Office of the Ombudsman contends that respondents acted in bad faith in proceeding with the demolition although they knew that Rep. Act No. 7279 and P.D. No. 1096 were inapplicable. Rep. Act No. 7279 applies only to urbanized areas and does not include the subject land which is under CARP coverage. Respondents also failed to follow the prescribed guidelines in carrying out a demolition. On the other hand, P.D. No. 1096 exempts from the payment of building permit fees traditional indigenous family dwellings such as the demolished houses and improvements in this case. Likewise, only dangerous or ruinous buildings or structures may be ordered repaired, vacated or demolished. The Office of the Ombudsman concludes that respondents were guilty of grave misconduct.

Respondents Mijares, Ferrera and Ruba counter that they were charged with violating Rep. Act No. 7279. If this law is inapplicable to the instant case, then they have no liability at all. They add that in the criminal case against them, the Office of the Ombudsman recognized that the SPFMPCI members were professional squatters.[19] They ratiocinate that as such, they should be summarily abated whether the subject land was urbanized or not. They also argue that even if Rep. Act No. 7279 was inapplicable, they enforced the demolition in good faith. On the other hand, respondent Querubin reiterates that the SPFMPCI members were professional squatters who are not entitled to protection under either Rep. Act No. 7279 or P.D. No. 1096.

It bears stressing that in administrative proceedings, the complainant has the burden of proving, by substantial evidence, the allegations in the complaint. Substantial evidence does not necessarily import preponderance of evidence as is required in an ordinary civil case; rather, it is such relevant evidence as a reasonable mind might accept as adequate to support a

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[19] CA *rollo* (CA-G.R. SP No. 76700), pp. 132-141.

conclusion.[20] A thorough examination of the records of this case reveals that such quantum of proof was not met here.

Foremost, we find the reliance of both parties on the provisions of Rep. Act No. 7279 and P.D. No. 1096 to determine the propriety of the demolition implemented by respondents, misplaced.

Rep. Act No. 7279 covers lands in urban and urbanizable areas, including existing areas for priority development, zonal improvement sites, slum improvement and resettlement sites, and in other areas that may be identified by the local government units as suitable for socialized housing.[21] On the other hand, P.D. No. 1096 applies to the design, location, sitting, construction, alteration, repair, conversion, use, occupancy, maintenance, moving, demolition of, and addition to public and private buildings and structures, except traditional indigenous family dwellings as defined therein.[22]

The parcel of land involved in this case hosts the Philippine Space Communications Center which consists of a satellite earth station that serves as the communications gateway of the Philippines to more than two-thirds of the world.[23] It was declared by P.D. No. 1845,[24] as amended by P.D. No. 1848,[25] as a security zone to ensure its security and uninterrupted operation considering the vital role of the earth station in the

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[20] *Tapiador v. Office of the Ombudsman*, G.R. No. 129124, March 15, 2002, 379 SCRA 322, 329.

[21] Section 4, Article II.

[22] Section 103(a).

[23] *Department of Agrarian Reform v. Philippine Communications Satellite Corp.*, *supra* at 731.

[24] Declaring the Area within a Radius of Three Kilometers Surrounding the Satellite Earth Station in Baras, Rizal, a Security Zone. Done on April 30, 1982.

[25] Revising Presidential Decree No. 1845, Declaring the Surrounding Area of the Satellite Earth Station in Baras, Rizal Province, a Security Zone. Done on July 29, 1982.

country's telecommunications and national development.[26] The law also placed it under the jurisdiction of the Ministry (now Department) of National Defense which has the power and the authority to determine who can occupy the areas within the security zone, and how the lands shall be utilized.[27]

Clearly, P.D. Nos. 1845 and 1848 should govern notwithstanding the provisions of Rep. Act No. 7279 and P.D. No. 1096 since the former laws have specific reference to the use and occupation of the parcel of land in this case.

Based on these laws, we find the demolition implemented by respondents in order. The SPFMPCI members occupied and introduced improvements in the parcel of land under no right, title or vested interest whatsoever. They never secured the prior written permission of the Secretary of National Defense as required by law. Although the land was initially placed under CARP coverage and they claimed to be farmer-beneficiaries, they were not included in the list of occupants/potential farmer-beneficiaries of PHILCOMSAT landholdings on file with the MARO and PARO.[28] In short, the SPFMPCI members never controverted the evidence presented by respondents that they (the SPFMPCI members) were illegal occupants of the land. Interestingly, even the Office of the Ombudsman recognized in the criminal case against respondents that the SPFMPCI members were professional squatters.

If under Rep. Act No. 7279, demolition and eviction are allowed when individuals have been identified as professional squatters and squatting syndicates[29] or when they occupy danger

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[26] *Department of Agrarian Reform v. Philippine Communications Satellite Corp.*, *supra* at 735-736.

[27] *Id.* at 736.

[28] CA *rollo* (CA-G.R. SP No. 76700), pp. 104-107.

[29] Sec. 27. Action Against Professional Squatters and Squatting Syndicates.— The local government units, in cooperation with the Philippine National Police, the Presidential Commission for the Urban Poor (PCUP), and the PCUP-accredited urban poor organization in the area, shall adopt

areas and other public places,[30] and under P.D. No. 1096, they construct dangerous and ruinous buildings or structures,[31] then with more reason the SPFMPCI members should be summarily evicted and their structures and dwellings demolished. The parcel of land involved in this case is a security zone whose operations must be protected from any form of disruption. It must be protected from all types of squatters, including the SPFMPCI members, who might create danger to a very important national telecommunications facility.

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measures to identify and effectively curtail the nefarious and illegal activities of professional squatters and squatting syndicates, as herein defined.

Any person or group identified as such shall be summarily evicted and their dwellings or structures demolished, and shall be disqualified to avail of the benefits of the Program. A public official who tolerates or abets the commission of the abovementioned acts shall be dealt with in accordance with existing laws.

x x x x x x x x x

[30] Sec. 28. Eviction and Demolition. — Eviction or demolition as a practice shall be discouraged. Eviction or demolition, however, may be allowed under the following situations:

(a) When persons or entities occupy danger areas such as esteros, railroad tracks, garbage dumps, riverbanks, shorelines, waterways, and other public places such as sidewalks, roads, parks, and playgrounds;

(b) When government infrastructure projects with available funding are about to be implemented; or

(c) When there is a court order for eviction and demolition.

x x x x x x x x x

[31] Section 214. Dangerous and Ruinous Buildings or Structures.— Dangerous buildings are those which are herein declared as such or are structurally unsafe or not provided with safe egress, or which constitute a fire hazard, or are otherwise dangerous to human life, or which in relation to existing use, constitute a hazard to safety or health or public welfare because of inadequate maintenance, dilapidation, obsolescence, or abandonment; or which otherwise contribute to the pollution of the site or the community to an intolerable degree.

Section 215. Abatement of Dangerous Buildings. — When any building or structure is found or declared to be dangerous or ruinous, the Building Official shall order its repair, vacation or demolition depending upon the degree of danger to life, health, or safety. This is without prejudice to further action that may be taken under the provisions of Articles 482 and 694 to 707 of the Civil Code of the Philippines.

Having said that, we do not find respondents guilty of grave misconduct. Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer. And when the elements of corruption, clear intent to violate the law or flagrant disregard of established rule are manifest, the public officer shall be liable for grave misconduct.[32]

Respondents rightfully determined the occupation by the SPFMPCI members unauthorized (albeit on a different basis). As the Court of Appeals observed, respondents also presented a list of settlers who were affected by the demolition. The production of such list was made to support their claim that they notified the SPFMPCI members of the demolition and that a conference was held prior thereto.[33] Had respondents been impelled by ill motive, they would not have taken measures to properly identify who were legal occupants and who were squatters in the parcel of land in this case. Clearly, respondents acted within the limits of the law when they implemented the demolition.

WHEREFORE, the petition is *DENIED*. The Decision dated June 23, 2005 and the Resolution dated November 25, 2005 of the Court of Appeals in CA-G.R. SP Nos. 76700 and 76484 are *AFFIRMED*.

SO ORDERED.

Carpio Morales, Chico-Nazario,[*] *Leonardo-de Castro,*[**] and *Brion, JJ.,* concur.

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[32] *Estarija v. Ranada*, G.R. No. 159314, June 26, 2006, 492 SCRA 652, 663; *Bureau of Internal Revenue v. Organo*, G.R. No. 149549, February 26, 2004, 424 SCRA 9, 16.

[33] CA *rollo*, (CA-G.R. SP No. 76700), pp. 108-110.

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

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

SECOND DIVISION

[G.R. No. 172174. July 9, 2009]

DAVAO CONTRACTORS DEVELOPMENT COOPERATIVE (DACODECO), represented by Chairman of the Board ENGR. EDGAR L. CHAVEZ, *petitioner, vs.* **MARILYN A. PASAWA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; CERTIFICATE OF NON-FORUM SHOPPING; CONTENTS.— Under Section 3, par. 3, Rule 46 of the Rules of Court, a petition for *certiorari* must be verified and accompanied by a sworn certification of non-forum shopping. A pleading is verified by an affidavit that the affiant has read the pleading and that the allegations therein are true and correct of his personal knowledge or based on authentic records. On the other hand, a certification of non-forum shopping is a certification under oath by the plaintiff or principal party in the complaint or other initiatory pleading asserting a claim for relief or in a sworn certification annexed thereto and simultaneously filed therewith, (1) that he has not commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and no such other action or claim is pending therein; (2) if there is such other pending action or claim, a complete statement of the present status thereof; and (3) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

2. ID.; ID.; ID. ID.; RATIONALE.— The reason the certification of non-forum shopping is required to be accomplished by the plaintiff or principal party himself is because he has actual knowledge of whether he has initiated similar actions or proceedings in different courts or agencies. In case the plaintiff or principal party is a juridical entity, such as petitioner, the certification may be signed by an authorized person who has personal knowledge of the facts required to be established by the documents. Although petitioner submitted a verification/ certification of non-forum shopping, affiant Edgar L. Chavez

had no authority to sign the verification/certification of non-forum shopping attached to the petition filed in the Court of Appeals. The records disclose that the authority of Chavez was to represent petitioner only before the NLRC. Moreover, the board resolution showing such authority was neither certified nor authenticated by the Corporate Secretary. The Corporate Secretary should have attested to the fact that, indeed, petitioner's Board of Directors had approved a Resolution on August 11, 2005, authorizing Chavez, to file the petition and to sign the verification/certification of non-forum shopping.

3. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; MATERIAL DATES WHICH MUST BE STATED THEREIN. — It is settled that the following material dates must be stated in a petition for *certiorari* brought under Rule 65: *first*, the date when notice of the judgment or final order or resolution was received; *second*, the date when a motion for new trial or for reconsideration was filed; and *third*, the date when notice of the denial thereof was received. In the case before us, petitioner failed to indicate the first and second dates, particularly the date of receipt of the NLRC resolution and the date of filing of the motion for reconsideration. As explicitly stated in Rule 65, failure to comply with any of the requirements shall be sufficient ground for the dismissal of the petition.

4. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT BY EMPLOYER; WHEN PROBATIONARY EMPLOYEE CAN BE LEGALLY DISMISSED; LIMITATIONS.— Under Article 281 of the Labor Code, a probationary employee can be legally dismissed either: (1) for a just cause; or (2) when he fails to qualify as a regular employee in accordance with the reasonable standards made known to him by the employer at the start of the employment. Nonetheless, the power of the employer to terminate the services of an employee on probation is not without limitations. *First*, this power must be exercised in accordance with the specific requirements of the contract. *Second*, the dissatisfaction on the part of the employer must be real and in good faith, not feigned so as to circumvent the contract or the law. *Third*, there must be no unlawful discrimination in the dismissal. In termination cases, the burden of proving just or valid cause for dismissing an employee rests on the employer. Here, petitioner did not present proof that respondent was duly notified, at the time of

her employment, of the reasonable standards she needed to comply with for her continued employment.

5. ID.; ID.; ID.; LOSS OF TRUST AND CONFIDENCE AS VALID GROUND; EXPLAINED.— To be a valid ground for dismissal, loss of trust and confidence must be based on a willful breach of trust and founded on clearly established facts. A breach is willful if it is done intentionally, knowingly and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. It must rest on substantial grounds and not on the employer's arbitrariness, whims, caprices or suspicion; otherwise, the employee would eternally remain at the mercy of the employer. Such ground of dismissal has never been intended to afford an occasion for abuse because of its subjective nature. As the records would show, the evaluation committee did not elaborate on its finding that respondent made a false statement in the 2004 General Assembly. In fact, the termination letter merely cited respondent's failure to meet "the working standard of our cooperative" as a ground for her dismissal. Even petitioner's position paper before the Labor Arbiter did not contain any allegation of loss of trust and confidence as a ground for dismissal. Said loss was mentioned only for the first time in petitioner's memorandum of appeal. Clearly, such submission is belated and lacks sufficient basis.

APPEARANCES OF COUNSEL

Cesar L. Chavez, Jr. for petitioner.
Tesiorna Escurzon & Gonzales Law Offices for respondent.

D E C I S I O N

QUISUMBING, *J.*:

Before us is a petition for review on *certiorari* seeking to reverse the Resolutions dated February 8, 2006[1] and March 28,

[1] *Rollo*, pp. 43-44. Penned by Associate Justice Myrna Dimaranan Vidal, with Associate Justices Romulo V. Borja and Ricardo R. Rosario, concurring.

2006[2] of the Court of Appeals-Mindanao Station in CA-G.R. SP No. 00822 which had dismissed the petition for *certiorari* on technical grounds.

The case stemmed from the following facts:

Petitioner Davao Contractors Development Cooperative (DACODECO) is a duly registered cooperative engaged in the construction business. On January 5, 2004, it hired respondent Marilyn A. Pasawa (PASAWA) as General Manager with a monthly salary of ₱6,500.

Sometime in May 2004, the Board of Directors of DACODECO formed an evaluation committee to assess respondent's performance. The evaluation committee reported that respondent's services was just "average"; she lacked construction knowledge; and she made a false statement in the 2004 General Assembly.[3] Upon its recommendation, the Board of Directors dismissed respondent effective May 31, 2004, to wit:

> The committee on evaluation composed of different committee [chairmen] and vice board chairman Mr. Roldan P. Ibañez has submitted to the Board of Directors during our special board meeting last May 14, 2004, their findings and evaluation of your performance for the last five months. The Board of Directors intensively discussed, debated and carefully evaluated the issue presented to us and with our own opinion and observation has come up with a decision that **you have not [met] the working standard of our cooperative**. Therefore it is sad to say that we have decided to terminate your services effective [M]ay 31, 2004.
>
> Furthermore, we thank you for your services you have rendered with us and will miss your amiable and motherly treatment you have given to your staff and members.[4] [Emphasis supplied.]

Respondent filed a complaint for illegal dismissal and contested the findings of the evaluation committee. She asserted that

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[2] *Id.* at 45-46.

[3] *Id.* at 121-122.

[4] *Id.* at 64.

she was able to establish the proper system and guidelines for DACODECO's business operations; and she was able to rectify DACODECO's mistakes and errors in the past, thus, improving its business output and boosting its revenues. However, the new Chairman of the Board of Directors disfavored the streamlining.[5] Respondent also contended that contrary to DACODECO's claim, she was engaged as a regular employee.

On March 15, 2005, the Labor Arbiter rendered a Decision[6] in respondent's favor. He ruled that respondent was a probationary employee as evidenced by Board Resolution No. 369-2003[7] which contained DACODECO's acceptance of her application as General Manager. He noted, however, that the board resolution did not specify or inform respondent of the reasonable standards by which her advancement to regular status would be gauged. Thus, respondent's dismissal was invalid. As reinstatement was no longer possible, the Labor Arbiter ordered DACODECO to pay respondent separation pay equivalent to one month salary of ₱6,500 and backwages from the time of her dismissal up to the finality of his decision.

The decretal portion of the Decision reads:

> WHEREFORE, **premises considered**, judgment is hereby rendered declaring Complainant's dismissal as illegal. Accordingly, the Respondent DAVAO CONTRACTORS DEVELOPMENT COOPERATIVE (DACODECO) acting through its responsible officers is hereby ordered to pay the complainant the sum of **SIXTY EIGHT THOUSAND TWO HUNDRED FIFTY PESOS (₱68,250.00)**, representing her separation pay of one month salary and backwages tentatively computed to cover the period from **June 1, 2004** up to the date of promulgation of this decision.
>
> SO ORDERED.[8]

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[5] *Id.* at 53.

[6] *Id.* at 81-87.

[7] *Id.* at 119.

[8] *Id.* at 87.

Dissatisfied, DACODECO appealed to the National Labor Relations Commission (NLRC). In a Resolution[9] dated July 22, 2005, the NLRC dismissed the appeal for failure to accompany the memorandum of appeal with a certificate of non-forum shopping. Thus:

> WHEREFORE, the appeal is hereby **DISMISSED for NON-PERFECTION**. Accordingly, the decision appealed from is now rendered final and executory.
>
> SO ORDERED.[10]

DACODECO elevated the dismissal of its appeal to the Court of Appeals by way of petition for *certiorari*. But the appellate court dismissed it on technical grounds:

> Instant petition is hereby DISMISSED on the following grounds:
>
> 1) the verification and affidavit of non-forum shopping was signed by EDGAR L. CHAVEZ who does not appear to be a party to the case nor duly authorized to institute present petition in this Court, as the copy of the board resolution attached to the petition authorized Mr. CHAVEZ to represent petitioner Cooperative only before the NLRC; moreover, the copy of the board resolution was not certified nor authenticated by the Board Secretary; and
>
> 2) failure to indicate the following material dates pursuant to Section 3, Rule 46 of the Rules of Court: a) date of receipt of the assailed 22 July 2005 resolution; and b) date of filing of the motion for reconsideration.
>
> SO ORDERED.[11]

Hence, this petition wherein DACODECO alleges that the appellate court erred:

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[9] *Id.* at 97-98.

[10] *Id.*

[11] *Id.* at 43.

I.

… IN DISMISSING THE PETITION FOR *CERTIORARI* DESPITE THE SUBSTANTIAL COMPLIANCE OF PETITIONER TO THE PROCEDURAL AND TECHNICAL REQUIREMENTS IN THE FILING THEREOF.

II.

… IN DISMISSING THE PETITION FOR *CERTIORARI* BY GIVING MORE EMPHASIS ON TECHNICALITIES EVEN IF THE PETITION IS CLEARLY MERITORIOUS.[12]

The sole issue is: Did the Court of Appeals err in dismissing DACODECO's petition for *certiorari* on pure technicalities?

Petitioner DACODECO contends that the appellate court erred in dismissing its petition for *certiorari* on technical grounds since it substantially complied with the required verification and certification of non-forum shopping. It alleges that affiant Edgar L. Chavez was duly authorized by its Board of Directors to represent it in the NLRC proceedings. It also avers that it substantially complied with the statement of material dates since it stated when the NLRC denied its appeal and motion for reconsideration, and when it received the denial of its motion for reconsideration. Petitioner adds that it has a meritorious appeal. It dismissed respondent for her failure to meet the reasonable standards for employment and loss of trust and confidence.

Respondent PASAWA counters that petitioner's petition for *certiorari* with the appellate court was properly dismissed for its failure to have the verification and certification of non-forum shopping signed by an authorized person and to state the material dates. Respondent also argues that even if technicalities were set aside, the petition would still fail since petitioner failed to inform her of the reasonable standards by which her advancement to regular status would be gauged.

Petitioner's contentions are untenable.

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[12] *Id.* at 28.

Under Section 3, par. 3,[13] Rule 46 of the Rules of Court, a petition for *certiorari* must be verified and accompanied by a sworn certification of non-forum shopping. A pleading is verified by an affidavit that the affiant has read the pleading and that the allegations therein are true and correct of his personal knowledge or based on authentic records. On the other hand, a certification of non-forum shopping is a certification under oath by the plaintiff or principal party in the complaint or other initiatory pleading asserting a claim for relief or in a sworn certification annexed thereto and simultaneously filed therewith, (1) that he has not commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and no such other action or claim is pending therein; (2) if there is such other pending action or claim, a complete statement of the present status thereof; and (3) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.[14]

The reason the certification of non-forum shopping is required to be accomplished by the plaintiff or principal party himself is because he has actual knowledge of whether he has initiated similar actions or proceedings in different courts or agencies.[15]

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[13] **SEC. 3.** *Contents and filing of petition; effect of non-compliance with requirements.* — …

x x x x x x x x x

The petitioner shall also submit together with the petition a sworn certification that he has not theretofore commenced any other action involving the same issues in the Supreme Court, the Court of Appeals or different divisions thereof, or any other tribunal or agency; if there is such other action or proceeding, he must state the status of the same;…

x x x x x x x x x

[14] *LDP Marketing, Inc. v. Monter*, G.R. No. 159653, January 25, 2006, 480 SCRA 137, 141-142.

[15] *Digital Microwave Corporation v. Court of Appeals*, G.R. No. 128550, March 16, 2000, 328 SCRA 286, 290.

In case the plaintiff or principal party is a juridical entity, such as petitioner, the certification may be signed by an authorized person who has personal knowledge of the facts required to be established by the documents.[16]

Although petitioner submitted a verification/certification of non-forum shopping, affiant Edgar L. Chavez had no authority to sign the verification/certification of non-forum shopping attached to the petition filed in the Court of Appeals. The records disclose that the authority of Chavez was to represent petitioner only before the NLRC.[17] Moreover, the board resolution showing such authority was neither certified nor authenticated by the Corporate Secretary. The Corporate Secretary should have attested to the fact that, indeed, petitioner's Board of Directors had approved a Resolution[18] on August 11, 2005, authorizing Chavez, to file the petition and to sign the verification/certification of non-forum shopping.

On the matter of material dates, the petition for *certiorari* failed to indicate the material dates that would show the timeliness of the filing thereof with the Court of Appeals. It is settled that the following material dates must be stated in a petition for *certiorari* brought under Rule 65: *first*, the date when notice of the judgment or final order or resolution was received; *second*, the date when a motion for new trial or for reconsideration was filed; and *third*, the date when notice of the denial thereof was received.[19] In the case before us, petitioner failed to indicate the first and second dates, particularly the date of receipt of the NLRC resolution and the date of filing of the motion for reconsideration.[20] As explicitly stated in Rule 65, failure to comply

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[16] *Expertravel & Tours, Inc. v. Court of Appeals*, G.R. No. 152392, May 26, 2005, 459 SCRA 147, 157.

[17] See *Sapitan v. JB Line Bicol Express, Inc.*, G.R. No. 163775, October 19, 2007, 537 SCRA 230, 241-242.

[18] *Rollo*, p. 124.

[19] *Lapid v. Laurea*, G.R. No. 139607, October 28, 2002, 391 SCRA 277, 284.

[20] *Rollo*, pp. 107-118.

with any of the requirements shall be sufficient ground for the dismissal of the petition.[21]

But even if these procedural lapses could be dispensed with, the instant petition just the same merits dismissal. After an encompassing review of the records of the case, we find no facts and circumstances which would support petitioner's claim of a valid dismissal.

Under Article 281[22] of the Labor Code, a probationary employee can be legally dismissed either: (1) for a just cause; or (2) when he fails to qualify as a regular employee in accordance with the reasonable standards made known to him by the employer at the start of the employment. Nonetheless, the power of the employer to terminate the services of an employee on probation is not without limitations. *First*, this power must be exercised in accordance with the specific requirements of the contract. *Second*, the dissatisfaction on the part of the employer must be real and in good faith, not feigned so as to circumvent the contract or the law. *Third*, there must be no unlawful discrimination in the dismissal. In termination cases, the burden of proving just or valid cause for dismissing an employee rests on the employer.[23]

Here, petitioner did not present proof that respondent was duly notified, at the time of her employment, of the reasonable

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[21] *Tambong v. R. Jorge Development Corporation*, G.R. No. 146068, August 31, 2006, 500 SCRA 399, 404; *Cuñada v. Drilon*, G.R. No. 159118, June 28, 2004, 432 SCRA 618, 621.

[22] **ART. 281.** ***Probationary employment***. — Probationary employment shall not exceed six (6) months from the date the employee started working, unless it is covered by an apprenticeship agreement stipulating a longer period. The services of an employee who has been engaged on a probationary basis may be terminated for a just cause or when he fails to qualify as a regular employee in accordance with reasonable standards made known by the employer to the employee at the time of his engagement. An employee who is allowed to work after a probationary period shall be considered a regular employee.

[23] *Dusit Hotel Nikko v. Gatbonton*, G.R. No. 161654, May 5, 2006, 489 SCRA 671, 675-676.

standards she needed to comply with for her continued employment.[24]

Neither can respondent be dismissed for loss of trust and confidence. To be a valid ground for dismissal, loss of trust and confidence must be based on a willful breach of trust and founded on clearly established facts. A breach is willful if it is done intentionally, knowingly and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. It must rest on substantial grounds and not on the employer's arbitrariness, whims, caprices or suspicion; otherwise, the employee would eternally remain at the mercy of the employer. Such ground of dismissal has never been intended to afford an occasion for abuse because of its subjective nature.[25]

As the records would show, the evaluation committee did not elaborate on its finding that respondent made a false statement in the 2004 General Assembly. In fact, the termination letter merely cited respondent's failure to meet "the working standard of our cooperative" as a ground for her dismissal.[26] Even petitioner's position paper before the Labor Arbiter did not contain any allegation of loss of trust and confidence as a ground for dismissal.[27] Said loss was mentioned only for the first time in petitioner's memorandum of appeal.[28] Clearly, such submission is belated and lacks sufficient basis.

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[24] *Athenna International Manpower Services, Inc. v. Villanos*, G.R. No. 151303, April 15, 2005, 456 SCRA 313, 322; *Secon Philippines, Ltd. v. NLRC*, G.R. No. 97399, December 3, 1999, 319 SCRA 685, 689.

[25] *AMA Computer College, Inc. v. Garay*, G.R. No. 162468, January 23, 2007, 512 SCRA 312, 316-317; *C.F. Sharp & Co., Inc. v. Zialcita*, G.R. No. 157619, July 17, 2006, 495 SCRA 387, 394.

[26] *Rollo*, p. 64.

[27] *Id.* at 49-50.

[28] *Id.* at 93-95.

WHEREFORE, the instant petition is *DENIED*. The Resolutions dated February 8, 2006 and March 28, 2006 of the Court of Appeals-Mindanao Station in CA-G.R. SP No. 00822 are *AFFIRMED*. No pronouncement as to costs.

SO ORDERED.

Carpio Morales, Chico-Nazario,[*] *Leonardo-de Castro,*[**] and *Brion, JJ.,* concur.

SECOND DIVISION

[G.R. No. 172212. July 9, 2009]

RAFAEL RONDINA, *petitioner, vs.* **COURT OF APPEALS FORMER SPECIAL 19th DIVISION, UNICRAFT INDUSTRIES INTERNATIONAL CORP., INC., ROBERT DINO, CRISTINA DINO, MICHAEL LLOYD DINO, ALLAN DINO and MYLENE JUNE DINO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; USE OF AN ERRONEOUS REMEDY IS CAUSE FOR DISMISSAL OF THE PETITION FOR *CERTIORARI*; EXCEPTION.— At the outset, we note that petitioner came to this Court *via* a petition for *certiorari* under Rule 65 of the Rules of Court instead of an appeal under Rule 45. It deserves to be dismissed on procedural grounds, as it was filed in lieu of appeal, which is the prescribed remedy, and far beyond the reglementary period. It is elementary in remedial law that the use of an erroneous remedy is cause for

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

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

dismissal of the petition for *certiorari* and it has been repeatedly stressed that a petition for *certiorari* is not a substitute for a lost appeal. This is due to the nature of a Rule 65 petition for *certiorari* which lies only where there is "no appeal," and "no plain, speedy and adequate remedy in the ordinary course of law." Be that as it may, this Court treats the present petition for *certiorari* as one for review under Rule 45 in accordance with the liberal spirit pervading the Rules of Court and in the interest of justice, and after noting that the application of the rules had been similarly relaxed in the proceedings below.

2. COMMERCIAL LAW; PRIVATE CORPORATIONS; PIERCING THE VEIL OF CORPORATE ENTITY; WHEN AVAILABLE.— To hold a director personally liable for the debts of the corporation, and thus pierce the veil of corporate fiction, the bad faith or wrongdoing of the director must be established clearly and convincingly. Bad faith is never presumed. Bad faith does not connote bad judgment or negligence. Bad faith imports a dishonest purpose. Bad faith means breach of a known duty through some ill motive or interest. Bad faith partakes of the nature of fraud. Thus, we agree with the appellate court that VA Calipay failed to point out the circumstances proving that private respondents acted with bad faith or malice in dismissing the employees so as to make them solidarily liable with the corporation.

3. LABOR AND SOCIAL LEGISLATION; VOLUNTARY ARBITRATION; QUITCLAIM; ACCEPTANCE THEREOF WOULD NOT AMOUNT TO ESTOPPEL; APPLICATION IN CASE AT BAR.— As a rule, deeds of release or quitclaim cannot bar employees from demanding benefits to which they are legally entitled or from contesting the legality of their dismissal. The acceptance of those benefits would not amount to estoppel. Furthermore, there is a gross disparity between the amount actually received by petitioner as compared to the amount owing him as initially computed by VA Calipay. The amount of the settlement is indubitably unconscionable; hence, ineffective to bar petitioner from claiming the full measure of his legal rights. In any event, we deem it appropriate that the amount he received as consideration for signing the quitclaim be deducted from his monetary award.

4. ID.; ID.; ID.; REMAND OF THE CASE TO VOLUNTARY ARBITRATOR FOR THE RECOMPUTATION OF

MONETARY BENEFITS, DEEMED PROPER.— The alleged partiality of VA Calipay due to his professional relationship with the counsel representing the employees was already an issue even before VA Calipay rendered his decision on January 23, 2004. We cannot see how the appellate court could conclude that the rendition of the decision was free from partiality but not so with the computation of the monetary benefits. Indeed, to require the parties to choose another voluntary arbitrator for the sole purpose of recomputing the monetary benefits would only prolong the final disposition of this case. Thus, we deem it proper to remand the case to VA Calipay for the prompt recomputation of the monetary benefits of the employees.

APPEARANCES OF COUNSEL

Mantilla & Associates for petitioner.
Joshua N. Dacumos for respondents Dinos.
Jorge L. Esparagoza for Unicraft Industries International Corporation.

D E C I S I O N

QUISUMBING, *J.*:

In this petition for *certiorari*, petitioner seeks the nullification of the Amended Decision[1] dated January 16, 2006 of the Court of Appeals in CA-G.R. SP No. 81951.

The salient facts, as found by the Court of Appeals,[2] are as follows:

Petitioner Rafael Rondina is among the thirty-two (32) employees of respondent Unicraft Industries International

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[1] *Rollo*, pp. 152-179. Penned by Associate Justice Arsenio J. Magpale, with Associate Justices Vicente L. Yap and Enrico A. Lanzanas, concurring.

[2] With editorial changes. See also *Unicraft Industries International Corporation v. Court of Appeals*, G.R. No. 134903, March 26, 2001, 355 SCRA 233.

Corporation, Inc., who filed with the National Labor Relations Commission (NLRC) a complaint for illegal dismissal, underpayment/non-payment of wages, overtime pay, holiday pay, 13th month pay, and service incentive leave pay.

On December 19, 1996, pursuant to Policy Instruction No. 56 dated April 6, 1996 of the Secretary of Labor, and by virtue of the agreement of the parties, the case was submitted to Voluntary Arbitrator (VA) Florante V. Calipay, for voluntary arbitration. Later, private respondents filed a motion for re-selection of voluntary arbitrator. VA Calipay denied the motion and defined the issues to be resolved in the arbitration proceedings.

On March 15, 1997, for failure of private respondents and their counsel to appear and present evidence at the scheduled hearing, VA Calipay rendered a decision in favor of the employees. Private respondents filed a petition for *certiorari* with the Court of Appeals contending that they were denied the opportunity to be heard in the proceedings before VA Calipay. On April 22, 1997, the appellate court approved a Stipulation[3] of the parties to remand the case to VA Calipay to allow private respondents to prove their case.

Instead of conducting further proceedings, however, VA Calipay filed a comment praying, *inter alia*, that he be declared to have lost jurisdiction over the case upon rendition of the judgment. On June 18, 1998, upon motion of the employees, the appellate court re-examined the stipulation of the parties and thereafter rendered a resolution allowing, among others, the partial execution of the decision of VA Calipay with respect to the award of separation pay and attorney's fees.

Private respondents challenged the resolution before this Court. In a Decision[4] dated March 26, 2001, we ruled that the appellate court committed grave abuse of discretion amounting to lack of jurisdiction when it ordered the immediate execution of VA

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[3] *Rollo*, pp. 31-33.

[4] *Unicraft Industries International Corporation v. Court of Appeals*, *supra* note 2.

Calipay's award of separation pay and attorney's fees. The award of separation pay carries with it the inevitable conclusion that the employees were illegally dismissed. However, that finding of VA Calipay was premature and null and void since private respondents were not given the chance to present evidence on their behalf. Thus, we remanded the case to VA Calipay and directed him to receive evidence for private respondents and conduct further proceedings therein.

Pursuant to this Court's directive, VA Calipay required the parties to submit supplemental pleadings and additional evidence. Private respondents filed a motion to inhibit due to VA Calipay's professional relationship with the counsel representing the employees. VA Calipay denied the motion and gave private respondents an extension of time to submit their supplemental pleadings and additional evidence.

On January 23, 2004, VA Calipay rendered a decision,[5] the decretal portion of which, reads:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of the complainants, to wit:
>
> a. *Illegal Dismissal & Violations of Minimum Wage and Standard Labor Benefits*. The dismissal of the complainants [is] hereby declared *illegal*. The respondents: Spouses ROBERT DINO, CRISTINA DINO, children MICHAEL LLOYD DINO, ALLAN DINO & MYLENE JUNE DINO are hereby declared guilty of illegal dismissal and violation [of] minimum wage and labor standard benefits. They are therefore held jointly and solidarily liable for and thus, ordered to pay the complainants' separation pay, wage differentials, moneys, backwages, attorney's fees, costs of litigation.
>
> b. *Joint and Solidary Liability of Respondents*. The respondents are further ordered, in view of imputations of bad faith and the strained relations of the parties, to pay the complainants separation pay at one (1) month pay for every year of service from the first day of service until the date of finality of this judgment, less the amounts the complainants acknowledged to have received before officials at the Department of Labor and Employment Region VII, Cebu City.

[5] *Rollo*, pp. 47-55.

The total *separation pay* is ***ONE MILLION NINE HUNDRED SIXTY-TWO THOUSAND EIGHT HUNDRED FORTY PESOS (₱1,962,840.00)***.

c. *Wage Differentials, Standard Labor Benefits plus Backwages up to* ***31 December 2003***. Aside from being guilty of illegal dismissal, the respondents are also guilty for violating minimum wages and labor standard law and are hereby ordered to pay the complainants differentials in wage and labor standard benefits, plus backwages from date of illegal dismissal in 1995, which as of date of judgment on *31 December 2003, had amounted to* ***SEVENTEEN MILLION EIGHT [HUNDRED] TWENTY-FIVE THOUSAND SIX HUNDRED FOURTEEN PESOS (₱17,825,614.00)***.

d. Thus, the total monetary obligation, which the respondents are jointly and solidarily held liable and mandated to pay (embracing separation pay, wage and labor standards differentials or award plus backwages) had amounted to ***NINETEEN MILLION SEVEN HUNDRED EIGHTY-EIGHT THOUSAND FOUR HUNDRED FIFTY-FOUR PESOS & FORTY CENTAVOS (₱19,788,454.40)***.

e. The claims for moral damages are DISMISSED for lack of convincing evidence.

f. *Attorney's Fees and Litigation Costs*. The respondents are ordered to pay *Attorney's Fees* in the amount equivalent to ten (10) percent of the total award. *Litigation costs* of TEN THOUSAND PESOS (₱10,000.00) is likewise awarded to the complainants.

g. *Legal Interest*. The respondents shall be liable for legal interest of one (1) percent per month or twelve (12) percent per annum over the total judgment award from the date of finality of judgment until it is fully settled.

In Summation

Judgment is rendered in favor of the complainants and against the respondents: Spouses ROBERT DINO, CRISTINA DINO, children MICHAEL LLOYD DINO, ALLAN DINO & MYLENE JUNE DINO, holding them jointly and solidarily liable and ordering them to pay the former ***TWENTY-ONE MILLION SEVEN HUNDRED***

SEVENTY-SEVEN THOUSAND TWO HUNDRED NINETY-NINE PESOS & EIGHTY-FOUR CENTAVOS (₱21,777,299.84) divided as follows:

a.) Total Separation Pay & Monetary Award ….		**₱19,788,454.40**
b.) Attorney's Fees of 10%	…….	**₱ 1,978,845.44**
c.) Litigation Costs	…….	₱ 10,000.00
	TOTAL	**₱21,777,299.84**

The respondents are ordered to pay legal interest at 12% per annum or one (1) percent per month of the judgment award from the date of judgment up to the date of its full payment.

The respondents are therefore mandated and enjoined to comply with this judgment.

SO ORDERED.[6]

Dissatisfied, private respondents filed a petition for *certiorari* with the Court of Appeals. In its Decision[7] dated September 23, 2005, the appellate court ruled that: *First*, the jurisdiction of VA Calipay to hear and decide the case had been affirmed by this Court which specifically remanded the case to him for reception of evidence and further proceedings. The parties had also agreed in a stipulation, which was approved by the appellate court on April 22, 1997, to remand the case to VA Calipay to allow private respondents to prove their case. Such stipulation embodied the issues to be resolved in the arbitration proceedings. *Second*, VA Calipay never showed manifest partiality in favor of the employees. He gave private respondents the opportunity to submit their supplemental pleadings and additional evidence to support their case but they ignored it. The fact that VA Calipay has a professional relationship with the counsel representing the employees does not prove in any way that he acted with partiality in deciding the case in favor of the employees.

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

[7] *Id.* at 126-150.

Third, the stipulation of the parties which was approved by the appellate court on April 22, 1997, showed that there were 32 employees. These employees were also indicated as parties in the case in the Decision dated March 26, 2001 of this Court. *Fourth*, private respondents should not be adjudged solidarily liable with the corporation. VA Calipay failed to point out the circumstances that would prove bad faith or malice on their part in terminating the employees. *Fifth*, the quitclaims[8] executed by some of the employees carried with it the presumption of validity since these were verified by an officer of the Department of Labor and Employment. Such presumption is strengthened by the fact that the employees failed to disclaim their signatures therein or assert that they were forced to sign the same. Thus, the quitclaims effectively barred those who executed the same from making further claims from the corporation.

Thus, the appellate court remanded the case to VA Calipay for a detailed computation of the monetary benefits by showing the basis or factors of the computation and to exclude therefrom the employees who have executed the valid quitclaims. The dispositive portion states:

> WHEREFORE, premises considered, the petition is **PARTIALLY GRANTED**. Consequently, the assailed judgment is hereby **AFFIRMED** with **MODIFICATION** by holding that **ONLY** Unicraft Industries International Corporation is held liable to private respondents, except those who executed the valid quitclaims. Individual petitioners are not personally liable to private respondents.
>
> The monetary awards for private respondents who executed the valid quitclaims are **DELETED** for reasons stated above.
>
> Let the case be remanded to VA Calipay for him to make a detailed computation of the monetary judgment for each of the private respondents by showing therein the basis and factors of the computation, excluding those who executed the valid quitclaims.
>
> SO ORDERED.[9]

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[8] *Id.* at 336.

[9] *Id.* at 149.

Both parties filed separate motions for reconsideration. In its Amended Decision dated January 16, 2006, the appellate court noted that private respondents filed criminal and administrative complaints against VA Calipay and that his counsel is the counsel representing the employees. With these developments, the appellate court ruled that while the decision of VA Calipay was free from partiality, it would be for the best interest of justice not to remand the case to him for the recomputation of the monetary benefits. As a result, the appellate court ordered the parties to choose another voluntary arbitrator for the purpose of recomputing the monetary benefits of the employees who are entitled thereto. Thus:

> WHEREFORE, premises considered, the petition is **PARTIALLY GRANTED**. Consequently, the assailed judgment is hereby **AFFIRMED** with **MODIFICATION** by holding that **ONLY** Unicraft Industries International Corporation is held liable to private respondents, except those who executed the valid quitclaims. Individual petitioners are not personally liable to private respondents.
>
> The monetary awards for private respondents who executed the valid quitclaims are **DELETED** for reasons stated above.
>
> The parties are ordered to choose another accredited Voluntary Arbitrator within fifteen (15) days from receipt hereof for the purpose of recomputing the monetary benefits for each of the private respondents by showing therein the basis and factors of the computation, excluding those who executed the valid quitclaims.
>
> As soon as the parties have selected the new Voluntary Arbitrator, they are ordered to notify this Court within ten (10) days from such selection so that this case shall be remanded to him for the recomputation of the monetary benefits of the private respondents who are entitled thereto. Also, VA Calipay is ordered to immediately transmit all the records of the case in his custody to the newly chosen Voluntary Arbitrator.
>
> SO ORDERED.[10]

Hence, the instant petition anchored on the following grounds:

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[10] *Id.* at 178.

THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION:

I.

WHEN THE PUBLIC RESPONDENT RULED THAT ONLY RESPONDENT UNICRAFT IS LIABLE [FOR THE ILLEGAL DISMISSAL].

II.

WHEN THE PUBLIC RESPONDENT DECLARED THAT THE QUITCLAIMS WERE VALID AND DELETED THE MONETARY AWARDS FOR THOSE WHO EXECUTED THEM.

III.

WHEN THE PUBLIC RESPONDENT ORDERED THE SELECTION OF A NEW VOLUNTARY ARBITRATOR CONTRARY TO THE FINAL RESOLUTIONS OF THE COURT OF APPEALS, MANILA AND THE SUPREME COURT.[11]

At the outset, we note that petitioner came to this Court *via* a petition for *certiorari* under Rule 65 of the Rules of Court instead of an appeal under Rule 45. It deserves to be dismissed on procedural grounds, as it was filed in lieu of appeal, which is the prescribed remedy, and far beyond the reglementary period. It is elementary in remedial law that the use of an erroneous remedy is cause for dismissal of the petition for *certiorari* and it has been repeatedly stressed that a petition for *certiorari* is not a substitute for a lost appeal. This is due to the nature of a Rule 65 petition for *certiorari* which lies only where there is "no appeal," and "no plain, speedy and adequate remedy in the ordinary course of law."[12]

Be that as it may, this Court treats the present petition for *certiorari* as one for review under Rule 45 in accordance with the liberal spirit pervading the Rules of Court and in the interest

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[11] *Id.* at 17.

[12] *Gonzales v. Climax Mining Ltd.*, G.R. Nos. 161957 & 167994, January 22, 2007, 512 SCRA 148, 163; *Nippon Paint Employees Union-Olalia v. Court of Appeals*, G.R. No. 159010, November 19, 2004, 443 SCRA 286, 291.

of justice, and after noting that the application of the rules had been similarly relaxed in the proceedings below.

Petitioner contends that private respondents should be made solidarily liable with the corporation since they acted with bad faith and malice in dismissing the employees. Petitioner adds that the quitclaims were invalid since the same were executed without the assistance of counsel and the amounts therein were unconscionable. Petitioner also argues that since the jurisdiction of VA Calipay to hear and decide the case had been affirmed by the Court of Appeals and by this Court, he should not be substituted by any other voluntary arbitrator for the purpose of recomputing the monetary benefits of the employees.

The first and second contentions hinge on certain factual determinations made by the Court of Appeals which ruled that VA Calipay failed to point out the circumstances proving that private respondents acted with bad faith or malice in dismissing the employees. At the same time, the appellate court held that the quitclaims executed by some of the employees carried with it the presumption of validity since these were verified by an officer of the Department of Labor and Employment. Such presumption is strengthened by the fact that the employees failed to disclaim their signatures therein or assert that they were forced to sign them. Thus, the quitclaims effectively barred those who executed the same from making further claims from the corporation.

It is worth mentioning that VA Calipay made conflicting observations on the matter of bad faith or malice on the part of private respondents when they dismissed the employees. While he initially concluded that "[e]vidence had proven that [private] respondents were guilty of malice in illegally dismissing the complainants, inflicting oppression upon the complaining workers,"[13] he later on declared that "[i]n either case, moral damages may be awarded when the dismissal was executed with malice and oppression. But such is not clear in this case due to lack of convincing evidence."[14] Indeed, to hold a director

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[13] *Rollo*, p. 52.

[14] *Id.* at 53.

personally liable for the debts of the corporation, and thus pierce the veil of corporate fiction, the bad faith or wrongdoing of the director must be established clearly and convincingly. Bad faith is never presumed. Bad faith does not connote bad judgment or negligence. Bad faith imports a dishonest purpose. Bad faith means breach of a known duty through some ill motive or interest. Bad faith partakes of the nature of fraud.[15] Thus, we agree with the appellate court that VA Calipay failed to point out the circumstances proving that private respondents acted with bad faith or malice in dismissing the employees so as to make them solidarily liable with the corporation.

On the validity of the quitclaims, we note that both VA Calipay and the Court of Appeals declared the same valid due to the failure of the employees to disclaim their signatures therein or assert that they were forced to sign the same. The only question before us is the extent to which the amount reflected therein is to be credited to petitioner's monetary award as the only employee who appealed the appellate court's decision. However, we find that VA Calipay and the appellate court erred in concluding that petitioner voluntarily signed the quitclaim. Contrary to this assumption, the mere fact that petitioner was not physically coerced or intimidated does not necessarily imply that he freely or voluntarily consented to the terms thereof. Moreover, private respondents, not petitioner, have the burden of proving that the quitclaim was voluntarily entered into.[16] As a rule, deeds of release or quitclaim cannot bar employees from demanding benefits to which they are legally entitled or from contesting the legality of their dismissal. The acceptance of those benefits would not amount to estoppel.[17] Furthermore,

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[15] *Carag v. National Labor Relations Commission*, G.R. No. 147590, April 2, 2007, 520 SCRA 28, 49-50; See *Mandaue Dinghow Dimsum House, Co., Inc. v. National Labor Relations Commission-Fourth Division*, G.R. No. 161134, March 3, 2008, 547 SCRA 402, 414-415.

[16] *EMCO Plywood Corporation v. Abelgas*, G.R. No. 148532, April 14, 2004, 427 SCRA 496, 514.

[17] *EMCO Plywood Corporation v. Abelgas*, *id.* at 515; See *Solgus Corporation v. Court of Appeals*, G.R. No. 157488, February 6, 2007, 514 SCRA 522, 535-536.

there is a gross disparity between the amount actually received by petitioner as compared to the amount owing him as initially computed by VA Calipay. The amount of the settlement is indubitably unconscionable; hence, ineffective to bar petitioner from claiming the full measure of his legal rights.[18] In any event, we deem it appropriate that the amount he received as consideration for signing the quitclaim be deducted from his monetary award.

Finally, the Court of Appeals noted that in the criminal and administrative complaints which private respondents filed against VA Calipay, he was represented by the counsel representing the employees. The appellate court, thus, ruled that while the decision of VA Calipay was free from partiality, it would be for the best interest of justice not to remand the case to him for the recomputation of the monetary benefits of the employees. Instead, it ordered the parties to choose another voluntary arbitrator for the purpose of recomputing the monetary benefits of the employees who are entitled thereto. We do not agree. The alleged partiality of VA Calipay due to his professional relationship with the counsel representing the employees was already an issue even before VA Calipay rendered his decision on January 23, 2004. We cannot see how the appellate court could conclude that the rendition of the decision was free from partiality but not so with the computation of the monetary benefits. Indeed, to require the parties to choose another voluntary arbitrator for the sole purpose of recomputing the monetary benefits would only prolong the final disposition of this case. Thus, we deem it proper to remand the case to VA Calipay for the prompt recomputation of the monetary benefits of the employees.

WHEREFORE, the petition is *PARTIALLY GRANTED*. The Amended Decision dated January 16, 2006 of the Court of Appeals in CA-G.R. SP No. 81951 is *MODIFIED* such that

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[18] *Mindoro Lumber and Hardware v. Bacay*, G.R. No. 158753, June 8, 2005, 459 SCRA 714, 723; See *C. Planas Commercial v. National Labor Relations Commission*, G.R. No. 144619, November 11, 2005, 474 SCRA 608, 620.

petitioner's quitclaim is deemed invalid. Further, Voluntary Arbitrator Florante V. Calipay is hereby *DIRECTED* to promptly make a detailed computation of the monetary benefits of the employees excluding those who executed the quitclaims but did not appeal in this Court. Report of appropriate action taken by him should be made to this Court within 15 days from notice. No pronouncement as to costs.

SO ORDERED.

Carpio Morales, Chico-Nazario, Leonardo-de Castro,* and Brion, JJ.,* concur.

SECOND DIVISION

[A.M. No. P-06-2219. July 13, 2009]
(Formerly A.M. No. 06-7-392-RTC)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **OFFICER-IN-CHARGE AND LEGAL RESEARCHER NILDA CINCO, Regional Trial Court, Branch 28, Catbalogan, Samar,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; CLERK OF COURT; WHEN GUILTY OF SIMPLE NEGLECT OF DUTY.— Respondent was the Officer-in-Charge, Branch Clerk of Court. As such, she had vital functions in the administration of justice. Clerks of court

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

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

are ranking officers who perform vital functions in the administration of justice. They are the designated custodians of, and have control over, court records. Section 7, Rule 136 of the Rules of Court states that clerks of court shall safely keep all the records, papers, files, and exhibits committed to their charge. The 2002 Revised Manual for Clerks of Court states that the duties of clerks of court include receiving and keeping the necessary papers of cases. In *Office of the Court Administrator v. Carriedo*, the Court held that clerks of court are duty-bound to safely keep court records and have them readily available upon request. They must be diligent and vigilant in managing the records. In Office of the Court Administrator v. Ramirez, the Court held that clerks of court are liable for the loss of court records. Despite respondent's awareness, however, that the filing cabinets were not enough to store all court records, she did not bother to inform the judge of the necessity of securing additional cabinets and, to, in the meantime, resort to measures to ensure the safety of the records. Indeed, respondent is guilty of **simple neglect of duty**, defined as "the failure to give attention to a task or the disregard of a duty due to carelessness or indifference," which is classified as a less grave offense under the Uniform Rules on Administrative Cases in the Civil Service and punishable with suspension for one month and one day to six months for the first offense and dismissal for the second offense.

2. ID.; ID.; ID.; ID.; HEAVY WORKLOAD DOES NOT FREE THE RESPONDENT FROM CRIMINAL LIABILITY; RATIONALE.— That respondent may have been saddled with a heavy workload does not free her from administrative liability. *Rivera v. Buena* teaches: **When respondent assumed the position of branch clerk of court, it was understood that he was willing, ready and able to do his job with utmost devotion and efficiency.** Having a voluminous workload, and being forced to do legal research work are unavailing defenses. Neither can respondent pass the blame to his subordinates. Being the administrative officer and having control and supervision over court records, he should have seen to it that his subordinates performed their functions well.

D E C I S I O N

CARPIO MORALES, *J.*:

By letter of December 11, 2004,[1] Nilda C. Cinco (respondent), Legal Researcher and Officer-in-Charge of Branch 28, Regional Trial Court (RTC) of Catbalogan, Samar, reported to Presiding Judge Sibanah E. Usman that there were five[2] missing records of cases in their Branch and that she suspected the one in charge of Criminal Cases, Lilia C. Raga,[3] to be behind the loss, hence, she recommended that an investigation be conducted.[4]

The pertinent portions of respondent's letter-report to Judge Usman read, quoted *verbatim*:

x x x x x x x x x

I discovered that three of the above-named records were missing on the 3rd day of November 2004, when Armando A. Canes, accused in Criminal Case No. 5885, posted bail for his temporary liberty. It was Judge Carmelita T. Cuares [of RTC, Br. 27] who signed, in view of your leave during the month of November. When the Cashbond

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[1] *Rollo*, pp. 6-8.

[2] In her Affidavit dated May 30, 2005, *rollo*, pp. 62-64, respondent stated that after her December 11, 2004 Letter, she discovered that the records of two other cases, Civil Case No. 7412, and Spec. Proc. No. 6336, which were placed in the cabinet located in front of her table, were also missing, thus, there were 7 missing records.

[3] By Decision of June 21, 2006 in A.M. No. P-06-2150, the Court found Lilia C. Raga guilty of grave misconduct and was accordingly dismissed from service.

[4] Respondent enumerated the cases as follows: (1) Criminal Case No. 5882, *People of the Philippines v. Dominador T. Alibio;* (2) Criminal Case No. 5885, *People v. Armando A. Canes and Mariano M. Sintos;* (3) Criminal Case No. 5839, *People of the Philippines v. Crispen Libao;* (4) Civil Case No. 7465, *Heirs of Pantaleon Gruta, et al., for Annulment of Extra Judicial Settlement of Estate;* (5) CAD Case No. 4 GLRO CAD Rec. No. 1378 Lot No. 385, *Director of Lands v. Luisa P. Sarmiento.*

of Armando Canes was submitted to our office, I look for its record purposely to attach said Cashbond. I could not find the record so I asked Alicia T. Redaja about the whereabouts of the record considering that she is the clerk assigned to take charge of Criminal Cases records and I also remembered that said record with some others were newly filed cases. . . Miss Redaja could not find the record . . . We inventoried the records twice in order to be sure whether the missing records were really missing, and we found out that three of the above-mentioned records were really missing.

On November 10, 2004 . . . I went to the Police Station and reported the loss of the records. On the 11th of November 2004, Miss Redaja found out that another record was missing – the record of Criminal Case No. 5839 – *People vs. Crispen Libao.* This record was still in the cabinet when we inventoried the records and was found out missing on the 11th of November 2004.

x x x x x x x x x

The last record that I found to be missing was the record of CAD Case No. 4 GLRO Cad Rec. No. 1378 Lot No. 385- *Director of Lands vs. Luisa P. Sarmiento,* which I thought was taken after we had inventoried the records just like the record of Criminal Case No. 5839- *People vs. Crispen Libao* which was also taken after we had inventoried the records, **but before I padlock the cabinets**.[5] (Emphasis and underscoring supplied)

Judge Usman referred respondent's letter, by letter of December 21, 2004,[6] to the Office of the Court Administrator (OCA) which in turn referred it to RTC Catbalogan Acting Executive Judge Carmelita T. Cuares (Judge Cuares) for investigation.

THE INVESTIGATING JUDGE'S

REPORT AND ACTION TAKEN

THEREON.

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[5] *Rollo,* pp. 6-8.

[6] *Id.* at 5.

Judge Cuares' Memorandum Report[7] was summarized by the OCA in its June 29, 2006 Report:

x x x x x x x x x

. . . [A]lthough Officer-in-Charge Cinco is the custodian of the missing records, all court personnel have access to the records since these are only placed either on top of Cinco's table, on her chair or in some corners, due to lack of space inside the cabinets. OIC Cinco suspects that the lost records were taken by Lilia C. Raga, Process Server of that court, to discredit her because she refused to sign a petition against their presiding judge, Judge Sibanah E. Usman.

x x x x x x x x x

Judge Cuares questioned the employees who had access to the court records as well as the security guards in the Hall of Justice. She found no evidence that would implicate Mrs. Raga to the missing records. Nonetheless, the case records that were reported were all reconstituted except Civil Cases Nos. 7412 and 6336 that had long been terminated.

Judge Cuares **recommended** that (a) Judge Usman be reprimanded for his failure to immediately investigate the loss; (b) Nilda C. Cinco be reprimanded for the loss of the case records; be warned to be extra careful in handling case records, and to adopt a system of accounting for every case record at the end of office hours to ensure that all records are accounted for; and (c) the other employees implicated in this case be relieved from liability for lack of evidence against them. Further, so as not to repeat the occurrence of loss of records, the judge should ensure that, unless authorized by the court, no one be allowed to meddle with the affairs of the court.[8] (Emphasis and underscoring supplied)

Respondent, by letter dated September 18, 2006,[9] in compliance with this Court's directive, manifested that she was not willing to submit the case for decision on the basis of the pleadings/ records already filed. And she requested for a copy of the complaint against her so that she could file her answer.

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[7] *Id.* at 21-33.

[8] *Id.* at 1-2.

[9] *Id.* at 222.

The Court thereafter furnished respondent a copy of Judge Cuares' Memorandum Report and directed her to comment thereon. Respondent did comply.

EVALUATION BY THE OCA OF THE INVESTIGATING JUDGE'S REPORT AND ACTION TAKEN BY THE COURT

The OCA, by Memorandum dated March 6, 2008,[10] evaluated respondent's Comment in this wise:

> Section 7 of Rule 136 of the Revised Rules of Court is explicit that the Clerk of Court shall safely keep all records, papers, files, exhibits and public property committed to her charge. Being the Acting Clerk of Court, respondent Cinco is the custodian of the court records and as such, she is expected to discharge her duty of safekeeping court records with diligence, efficiency and professionalism. Consonant with this duty of safekeeping the records of cases is the bounden duty of the custodian to see to it that the records are kept in secure places.
>
> In this case, however, respondent Cinco admitted that prior to the loss of the case records she leaves the cabinet where she keeps the case records unlocked in order that her co-employees shall have direct access to it every time they need the records. **Obviously, respondent Cinco failed to meet the requirement expected of her as a custodian.** The fact that she keeps the cabinets unlocked so that her co-employees could have direct access to the case records is a manifestation of her utter lack of diligence and carefulness in performing her duty as a custodian. She did not even bother to take any precautions to see to it that only authorized court personnel shall have access to the cabinets where the records are kept because she made it directly accessible to all by leaving it unlocked. Court records are confidential documents and respondent should have adopted measures to safeguard and ensure their confidentiality and integrity.
>
> To escape culpability, respondent attributes the loss of the case records to the fact that the court lack sufficient cabinets where the

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[10] *Id.* at 312-315.

court records could be safely kept and to Lilia Raga whom she suspects to have taken the case records. We find this untenable. As noted by then DCA Elepaño in the Agenda report dated 29 June 2006, **a simple exercise of diligence could have alerted respondent to inform her judge for the need of additional storage/filing cabinets and to resort to reliable safety measures to ensure the safety of the case records.** Further, aside from respondent's bare allegations and speculations, no concrete evidence was presented to prove that Lilia Raga took the missing records.[11] (Emphasis and underscoring supplied)

The OCA thus concluded that respondent is liable for simple neglect of duty and accordingly recommended that she be suspended for one month and one day, with advice to devise means to ensure the safety of the records of the cases.[12]

In compliance with this Court's Resolution of April 16, 2008[13] requiring respondent to manifest within ten days from notice whether she was willing to submit the case for resolution on the basis of the pleadings filed, she filed "Supplemental Comments," which the Court noted in its Resolution of November 12, 2008,[14] stating that she is "a victim of vindictiveness by an unscrupulous employee" whose "misbehavior" they were only trying to curtail.

THE COURT'S FINDINGS

The Court finds the evaluation by the OCA of the Investigating Judge's Report and its recommendation well-taken. Respondent was the Officer-in-Charge, Branch Clerk of Court. As such, she had vital functions in the administration of justice.

Clerks of court are ranking officers who perform vital functions in the administration of justice. They are the designated custodians of, and have control over, court records. Section 7, Rule 136 of the Rules of Court states that clerks of court shall safely keep all the

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[11] *Id.* at 314.

[12] *Id.* at 315.

[13] *Id.* at 317.

[14] *Id.* at 323-324.

records, papers, files, and exhibits committed to their charge. The 2002 Revised Manual for Clerks of Court states that the duties of clerks of court include receiving and keeping the necessary papers of cases. In *Office of the Court Administrator v. Carriedo*, the Court held that clerks of court are duty-bound to safely keep court records and have them readily available upon request. They must be diligent and vigilant in managing the records. In Office of the *Court Administrator v. Ramirez*, the Court held that clerks of court are liable for the loss of court records.[15] (Italics in the original; underscoring supplied)

Despite respondent's awareness, however, that the filing cabinets were not enough to store all court records, she did not bother to inform the judge of the necessity of securing additional cabinets and, to, in the meantime, resort to measures to ensure the safety of the records.

Indeed, respondent is guilty of **simple neglect of duty,** defined as "the failure to give attention to a task or the disregard of a duty due to carelessness or indifference,"[16] which is classified as a less grave offense under the Uniform Rules on Administrative Cases in the Civil Service and punishable with suspension for one month and one day to six months for the first offense and dismissal for the second offense.[17]

That respondent may have been saddled with a heavy workload does not free her from administrative liability. *Rivera v. Buena*[18] teaches:

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[15] *Office of the Court Administrator v. Garcia-Rañoco*, A.M. No. P-03-1717, March 6, 2008, 547 SCRA 670, 674.

[16] *Calo v. Dizon*, A.M. No. P-07-2359, August 11, 2008, 561 SCRA 517, 533; *Rivera v. Buena*, A.M. No. P-07-2394, February 19, 2008, 546 SCRA 222, 229; *Office of the Court Administrator v. Paredes*, A.M. No. P-06-2103, April 17, 2007, 521 SCRA 365, 370.

[17] Section 52(B)(1), CSC Resolution No. 991936, August 31, 1999.

[18] *Rivera v. Buena*, A.M. No. P-07-2394, February 19, 2008, 546 SCRA 222, 228-229.

When respondent assumed the position of branch clerk of court, it was understood that he was willing, ready and able to do his job with utmost devotion and efficiency. Having a voluminous workload, and being forced to do legal research work are unavailing defenses. Neither can respondent pass the blame to his subordinates. Being the administrative officer and having control and supervision over court records, he should have seen to it that his subordinates performed their functions well.[19] (Emphasis and underscoring supplied)

WHEREFORE, the Court finds respondent, Nilda C. Cinco, Officer-in-Charge, Branch Clerk of Court, and Legal Researcher, Regional Trial Court, Branch 28, Catbalogan, Samar, guilty of simple neglect of duty. She is *SUSPENDED* for One Month and One Day without pay, with warning that a repetition of the same or similar act shall be dealt with more severely.

SO ORDERED.

Quisumbing (Chairperson), Chico-Nazario,[*] *Leonardo-de Castro,*[**] and *Brion, JJ.*, concur.

FIRST DIVISION

[G.R. No. 141888. July 13, 2009]

MELBAROSE R. SASOT, *petitioner, vs.* **AMADO YUSON, ROMEO SUANINO, and MELODY DE GUZMAN,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; THE DETERMINATION OF PROBABLE CAUSE FOR THE

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[19] *Ibid.*

[*] Additional member per Special Order No. 658.

[**] Additional member per Special Order No. 635.

PURPOSE OF FILING AN INFORMATION AS AN EXECUTIVE FUNCTION; CONSTRUED.— The general rule is that the courts do not interfere with the discretion of the public prosecutor in determining the specificity and adequacy of the averments in a criminal complaint. The determination of probable cause for the purpose of filing an information in court is an executive function which pertains at the first instance to the public prosecutor and then to the Secretary of Justice. The duty of the Court in appropriate cases is merely to determine whether the executive determination was done without or in excess of jurisdiction or with grave abuse of discretion. Resolutions of the Secretary of Justice are not subject to review unless made with grave abuse.

2. ID.; ID.; ID.; WHEN GRAVE ABUSE OF DISCRETION PRESENT. — Grave abuse of discretion is the capricious and whimsical exercise of judgment on the part of the public officer concerned which is equivalent to an excess or lack of jurisdiction. In determining whether the Investigating Prosecutor or the Secretary of Justice committed grave abuse of discretion, it is expedient to know if the findings of fact of the prosecutor were reached in an arbitrary or despotic manner.

3. CRIMINAL LAW; ILLEGAL POSSESSION OF FIREARMS; ABSENCE OF LICENSE IS AN ESSENTIAL ELEMENT; NOT PRESENT IN CASE AT BAR.— It is settled that the lack or absence of a license is an essential ingredient of the crime of illegal possession of firearm. Here, the Secretary of Justice sustained the Investigating Prosecutor's conclusion and found no sufficient justification to reconsider the case. Both were unanimous in finding no dispute as to the firearm license presented by Yuson at the time of his arrest. In fact, the same license was affirmed by the PNP-FED after direct verification by the prosecutor handling the case.

APPEARANCES OF COUNSEL

Gallardo S. Tongohan for petitioner.
Stanlee D. Calma for respondents.

D E C I S I O N

CARPIO, *J.*:

The Case

Before the Court is a petition for *certiorari*[1] assailing the Decision[2] dated 14 July 1999 and Resolution[3] dated 4 February 2000 of the Court of Appeals in CA-G.R. SP No. 47355.

The Facts

On 17 August 1994, petitioner Melbarose R. Sasot (Melbarose) filed a complaint for serious physical injuries against respondents Amado Yuson (Yuson), Romeo Suanino (Suanino) and Melody de Guzman (de Guzman) with the National Bureau of Investigation (NBI).[4] In her Complaint-Affidavit,[5] Melbarose alleged that her daughter, Aileenrose R. Sasot (Aileen), suffered contusions and bruises all over her body inflicted by Yuson, the alleged leader of the religious group Nuestra Señora del Gumamela Celis (Gumamela Celis) or Our Lady of the Heavenly Gumamela Flower, and some members of his cult, Suanino and de Guzman.

On 23 August 1994, two senior agents of the NBI went to Yuson's residence at 2004 Blumentritt Street, Sampaloc, Manila to conduct an inquiry. During the course of the inquiry, the NBI agents allegedly illegally conducted a search on Yuson's house and seized an unlicensed Colt cal. 45 pistol. Thus, the

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[1] Under Rule 65 of the 1997 Revised Rules of Civil Procedure.

[2] *Rollo*, pp. 33-40. Penned by Justice Artemon D. Luna with Justices Conchita Carpio Morales (now a member of this Court) and Bernardo P. Abesamis, concurring.

[3] *Id.* at 31-32. Penned by Justice Bernardo P. Abesamis with Justices Conchita Carpio Morales (now a member of this Court) and Mercedes Gozo Dadole, concurring.

[4] *Id.* at 288. Docketed in the NBI as NBI CCN-C-94-05567.

[5] *Id.* at 269-272.

NBI arrested Yuson for violation of Presidential Decree No. 1866 (PD 1866) or the illegal possession of firearms and ammunition for possessing an unlicensed pistol. Yuson's arrest had been widely publicized in newspapers and television.[6]

On 26 August 1994, the Firearms and Explosives Division of the Philippine National Police (PNP-FED) at Camp Crame, Quezon City issued a certification:[7]

CERTIFICATION

TO WHOM IT MAY CONCERN:

This is to certify that Amado Yuson, no middle name and of 2000 Blumentritt St., Dimasalang, Metro Manila has no available info with this Office as of this date.

Further certify that one (1) Romeo Suanino, no middle name and of 188 Miguelin St., Sampaloc, Manila has no available info with this Office as of this date.

This certification is issued per request of Federico M. Opinion, Jr., Chief, Special Task Force, MATATAG, PACC.

This certification, together with the complaint filed by Melbarose, served as the NBI's basis for filing, on 13 September 1994, a complaint for violation of PD 1866 and for serious physical injuries[8] with the Prosecution Office of the Department of Justice.

On 6 December 1994, Yuson and his wife, Lulu, filed their Counter-Affidavit.[9] They stated that the NBI agents, without an arrest or search warrant, searched their house for firearms and seized Yuson's Colt cal. 45 pistol with serial no. 1420087 under license no. TL 00827 RL, even after an application to own and a permit to carry said firearm had been presented. Yuson denied the physical injuries charged against him by

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[6] *Id.* at 259-264.

[7] Records, Annex D-8.

[8] Complaint docketed as I.S. No. 94-432.

[9] *Rollo*, pp. 289-291.

Melbarose, the mother of the alleged victim, Aileen. Yuson added that the averments in the complaint were hearsay in character and inadmissible in evidence against him.

On 13 December 1994, Yuson, Suanino, and de Guzman filed a Motion to Dismiss with the NBI.[10] They alleged that Melbarose was not the proper party in interest but Aileen, the supposed victim, who was then 23 years of age. They reiterated that all averments in the complaint and other corroborative affidavits were hearsay in character and based on false and groundless accusations. Further, the seized firearm was covered by a valid application to own the firearm, as well as a permit to carry.

On 24 February 1995, Melbarose filed her Reply-Affidavit,[11] together with Aileen's Affidavit.[12] On 27 February 1995, Aileen's Supplemental Affidavit followed.[13] Aileen recounted that she was introduced by Suanino to Yuson and the religious group Gumamela Celis. She narrated her experiences with the group and how this affected her relationship with her friends and family. In her sworn statement, Aileen talked about in detail how she developed violent emotional and psychological problems after immersing herself in the activities of the so-called cult. She also mentioned Yuson and his sexual exploits with the other women in the group.

On 27 February 1995, Melbarose wrote to then NBI Director Epimaco Velasco requesting that an additional charge of falsification of public documents be meted against Yuson. Melbarose stated that Yuson presented a falsified firearm license during the preliminary investigation.

In a Resolution dated 1 April 1997,[14] the Investigating Prosecutor, Senior State Prosecutor Theodore M. Villanueva (Investigating Prosecutor), dismissed the complaints for serious

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[10] *Id.* at 133-134.

[11] *Id.* at 321-326.

[12] *Id.* at 327-330.

[13] *Id.* at 132.

[14] *Id.* at 406-410.

physical injuries, violation of PD 1866, and falsification of public documents. The relevant portions of the resolution state:

The undersigned after an assiduous evaluation of the facts of the case and the evidence presented finds the non-existence of probable cause to hold respondents for trial of the crime of physical injuries.

The witness Aileen Sasot in her sworn statement failed to name the persons responsible for the injuries she sustained on July 3, 1994. Witness Aileen did not even mention where and when she was physically abused nor as to how were the injuries inflicted upon her. True to say that Aileen narrated the sex filled stories told by Amado Yuson but there is no showing that she was actually molested sexually nor were direct overt acts of sexual advances made on her person. The testimonies of the other witnesses in this case as to how Aileen suffered the bodily injuries are hearsay, they not being based on their own personal account nor have they witnessed the actual incident wherein Aileen was subjected to physical harm. The allegation that the religious cult is responsible for the psychological imbalance suffered by Aileen Sasot is not based on any concrete evidence. The allegations standing merely on hearsay evidence, suspicions and conjectures. These type of evidence could not stand up in a court law wherein strong evidence must be presented to sustain a case for the prosecution.

As to the charge of illegal possession of firearm, a check with the PNP-FED, the government agency in charge with the licensing of firearms and the repository of all records relative to licensed firearms reveal that respondent Amado Yuzon *y* Belizon is licensed to possess a firearm at the time of his arrest by the NBI therefore putting an end to the allegation that the license presented by respondent is fake and further putting an end to the allegation of Melbarose Sasot that Amado Yuzon falsified public documents considering that the latter presented falsified gun license.

The documents presented by the PNP-FED is presumed regular on its face and strong evidence to prove the contrary is needed to overturn such presumption which the challenge in this case miserably failed.

It is therefore recommended that the criminal complaint filed against respondent Amado Yuzon; Romeo Suanico and Melody de Guzman be dismissed for lack of evidence. It is further recommended that the complaint for illegal possession of firearm and falsification

of public document filed against Amado Yuzon *y* Belizon be dismissed for lack of merit.[15]

The motion for consideration filed by Melbarose was also dismissed in a Resolution dated 2 June 1997.[16] Melbarose appealed to then Secretary of Justice Teofisto T. Guingona, Jr. (Secretary of Justice). On 13 August 1997, the Secretary of Justice dismissed the appeal outright reasoning that there was no reversible error in the questioned resolution.[17] Likewise, the motion for reconsideration filed by Melbarose was dismissed in a letter-resolution dated 30 October 1997.[18] The letter-resolutions state:

13 August 1997

x x x x x x x x x

Sir:

This refers to your appeal from the Resolution of the Office of the Chief State Prosecutor in I.S. No. 94-432 dismissing your complaint against Amado Yuson and others for serious physical injuries, violation of Presidential Decree No. 1866 and for falsification of public documents.

Section 9 of Department Order No. 223 dated June 30, 1993 provides that the Secretary of Justice may, *motu propio*, dismiss outright an appeal if there is no showing of any reversible error in the questioned resolution. We considered the arguments raised and discussed in your appeal, as well as the findings in the questioned resolution, and on the basis of the evidence presented, we find no such error committed by the prosecutors that would justify a reversal of their resolution.

Moreover, you failed to attach copies of all annexes to the "reply affidavit" of Melbarose R. Sasot dated February 24, 1995; all annexes to the affidavit of Aileenrose R. Sasot dated February 24, 1995; the

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[15] *Id.* at 409-410.

[16] *Id.* at 411-412.

[17] *Id.* at 427-428.

[18] *Id.* at 429.

handwritten note dated November 4, 1994 of Aileen Sasot cited in the "affidavit" of Amado Yuson and Lulu Yuson dated December 6, 1994; and Registry Receipt No. 008253 evidencing service of a copy of the appeal to the adverse parties or their counsel as required under Section 3 of the said department order.

Consequently, we resolve to dismiss your appeal.

30 October 1997

x x x x x x x x x

Sir:

This refers to your motion for reconsideration of our letter-resolution dated August 13, 1997 dismissing your appeal in I.S. No. 94-432 against Amado Yuson and others for serious physical injuries, violation of Presidential Decree No. 1866 and for falsification of public documents.

We have carefully studied your motion and the grounds relied upon in support thereof, but found no sufficient justification to reconsider said resolution.

Besides, you still failed to submit copies of all annexes to the "reply affidavit" of Melbarose R. Sasot dated February 24, 1995; all annexes to the affidavit of Aileenrose R. Sasot dated February 24, 1995; and the handwritten note dated November 4, 1994 of Aileen Sasot cited in the "affidavit" of Amado Yuson and Lulu Yuson dated December 6, 1994.

Wherefore, your motion is hereby denied with finality.

Melbarose filed an appeal from the resolutions of the Secretary of Justice with the Office of the President, docketed as O.P. Case No. 98-0-8273. In an Order dated 6 March 1998,[19] the appeal was dismissed outright. The Office of the President reasoned that the offenses with which Yuson was charged were felonies not punishable by *reclusion perpetua* to death. Thus, the case could not be taken cognizance by the Office of

[19] *Id.* at 430-431. Signed by then Chief Presidential Legal Counsel Renato C. Corona (now a member of this Court), by authority of the President.

the President as governed by Memorandum Circular No. 58, series of 1997.[20]

Melbarose then filed a petition for review with the Court of Appeals, docketed as CA-G.R. SP No. 47355.

The Ruling of the Court of Appeals

On 14 July 1999, the petition was dismissed by the appellate court. The relevant portions of the decision state:

> In fine, the determination of whether there exists a probable cause or not, rests primarily with the prosecutor. He cannot be compelled to file a criminal information and prosecute a case where he is convinced that he does not have the necessary evidence to do so. x x x
>
> In the case at bar, there is no clear showing of grave abuse of discretion committed by the Secretary of Justice in affirming the resolution of the Chief State Prosecutor, dismissing the criminal complaint filed by Melbarose Sasot against Amado Yuson and the other members of his cult.
>
> x x x x x x x x x
>
> Thus, in the more recent case of *Pono vs. NLRC*, 275 SCRA 611, the High Court restated the rule that "an investigating fiscal is under no obligation to file a criminal information where he is not convinced that he has the quantum of evidence at hand to support the averments."
>
> WHEREFORE, the petition for review is hereby DENIED DUE COURSE, and DISMISSED.
>
> SO ORDERED.[21]

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[20] No appeal from or petition for review of decisions/orders/resolutions of the Secretary of Justice on preliminary investigations of criminal cases shall be entertained by the Office of the President, except those involving offenses punishable by *reclusion perpetua* to death wherein new and material issues are raised which were not previously presented before the Department of Justice and were not ruled upon in the subject decision/order/resolution, in which case the President may order the Secretary of Justice to reopen/review the case, provided, that, the prescription of the offense is not due to lapse within six (6) months from notice of the questioned resolution/order/decision, and provided further, that, the appeal or petition for review is filed within thirty (30) days from such notice.

[21] *Rollo*, pp. 38-39.

The motion for reconsideration filed by Melbarose was also denied for lack of merit in a Resolution dated 4 February 2000.

Hence, the instant petition.

The Issue

The issue is whether the Court of Appeals, in sustaining the Secretary of Justice and the Investigating Prosecutor, committed grave abuse of discretion in excess or lack of jurisdiction in dismissing Melbarose's appeal.

The Court's Ruling

The petition lacks merit.

Melbarose insists that respondent Yuzon did not produce a firearm license at the time of his arrest on 23 August 1994. Melbarose states that she was able to secure a "recovery printout" from the PNP-FED showing that there is indeed a firearm license under the name of "Yuson Amado Belizon" issued on 19 February 1996 and expiring in June 1998. However, this license is different from the one presented by Yuson which coverered the period from 14 February 1994 to June 1996. Melbarose asserts that there had been a blatant and unexplained discrepancy and irregularity on the firearm license presented by Yuson.

Yuson, on the other hand, maintains that he was able to present the required firearm license after the seizure of his pistol. The PNP-FED, the government agency charged with the licensing of firearms, affirmed the existence of the required firearm license after a subpoena was sent by the Investigating Prosecutor. Yuson asserts that there should be no confusion as to the identity of Amado Yuson and Amado Yuson *y* Belizon since they are one and the same person.

The general rule is that the courts do not interfere with the discretion of the public prosecutor in determining the specificity and adequacy of the averments in a criminal complaint. The determination of probable cause for the purpose of filing an information in court is an executive function which pertains at

the first instance to the public prosecutor and then to the Secretary of Justice. The duty of the Court in appropriate cases is merely to determine whether the executive determination was done without or in excess of jurisdiction or with grave abuse of discretion. Resolutions of the Secretary of Justice are not subject to review unless made with grave abuse.[22]

Grave abuse of discretion is the capricious and whimsical exercise of judgment on the part of the public officer concerned which is equivalent to an excess or lack of jurisdiction. In determining whether the Investigating Prosecutor or the Secretary of Justice committed grave abuse of discretion, it is expedient to know if the findings of fact of the prosecutor were reached in an arbitrary or despotic manner.[23]

In the present case, the Investigating Prosecutor dismissed the case for violation of PD 1866 against Yuson for possessing a validly licensed firearm as certified by the PNP-FED. The Prosecutor explained:

> Respondent Amado Yuson for his part presented a license to exonerate him from the provisions of PD 1866. The license show that he is authorized to possess a .45 caliber pistol with serial number SN-1420087 with license no. RL M76C3382704 valid from February 14, 1994 to June 1996 FORM NO. 061304 with Permit to Carry PTC FOR NR. 41613 valid from Sept. 16, 1994 to Dec. 31, 1994. Respondent submitted a certification from the Firearms and Explosives Division signed by P/Sr. Inspector Edwin C. Roque, Chief, Records Branch to the effect that he has a license to possess a .45 caliber pistol.
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> x x x x x x x x x
>
> As to the charge of illegal possession of firearm, a check with the PNP-FED, the government agency in charge with the licensing of firearms and the repository of all records relative to licensed firearms reveal that respondent Amado Yuzon *y* Belizon is licensed to possess a firearm at the time of his arrest by the NBI therefore

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[22] *Insular Life Assurance Company, Limited v. Serrano*, G.R. No. 163255, 22 June 2007, 525 SCRA 400.

[23] *Baviera v. Paglinawan*, G.R. Nos. 168380 and 170602, 8 February 2007, 515 SCRA 170.

putting an end to the allegation that the license presented by respondent is fake and further putting an end to the allegation of Melbarose Sasot that Amado Yuzon falsified public documents considering that the latter presented falsified gun license.

The documents presented by the PNP-FED is presumed regular on its face and strong evidence to prove the contrary is needed to overturn such presumption which the challenge in this case miserably failed. x x x[24]

Melbarose claims that the license presented by Yuson was falsified. However, as found by the Investigating Prosecutor:

The undersigned as per agreement with the parties sent a subpoena to the PNP-FED for this office to present all pertinent documents/ records on file with their office relative to the firearm in question. On March 14, 1997, the PNP-FED complied with the directive and submitted the requested documents. The undersigned found that the documents presented are likewise the same documents which were submitted earlier by both parties. x x x[25]

It is settled that the lack or absence of a license is an essential ingredient of the crime of illegal possession of firearm. Here, the Secretary of Justice sustained the Investigating Prosecutor's conclusion and found no sufficient justification to reconsider the case. Both were unanimous in finding no dispute as to the firearm license presented by Yuson at the time of his arrest. In fact, the same license was affirmed by the PNP-FED after direct verification by the prosecutor handling the case.

Melbarose failed to substantiate her allegations that the prosecutor's exercise of discretion was done in an arbitrary or despotic manner by reason of passion or personal hostility. As correctly ruled by the Court of Appeals, there is no clear showing of grave abuse of discretion committed by the Secretary of Justice in affirming the resolution of the Investigating Prosecutor.

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[24] *Rollo*, pp. 408-410.

[25] *Id.* at 409.

Thus, the Court is precluded from interfering with the executive determination of probable cause for the purpose of filing an information in court, in the absence of grave abuse of discretion.

WHEREFORE, we *DISMISS* the petition. We *AFFIRM* the Decision dated 14 July 1999 and Resolution dated 4 February 2000 of the Court of Appeals in CA-G.R. SP No. 47355.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 160265. July 13, 2009]

NELY T. CO, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES, SOCIAL SECURITY SYSTEM, OFFICE OF THE SOLICITOR GENERAL and SPOUSES JOSE and MERCEDES LIM,**[**] *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; MOTION FOR NEW TRIAL; GROUNDS.— Extrinsic fraud is a valid ground in a motion for new trial, not a motion for reconsideration: SECTION 1. *Grounds of and period for filing motion for new trial or reconsideration.* – Within the period for taking an appeal, the aggrieved party may move the trial court to set aside the judgment or final order and grant a **new trial** for one or more of the following causes materially affecting the substantial

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[*] Designated additional member per Raffle dated 6 July 2009.

[**] The Court of Appeals and Regional Trial Court, Quezon City, Branch 78 were originally impleaded as public respondents. However, they were excluded pursuant to Rule 45, Section 4 of the Rules of Court.

rights of said party: (a) **Fraud**, accident, mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which such aggrieved party has probably been impaired in his rights; or (b) Newly discovered evidence, which he could not, with reasonable diligence, have discovered and produced at the trial, and which if presented would probably alter the result. Within the same period, the aggrieved party may also **move for reconsideration upon the grounds that the damages awarded are excessive, that the evidence is insufficient to justify the decision or final order, or that the decision or final order is contrary to law.**

2. ID.; RULES OF PROCEDURE; STRICT AND RIGID APPLICATION THEREOF WHICH TEND TO FRUSTRATE SUBSTANTIAL JUSTICE MUST BE AVOIDED, RATIONALE. — For the rule-making power of this Court is coupled with the duty to protect and promote constitutional and substantive rights, not to defeat them. Thus, the rules of procedure should be viewed as mere tools designed to facilitate the attainment of justice. Their strict and rigid application, resulting in technicalities that tend to frustrate rather than promote substantial justice, must always be avoided.

3. ID.; ID.; JUDGMENT; CONCLUSIVENESS OF JUDGMENT; CONSTRUED.— There was no need for the RTC to make an independent finding because the doctrine of conclusiveness of judgment had already set in. The reasons for establishing the principle of "conclusiveness of judgment" are founded on sound public policy, and to grant this petition would have the effect of unsettling this well-settled doctrine. It is allowable to reason back from a judgment to the basis on which it stands, upon the obvious principle that where a conclusion is indisputable, and could have been drawn only from certain premises, the premises are equally indisputable with the conclusion. **When a fact has been once determined in the course of a judicial proceeding, and a final judgment has been rendered in accordance therewith, it cannot be again litigated between the same parties without virtually impeaching the correctness of the former decision, which, from motives of public policy, the law does not permit to be done.** *Res judicata* has two concepts. The first is bar by prior judgment under Rule 39, Section 47 (b), and the second is conclusiveness of judgment under Rule 39, Section 47 (c).

Both concepts are founded on the principle of estoppel, and are based on the salutary public policy against unnecessary multiplicity of suits. Like the splitting of causes of action, *res judicata* is in pursuance of such policy. **Matters settled by a Court's final judgment should not be litigated upon or invoked again. Relitigation of issues already settled merely burdens the Courts and the taxpayers, creates uneasiness and confusion, and wastes valuable time and energy that could be devoted to worthier cases.**

4. LABOR AND SOCIAL LEGISLATION; SOCIAL SECURITY COMMISSION; PRIMARILY CHARGED WITH THE DUTY OF SETTLING DISPUTES UNDER RA 1161; VIOLATION IN CASE AT BAR.— Well-settled is the rule that the mandatory coverage of RA 1161, as amended, is premised on the existence of an employer-employee relationship. We are mindful that in *Republic v. Asiapro Cooperative*, we ruled that the question on the existence of an employer-employee relationship for the purpose of determining the coverage of the SSS law falls within the jurisdiction of the Social Security Commission (SSC) which is primarily charged with the duty of settling disputes under RA 1161, as amended. To sum up, the final and executory NLRC decision (to the effect that respondent spouses were not the employees of petitioner) was binding on this criminal case for violation of RA 1161, as amended. Accordingly, the RTC committed grave abuse of discretion when it refused to grant petitioner's motion to quash the Information. Simply said, any conviction for violation of the SSS law based on the erroneous premise of the existence of an employer-employee relationship would be a transgression of petitioner's constitutional rights.

APPEARANCES OF COUNSEL

Edmund T. Espina for petitioner.
The Solicitor General for public respondent.
Felicisimo Chavez Ilagan for private respondents.

D E C I S I O N

CORONA, *J.*:

This is a petition for review on *certiorari*[1] of the May 15, 2003 and October 6, 2003 resolutions[2] of the Court of Appeals (CA) in CA-G.R. SP No. 69510.

On January 12, 2001, an Information charging petitioner Nely T. Co with violation of Section 22(d) in relation to Section 28(e) of RA[3] 1161, as amended by RA 8282 (the Social Security Law of 1997)[4] was filed in the Regional Trial Court (RTC), Quezon City, Branch 78, on the basis of the complaint of respondent spouses Jose and Mercedes Lim, who claimed to

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[1] Under Rule 45 of the Rules of Court. *Rollo*, p. 3.

[2] Penned by Associate Justice Eloy R. Bello, Jr. (retired) and concurred in by then Presiding Justice Cancio C. Garcia (now retired Supreme Court Justice) and Associate Justice Mariano C. del Castillo of the First Division of the Court of Appeals. *Id.*, pp. 23-24.

[3] Republic Act.

[4] Should be Section 22(a) and (b) in relation to Section 22(e):

Sec. 22. *Remittance of Contributions*. — (a) The contribution imposed in the preceding section shall be remitted to the SSS within the first ten (10) days of each calendar month following the month for which they are applicable or within such time as the Commission may prescribe. Every employer required to deduct and to remit such contributions shall be liable for their payment and if any contribution is not paid to the SSS as herein prescribed, he shall pay besides the contribution a penalty thereon of three percent (3%) per month from the date the contribution falls due until paid. If deemed expedient and advisable by the Commission, the collection and remittance of contributions shall be made quarterly or semi-annually in advance, the contributions payable by the employees to be advanced by their respective employers: Provided, That upon separation of an employee, any contribution so paid in advance but not due shall be credited or refunded to his employer.

(b) The contributions payable under this Act in cases where an employer refuses or neglects to pay the same shall be collected by the SSS in the same manner as taxes are made collectible under the National Internal Revenue Code, as amended. Failure or refusal of the employer to pay or remit the contributions herein prescribed shall not prejudice the right of the covered employee to the benefits of the coverage.

be petitioner's employees.[5] Petitioner was accused of failing to remit the compulsory contributions of respondent spouses to respondent Social Security System (SSS).[6]

On July 3, 2001, petitioner filed a motion to quash the Information, arguing that the facts alleged in the Information did not constitute an offense because respondent spouses were not her employees. In support of her motion, petitioner cited the ruling of the National Labor Relations Commission (NLRC) on the issue of whether petitioner and respondent spouses had an employer-employee relationship with her or her company.

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xxx xxx xxx

Sec. 28. *Penal Clause*. — xxx

(e) Whoever fails or refuses to comply with the provisions of this Act or with the rules and regulations promulgated by the Commission, shall be punished by a fine of not less than Five thousand pesos (₱5,000) nor more than Twenty thousand pesos (₱20,000), or imprisonment for not less than six (6) years and one (1) day nor more than twelve (12) years or both, at the discretion of the court: Provided, That where the violation consists in failure or refusal to register employees or himself, in case of the covered self-employed, or to deduct contributions from the employees' compensation and remit the same to the SSS, the penalty shall be a fine of not less than Five thousand pesos (₱5,000) nor more than Twenty thousand pesos (₱20,000) and imprisonment for not less than six (6) years and one (1) day nor more than twelve (12) years.

[5] Docketed as Criminal Case No. Q-01-97619. The information read:

The undersigned accuses [petitioner] of Violation of Sec. 22(d), in relation to Section 28(e) of Republic Act No. 1161, as amended, committed as follows:

That on or about and during the period from September 1997 to March 2000 in Quezon City, Philippines, the above-named accused, being then the owner of Ever Ready Marketing, with address located at No. 37 Sibuyan St., this City, a compulsorily covered employer under the Social Security Law, as amended, did then and there [willfully] and unlawfully fail, neglect and refuse and still fails, neglects and refuses to remit to the Social Security System (SSS) at East Avenue, Diliman, this City, contributions for SSS Medicare and Employees Compensation (EC) for its covered employees in the amount of ₱173,393.00, Philippine Currency, and the 3% penalty imposed thereon in the amount of ₱164,843.03 computed as of April 28, 2000 as well as the additional 3% penalty that have accrued from such date until said contributions is paid, despite demand made upon said accused to comply therewith.

CONTRARY TO LAW. (*Rollo*, p. 80.)

[6] *Id.*, p. 234.

Prior to this, on March 27, 2000 (before the filing of the Information), respondent spouses had filed a labor case for illegal dismissal and nonpayment of overtime pay, holiday pay, holiday premium pay, service incentive leave and 13th month pay against Ever-Ready Phils., Inc.[7] and its officers Joseph Thomas Co, William Co, Wilson Co and petitioner.[8]

On September 29, 2000, labor arbiter (LA) Ernesto S. Dinopol rendered a decision dismissing the complaint for lack of merit. He held that respondent spouses had voluntarily left the company as shown by the deeds of release and quitclaim they executed. They were also not entitled to their monetary claims under Article 82 of the Labor Code because they were field personnel of the company.[9]

Aggrieved, both parties appealed to the NLRC. In a resolution dated May 31, 2001, it affirmed the decision of the LA and ruled that the respondent spouses, as sales representatives, were independent contractors.[10] Therefore, there was no employer-employee relationship between the parties. This NLRC resolution attained finality on December 20, 2001.[11]

Notwithstanding the NLRC ruling on the lack of employer-employee relationship between petitioner and respondent spouses, Judge Percival Mandap Lopez of the RTC denied petitioner's motion to quash (the Information charging violation of the SSS law) in a resolution dated November 12, 2001.[12] On March 8, 2002, petitioner filed a petition for *certiorari* and prohibition against

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[7] Formerly Richie's Commercial/Ever-Ready Marketing.

[8] Docketed as NLRC-NCR-Case No. 00-03-01826-2000.

[9] *Rollo*, pp. 63-64.

[10] Third Division. Penned by Commissioner Ireneo B. Bernardo and concurred in by Presiding Commissioner Lourdes C. Javier and Commissioner Tito F. Genilo. *Id.*, pp. 66-70.

[11] *Id.*, p. 72.

[12] *Id.*, pp. 54-55. Petitioner did not file a motion for reconsideration of the November 12, 2001 resolution of the RTC. She argued in her petition in the CA that the question raised was purely one of law. *Id.*, p. 75.

Judge Lopez in the CA seeking to set aside the November 12, 2001 RTC resolution denying her motion to quash.

In a resolution dated January 13, 2003, the CA required petitioner to implead the People of the Philippines, SSS, Office of the Solicitor General and respondent spouses.[13] For petitioner's failure to comply with this order, the CA dismissed the petition on May 15, 2003 and denied reconsideration on October 6, 2003. According to the CA, petitioner was bound by the negligence of her former counsel.

Hence, this petition.

For our resolution are the following issues: (1) whether petitioner's motion for reconsideration of the CA's dismissal of the petition was correctly denied and (2) whether petitioner's motion to quash should have been granted by the RTC.

On the first issue, petitioner argues that the CA should have granted her motion for reconsideration of the May 15, 2003 resolution. She asserts that under Rule 37, Section 1 (a) of the Rules of Court, the abandonment of her case by her former counsel[14] amounted to extrinsic fraud which was a meritorious ground.

Petitioner is incorrect. Extrinsic fraud is a valid ground in a motion for new trial, not a motion for reconsideration:

> SECTION 1. *Grounds of and period for filing motion for new trial or reconsideration.*— Within the period for taking an appeal, the aggrieved party may move the trial court to set aside the judgment or final order and grant a **new trial** for one or more of the following causes materially affecting the substantial rights of said party:
>
> (a) **Fraud**, accident, mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which such aggrieved party has probably been impaired in his rights; or
>
> (b) Newly discovered evidence, which he could not, with reasonable diligence, have discovered and produced at the trial, and which if presented would probably alter the result.

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[13] *Id.*, p. 130.

[14] Atty. Ateneones S. Bacale.

Within the same period, the aggrieved party may also **move for reconsideration upon the grounds that the damages awarded are excessive, that the evidence is insufficient to justify the decision or final order, or that the decision or final order is contrary to law**. (Emphasis supplied)

Petitioner asserted no other ground aside from extrinsic fraud. Therefore, her motion was properly denied and we do not see the need to discuss the merits of such ground.

Nevertheless, in the interest of justice and to prevent undue delay in the disposition of this case, we tackle the next issue raised by petitioner despite the CA's proper dismissal of her petition.[15] This was a criminal case and the possibility of a person being deprived unjustly of her liberty due to the procedural lapse of counsel was a strong and compelling reason to warrant suspension of the Rules of Court.[16] For the rule-making power of this Court is coupled with the duty to protect and promote constitutional and substantive rights,[17] not to defeat them. Thus, the rules of procedure should be viewed as mere tools designed to facilitate the attainment of justice. Their strict and rigid application, resulting in technicalities that tend to frustrate rather than promote substantial justice, must always be avoided.[18]

Petitioner maintains that the factual finding in the illegal dismissal case that respondent spouses were not her employees is binding in this case. There being no employer-employee relationship, respondent spouses were not entitled to coverage under RA 1161, as amended, and petitioner should not be penalized under said law. We agree.

Well-settled is the rule that the mandatory coverage of RA 1161, as amended, is premised on the existence of an employer-

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[15] See *Bunao v. Social Security System*, G.R. No. 159606, 13 December 2005, 477 SCRA 564, 570-571.

[16] *De Guzman v. People*, G.R. No. 167492, 22 March 2007, 518 SCRA 767, 772, citing *Alonzo v. Villamor, et al.*, 16 Phil. 315 (1910).

[17] S*ee* Section 5(5), Article VIII, Constitution.

[18] *De Guzman v. Sandiganbayan*, G.R. No. 103276, 11 April 1996, 256 SCRA 171, 179.

employee relationship.[19] Applicable here is *Smith Bell & Co., Inc. v. Court of Appeals*:[20]

> Based on the records of the case at bar and those of G.R. No. L-44620, it is clear that the resolution of this Court dated 26 January 1977, rendered in G.R. No. L-44620 [illegal dismissal case], constitutes a bar to SSC Case No. 2453. We, therefore, find merit in the petition at bar.
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> It is true that in SSC Case No. 2453, private respondents sought to enforce their alleged right to compulsory coverage by the SSS on the main allegation that they are employees of petitioner company. On the other hand, in NLRC Case No. ROVII-153, private respondents, in order to support their position that they were illegally dismissed by petitioner company from their work, maintained that there was an employee-employer relationship existing between petitioner and private respondents at the time of such dismissal. In other words, **the issue common to both cases is whether there existed an employee-employer relationship at the time of the occurrence of the acts complained of both in SSC Case No. 2453 and NLRC Case No. RO-VII-153**.
>
> It is well to note that the said **issue was adjudged with finality** in G.R. No. L-44620, through this Court's resolutions dated 26 January 1977 and 14 March 1977. The dismissal of the petition of the herein private respondents in G.R. No. L-44620, though contained in a minute resolution, was an adjudication on the merits of the case.
>
> **The present controversy, therefore, squarely falls under the umbrage of *res judicata*, particularly, under the rule on "conclusiveness of judgment."** Following this rule, as stated in *Bienvenida Machoca Arcadio vs. Carriaga, Jr.*, we hold that the judgment in G.R. No. L-44620 bars SSC Case No. 2453, as the relief sought in the latter case is inextricably related to the ruling in G.R. No. L-44620 to the effect that private respondents, are not employees of petitioner.[21] (Emphasis supplied)

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[19] *Chua v. Court of Appeals*, 483 Phil. 126, 136 (2004), citing *Security System v. Court of Appeals*, G.R. No. 100388, 14 December 2000, 348 SCRA 1, 10–11.

[20] G.R. No. 59692, 11 October 1990, 190 SCRA 362. This ruling was reiterated in *Commander Realty, Inc. v. Fernandez*, G.R. No. 167945, 14 July 2006, 495 SCRA 146, 157-164.

[21] *Id.*, pp. 370-372, citation omitted.

The only difference is that the instant case is a criminal case whereas the case in *Smith Bell* was a civil case. However, the doctrine of conclusiveness of judgment also applies in criminal cases. As we declared in *Constantino v. Sandiganbayan (First Division):*[22]

> Although the instant case involves a criminal charge whereas *Constantino* involved an administrative charge, still the findings in the latter case are binding herein because the same set of facts are the subject of both cases. What is decisive is that the issues already litigated in a final and executory judgment preclude — by the principle of bar by prior judgment, an aspect of the doctrine of *res judicata*, and even under the doctrine of "law of the case," — the re-litigation of the same issue in another action. It is well established that when a right or fact has been judicially tried and determined by a court of competent jurisdiction, so long as it remains unreversed, it should be conclusive upon the parties and those in privity with them. The dictum therein laid down became the law of the case and what was once irrevocably established as the controlling legal rule or decision continues to be binding between the same parties as long as the facts on which the decision was predicated continue to be the facts of the case before the court. Hence, the binding effect and enforceability of that dictum can no longer be resurrected anew since such issue had already been resolved and finally laid to rest, if not by the principle of *res judicata*, at least by conclusiveness of judgment.
>
> It may be true that the basis of administrative liability differs from criminal liability as the purpose of administrative proceedings on the one hand is mainly to protect the public service, based on the time-honored principle that a public office is a public trust. On the other hand, the purpose of the criminal prosecution is the punishment of crime. However, the dismissal by the Court of the administrative case against *Constantino* based on the same subject matter and after examining the same crucial evidence operates to dismiss the criminal case because of the precise finding that the act from which liability is anchored does not exist.
>
> It is likewise clear from the decision of the Court in *Constantino* that the level of proof required in administrative cases which is substantial evidence was not mustered therein. The same evidence is again before the Court in connection with the appeal in the criminal case. Ineluctably, the same evidence cannot with greater reason satisfy

[22] G.R. No. 140656, 13 September 2007, 533 SCRA 205.

the higher standard in criminal cases such as the present case which is evidence beyond reasonable doubt.[23]

We are mindful that in *Republic v. Asiapro Cooperative*,[24] we ruled that the question on the existence of an employer-employee relationship for the purpose of determining the coverage of the SSS law falls within the jurisdiction of the Social Security Commission (SSC) which is primarily charged with the duty of settling disputes under RA 1161, as amended.[25] In that case, the SSS filed a petition in the SSC praying that Asiapro Cooperative (Asiapro) be directed to register as an employer, to report its owners-members as covered employees under the compulsory coverage of SSS and to remit the necessary contributions in accordance with the law.[26] Asiapro sought the dismissal of the petition alleging that no employer-employee relationship existed between it and its owners-members, thus SSC had no jurisdiction over it. We held that, based on Section 5 of RA 8282,[27] SSC had jurisdiction over the petition.

Republic v. Asiapro Cooperative, however, is inapplicable here as this case does not concern the issue of jurisdiction of the SSC. Furthermore, the question of the existence of an employer-employee relationship was already disposed of with finality, albeit in the context of an illegal dismissal case in the NLRC. There was no need for the RTC to make an independent finding because the doctrine of conclusiveness of judgment had already set in.

The reasons for establishing the principle of "conclusiveness of judgment" are founded on sound public policy, and to grant this petition would have the effect of unsettling this well-settled doctrine. It is allowable to reason back from a judgment to the basis on which it stands, upon the obvious principle that where a conclusion is indisputable, and could have been drawn only from certain premises, the premises are

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[23] *Id.*, pp. 228-230, citations omitted.

[24] G.R. No. 172101, 23 November 2007, 538 SCRA 659.

[25] *Id.*, p. 672.

[26] *Id.*, p. 664.

[27] Sec. 5. *Settlement of Disputes*. – (a) Any dispute arising under this Act with respect to coverage, benefits, contributions and penalties thereon or any other matter related thereto, shall be cognizable by [SSC], xxx

equally indisputable with the conclusion. **When a fact has been once determined in the course of a judicial proceeding, and a final judgment has been rendered in accordance therewith, it cannot be again litigated between the same parties without virtually impeaching the correctness of the former decision, which, from motives of public policy, the law does not permit to be done**.[28]

Res judicata has two concepts. The first is bar by prior judgment under Rule 39, Section 47 (b), and the second is conclusiveness of judgment under Rule 39, Section 47 (c). Both concepts are founded on the principle of estoppel, and are based on the salutary public policy against unnecessary multiplicity of suits. Like the splitting of causes of action, *res judicata* is in pursuance of such policy. **Matters settled by a Court's final judgment should not be litigated upon or invoked again. Relitigation of issues already settled merely burdens the Courts and the taxpayers, creates uneasiness and confusion, and wastes valuable time and energy that could be devoted to worthier cases**.[29] (Emphasis supplied)

To sum up, the final and executory NLRC decision (to the effect that respondent spouses were not the employees of petitioner) was binding on this criminal case for violation of RA 1161, as amended. Accordingly, the RTC committed grave abuse of discretion when it refused to grant petitioner's motion to quash the Information. Simply said, any conviction for violation of the SSS law based on the erroneous premise of the existence of an employer-employee relationship would be a transgression of petitioner's constitutional rights.

WHEREFORE, the petition is hereby *GRANTED*. Criminal Case No. Q-01-97619 is *ORDERED* dismissed.

No costs.

SO ORDERED.

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

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[28] *Rasdas v. Estenor*, G.R. No. 157605, 13 December 2005, 477 SCRA 538, 550, citing *Kidpalos v. Baguio Gold Mining Co.*, 122 Phil. 249 (1965) and *National Housing Authority v. Baello*, G.R. No. 143230, 20 August 2004, 437 SCRA 86.

[29] *Camara v. Court of Appeals*, 369 Phil. 858, 865 (1999).

FIRST DIVISION

[G.R. No. 160772. July 13, 2009]

HILARIO P. SORIANO, *petitioner, vs.* **OMBUDSMAN SIMEON V. MARCELO, HON. MARILOU B. ANCHETA-MEJIA, Graft Investigation Officer II, and ATTY. CELEDONIO P. BALASBAS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; NOT A PROPER REMEDY FOR AN ERROR OF JUDGMENT IN THE EVALUATION OF EVIDENCE; SUSTAINED.— The arguments raised by petitioner are not errors involving jurisdiction but one of judgment, which is beyond the province of the extraordinary remedy of *certiorari.* As we have ruled in *First Corporation v. Former Sixth Division of the Court of Appeals*, to wit: It is a fundamental aphorism in law that a review of facts and evidence is not the province of the extraordinary remedy of *certiorari*, which is *extra ordinem* — beyond the ambit of appeal. In *certiorari* proceedings, judicial review does not go as far as to examine and assess the evidence of the parties and to weigh the probative value thereof. It does not include an inquiry as to the correctness of the evaluation of evidence. Any error committed in the evaluation of evidence is merely an error of judgment that cannot be remedied by *certiorari*. An *error of judgment* is one which the court may commit in the exercise of its jurisdiction. An error of jurisdiction is one where the act complained of was issued by the court without or in excess of jurisdiction, or with grave abuse of discretion, which is tantamount to lack or in excess of jurisdiction and which error is correctible only by the extraordinary writ of *certiorari*. *Certiorari* will not be issued to cure errors of the trial court in its appreciation of the evidence of the parties, or its conclusions anchored on the said findings and its conclusions of law. It is not for this Court to re-examine conflicting evidence, re-evaluate the credibility of the witnesses or substitute the findings of fact of the court *a quo.*

2. ID.; ID.; ID.; AS A RULE THE COURTS WILL NOT INTERFERE WITH THE DISCRETION OF THE PROSECUTOR OR THE OMBUDSMAN; RATIONALE.— The general rule has been that the courts will not interfere with the discretion of the prosecutor or the Ombudsman, in the exercise of his investigative power, to determine the specificity and adequacy of the averments of the offense charged. As we have explained in *Esquivel v. Ombudsman*: The Ombudsman is empowered to determine whether there exists reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof and, thereafter, to file the corresponding information with the appropriate courts. Settled is the rule that the Supreme Court will not ordinarily interfere with the Ombudsman's exercise of his investigatory and prosecutory powers without good and compelling reasons to indicate otherwise. Said exercise of powers is based upon the constitutional mandate and the court will not interfere in its exercise. The rule is based not only upon respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman, but upon practicality as well. Otherwise, innumerable petitions seeking dismissal of investigatory proceedings conducted by the Ombudsman will grievously hamper the functions of the office and the courts, in much the same way that courts will be swamped if they had to review the exercise of discretion on the part of public prosecutors each time they decided to file an information or dismiss a complaint by a private complainant. In *Presidential Commission on Good Government v. Desierto*, we discussed the value of the Ombudsman's independence, thus: Case law has it that the determination of probable cause against those in public office during a preliminary investigation is a function that belongs to the Office of the Ombudsman. The Ombudsman has the discretion to determine whether a criminal case, given its attendant facts and circumstances, should be filed or not. It is basically his call. He may dismiss the complaint forthwith should he find it to be insufficient in form or substance, or he may proceed with the investigation if, in his view, the complaint is in due and proper form and substance. We have consistently refrained from interfering with the constitutionally mandated investigatory and prosecutorial powers of the Ombudsman. Thus, if the Ombudsman, using professional judgment, finds the case

dismissible, the Court shall respect such findings, unless the exercise of such discretionary powers is tainted by grave abuse of discretion.

3. ID.; ID.; ID.; ID.; EXCEPTION; GRAVE ABUSE OF DISCRETION AS A GROUND; CONSTRUED.— The Ombudsman has the full discretion to determine whether or not a criminal case should be filed. Nonetheless, this Court is not precluded from reviewing the Ombudsman's action when there is a charge of grave abuse of discretion. Grave abuse of discretion implies a capricious and whimsical exercise of judgment tantamount to lack of jurisdiction. The Ombudsman's exercise of power must have been done in an arbitrary or despotic manner which must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform the duty enjoined or to act at all in contemplation of law. An examination of the records would show that the Office of the Ombudsman did not act with grave abuse of discretion, amounting to lack or in excess of jurisdiction, in dismissing the complaint against Balasbas.

4. CRIMINAL LAW; VIOLATION OF R.A. 3019 (OTHERWISE KNOWN AS ANTI GRAFT AND CORRUPT PRACTICES ACT); ELEMENTS.— The elements of the offense of violation of Section 3(e) of RA 3019, as amended, are as follows: 1) The accused must be a public officer discharging administrative, judicial or official functions; 2) He must have acted with manifest partiality, evident bad faith or inexcusable negligence; and 3) That his action caused undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions.

5. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; PURPOSE THEREOF.— We reiterate the ruling in *Collantes*, thus: Agencies tasked with the preliminary investigation and prosecution of crimes should never forget that the purpose of a preliminary investigation is to secure the innocent against hasty, malicious and oppressive prosecution, and to protect one from an open and public accusation of crime, from the trouble, expense and anxiety of a public trial, and also to protect the State from useless and expensive trials. It is, therefore, imperative upon such agencies to relieve any person from the trauma of going through a trial once it is ascertained that the evidence is insufficient to sustain

a *prima facie* case or that no probable cause exists to form a sufficient belief as to the guilt of the accused.

APPEARANCES OF COUNSEL

Gonzalez & Associates Law for petitioner.

D E C I S I O N

CARPIO, *J.*:

The Case

Before this Court is a petition for *certiorari* under Rule 65 filed by Hilario P. Soriano (petitioner) seeking to set aside the Resolution dated 29 July 2002,[1] which dismissed the complaint against Assistant City Prosecutor Celedenio P. Balasbas (Balasbas), and the Order dated 14 July 2003,[2] which denied the motion for reconsideration, both issued by the Office of the Ombudsman in OMB-C-C-02-0246-E.

The Antecedent Facts

On 1 June 2001, petitioner filed an affidavit-complaint against Mely S. Palad (Palad), a bank examiner of the Bangko Sentral ng Pilipinas, for Falsification of Public Documents and Use of Falsified Document punishable under Article 172 of the Revised Penal Code. The complaint was filed with the Office of the City Prosecutor of Manila and was docketed as I.S. No. 01-F-22547. Acting on the complaint, Balasbas issued a Resolution on 27 August 2001 recommending that Palad be charged in court with Falsification of Public Documents and that the charge of Use of Falsified Document be dropped for lack of merit.

The Resolution of 27 August 2001 was forwarded to 2nd Assistant City Prosecutor Leoncia R. Dimagiba (Dimagiba) who

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[1] *Rollo*, pp. 16-18.

[2] *Id.* at 19-23.

recommended the filing of the information. This Resolution was forwarded to the City Prosecutor for approval.

Meanwhile, on 25 January 2002, Palad filed a Motion to Re-Open Case on the ground that she was not given a copy of the subpoena or any notice regarding the complaint filed against her.

On 27 February 2002, Dimagiba recommended the reopening of the case. City Prosecutor Ramon R. Garcia (City Prosecutor) approved the recommendation. Thus, on 26 March 2002, Balasbas issued a subpoena to the parties setting the case for investigation.

The reopening of the case prompted petitioner to file on 18 April 2002 with the Office of the Ombudsman a criminal complaint against Balasbas for violation of Section 3(e) of Republic Act No. 3019 (RA 3019), otherwise known as the Anti-Graft and Corrupt Practices Act. Petitioner alleged that in the reopening of I.S. No. 01-F-22547, Palad received an unwarranted advantage or preference, through manifest partiality, evident bad faith and gross inexcusable negligence, causing undue injury to petitioner.

In the Resolution dated 29 July 2002, Graft Investigation Officer Charity Grace A. Rico of the Office of the Ombudsman recommended the dismissal of petitioner's complaint for want of sufficient basis. This recommendation was approved by Ombudsman Simeon V. Marcelo. The Motion for Reconsideration was denied in the Order of 14 July 2003,[3] for lack of merit.

Hence, the present petition for *certiorari*.

The Issue

Petitioner raises the sole issue of whether or not the Office of the Ombudsman acted with grave abuse of discretion, amounting to lack or in excess of jurisdiction, in dismissing the complaint against Balasbas.

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[3] Issued by Graft Investigation Officer II Marilou B. Ancheta-Mejica and approved by Deputy Ombudsman for Luzon, Victor C. Fernandez (as per Delegation of Authority by the Ombudsman dated 8 September 2003).

The Court's Ruling

The instant petition is a special civil action for *certiorari* which is a remedy meant to correct only errors of jurisdiction, not errors of judgment. Petitioner assails the resolution of the Office of the Ombudsman dismissing the criminal case against Balasbas. Petitioner claims that the subordinates were not supposed to blindly follow illegal orders of their superiors. He insists that Balasbas is still liable for the reopening of the case without lawful reasons, for no law gives his superiors the right to indiscriminately order the reopening of a case. Petitioner argues that Balasbas could have opted not to issue a subpoena knowing that the directive of the City Prosecutor to reopen the case of Palad was not warranted. Thus, for giving unwarranted advantage or preference to Palad that caused undue injury to petitioner, Balasbas must be held liable for violation of Section 3(e) of RA 3019.

The arguments raised by petitioner are not errors involving jurisdiction but one of judgment, which is beyond the province of the extraordinary remedy of *certiorari*. As we have ruled in *First Corporation v. Former Sixth Division of the Court of Appeals*,[4] to wit:

> It is a fundamental aphorism in law that a review of facts and evidence is not the province of the extraordinary remedy of *certiorari*, which is *extra ordinem* — beyond the ambit of appeal. In *certiorari* proceedings, judicial review does not go as far as to examine and assess the evidence of the parties and to weigh the probative value thereof. It does not include an inquiry as to the correctness of the evaluation of evidence. Any error committed in the evaluation of evidence is merely an error of judgment that cannot be remedied by *certiorari*. An *error of judgment* is one which the court may commit in the exercise of its jurisdiction. An error of jurisdiction is one where the act complained of was issued by the court without or in excess of jurisdiction, or with grave abuse of discretion, which is tantamount to lack or in excess of jurisdiction and which error is correctible only by the extraordinary writ of *certiorari*. *Certiorari* will not be issued to cure errors of the trial court in its appreciation

[4] G.R. No. 171989, 4 July 2007, 526 SCRA 564, 578.

of the evidence of the parties, or its conclusions anchored on the said findings and its conclusions of law. It is not for this Court to re-examine conflicting evidence, re-evaluate the credibility of the witnesses or substitute the findings of fact of the court *a quo.*

This notwithstanding, may this Court review the findings of the Office of the Ombudsman? The general rule has been that the courts will not interfere with the discretion of the prosecutor or the Ombudsman, in the exercise of his investigative power, to determine the specificity and adequacy of the averments of the offense charged.[5] As we have explained in *Esquivel v. Ombudsman*:[6]

> The Ombudsman is empowered to determine whether there exists reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof and, thereafter, to file the corresponding information with the appropriate courts. Settled is the rule that the Supreme Court will not ordinarily interfere with the Ombudsman's exercise of his investigatory and prosecutory powers without good and compelling reasons to indicate otherwise. Said exercise of powers is based upon the constitutional mandate and the court will not interfere in its exercise. The rule is based not only upon respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman, but upon practicality as well. Otherwise, innumerable petitions seeking dismissal of investigatory proceedings conducted by the Ombudsman will grievously hamper the functions of the office and the courts, in much the same way that courts will be swamped if they had to review the exercise of discretion on the part of public prosecutors each time they decided to file an information or dismiss a complaint by a private complainant.

In *Presidential Commission on Good Government v. Desierto*,[7] we discussed the value of the Ombudsman's independence, thus:

> Case law has it that the determination of probable cause against those in public office during a preliminary investigation is a function

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[5] *Ocampo IV v. Ombudsman*, G.R. Nos. 103446-47, 30 August 1993, 225 SCRA 725.

[6] 437 Phil. 702, 711-712 (2002).

[7] G.R. No. 139296, 23 November 2007, 538 SCRA 207, 215-216.

that belongs to the Office of the Ombudsman. The Ombudsman has the discretion to determine whether a criminal case, given its attendant facts and circumstances, should be filed or not. It is basically his call. He may dismiss the complaint forthwith should he find it to be insufficient in form or substance, or he may proceed with the investigation if, in his view, the complaint is in due and proper form and substance. We have consistently refrained from interfering with the constitutionally mandated investigatory and prosecutorial powers of the Ombudsman. Thus, if the Ombudsman, using professional judgment, finds the case dismissible, the Court shall respect such findings, unless the exercise of such discretionary powers is tainted by grave abuse of discretion.

The Ombudsman has the full discretion to determine whether or not a criminal case should be filed. Nonetheless, this Court is not precluded from reviewing the Ombudsman's action when there is a charge of grave abuse of discretion. Grave abuse of discretion implies a capricious and whimsical exercise of judgment tantamount to lack of jurisdiction. The Ombudsman's exercise of power must have been done in an arbitrary or despotic manner which must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[8] An examination of the records would show that the Office of the Ombudsman did not act with grave abuse of discretion, amounting to lack or in excess of jurisdiction, in dismissing the complaint against Balasbas.

Balasbas, as Assistant City Prosecutor, was charged with violation of Section 3(e) of the Anti-Graft and Corrupt Practices Act which provides, thus:

SEC. 3. Corrupt practices of public officers. — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x x x x x x x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits,

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[8] *Presidential Commission on Good Government v. Desierto*, G.R. No. 139296, 23 November 2007, 538 SCRA 207.

advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

The elements of the offense of violation of Section 3(e) of RA 3019, as amended, are as follows:

1) The accused must be a public officer discharging administrative, judicial or official functions;

2) He must have acted with manifest partiality, evident bad faith or inexcusable negligence; and

3) That his action caused undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions.[9]

In *Albert v. Sandiganbayan*,[10] we discussed the second element, to wit:

There is "manifest partiality" when there is a clear, notorious, or plain inclination or predilection to favor one side or person rather than another. "Evident bad faith" connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. "Evident bad faith" contemplates a state of mind affirmatively operating with furtive design or with some motive or self-interest or ill will or for ulterior purposes. "Gross inexcusable negligence" refers to negligence characterized by the want of even the slightest care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with conscious indifference to consequences insofar as other persons may be affected.

And, as we explained in *Collantes v. Marcelo*,[11]

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[9] *Albert v. Sandiganbayan*, G.R. No. 164015, 26 February 2009; *Collantes v. Marcelo*, G.R. Nos. 167006-07, 14 August 2007, 530 SCRA 142.

[10] G.R. No. 164015, 26 February 2009.

[11] G.R. Nos. 167006-07, 14 August 2007, 530 SCRA 142, 155.

Well-settled is the rule that good faith is always presumed and the Chapter on Human Relations of the Civil Code directs every person, *inter alia*, to observe good faith which springs from the fountain of good conscience. Specifically, a public officer is presumed to have acted in good faith in the performance of his duties. Mistakes committed by a public officer are not actionable absent any clear showing that they were motivated by malice or gross negligence amounting to bad faith. "Bad faith" does not simply connote bad moral judgment or negligence. There must be some dishonest purpose or some moral obliquity and conscious doing of a wrong, a breach of a sworn duty through some motive or intent or ill will. It partakes of the nature of fraud. It contemplates a state of mind affirmatively operating with furtive design or some motive of self-interest or ill will for ulterior purposes.

The law also requires that the *public officer's action caused* undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions. x x x

Petitioner failed to show that Balasbas acted with manifest partiality, evident bad faith or inexcusable negligence in issuing the subpoena. As further pointed out by the Office of the Ombudsman in its Resolution of 29 July 2002, there was no undue injury because petitioner "had suffered no actual damage."

Although Balasbas initially recommended the filing of a criminal case against Palad, this recommendation was still subject to the approval of his superiors, Dimagiba and the City Prosecutor. Balasbas, as investigating prosecutor, had no power or control over the final disposition of Palad's motion to reopen the case. Conducting a preliminary investigation for the purpose of determining whether there exists probable cause to prosecute a person for the commission of a crime, including the determination of whether to conclude, reopen or dismiss the criminal complaint subject of the preliminary investigation, is a matter that rests within the sound discretion of the provincial or city prosecutor. This is clear from the provision of Section 4, Rule 112 of the Revised Rules on Criminal Procedure which specifically states that no complaint or information may be filed or dismissed by an investigating fiscal without the prior written authority of the

provincial or city fiscal or chief state prosecutor or the Ombudsman or his deputy, thus:

SEC. 4. *Resolution of investigating prosecutor and its review.* If the investigating prosecutor finds cause to hold the respondent for trial, he shall prepare the resolution and information. He shall certify under oath in the information that he, or as shown by the record, an authorized officer, has personally examined the complainant and his witnesses; that there is reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof; that the accused was informed of the complaint and of the evidence submitted against him; and that he was given an opportunity to submit controverting evidence. Otherwise, he shall recommend the dismissal of the complaint.

Within five (5) days from his resolution, he shall forward the record of the case to the provincial or city prosecutor or chief state prosecutor or to the Ombudsman or his deputy in cases of offenses cognizable by the *Sandiganbayan* in the exercise of its original jurisdiction. They shall act on the resolution within ten (10) days from their receipt thereof and shall immediately inform the parties of such action.

No complaint or information may be filed or dismissed by an investigating prosecutor without the prior written authority or approval of the provincial or city prosecutor or chief state prosecutor or the Ombudsman or his deputy.

Where the investigating prosecutor recommends the dismissal of the complaint but his recommendation is disapproved by the provincial or city prosecutor or chief state prosecutor or the Ombudsman or his deputy on the ground that a probable cause exists, the latter may, by himself, file the information against the respondent, or direct another assistant prosecutor or state prosecutor to do so without conducting another preliminary investigation.

If upon petition by a proper party under such rules as the Department of Justice may prescribe or *motu proprio*, the Secretary of Justice reverses or modifies the resolution of the provincial or city prosecutor or chief state prosecutor, he shall direct the prosecutor concerned either to file the corresponding information without conducting another preliminary investigation, or to dismiss or move for dismissal of the complaint or information with notice to the parties. The same Rule shall apply in preliminary investigations conducted by the officers of the Office of the Ombudsman. (Emphasis supplied)

Palad filed a motion to reopen the case because she was not given any notice or subpoena relative to the criminal case filed against her, invoking her basic constitutional right to due process of law. When asked to comment on Palad's motion to reopen, Balasbas even objected to the reopening of the case as this would "only result to the delay in the final disposition of the case."[12] It was Dimagiba, his superior, who recommended that the motion to reopen be granted "in the interest of justice and considering that only 1 subpoena containing 2 scheduled dates was sent to respondent, and there being no return thereof, attached to the records." Dimagiba's recommendation was approved by the City Prosecutor.[13] Consonant with Section 4, Rule 112, Balasbas had no other recourse but to follow the recommendation of his superior. The subpoena he issued to the parties setting the case for investigation was in pursuance to that recommendation which was finally approved by the City Prosecutor.

As regards petitioner's claim that Balasbas "blindly followed the illegal orders of his superiors," it is worthy to note that petitioner filed a similar case for violation of Section 3(e) of RA 3019, as amended, this time against Dimagiba involving the same Resolution dated 27 August 2001 submitted by Balasbas. This Court, in *Soriano v. Marcelo*,[14] dismissed that petition for lack of merit and held that petitioner was not able to show that Dimagiba was motivated by self-interest or ill-will in reopening the preliminary investigation stage of Palad's case. The Court further ruled that Dimagiba acted in good faith, as he believed that a denial of the motion to reopen the preliminary investigation due to the accused's failure to submit her counter-affidavit would only lead to more delays.

We reiterate the ruling in *Collantes*,[15] thus:

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[12] *Rollo*, p. 60.

[13] *Id.* at 61.

[14] G.R. No. 163017, 18 June 2008, 555 SCRA 85.

[15] *Supra* note 9 at 156-157, citing *Baylon v. Office of the Ombudsman*, 423 Phil. 705 (2001) and *Venus v. Desierto*, 358 Phil. 675, 699-700 (1998).

Agencies tasked with the preliminary investigation and prosecution of crimes should never forget that the purpose of a preliminary investigation is to secure the innocent against hasty, malicious and oppressive prosecution, and to protect one from an open and public accusation of crime, from the trouble, expense and anxiety of a public trial, and also to protect the State from useless and expensive trials. It is, therefore, imperative upon such agencies to relieve any person from the trauma of going through a trial once it is ascertained that the evidence is insufficient to sustain a *prima facie* case or that no probable cause exists to form a sufficient belief as to the guilt of the accused.

We find that the Office of the Ombudsman, acting within the bounds of its constitutionally mandated duty, did not commit grave abuse of discretion in dismissing the complaint against Balasbas.

WHEREFORE, we *DISMISS* the petition. We *AFFIRM* the Resolution dated 29 July 2002 and the Order dated 14 July 2003 of the Office of the Ombudsman in OMB-C-C-02-0246-E. Costs against petitioner.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 161238. July 13, 2009]

HEIRS OF JOSE G. SANTIAGO, namely, JULIA G. SANTIAGO, ESTER G. SANTIAGO, PRISCILA G. SANTIAGO, SUSAN G. SANTIAGO, JOSE G. SANTIAGO, JR., ERLINDA G. SANTIAGO, CARMENCITA G. SANTIAGO, MA. VICTORIA G. SANTIAGO, and APOLINARIO G. SANTIAGO, represented by ESTER G. SANTIAGO (for herself and

in their behalf), *petitioners, vs.* **AUREA G. SANTIAGO, VICENTE ONG, MARK VINCENT L. ONG, and REGISTER OF DEEDS OF MEYCAUAYAN, BULACAN,** *respondents.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; REAL PARTIES IN INTEREST; DEFINED; NOT APPLICABLE IN CASE AT BAR.— A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. A cause of action is the act or omission by which a party violates a right of another. In the present case, there is no dispute that Juan Santiago owned half of the subject lot while the other half belonged to his brother Jose. Juan Santiago merely exercised his right when he sold a portion of his undivided half to Mark Vincent L. Ong. Petitioners question Juan's transaction even though petitioners are neither parties to the contract nor heirs or assigns of Juan Santiago. Juan Santiago left a probated will leaving all his properties to his wife Aurea, to the exclusion of petitioners. As heirs of Jose Santiago, co-owner of the subject property, petitioners may only question the sale if their right of preemption under the Civil Code of the Philippines was disregarded, and they wish to exercise such right. However, petitioners do not seek to exercise the right of preemption. Thus, they are not real parties in interest in the present case.

APPEARANCES OF COUNSEL

Wilfredo O. Arceo and *Gonzales Relova (+) Muyco & De Guzman* for petitioners.

Dominador R. Santiago for respondents.

R E S O L U T I O N

CARPIO, *J.*:

The Case

This is a petition for review on *certiorari*[1] assailing the Decision[2] promulgated on 14 November 2003 of the Court of Appeals (appellate court) in CA-G.R. CV No. 66048. The appellate court affirmed *in toto* the Decision[3] dated 30 September 1999 of Branch 11 of the Regional Trial Court of Malolos, Bulacan (trial court) in Civil Case No. 126-M-96 which upheld the validity of the sale by Juan Santiago in favor of Mark Vincent L. Ong of 10,926 square meters out of 31,853 square meters of co-owned property in the case filed by Juan Santiago's nephews and nieces (petitioners). Petitioners are the heirs of Jose G. Santiago, and Jose G. Santiago is Juan Santiago's brother and co-owner of the subject property. The trial court also upheld the validity of the Transfer Certificate of Title (TCT) issued in favor of Mark Vincent L. Ong.

The Facts

The trial court narrated the facts as follows:

> This is an action for annulment of titles, injunction, damages and restraining order.
>
> Plaintiffs, the heirs of Jose G. Santiago, allege in their Complaint that their father and his brother Juan G. Santiago, both deceased, were registered co-owners of a parcel of land containing an area of 31,853 square meters located at Catmon, Sta. Maria, Bulacan, covered by T.C.T. No. T-117343(M) (Exh. "A"). That on May 26, 1992, Juan Santiago, while confined at the Chinese General Hospital, Intensive Care Unit, allegedly sold a portion of the above lot, measuring 10,926 square meters, to a two (2) year old child Mark Vincent Ong with the participation of defendant Aurea Santiago as evidenced by a Deed of

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

[2] *Rollo*, pp. 81-94. Penned by Associate Justice Andres B. Reyes, Jr. with Associate Justices Buenaventura J. Guerrero and Regalado E. Maambong, concurring.

[3] *Id.* at 46-49. Penned by Judge Basilio B. Gabo, Jr.

Sale over a Portion of Land, dated May 26, 1992. And in support of the foregoing sale, an alleged affidavit of [non-]tenancy was executed by Juan G. Santiago. Both signatures of the latter in the said two (2) documents, according to plaintiffs, were spurious, forged and falsified by defendants who stood to benefit from it. Defendants Vicente Ong and Mark Vincent Ong, father and son respectively, were able to secure a title over the disputed lot by virtue of the falsified deed of sale and a supposed Partition Agreement dated October 15, 1994 executed by Jose Santiago and Juan Santiago who were long deceased before said date, having died on May 25, 1990 and September 21, 1992, respectively. Later on, Aurea Santiago allegedly managed to obtain a title covering the remaining 20,927 square meters, Title No. T-213216(M) issued on November 18, 1994 in the names of both Jose and Juan Santiago diminishing thereby the share of herein plaintiffs in the property.

Defendant Aurea Santiago in her Answer, denied *inter-alia*, having committed any falsification of document relative to the lot in question nor dealing or transacting with the other defendants. She claimed that her husband, Juan Santiago, during his lifetime, merely asked her to sign her conformity to a document selling his share in the subject parcel of lot which she did without even reading the document. That she received no amount of money from any of the defendants from the sale of the said property, which in reality was a capital property of her husband excluded from their conjugal partnership. With the aforesaid sale, she came to lose, as a consequence, all claims or interests over the remainder of the lot belonging to the co-ownership.

Defendants Ong in their Answer, admitted having purchased the questioned lot, with Vicente Ong explaining that the purchase was for valuable consideration in favor of her [sic] son Mark Vincent Ong, done after receiving legal advise [sic] on the matter, denying at the same time any participation in the preparation and execution of the deed of partition of the property.

Plaintiff, on the stand, reiterated the allegations in the complaint with the additional information that their father, Jose, died on May 25, 1990 and their uncle, Juan, expired on September 21, 1992.

Isagani Garcia, records officer of the Register of Deeds of Meycauayan, Bulacan testified on the matter of recording the documents involved in the case.

Atty. Jeremias Vitan, the notary public who appeared to have notarized the deed of sale (Exh. "B") and the affidavit of non-tenancy

(Exh. "C") denied his notarization alleging that his signature in both documents were forgeries.

Defendant Aurea Santiago, in her testimony, merely reiterated her allegations in her Answer.

So did Vicente Ong, explaining in addition the details on how he came to buy the property and the corresponding documentation thereof, which according to him, was all handled by one Atty. Santiago and a certain Lita, after the death of the latter.

Plaintiffs, as the evidence shows, are after the annulment of the following documents based on fraud, to wit:

1. Deed of Sale dated May 26, 1992 executed by the deceased Juan Santiago in favor of Mark Vincent L. Ong involving the disputed 10,926 square meters of the community property covered by T.C.T. No. T-117343(M) (Exh. "B");
2. T.C.T. No. 213125(M) issued in the name of Mark Vincent L. Ong (Exh. "E");
3. Subdivision Plan signed by Mark Vincent Ong and the brothers Jose and Juan Santiago (Exh. "F");
4. Transfer Certificate of Title No. T-213216(M) issued in the names of Juan G. Santiago and Jose Santiago covering an area of 20,927 square meters or the remaining area of the community property (Exh. "H");
5. Consolidation and Partition Agreement dated August 17, 1994 signed by Juan and Jose Santiago (Exh. "N").[4]

The Trial Court's Ruling

In its Decision dated 30 September 1999, the trial court partly denied the petitioners' claims. The trial court declared that Juan Santiago was well within his rights as a co-owner when he sold 10,926 square meters of the co-owned lot. Petitioners have no reason to complain or impugn the sale. Despite the allegations of forgery, the Ongs have in their favor the presumption of good faith in buying a portion of the co-owned lot. Vicente Ong's testimony that the late Juan Santiago's representatives carried out the documentation and registration of the property remained

[4] *Id.* at 46-48.

uncontradicted. The trial court decreed that TCT No. 213216(M) issued in the names of Juan and Jose Santiago has no legal basis. Petitioners are thus entitled to 15,000 square meters, more or less, or one-half of the 31,853 square meters of the subject property.

The dispositive portion of the trial court's decision reads:

> WHEREFORE, judgment is hereby rendered as follows:
>
> 1. Declaring the Deed of Sale dated May 26, 1992 executed by the deceased Juan Santiago in favor of Mark Vincent L. Ong involving 10,926 square meters of the community property valid;
> 2. Declaring T.C.T. No. 213125(M) issued in the name of Mark Vincent L. Ong valid;
> 3. Declaring, as null and void, T.C.T. No. T-213216(M) issued in the name of Juan Santiago and Jose Santiago covering an area of 20,927 square meters of the disputed property;
> 4. Directing the parties to sit down and effectuate a partition of the property in question in accordance with this decision; and
> 5. Ordering the Register of Deeds of Meycauayan, Bulacan to cancel T.C.T. No. 213216(M) and issue in lieu thereof a new Transfer Certificate of Title in the name of Juan Santiago and Jose Santiago specifying their respective share in accordance with this decision.
>
> No pronouncement as to cost.
>
> SO ORDERED.[5]

The Ruling of the Appellate Court

In its Decision promulgated on 14 November 2003, the appellate court affirmed the decision of the trial court. The appellate court declared that Juan Santiago's sale of an undivided portion consisting of 10,926 square meters of co-owned property remains valid. Petitioners are not the real parties in interest possessing the character of a contracting party, or of heirs or assigns of the vendor. Only the estate of Juan Santiago, to the exclusion of petitioners, stands to be benefited or injured by the

[5] *Id.* at 49.

decision in the present case. There is a lack of convincing and credible proof to support the allegations of fraud with respect to the Absolute Deed of Sale and the Affidavit of Non-Tenancy. There is also an absence of satisfactory evidence to dispute the apparent irregularity on the signatures of Juan and Jose Santiago on the subdivision, consolidation and partition agreement.

The Issues

Petitioners insist that they are the real parties in interest to bring the instant suit and that they have a cause of action against the respondents. Furthermore, petitioners assert that the Deed of Absolute Sale is void. Finally, the partition of the remaining portion of the lot cannot be done in accordance with the trial court's decision.

The Ruling of the Court

The petition has no merit.

We see no reason to overturn the findings of fact of the trial and appellate courts. Therefore, we do not divert from their rulings.

Petitioners are not real parties in interest and therefore have no cause of action in bringing the present case. A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit.[6] A cause of action is the act or omission by which a party violates a right of another.[7] In the present case, there is no dispute that Juan Santiago owned half of the subject lot while the other half belonged to his brother Jose. Juan Santiago merely exercised his right when he sold a portion of his undivided half to Mark Vincent L. Ong. Petitioners question Juan's transaction even though petitioners are neither parties to the contract nor heirs or assigns of Juan Santiago.[8]

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[6] Section 2, Rule 3 of the 1997 Rules of Civil Procedure.

[7] Section 2, Rule 2 of the 1997 Rules of Civil Procedure.

[8] Article 1311 of the Civil Code reads as follows:

Contracts take affect only between the parties, their assigns and heirs, except in case where the rights and obligations arising from the contract are not transmissible by their nature, or by stipulation or by provision of law. The heir is not liable beyond the value of the property he received from the decedent.

Juan Santiago left a probated will leaving all his properties to his wife Aurea, to the exclusion of petitioners. As heirs of Jose Santiago, co-owner of the subject property, petitioners may only question the sale if their right of preemption under the Civil Code of the Philippines[9] was disregarded, and they wish to exercise such right. However, petitioners do not seek to exercise the right of preemption. Thus, they are not real parties in interest in the present case.

We likewise affirm the lower courts' ruling on the validity of the Deed of Sale, even though petitioners have no personality to question the same before this Court. Apart from their allegations, petitioners failed to prove that Juan Santiago was incapacitated to contract at the time of the execution of the Deed of Sale.

Finally, we affirm the lower courts' ruling that TCT No. 213216 (M) issued in the names of Jose and Juan Santiago be nullified and a new one issued to reflect the shares in the remaining portions of the subject property. The estate of Juan Santiago can only claim 5,000 square meters, more or less, of the remaining 20,927 square meters of the subject property.

WHEREFORE, we *DENY* the petition. We *AFFIRM* the Decision promulgated on 14 November 2003 of the Court of Appeals in CA-G.R. CV No. 66048.

SO ORDERED.

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

If a contract should contain some stipulation in favor of a third person, he may demand its fulfillment provided he communicated his acceptance to the obligor before its revocation. A mere incidental benefit or interest of a person is not sufficient. The contracting parties must have clearly and deliberately conferred a favor upon a third person.

[9] Article 1623 of the Civil Codes provides:

The right of legal preemption or redemption shall not be exercised except within thirty days from the notice in writing by the prospective vendor, or by the vendor, as the case may be. The deed of sale shall not be recorded in the Registry of Property unless accompanied by an affidavit of the vendor that he has given written notice thereof to all possible redemptioners.

The right of redemption of co-owners excludes that of adjoining owners.

FIRST DIVISION

[G.R. No. 162074. July 13, 2009]

CECILLEVILLE REALTY AND SERVICE CORPORATION, *petitioner, vs.* **SPOUSES TITO ACUÑA and OFELIA B. ACUÑA,** *respondents.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS; WHOEVER PAYS FOR ANOTHER MAY DEMAND FROM THE DEBTOR WHAT HE HAS PAID; EXCEPTION; NOT PRESENT IN CASE AT BAR.— We see that Cecilleville paid the debt of the Acuña spouses to Prudential as an interested third party. The second paragraph of Article 1236 of the Civil Code reads: Whoever pays for another may demand from the debtor what he has paid, except that if he paid without the knowledge or against the will of the debtor, he can recover only insofar as the payment has been beneficial to the debtor. Even if the Acuña spouses insist that Cecilleville's payment to Prudential was without their knowledge or against their will, Article 1302(3) of the Civil Code states that Cecilleville still has a right to reimbursement, thus: When, even without the knowledge of the debtor, a person interested in the fulfillment of the obligation pays, without prejudice to the effects of confusion as to the latter's share. Cecilleville clearly has an interest in the fulfillment of the obligation because it owns the properties mortgaged to secure the Acuña spouses' loan. When an interested party pays the obligation, he is subrogated in the rights of the creditor. Because of its payment of the Acuña spouses' loan, Cecilleville actually steps into the shoes of Prudential and becomes entitled, not only to recover what it has paid, but also to exercise all the rights which Prudential could have exercised. There is, in such cases, not a real estinguishment of the obligation, but a change in the active subject.

2. ID.; PRESCRIPTION OF ACTIONS; CAUSE OF ACTION CREATED BY LAW PRESCRIBES IN TEN YEARS; NOT APPLICABLE IN CASE AT BAR.— Cecilleville's cause of action against the Acuña spouses is one created by law; hence,

the action prescribes in ten years. Prescription accrues from the date of payment by Cecilleville to Prudential of the Acuña spouses' debt on 5 April 1994. Cecilleville's present complaint against the Acuña spouses was filed on 20 June 1996, which was almost two months from the extrajudicial demands to pay on 9 and 23 April 1996. Whether we use the date of payment, the date of the last written demand for payment, or the date of judicial demand, it is clear that Cecilleville's cause of action has not yet prescribed.

APPEARANCES OF COUNSEL

Dante SL. Resurreccion for petitioner.
Saguisag & Associates for respondents.
Alberto L. Deslate for respondents.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition for review[1] assailing the Amended Decision[2] promulgated on 30 January 2004 of the Court of Appeals (appellate court) in CA-G.R. CV No. 56623. The appellate court affirmed the Resolution[3] dated 14 February 1997 of Branch 225, Regional Trial Court of Quezon City (trial court) in Civil Case No. Q-96-27837 which dismissed the complaint of petitioner Cecilleville Realty and Service Corporation (Cecilleville) against respondent spouses Tito and Ofelia Acuña (Acuña spouses) on the ground of prescription.

The Facts

The trial court summarized the facts of the case as follows:

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

[2] *Rollo*, pp. 24-28. Penned by Associate Justice Perlita J. Tria Tirona with Associate Justices Roberto A. Barrios and Edgardo F. Sundiam, concurring.

[3] CA *rollo*, pp. 88-90. Penned by Judge Arsenio J. Magpale.

Sometime in September 1981, the defendants [Acuña spouses] requested the plaintiff [Cecilleville] thru its President, Jose A. Resurreccion, to lend to them for one (1) year, two (2) parcels of land owned by the plaintiff as collaterals to secure a credit line from the Prudential Bank and Trust Company ["Prudential"]. On September 21, 1981, thru a secretary's certificate and by virtue of a board resolution, the plaintiff lent to defendants the said owner's copies of certificate of title. However, on September 28, 1991, defendant Ofelia B. Acuña forged the signature of Lucia R. Reyes as corporate secretary. By virtue of the fake secretary's certificate, the defendants were able to obtain a personal loan from "Prudential" in the sum of ₱610,000.00 with said certificates as collaterals and upon signing a Real Estate Mortgage dated September 30, 1981 and two Promissory Notes dated October 7, 1981 and October 15, 1981. Due to the defendants' default in the payment of their indebtedness, "Prudential" threatened to extrajudicially foreclose the real estate mortgage on plaintiff's properties thru a notice of auction sale. To avoid foreclosure proceedings on its properties, the plaintiff was forced to settle defendants' obligations to "Prudential" in the amount of ₱3,367,474.42. Subsequently, several written demands for reimbursement were sent by the plaintiff to the defendants. Nevertheless, the defendants failed to pay their obligation. Hence, the filing of the instant case.

In their motion, defendants contend that the instant complaint should be dismissed on the grounds of prescription, laches and *res judicata*. The defendants insist that the action of the plaintiff is based on fraud or forgery of a secretary's certificate. The forgery allegedly happened on September 28, 1981 or fifteen (15) years ago. Therefore, the plaintiff should have brought the instant action within the period provided for in Article 1146 of the Civil Code. Moreover, the defendants argue that the plaintiff's inordinate delay in the filing of the instant suit clearly shows that it has abandoned its claim against the defendants and therefore guilty of laches. Consequently, the defendants aver that the forgery issue has been passed upon in CA-G.R. CV No. 35452. The same was litigated in Civil Case No. Q-59789, Branch 78, Regional Trial Court, Quezon City "where the plaintiff tried unsuccessfully to have the contract of real estate mortgage involving the same properties, between defendant Ofelia Acuña and the Prudential Bank and Trust Company,

annulled on the same ground raised here." Hence, the principle of *res judicata* applies.[4]

This Court, in its resolution in G.R. No. 109488, affirmed the appellate court's decision in CA-G.R. CV No. 35452 that Cecilleville ratified the mortgage contract between the Acuña spouses and Prudential. The dispositive portion of the decision in CA-G.R. CV No. 35452 reads:

> WHEREFORE, the appeal of appellant Cecilleville Realty and Service Corporation should be, as it is hereby, *DISMISSED*. Finding merit to the appeal of Prudential Bank & Trust Company, the writ of preliminary injunction heretofore issued by the trial court is hereby *LIFTED*, and appellant Bank can now proceed with the foreclosure proceedings of the mortgaged properties.
>
> As a corollary thereto, appellant Cecilleville is hereby ordered to pay appellant Prudential Bank the interests, penalty and service charges stipulated in the promissory notes secured by the mortgage, accruing from the time the writ of preliminary injunction was issued until the said promissory notes are fully paid. No costs.
>
> SO ORDERED.[5]

After Cecilleville paid Prudential, Cecilleville filed the present action to claim reimbursement from the Acuña spouses.

The Ruling of the Trial Court

In its Resolution dated 14 February 1997, the trial court dismissed Cecilleville's complaint on the ground of prescription. The trial court found that the complaint expressly alleged that Cecilleville discovered the fraud on 28 September 1981. Therefore, Cecilleville had only four years from discovery of the fraud within which to file the appropriate action. The present action was filed on 20 June 1996, clearly beyond the prescriptive period.

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[4] *Id*. at 88-89.

[5] *Rollo*, pp. 97-98. Penned by Associate Justice Antonio M. Martinez with Associate Justices Artemon D. Luna and Ma. Alicia Austria-Martinez (a retired member of this Court), concurring.

The Ruling of the Appellate Court

Cecilleville lodged an appeal before the appellate court. In its Decision promulgated on 14 January 2003, the appellate court reversed and set aside the trial court's ruling and decided in favor of Cecilleville. The appellate court stated that Cecilleville has two causes of action against the Acuña spouses: reimbursement of a sum of money and damages arising from fraud. Cecilleville's action for reimbursement was filed on 20 June 1996, barely two months after 23 April 1996, when Cecilleville made an extrajudicial demand to pay. Two months is well within the five-year prescriptive period prescribed in Article 1149 of the Civil Code. On the other hand, the appellate court declared that the complaint did not mention the date of Cecilleville's discovery of Ofelia Acuña's forgery of Lucia Reyes' signature. The appellate court concluded that the trial court erred in declaring Cecilleville's claim for damages barred by prescription and laches. The appellate court also declared that there is no identity of parties, subject matter and causes of action between the present case and that of G.R. No. 109488 between Cecilleville and Prudential. Hence, the principle of *res judicata* does not apply.

The dispositive portion of the appellate court's 14 January 2003 Decision reads:

> WHEREFORE, the instant appeal is GRANTED and the assailed resolution of the Regional Trial Court of Quezon City, Branch 225, in Civil Case No. Q-96-27837 is hereby REVERSED and SET ASIDE. Let this case be remanded to the trial court for further proceedings.
>
> SO ORDERED.[6]

On motion for reconsideration filed by the Acuña spouses, the appellate court promulgated an amended decision on 30 January 2004 which affirmed the trial court's decision. The appellate court ruled that Cecilleville's claim for reimbursement of its payment to Prudential is prediacted on the fraud allegedly committed by the Acuña spouses. Without the alleged personal

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[6] *Id.* at 111.

loan of the Acuña spouses, there would be no foreclosure to forestall and no basis for Cecilleville's claim for reimbursement. Actions for relief on the ground of fraud may be brought within four years from discovery of the fraud. In its brief filed before the appellate court, Cecilleville stated that it learned of the existence of the falsified Secretary's Certificate on 20 January 1987. Cecilleville filed the present case on 20 June 1996, or more than nine years after the discovery of the fraud. Thus, Cecilleville's action is barred by prescription. The dispositive portion of the appellate court's amended decision reads:

> WHEREFORE, the instant motion for reconsideration is GRANTED. The decision, dated 14 January 2003, of this Court is accordingly, RECONSIDERED and SET ASIDE. The assailed resolution, dated 14 February 1997, of the Regional Trial Court of Quezon City, Branch 225, in Civil Case No. Q-96-27837, is hereby AFFIRMED.
>
> SO ORDERED.[7]

The Issues

Cecilleville mentions two grounds in its appeal before this Court. First, the appellate court gravely erred because its amended decision is premised on a misapprehension of facts. Cecilleville alleges that its claim for reimbursement is not based on fraud but on a ratified third-party real estate mortgage contract to accommodate the Acuña spouses. Second, the appellate court's amended decision is not in accord with law or with this Court's decisions. Cecilleville theorizes that its ratification extinguished the action to annul the real estate mortgage and made the real estate mortgage valid and enforceable. Thus, Cecilleville demands reimbursement on the basis of a ratified real estate mortgage.

The Ruling of the Court

We see merit in the petition.

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[7] *Id*. at 27.

The facts of the case are simple: The Acuña spouses obtained a loan from Prudential secured by a real estate mortgage on Cecilleville's property. The Acuña spouses defaulted on their loan, and Prudential initiated foreclosure proceedings. Cecilleville tried to annul the real estate mortgage but failed when the Court ruled that Cecilleville had ratified the real estate mortgage. In effect, Cecilleville became a third-party accommodation mortgagor. Cecilleville paid Prudential to avoid foreclosure of its mortgaged properties. Cecilleville repeatedly asked the Acuña spouses to reimburse what it paid Prudential, but the Acuña spouses refused to do so.

From the facts above, we see that Cecilleville paid the debt of the Acuña spouses to Prudential as an interested third party. The second paragraph of Article 1236 of the Civil Code reads:

> Whoever pays for another may demand from the debtor what he has paid, except that if he paid without the knowledge or against the will of the debtor, he can recover only insofar as the payment has been beneficial to the debtor.

Even if the Acuña spouses insist that Cecilleville's payment to Prudential was without their knowledge or against their will, Article 1302(3) of the Civil Code states that Cecilleville still has a right to reimbursement, thus:

> When, even without the knowledge of the debtor, a person interested in the fulfillment of the obligation pays, without prejudice to the effects of confusion as to the latter's share.

Cecilleville clearly has an interest in the fulfillment of the obligation because it owns the properties mortgaged to secure the Acuña spouses' loan. When an interested party pays the obligation, he is subrogated in the rights of the creditor.[8] Because of its payment of the Acuña spouses' loan, Cecilleville actually steps into the shoes of Prudential and becomes entitled, not

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[8] Article 1302(3) of the Civil Code of the Philippines states that "[i]t is presumed that there is legal subrogation x x x when, even without the knowledge of the debtor, a person interested in the fulfillment of the obligation pays, without prejudice to the effects of confusion as to the latter's share."

only to recover what it has paid, but also to exercise all the rights which Prudential could have exercised. There is, in such cases, not a real extinguishment of the obligation, but a change in the active subject.[9]

Cecilleville's cause of action against the Acuña spouses is one created by law; hence, the action prescribes in ten years.[10] Prescription accrues from the date of payment by Cecilleville to Prudential of the Acuña spouses' debt on 5 April 1994. Cecilleville's present complaint against the Acuña spouses was filed on 20 June 1996, which was almost two months from the extrajudicial demands to pay on 9 and 23 April 1996. Whether we use the date of payment, the date of the last written demand for payment, or the date of judicial demand, it is clear that Cecilleville's cause of action has not yet prescribed.

Finally, considering the length of time of litigation and the fact that the records of the case are before this Court, we deem it prudent to declare the Acuña spouses' liability to Cecilleville in the following amounts:

a. ₱3,367,474.42, representing the amount paid by Cecilleville to Prudential; and

b. interest on the ₱3,367,474.42 at 16% *per annum*, this being the interest rate upon default on the promissory note to Prudential to which Cecilleville is subrogated. Interest shall be calculated from 9 April 1996, the date of Cecilleville's first written demand to the Acuña spouses after its payment to Prudential.

The Acuña spouses shall also pay attorney's fees to Cecilleville equivalent to 5% of the total award.[11]

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[9] ARTURO M. TOLENTINO, IV. *CIVIL CODE OF THE PHILIPPINES* 283 (1991) citing 8 MANRESA 269.

[10] Article 1144 of the Civil Code of the Philippines.

[11] *Philippine Blooming Mills, Inc. v. Court of Appeals*, 459 Phil. 875 (2003); See *Eastern Shipping Lines, Inc. v. Court of Appeals*, G.R. No. 97412, 12 July 1994, 234 SCRA 78.

WHEREFORE, we *GRANT* the petition. We *SET ASIDE* the Amended Decision promulgated on 30 January 2004 of the Court of Appeals in CA-G.R. CV No. 56623. Respondent spouses Tito Acuña and Ofelia B. Acuña shall pay petitioner Cecilleville Realty and Service Corporation the following: ₱3,367,474.42, representing the amount paid by Cecilleville Realty and Service Corporation to Prudential Bank and Trust Company; and interest on the ₱3,367,474.42 at 16% *per annum*. Interest shall be calculated from 9 April 1996 until full payment. Spouses Tito Acuña and Ofelia B. Acuña shall also pay attorney's fees to Cecilleville Realty and Service Corporation equivalent to 5% of the total award.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 162540. July 13, 2009]

GEMMA T. JACINTO, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; QUALIFIED THEFT; ELEMENTS.— The elements of the crime of qualified theft defined under Article 308, in relation to Article 310, both of the Revised Penal Code: (1) the taking of personal property — as shown by the fact that petitioner, as collector for Mega Foam, did not remit the customer's check payment to her employer and, instead, appropriated it for herself; (2) said property belonged to another — the check belonged to Baby Aquino, as it was her payment for purchases she made; (3) the taking was done with intent to gain — this is presumed from the act of unlawful taking and further shown by the fact that the check was deposited to the bank account

of petitioner's brother-in-law; (4) it was done without the owner's consent – petitioner hid the fact that she had received the check payment from her employer's customer by not remitting the check to the company; (5) it was accomplished without the use of violence or intimidation against persons, nor of force upon things – the check was voluntarily handed to petitioner by the customer, as she was known to be a collector for the company; and (6) it was done with grave abuse of confidence – petitioner is admittedly entrusted with the collection of payments from customers. However, as may be gleaned from the aforementioned Articles of the Revised Penal Code, **the personal property subject of the theft must have some value, as the intention of the accused is to *gain* from the thing stolen.** This is further bolstered by Article 309, where the law provides that the penalty to be imposed on the accused is dependent on the value of the thing stolen.

2. ID.; IMPOSSIBLE CRIME; REQUISITES.— The requisites of an impossible crime are: (1) that the act performed would be an offense against persons or property; (2) that the act was done with evil intent; and (3) that its accomplishment was inherently impossible, or the means employed was either inadequate or ineffectual. The aspect of the inherent impossibility of accomplishing the intended crime under Article 4(2) of the Revised Penal Code was further explained by the Court in *Intod* in this wise: Under this article, the act performed by the offender cannot produce an offense against persons or property because: (1) the commission of the offense is inherently impossible of accomplishment; or (2) the means employed is either (a) inadequate or (b) ineffectual. That the offense cannot be produced because the commission of the offense is inherently impossible of accomplishment is the focus of this petition. To be impossible under this clause, the act intended by the offender must be by its nature one impossible of accomplishment. There must be either (1) legal impossibility, or (2) physical impossibility of accomplishing the intended act in order to qualify the act as an impossible crime. Legal impossibility occurs where the intended acts, even if completed, would not amount to a crime. x x x The impossibility of killing a person already dead falls in this category. On the other hand, factual impossibility occurs when extraneous circumstances unknown to the actor or beyond his control prevent the consummation of the intended crime. x x x In *Intod*, the Court went on to give an example of an offense that involved factual impossibility, *i.e.*, a man puts his hand in

the coat pocket of another with the intention to steal the latter's wallet, but gets nothing since the pocket is empty.

3. ID.; ID.; ID.; PRESENT IN CASE AT BAR.— In this case, petitioner performed all the acts to consummate the crime of qualified theft, which is a crime against property. Petitioner's evil intent cannot be denied, as the mere act of unlawfully taking the check meant for Mega Foam showed her intent to gain or be unjustly enriched. Were it not for the fact that the check bounced, she would have received the face value thereof, which was not rightfully hers. Therefore, it was only due to the extraneous circumstance of the check being unfunded, a fact unknown to petitioner at the time, that prevented the crime from being produced. The thing unlawfully taken by petitioner turned out to be absolutely worthless, because the check was eventually dishonored, and Mega Foam had received the cash to replace the value of said dishonored check.

APPEARANCES OF COUNSEL

Hillario Paul H. Ragunjan, Jr. for petitioner.
The Solicitor General for respondent.

D E C I S I O N

PERALTA, *J.*:

Before us is a petition for review on *certiorari* filed by petitioner Gemma T. Jacinto seeking the reversal of the Decision[1] of the Court of Appeals (CA) in CA-G.R. CR No. 23761 dated December 16, 2003, affirming petitioner's conviction of the crime of Qualified Theft, and its Resolution[2] dated March 5, 2004 denying petitioner's motion for reconsideration.

Petitioner, along with two other women, namely, Anita Busog de Valencia *y* Rivera and Jacqueline Capitle, was charged before the Regional Trial Court (RTC) of Caloocan City, Branch 131, with the crime of Qualified Theft, allegedly committed as follows:

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[1] Penned by Associate Justice Mario L. Guariña III, with Associate Justices Martin S. Villarama, Jr. and Jose C. Reyes, Jr., concurring; *rollo*, pp. 70-77.

[2] *Id*. at 86.

That on or about and sometime in the month of July 1997, in Kalookan City, Metro Manila, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together and mutually helping one another, being then all employees of MEGA FOAM INTERNATIONAL INC., herein represented by JOSEPH DYHENGCO *Y* CO, and as such had free access inside the aforesaid establishment, with grave abuse of trust and confidence reposed upon them with intent to gain and without the knowledge and consent of the owner thereof, did then and there willfully, unlawfully and feloniously take, steal and deposited in their own account, Banco De Oro Check No. 0132649 dated July 14, 1997 in the sum of ₱10,000.00, representing payment made by customer Baby Aquino to the Mega Foam Int'l. Inc. to the damage and prejudice of the latter in the aforesaid stated amount of ₱10,000.00.

CONTRARY TO LAW.[3]

The prosecution's evidence, which both the RTC and the CA found to be more credible, reveals the events that transpired to be as follows.

In the month of June 1997, Isabelita Aquino Milabo, also known as Baby Aquino, handed petitioner Banco De Oro (BDO) Check Number 0132649 postdated July 14, 1997 in the amount of ₱10,000.00. The check was payment for Baby Aquino's purchases from Mega Foam Int'l., Inc., and petitioner was then the collector of Mega Foam. Somehow, the check was deposited in the Land Bank account of Generoso Capitle, the husband of Jacqueline Capitle; the latter is the sister of petitioner and the former pricing, merchandising and inventory clerk of Mega Foam.

Meanwhile, Rowena Ricablanca, another employee of Mega Foam, received a phone call sometime in the middle of July from one of their customers, Jennifer Sanalila. The customer wanted to know if she could issue checks payable to the account of Mega Foam, instead of issuing the checks payable to *CASH*. Said customer had apparently been instructed by Jacqueline Capitle to make check payments to Mega Foam payable to *CASH*. Around that time, Ricablanca also received a phone call from an employee of Land Bank, Valenzuela Branch, who was looking for Generoso Capitle. The reason for the call was to inform

[3] Records, p. 107.

Capitle that the subject BDO check deposited in his account had been dishonored.

Ricablanca then phoned accused Anita Valencia, a former employee/collector of Mega Foam, asking the latter to inform Jacqueline Capitle about the phone call from Land Bank regarding the bounced check. Ricablanca explained that she had to call and relay the message through Valencia, because the Capitles did not have a phone; but they could be reached through Valencia, a neighbor and former co-employee of Jacqueline Capitle at Mega Foam.

Valencia then told Ricablanca that the check came from Baby Aquino, and instructed Ricablanca to ask Baby Aquino to replace the check with cash. Valencia also told Ricablanca of a plan to take the cash and divide it equally into four: for herself, Ricablanca, petitioner Jacinto and Jacqueline Capitle. Ricablanca, upon the advise of Mega Foam's accountant, reported the matter to the owner of Mega Foam, Joseph Dyhengco.

Thereafter, Joseph Dyhengco talked to Baby Aquino and was able to confirm that the latter indeed handed petitioner a BDO check for ₱10,000.00 sometime in June 1997 as payment for her purchases from Mega Foam.[4] Baby Aquino further testified that, sometime in July 1997, petitioner also called her on the phone to tell her that the BDO check bounced.[5] Verification from company records showed that petitioner never remitted the subject check to Mega Foam. However, Baby Aquino said that she had already paid Mega Foam ₱10,000.00 cash in August 1997 as replacement for the dishonored check.[6]

Generoso Capitle, presented as a hostile witness, admitted depositing the subject BDO check in his bank account, but explained that the check came into his possession when some unknown woman arrived at his house around the first week of July 1997 to have the check rediscounted. He parted with his cash in exchange for the check without even bothering to

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[4] TSN, February 11, 1998, p. 8.

[5] *Id.* at 14.

[6] TSN, February 11, 1998, pp. 9-10.

inquire into the identity of the woman or her address. When he was informed by the bank that the check bounced, he merely disregarded it as he didn't know where to find the woman who rediscounted the check.

Meanwhile, Dyhengco filed a Complaint with the National Bureau of Investigation (NBI) and worked out an entrapment operation with its agents. Ten pieces of ₱1,000.00 bills provided by Dyhengco were marked and dusted with fluorescent powder by the NBI. Thereafter, the bills were given to Ricablanca, who was tasked to pretend that she was going along with Valencia's plan.

On August 15, 2007, Ricablanca and petitioner met at the latter's house. Petitioner, who was then holding the bounced BDO check, handed over said check to Ricablanca. They originally intended to proceed to Baby Aquino's place to have the check replaced with cash, but the plan did not push through. However, they agreed to meet again on August 21, 2007.

On the agreed date, Ricablanca again went to petitioner's house, where she met petitioner and Jacqueline Capitle. Petitioner, her husband, and Ricablanca went to the house of Anita Valencia; Jacqueline Capitle decided not to go with the group because she decided to go shopping. It was only petitioner, her husband, Ricablanca and Valencia who then boarded petitioner's jeep and went on to Baby Aquino's factory. Only Ricablanca alighted from the jeep and entered the premises of Baby Aquino, pretending that she was getting cash from Baby Aquino. However, the cash she actually brought out from the premises was the ₱10,000.00 marked money previously given to her by Dyhengco. Ricablanca divided the money and upon returning to the jeep, gave ₱5,000.00 each to Valencia and petitioner. Thereafter, petitioner and Valencia were arrested by NBI agents, who had been watching the whole time.

Petitioner and Valencia were brought to the NBI office where the Forensic Chemist found fluorescent powder on the palmar and dorsal aspects of both of their hands. This showed that petitioner and Valencia handled the marked money. The NBI filed a criminal case for qualified theft against the two and one Jane Doe who was later identified as Jacqueline Capitle, the wife of Generoso Capitle.

The defense, on the other hand, denied having taken the subject check and presented the following scenario.

Petitioner admitted that she was a collector for Mega Foam until she resigned on June 30, 1997, but claimed that she had stopped collecting payments from Baby Aquino for quite some time before her resignation from the company. She further testified that, on the day of the arrest, Ricablanca came to her mother's house, where she was staying at that time, and asked that she accompany her (Ricablanca) to Baby Aquino's house. Since petitioner was going for a pre-natal check-up at the Chinese General Hospital, Ricablanca decided to hitch a ride with the former and her husband in their jeep going to Baby Aquino's place in Caloocan City. She allegedly had no idea why Ricablanca asked them to wait in their jeep, which they parked outside the house of Baby Aquino, and was very surprised when Ricablanca placed the money on her lap and the NBI agents arrested them.

Anita Valencia also admitted that she was the cashier of Mega Foam until she resigned on June 30, 1997. It was never part of her job to collect payments from customers. According to her, on the morning of August 21, 1997, Ricablanca called her up on the phone, asking if she (Valencia) could accompany her (Ricablanca) to the house of Baby Aquino. Valencia claims that she agreed to do so, despite her admission during cross-examination that she did not know where Baby Aquino resided, as she had never been to said house. They then met at the house of petitioner's mother, rode the jeep of petitioner and her husband, and proceeded to Baby Aquino's place. When they arrived at said place, Ricablanca alighted, but requested them to wait for her in the jeep. After ten minutes, Ricablanca came out and, to her surprise, Ricablanca gave her money and so she even asked, "What is this?" Then, the NBI agents arrested them.

The trial of the three accused went its usual course and, on October 4, 1999, the RTC rendered its Decision, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing, the Court finds accused ***Gemma Tubale De Jacinto y Latosa, Anita Busog De Valencia y Rivera and Jacqueline Capitle*** **GUILTY** beyond reasonable doubt

of the crime of ***QUALIFIED THEFT*** and each of them is hereby sentenced to suffer imprisonment of **FIVE (5) YEARS, FIVE (5) MONTHS AND ELEVEN (11) DAYS, *as minimum*, to SIX (6) YEARS, EIGHT (8) MONTHS AND TWENTY (20) DAYS, *as maximum***.

SO ORDERED.[7]

The three appealed to the CA and, on December 16, 2003, a Decision was promulgated, the dispositive portion of which reads, thus:

IN VIEW OF THE FOREGOING, the decision of the trial court is **MODIFIED**, in that:

(a) the sentence against accused Gemma Jacinto stands;

(b) the sentence against accused Anita Valencia is reduced to 4 months *arresto mayor* medium.

(c) The accused Jacqueline Capitle is acquitted.

SO ORDERED.

A Partial Motion for Reconsideration of the foregoing CA Decision was filed only for petitioner Gemma Tubale Jacinto, but the same was denied per Resolution dated March 5, 2004.

Hence, the present Petition for Review on *Certiorari* filed by petitioner alone, assailing the Decision and Resolution of the CA. The issues raised in the petition are as follows:

1. Whether or not petitioner can be convicted of a crime not charged in the information;

2. Whether or not a worthless check can be the object of theft; and

3. Whether or not the prosecution has proved petitioner's guilt beyond reasonable doubt.[8]

The petition deserves considerable thought.

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[7] *Rollo*, p. 51.

[8] *Id.* at 128.

The prosecution tried to establish the following pieces of evidence to constitute the elements of the crime of qualified theft defined under Article 308, in relation to Article 310, both of the Revised Penal Code: (1) the taking of personal property — as shown by the fact that petitioner, as collector for Mega Foam, did not remit the customer's check payment to her employer and, instead, appropriated it for herself; (2) said property belonged to another — the check belonged to Baby Aquino, as it was her payment for purchases she made; (3) the taking was done with intent to gain — this is presumed from the act of unlawful taking and further shown by the fact that the check was deposited to the bank account of petitioner's brother-in-law; (4) it was done without the owner's consent — petitioner hid the fact that she had received the check payment from her employer's customer by not remitting the check to the company; (5) it was accomplished without the use of violence or intimidation against persons, nor of force upon things — the check was voluntarily handed to petitioner by the customer, as she was known to be a collector for the company; and (6) it was done with grave abuse of confidence — petitioner is admittedly entrusted with the collection of payments from customers.

However, as may be gleaned from the aforementioned Articles of the Revised Penal Code, **the personal property subject of the theft must have some value, as the intention of the accused is to *gain* from the thing stolen**. This is further bolstered by Article 309, where the law provides that the penalty to be imposed on the accused is dependent on the value of the thing stolen.

In this case, petitioner unlawfully took the postdated check belonging to Mega Foam, but the same was apparently without value, as it was subsequently dishonored. Thus, the question arises on whether the crime of qualified theft was actually produced.

The Court must resolve the issue in the negative.

Intod v. Court of Appeals[9] is highly instructive and applicable to the present case. In *Intod*, the accused, intending to kill a

[9] G.R. No. 103119, October 21, 1992, 215 SCRA 52.

person, peppered the latter's bedroom with bullets, but since the intended victim was not home at the time, no harm came to him. The trial court and the CA held Intod guilty of attempted murder. But upon review by this Court, he was adjudged guilty only of an **impossible crime** as defined and penalized in paragraph 2, Article 4, in relation to Article 59, both of the Revised Penal Code, because of the factual impossibility of producing the crime. Pertinent portions of said provisions read as follows:

> Article 4(2). *Criminal Responsibility*.— Criminal responsibility shall be incurred:
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> x x x x x x x x x
>
> 2. By any person performing an act which would be an offense against persons or property, were it not for the **inherent impossibility of its accomplishment** or on account of the employment of inadequate to ineffectual means. (emphasis supplied)
>
> Article 59. *Penalty to be imposed in case of failure to commit the crime because the means employed or the aims sought are impossible*.— When the person intending to commit an offense has already performed the acts for the execution of the same but nevertheless the crime was not produced by reason of the fact that the act intended was by its nature one of impossible accomplishment or because the means employed by such person are essentially inadequate to produce the result desired by him, the court, having in mind the social danger and the degree of criminality shown by the offender, shall impose upon him the penalty of *arresto mayor* or a fine ranging from 200 to 500 pesos.

Thus, the requisites of an impossible crime are: (1) that the act performed would be an offense against persons or property; (2) that the act was done with evil intent; and (3) that its accomplishment was inherently impossible, or the means employed was either inadequate or ineffectual. The aspect of the inherent impossibility of accomplishing the intended crime under Article 4(2) of the Revised Penal Code was further explained by the Court in *Intod*[10] in this wise:

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[10] *Supra*.

Under this article, the act performed by the offender cannot produce an offense against persons or property because: (1) the commission of the offense is inherently impossible of accomplishment; or (2) the means employed is either (a) inadequate or (b) ineffectual.

That the offense cannot be produced because the commission of the offense is inherently impossible of accomplishment is the focus of this petition. To be impossible under this clause, the act intended by the offender must be by its nature one impossible of accomplishment. There must be either (1) legal impossibility, or (2) physical impossibility of accomplishing the intended act in order to qualify the act as an impossible crime.

Legal impossibility occurs where the intended acts, even if completed, would not amount to a crime.

x x x x x x x x x

The impossibility of killing a person already dead falls in this category.

On the other hand, factual impossibility occurs when extraneous circumstances unknown to the actor or beyond his control prevent the consummation of the intended crime. x x x[11]

In *Intod*, the Court went on to give an example of an offense that involved factual impossibility, *i.e.*, a man puts his hand in the coat pocket of another with the intention to steal the latter's wallet, but gets nothing since the pocket is empty.

Herein petitioner's case is closely akin to the above example of factual impossibility given in *Intod.* In this case, petitioner performed all the acts to consummate the crime of qualified theft, which is a crime against property. Petitioner's evil intent cannot be denied, as the mere act of unlawfully taking the check meant for Mega Foam showed her intent to gain or be unjustly enriched. Were it not for the fact that the check bounced, she would have received the face value thereof, which was not rightfully hers. Therefore, it was only due to the extraneous circumstance of the check being unfunded, a fact unknown to petitioner at the time, that prevented the crime from being produced. The thing unlawfully taken by petitioner turned out

[11] *Id.* at 57-58.

to be absolutely worthless, because the check was eventually dishonored, and Mega Foam had received the cash to replace the value of said dishonored check.

The fact that petitioner was later entrapped receiving the ₱5,000.00 marked money, which she thought was the cash replacement for the dishonored check, is of no moment. The Court held in *Valenzuela v. People*[12] that under the definition of theft in Article 308 of the Revised Penal Code, "there is only one operative act of execution by the actor involved in theft — the taking of personal property of another." Elucidating further, the Court held, thus:

> x x x Parsing through the statutory definition of theft under Article 308, there is one apparent answer provided in the language of the law — that theft is already "produced" upon the "tak[ing of] personal property of another without the latter's consent."
>
> x x x x x x x x x
>
> x x x when is the crime of theft produced? There would be all but certain unanimity in the position that theft is produced when there is deprivation of personal property due to its taking by one with intent to gain. Viewed from that perspective, it is immaterial to the product of the felony that the offender, once having committed all the acts of execution for theft, is able or unable to freely dispose of the property stolen since the deprivation from the owner alone has already ensued from such acts of execution. x x x
>
> x x x x x x x x x
>
> x x x we have, after all, held that unlawful taking, or *apoderamiento*, is deemed complete from the moment the offender gains possession of the thing, even if he has no opportunity to dispose of the same. x x x
>
> x x x Unlawful taking, which is the deprivation of one's personal property, is the element which produces the felony in its consummated stage. x x x[13]

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[12] G.R. No. 160188, June 21, 2007, 525 SCRA 306, 324 .

[13] *Id.* at 327, 343-345.

From the above discussion, there can be no question that **as of the time that petitioner took possession of the check meant for Mega Foam, she had performed all the acts to consummate the crime of theft, had it not been impossible of accomplishment in this case**. The circumstance of petitioner receiving the ₱5,000.00 cash as supposed replacement for the dishonored check was no longer necessary for the consummation of the crime of qualified theft. Obviously, the plan to convince Baby Aquino to give cash as replacement for the check was hatched only after the check had been dishonored by the drawee bank. Since the crime of theft is not a continuing offense, petitioner's act of receiving the cash replacement should not be considered as a continuation of the theft. At most, the fact that petitioner was caught receiving the marked money was merely corroborating evidence to strengthen proof of her intent to gain.

Moreover, the fact that petitioner further planned to have the dishonored check replaced with cash by its issuer is a different and separate fraudulent scheme. Unfortunately, since said scheme was not included or covered by the allegations in the Information, the Court cannot pronounce judgment on the accused; otherwise, it would violate the due process clause of the Constitution. If at all, that fraudulent scheme could have been another possible source of criminal liability.

IN VIEW OF THE FOREGOING, the petition is *GRANTED*. The Decision of the Court of Appeals, dated December 16, 2003, and its Resolution dated March 5, 2004, are *MODIFIED*. Petitioner Gemma T. Jacinto is found *GUILTY* of an *IMPOSSIBLE CRIME* as defined and penalized in Articles 4, paragraph 2, and 59 of the Revised Penal Code, respectively. Petitioner is sentenced to suffer the penalty of six (6) months of *arrresto mayor*, and to pay the costs.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 162721. July 13, 2009]

PETRONILA MAYLEM, *petitioner*, *vs.* **CARMELITA ELLANO and ANTONIA MORCIENTO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FINDINGS OF FACT OF THE AGRARIAN COURTS; CONCLUSIVE AND BINDING UPON THE SUPREME COURT; PRESENT IN CASE AT BAR.— Prefatorily, it is needless to state that in appeals in agrarian cases, long-standing is the rule that when the appellate court has confirmed that the findings of fact of the agrarian courts are borne out by the records, such findings are conclusive and binding on this Court. In other words, issues of fact that have already been decided by the DARAB and affirmed by the Court of Appeals, when supported by substantial evidence, will not be interfered with by this Court or be reviewed anew, except only upon a showing that there was fraud, collusion, arbitrariness, illegality, imposition or mistake on the part of the department head or a total lack of substantial evidence to support the decision. None of these circumstances which would otherwise require an independent factual evaluation of the issues raised in the present petition, obtains in this case. On the contrary, we find that the decision of the DARAB, as affirmed by the Court of Appeals, is substantially supported by the evidence on record.

2. LABOR AND SOCIAL LEGISLATION; AGRARIAN REFORM LAW; PRESIDENTIAL DECREE NO. 27; TWO STAGES OF EFFECTING LAND TRANSFER; SPECIFIED.— Land transfer under P.D. No. 27 is effected in two stages: (1) the issuance of a certificate of land transfer to a farmer-beneficiary as soon as the DAR transfers the landholding to him in recognition of his being deemed an owner; and (2) the issuance of an emancipation patent as proof of full ownership of the landholding upon full payment of the annual amortizations or lease rentals by the farmer-beneficiary. No principle in agrarian reform law is indeed more settled than that the issuance of an emancipation patent entitles the farmer-beneficiary to the vested right of absolute ownership of the landholding, and it constitutes

conclusive authority for the issuance of an original or transfer certificate of title in his name. It presupposes that the grantee or beneficiary has, following the issuance of a certificate of land transfer, already complied with all the preconditions required under P.D. No. 27, and that the landowner has been fully compensated for his property. And upon the issuance of title, the grantee becomes the owner of the landholding and he thereby ceases to be a mere tenant or lessee. His right of ownership, once vested, becomes fixed and established and is no longer open to doubt or controversy.

3. ID.; ID.; ID.; ID.; ABANDONMENT OR NEGLECT, AS GROUND FOR CANCELLATION OF EMANCIPATION PATENT; CONSTRUED.— Abandonment or neglect, as a ground for the cancellation of an emancipation patent or certificate of land award, according to *Castellano v. Spouses Francisco*, requires a clear and absolute intention to renounce a right or a claim, or to abandon a right or property coupled with an external act by which that intention is expressed or carried into effect. Intention to abandon, as held in *Corpuz v. Grospe*, implies a departure, with the avowed intent of never returning, resuming or claiming the right and the interest that have been abandoned. It consists in any one of these conditions: (a) failure to cultivate the lot due to reasons other than the non-suitability of the land to agricultural purposes, for at least two (2) calendar years, and to pay the amortizations for the same period; (b) permanent transfer of residence by the beneficiary and his family, which has rendered him incapable of cultivating the lot; or (c) relinquishment of possession of the lot for at least two (2) calendar years and failure to pay the amortization for the same period. x x x More importantly, as holder of an emancipation patent, Abad is bound by the proscription against transfers of land awards to third persons, which is prohibited by law. Paragraph 13 of P.D. No. 27 materially states: Title to land acquired pursuant to this Decree or the Land Reform Program of the Government shall not be transferable except by hereditary succession or to the Government in accordance with the provisions of this Decree, the Code of Agrarian Reform and other existing laws and regulations. This prohibition has been carried over to Section 27 of R.A. No. 6657, which provides: Section 27. *Transferability of Awarded Lands.*— Lands acquired by beneficiaries under this Act may not be sold, transferred or conveyed except through hereditary

succession, or to the government, or to the LBP (Land Bank of the Philippines), or to other qualified beneficiaries for a period of ten (10) years: Provided, however, That the children or the spouse of the transferor, shall have a right to repurchase the land from the Government or LBP within a period of two (2) years. x x x Hence, even if we must assume that Abad for a consideration had waived his rights to the property when he surrendered possession thereof to petitioner, such waiver is nevertheless ineffective and void, because it amounts to a prohibited transfer of the land award. As the Court held in *Lapanday Agricultural & Development Corp. v. Estita*, the waiver of rights and interests over landholdings awarded by the government is invalid for being violative of agrarian reform laws. And in *Torres v. Ventura*, the Court declared that the object of agrarian reform is to vest in the farmer-beneficiary, to the exclusion of others, the rights to possess, cultivate and enjoy the landholding for himself; hence, to insure his continued possession and enjoyment thereof, he is prohibited by law to make any form of transfer except only to the government or by hereditary succession. x x x A charge of abandonment or neglect of land awards under the agrarian reform program necessarily requires factual determination and evaluation by the DARAB, in which is vested the exclusive and original jurisdiction over the cancellation of emancipation patents and certificates of land award. In other words, the cancellation of an emancipation patent does not *ipso facto* arise from the mere fact that the grantee has abandoned or neglected to cultivate the land; such fact must be so declared and the consequent cancellation must be so ordered by competent authority.

4. CIVIL LAW; PRESCRIPTION; THREE-YEAR PRESCRIPTIVE PERIOD UNDER THE AGRARIAN REFORM LAW DOES NOT APPLY TO FARMERS WHO HAD BEEN ISSUED EMANCIPATION PATENTS.— Anent the issue of prescription, we find the ruling in *Omadle v. Casuno* to be instructive. That case, likewise, involved a complaint for recovery of possession filed with the DARAB by farmers who had already been issued emancipation patents. The complaint, however, was filed a year after the three-year prescriptive period had lapsed, but the Court—noting that the complainants therein had already acquired ownership over the property upon the issuance of the emancipation patents in their names and, hence, had severed their tenancy relationship with the landowner—held that the

prescriptive period under the agrarian reform law did not apply to them. The Court said: As to petitioners' claim that respondents' (complainants') cause of action had prescribed, let it be stressed that since respondents (complainants) have been issued Emancipation Patent No. A-042463 and TCT No. ET-5184 as early as December 18, 1987, they can no longer be considered tenants or lessees, but owners of the subject landholding. Obviously, Section 38 of R.A. No. 3844 on prescription finds no application to their case.

APPEARANCES OF COUNSEL

German M. Balot for petitioner.
Artemio R. Villaluz, Jr. for respondents.

D E C I S I O N

PERALTA, *J.*:

This is a petition for review under Rule 45 of the Rules of Court, seeking the reversal of the Decision[1] of the Court of Appeals in CA-G.R. SP No. 70431, dated September 11, 2003, as well as the Resolution[2] dated February 23, 2004, which denied reconsideration. The assailed Decision affirmed the Decision[3] of the Department of Agrarian Reform Adjudication Board–Isabela in DARAB Case No. 7725 which, in turn, affirmed the judgment[4] of the Provincial Adjudicator in DARAB Case No. II-1239-ISA'97 — a case for recovery of possession of a piece of private agricultural land.

Well-established are the following facts.

Since 1963, Bonifacio Abad had been tenanting a piece of private agricultural land less than a hectare in size (0.8497 hectare)

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[1] Penned by Associate Justice Conrado M. Vasquez, Jr. (now Presiding Justice of the Court of Appeals), with Associate Justices Bienvenido L. Reyes and Arsenio J. Magpale, concurring, *rollo*, pp. 22-29.

[2] *Id.* at 30.

[3] *Id.* at 43.

[4] *Id.*

and situated in San Salvador, Santiago City, Isabela[5] under a leasehold agreement he had entered into with petitioner's husband, Segundino Maylem, and the latter's parents. On January 8, 1988, or eight months before Segundino's demise,[6] the property was awarded to Abad by operation of Presidential Decree (P.D.) No. 27[7] under Emancipation Patent (EP) Nos. A-216347 and A-216348, which were issued by virtue of two certificates of land transfer both dated August 25, 1980.[8] The pieces of property were, in turn, respectively covered by Transfer Certificate of Title (TCT) Nos. 028668[9] and 028669, which were registered with the Register of Deeds of Isabela on June 14, 1988.[10] Sometime in 1990, petitioner persuaded Abad to temporarily give to her for one year the possession of the land identified by EP No. A-216347 and by the corresponding TCT No. 028668. Abad agreed, but after the lapse of the period, petitioner refused to surrender possession despite repeated demands.[11]

It appears that petitioner had instituted a certain Francico Morsiento as tenant-farmer to cultivate the subject land after Abad surrendered his possession,[12] and that as early as 1990, petitioner had been attempting to spare her landholdings from the operation of the agrarian reform laws. For one, her 1991 correspondence with the Land Bank of the Philippines shows that she and her children, as heirs of the deceased Segundino, refused to offer their land for distribution under the Operation

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[5] *Id.* at 71; CA *rollo*, p. 126.

[6] Segundino Maylem allegedly died on September 30, 1988; records, p. 35.

[7] 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 Therefor.

[8] Certificate of Land Transfer Nos. 0-69324 and 0-69323; records, pp. 3-4.

[9] Covering 3,959 sq m (0.3959 hectares); *id.* at 4.

[10] Covering 4,538 sq m (0.4538 hectares); *id.* at 3.

[11] Records, pp. 70-71; CA *rollo*, pp. 126-127.

[12] CA *rollo*, p. 54.

Land Transfer of the government.[13] It also appears that, sometime in November 1997, petitioner had filed with the Office of the Secretary of the Department of Agrarian Reform (DAR) a petition for the retention of a 21,194-sq m landholding covered by TCT No. T-42515.[14] The records show that said petition was granted on November 30, 1999.[15]

In the meantime, as petitioner refused to return possession of the property, and when it came to Abad's knowledge that the same was mortgaged to a third person,[16] Abad filed on December 5, 1997 a Complaint[17] for recovery of possession with the Provincial Adjudicator of the DAR. In it, he alleged that he had started tenanting the property since 1963, but upon the lapse of the one-year period during which he temporarily surrendered possession thereof to petitioner, the latter refused to return possession. Abad likewise alleged that he had brought the controversy to the DAR Municipal Office, but no resolution had yet transpired in view of petitioner's protest for the exclusion of her properties from the coverage of the agrarian reform law. Instead of addressing the allegations of Abad, petitioner, for her part, intimated that the proceedings be suspended until the petition for the retention of her landholdings shall have been finally resolved.[18]

The Provincial Adjudicator, nevertheless, proceeded to dispose of the complaint and, on July 15, 1998, rendered a decision in favor of Abad. The Provincial Adjudicator upheld Abad's right of possession arising from ownership which had already been

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[13] See the March 8, 1991 letter to the Land Bank of the Philippines (LBP), CA *rollo*, p. 35. See also the correspondence between LBP and the Department of Agrarian Reform regarding petitioner's letter, CA *rollo*, pp. 36-38.

[14] CA *rollo*, p. 32.

[15] See DAR Order dated November 30, 1999 in Adm. Case No. A-0204-0080-98; CA *rollo*, pp. 57-60.

[16] Records, pp. 70-71; CA *rollo*, pp. 126-127.

[17] Records, pp. 1-2.

[18] *Id.* at 33-34.

vested in him by virtue of the emancipation patents issued in his name, together with the corresponding TCTs; hence, Abad being the owner of the land, the agreement for the temporary surrender of the property was merely a futile attempt by petitioner to defeat the former's proprietary rights. The Provincial Adjudicator also noted that petitioner's petition for retention would not affect Abad's right to the property. Accordingly, petitioner was ordered to surrender the possession thereof to Abad.[19]

On appeal, the DARAB, in its January 17, 2001 Decision,[20] adopted the findings and conclusions of the Provincial Adjudicator.

Undaunted, petitioner lodged an appeal[21] with the Court of Appeals (CA), but to no avail. In its September 11, 2003 Decision, the appellate court dismissed the appeal and affirmed the decision of the DARAB. The CA ruled that when the emancipation patent was issued in the name of Abad, the latter became the absolute owner of the land in dispute; and that the subsequent registration thereof validated the transfer and created a lien on the property, of which everyone was therefore given constructive

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[19] CA *rollo*, p. 39. The dispositive portion of the decision reads:

Accordingly, judgment is hereby rendered:

1. Finding plaintiff to be now the owner of the land in suit by virtue of the Emancipation Patent issued in his favor;

2. Ordering defendant to surrender possession and cultivation thereof to the plaintiff; and

3. Ordering defendant to pay actual damages of ₱126,000.00 and litigation expenses of ₱10,000.00.

SO ORDERED.

[20] CA *rollo*, pp. 45-48. The DARAB, however, deleted the Provincial Adjudicator's award of actual damages and litigation expenses. It disposed of the appeal as follows:

WHEREFORE, premises considered, the questioned Decision dated July 15, 1998 is MODIFIED deleting the awards of actual damages and litigation expenses and the rest is AFFIRMED.

SO ORDERED.

[21] Via a petition for review under Rule 43 of the Rules of Court; CA *rollo*, pp. 9-18.

notice.[22] It pointed out that Abad retained the rights he had acquired through Presidential Decree (P.D.) No. 27 under the authority of Section 16 of Republic Act (R.A.) No. 6657.[23] It concluded that Abad, as owner, would not be affected by the petition for retention. Neither must he be deemed as having abandoned or surrendered the property, especially considering that he was merely induced by petitioner to temporarily relinquish possession with the assurance that it would be restored to him after a year.[24] Finally, as to petitioner's contention that Abad's complaint had already been barred by the three-year prescriptive period provided in the law, the appellate court took exception therefrom on the basis of the social justice policy of resolving doubts in favor of the disadvantaged farmer.[25]

With the denial of her motion for reconsideration,[26] petitioner brought to this Court the present recourse.

In this petition for review, petitioner advances the notion that while indeed EP No. A-216347 had been issued in Abad's name, the same was nevertheless recalled or cancelled when her petition for retention was granted by the DAR. Hence, she believes that the said land may be validly surrendered to her, especially in view of the waiver made by Abad of his rights thereto allegedly for a total consideration of ₱57,000.00. Raising once again the issue of prescription, she laments that it is patent from Abad's complaint that the action had already prescribed when the complaint was filed in 1997 and, hence, was dismissible on that ground.

For their part, respondents[27] counter that there is no evidence showing that EP No. A-216347 was recalled or cancelled by

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[22] CA *rollo*, p. 130.

[23] The Comprehensive Agrarian Reform Law, effective June 15, 1988.

[24] Quoting from the decision of the DARAB; CA *rollo*, pp. 131-132.

[25] CA *rollo*, p. 132.

[26] *Id.* at 151.

[27] Respondents are the heirs of Bonifacio Abad who substituted the latter upon his death.

the DAR and, thus, Abad cannot be deemed to have abandoned the landholding in favor of petitioner in a way that would sever the tenancy relationship, especially considering that Abad merely surrendered possession of the land temporarily upon petitioner's promise to return the same to him after one year. Anent the issue of prescription, respondents aver that it must be deemed to have been waived for failure of petitioner to timely raise the same before the DARAB.

The petition is unmeritorious.

Prefatorily, it is needless to state that in appeals in agrarian cases, long-standing is the rule that when the appellate court has confirmed that the findings of fact of the agrarian courts are borne out by the records, such findings are conclusive and binding on this Court.[28] In other words, issues of fact that have already been decided by the DARAB and affirmed by the Court of Appeals, when supported by substantial evidence, will not be interfered with by this Court or be reviewed anew, except only upon a showing that there was fraud, collusion, arbitrariness, illegality, imposition or mistake on the part of the department head or a total lack of substantial evidence to support the decision.[29] None of these circumstances which would otherwise require an independent factual evaluation of the issues raised in the present petition, obtains in this case. On the contrary, we find that the decision of the DARAB, as affirmed by the Court of Appeals, is substantially supported by the evidence on record.

Central to the resolution of this petition is the undeniable fact that Abad had previously been granted Emancipation Patent No. A-21347 covering the land in question, which, in turn, constituted the basis for the issuance in his name of TCT No. T-028668. On this score, we agree with the ruling of both the DARAB and the Court of Appeals that by reason of such grant,

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[28] *Perez-Rosario v. Court of Appeals*, G.R. No. 140796, 494 SCRA 66, 89, citing *Planters Development Bank v. Garcia*, 477 SCRA 185 (2005); *Milestone Realty and Co., Inc. v. Court of Appeals*, 431 Phil. 119, 130 (2002).

[29] *Dela Cruz v. Abille*, 405 Phil 357, 369 (2001), citing *Pearson, et al. v. Intermediate Appellate Court*, 295 SCRA 27, 48 (1998).

Abad became the absolute owner in fee simple of the subject agricultural land.

Land transfer under P.D. No. 27 is effected in two stages: (1) the issuance of a certificate of land transfer to a farmer-beneficiary as soon as the DAR transfers the landholding to him in recognition of his being deemed an owner; and (2) the issuance of an emancipation patent as proof of full ownership of the landholding upon full payment of the annual amortizations or lease rentals by the farmer-beneficiary.[30] No principle in agrarian reform law is indeed more settled than that the issuance of an emancipation patent entitles the farmer-beneficiary to the vested right of absolute ownership of the landholding, and it constitutes conclusive authority for the issuance of an original or transfer certificate of title in his name. It presupposes that the grantee or beneficiary has, following the issuance of a certificate of land transfer, already complied with all the preconditions required under P.D. No. 27,[31] and that the landowner has been fully compensated for his property.[32] And upon the issuance of title, the grantee becomes the owner of the landholding and he thereby ceases to be a mere tenant or lessee.[33] His right of ownership, once vested, becomes fixed and established and is no longer open to doubt or controversy.[34] Inescapably, Abad became the owner of the subject property upon the issuance of the emancipation patents and, as such, enjoys the right to possess the same—a right that is an attribute of absolute ownership.[35]

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[30] *Del Castillo v. Orciga*, G.R. No. 153850, August 31, 2006, 500 SCRA 498, 506.

[31] See *Omadle v. Casuno*, G.R. No. 143362, June 27, 2006, 493 SCRA 108, 113; *Pagtalunan v. Tamayo*, G.R. No. 54281, March 9, 1990, 183 SCRA 252, 259.

[32] See *Coruña v. Cinamin*, G.R. No. 154286, February 28, 2006, 483 SCRA 507, 522.

[33] See *Omadle v. Casuno, supra* note 31, at 112.

[34] *Pagtalunan v. Tamayo, supra* note 31, at 259.

[35] De Leon, *Comments and Cases on Property*, 3rd ed., 1998, p. 83.

Concededly, petitioner has not, at any time since the start of the controversy, contested the fact that since the issuance of EP No. A-216347 in favor of Abad, the same has subsisted and remained valid. She, nevertheless, claims that Abad, in effect, abandoned the subject land in her favor when he agreed in 1990 to surrender possession thereof to her, allegedly for a monetary consideration. We are not convinced.

Abandonment or neglect, as a ground for the cancellation of an emancipation patent or certificate of land award, according to *Castellano v. Spouses Francisco*,[36] requires a clear and absolute intention to renounce a right or a claim, or to abandon a right or property coupled with an external act by which that intention is expressed or carried into effect. Intention to abandon, as held in *Corpuz v. Grospe*,[37] implies a departure, with the avowed intent of never returning, resuming or claiming the right and the interest that have been abandoned. It consists in any one of these conditions: (a) failure to cultivate the lot due to reasons other than the non-suitability of the land to agricultural purposes, for at least two (2) calendar years, and to pay the amortizations for the same period; (b) permanent transfer of residence by the beneficiary and his family, which has rendered him incapable of cultivating the lot; or (c) relinquishment of possession of the lot for at least two (2) calendar years and failure to pay the amortization for the same period.[38] None of the instances cited above obtains in this case.

As found by the Court of Appeals, it is thus implausible that the surrender of the land by Abad could be interpreted as abandonment in contemplation of the law, in view of the understanding between him and petitioner that the surrender of possession would be merely temporary. Suffice it to say that

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[36] G.R. No. 155640, May 7, 2008, 554 SCRA 63.

[37] 388 Phil. 1100 (2000).

[38] Rules Governing the Correction and Cancellation of Registered/ Unregistered Emancipation Patents (EPs), and Certificate of Land Ownership Award (CLOAs) Due to Unlawful Acts and Omissions or Breach of Obligations of Agrarian Reform Beneficiaries (ARBs) and for other causes.

the allegation of abandonment is negated by the undisputed fact that Abad actually demanded the return of the property to him after the lapse of the one-year period. Indeed, petitioner's act of dispossessing Abad of the land awarded to him was merely calculated to impair the latter's vested right of ownership.[39]

More importantly, as holder of an emancipation patent, Abad is bound by the proscription against transfers of land awards to third persons, which is prohibited by law. Paragraph 13 of P.D. No. 27 materially states:

> Title to land acquired pursuant to this Decree or the Land Reform Program of the Government shall not be transferable except by hereditary succession or to the Government in accordance with the provisions of this Decree, the Code of Agrarian Reform and other existing laws and regulations.

This prohibition has been carried over to Section 27 of R.A. No. 6657, which provides:

> Section 27. *Transferability of Awarded Lands.* – Lands acquired by beneficiaries under this Act may not be sold, transferred or conveyed except through hereditary succession, or to the government, or to the LBP (Land Bank of the Philippines), or to other qualified beneficiaries for a period of ten (10) years: Provided, however, That the children or the spouse of the transferor, shall have a right to repurchase the land from the Government or LBP within a period of two (2) years. x x x

Hence, even if we must assume that Abad for a consideration had waived his rights to the property when he surrendered possession thereof to petitioner, such waiver is nevertheless ineffective and void, because it amounts to a prohibited transfer of the land award. As the Court held in *Lapanday Agricultural & Development Corp. v. Estita*,[40] the waiver of rights and interests over landholdings awarded by the government is invalid for being violative of agrarian reform laws.[41] And in *Torres v.*

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[39] CA *rollo*, pp. 47, 130.

[40] G.R. No. 162109, January 21, 2005, 449 SCRA 240.

[41] *Id.* at 255.

Ventura,[42] the Court declared that the object of agrarian reform is to vest in the farmer-beneficiary, to the exclusion of others, the rights to possess, cultivate and enjoy the landholding for himself; hence, to insure his continued possession and enjoyment thereof, he is prohibited by law to make any form of transfer except only to the government or by hereditary succession.[43]

Moreover, it bears stressing that petitioner has not shown that she had actually taken positive measures to cause the cancellation of EP No. A-216347 or, at least, the certificate of land transfer previously issued to Abad. Nowhere in the records does it appear that a direct action seeking the cancellation of Abad's emancipation patent or certificate of land transfer has ever been formally filed with the DAR office. A charge of abandonment or neglect of land awards under the agrarian reform program necessarily requires factual determination and evaluation by the DARAB, in which is vested the exclusive and original jurisdiction over the cancellation of emancipation patents and certificates of land award.[44] In other words, the cancellation of an emancipation patent does not *ipso facto* arise from the mere fact that the grantee has abandoned or neglected to cultivate the land; such fact must be so declared and the consequent cancellation must be so ordered by competent authority.[45]

There is likewise no merit in petitioner's averment that the November 30, 1998 Order[46] of the DAR, which granted her petition for retention, had the effect of canceling EP No. A-216347. To begin with, in her petition for retention, it must be noted that there was no allegation that part of the land sought to be retained included the property previously awarded

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[42] G.R. No. 86044, July 2, 1990, 187 SCRA 96.

[43] *Id.* at 104.

[44] See R.A. No. 6657, Sec. 50 and DARAB Rules of Procedure (May 30, 1994), Rule II, Sec. 1(f).

[45] See *Rovillos v. Court of Appeals*, G.R. No. 113605, November 27, 1998, 299 SCRA 400.

[46] CA *rollo*, pp. 57-60.

to Abad, or that, at least, petitioner was seeking to place under her retention rights properties that had already been transferred to farmer-beneficiaries including those awarded to Abad. What is clear from the said petition is that petitioner was seeking to spare from being further placed under the Operation Land Transfer her remaining 2.9194-hectare landholding covered by TCT No.T-42515[47]—a title that is different from any of the two TCTs that were issued in favor of Abad by virtue of his emancipation patents.

More importantly, a perusal of the DAR Order reveals that nothing therein specifically cancelled or, at least, ordered the cancellation of Abad's EP No. A-216347.[48] Hence, we fail to be swayed even by petitioner's reliance on a stipulation in a compromise agreement she allegedly entered into with Abad, whereby they admitted that the DAR Order directed among others the cancellation of existing emancipation patents included in the landholding subject of the petition for retention.[49] Clearly, these arguments are merely petitioner's last-ditch attempt to defeat Abad's right of ownership over the subject property, which had been vested in him as early as January 8, 1988 when he was awarded the emancipation patents.

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[47] *Id.* at 57, 59.

[48] The dispositive portion of the November 30, 1998 Order reads:

WHEREFORE, foregoing considered, ORDER is hereby issued:

1. Granting the herein petitioners right to retain the 2.9194 hectares, more or less, being applied [for] in the instant petition;

2. Directing the MARO concerned to initiate the execution of leasehold contracts by and between the herein petitioners and the tenant-beneficiaries affected;

3. The rights of the tenant-beneficiaries to security of tenure shall be respected by the herein petitioner; and

4. Directing the conduct of a final survey of the retained area.

SO ORDERED. (*Id.* at 59-60.)

[49] *Rollo*, p. 70. See Compromise Agreement, CA *rollo*, p. 111. The Compromise Agreement was attached to respondents' memorandum to the Court of Appeals.

Anent the issue of prescription, we find the ruling in *Omadle v. Casuno*[50] to be instructive. That case, likewise, involved a complaint for recovery of possession filed with the DARAB by farmers who had already been issued emancipation patents. The complaint, however, was filed a year after the three-year prescriptive period had lapsed, but the Court—noting that the complainants therein had already acquired ownership over the property upon the issuance of the emancipation patents in their names and, hence, had severed their tenancy relationship with the landowner—held that the prescriptive period under the agrarian reform law did not apply to them. The Court said:

> As to petitioners' claim that respondents' (complainants') cause of action had prescribed, let it be stressed that since respondents (complainants) have been issued Emancipation Patent No. A-042463 and TCT No. ET-5184 as early as December 18, 1987, they can no longer be considered tenants or lessees, but owners of the subject landholding. Obviously, Section 38 of R.A. No. 3844 on prescription finds no application to their case.[51]

As a final note, it is useful to reiterate the appellate court's conclusion that the registration of Abad's emancipation patents with the Register of Deeds in accordance with law had indeed put petitioner on notice of the fact that Abad had already acquired a vested right of ownership of the landholding under the agrarian reform law. This notwithstanding, inasmuch as registration is nothing more than a mere species of notice, we need not further expound on this subject, since it is overwhelmingly shown by the records and by petitioner's own admissions that she had actual knowledge of the fact that Abad became the absolute owner of the land in question merely upon the issuance in his favor of EP Nos. A-216347 and A-216348. Hence, he and his heirs may no longer be dispossessed of their rights of possession and ownership.

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[50] *Omadle v. Casuno*, *supra* note 31.

[51] *Id.* at 112.

WHEREFORE, the petition is *DENIED*. The assailed Decision of the Court of Appeals in CA-G.R. SP No. 70431, dated September 11, 2003, and its Resolution dated February 23, 2004, are *AFFIRMED*.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 165568. July 13, 2009]

GOVERNMENT SERVICE INSURANCE SYSTEM, *petitioner, vs.* **ABRAHAM LOPEZ,** *respondent.*

SYLLABUS

1. CIVIL LAW; CONTRACTS; STAGES OF EXECUTION.— The stages of a contract of sale are: (1) *negotiation*, starting from the time the prospective contracting parties indicate interest in the contract to the time the contract is perfected; (2) *perfection*, which takes place upon the concurrence of the essential elements of the sale; and (3) *consummation*, which commences when the parties perform their respective undertakings under the contract of sale, culminating in the extinguishment of the contract.

2. ID.; ID.; ELEMENTS.— In the present case, the parties never got past the negotiation stage. Nothing shows that the parties had agreed on any final arrangement containing the essential elements of a contract of sale, namely, (1) consent or the meeting of the minds of the parties; (2) object or subject matter of the contract; and (3) price or consideration of the sale.

3. ID.; ID.; EARNEST MONEY; WHEN CONCEPT NOT APPLICABLE; CASE AT BAR.— Considering that there was no perfected contract of sale, the concept of earnest money is certainly not applicable to this case. Article 1482 of the Civil

Code states that: "Whenever earnest money is given in a contract of sale, it shall be considered as part of the price and as proof of the perfection of the contract." The earnest money forms part of the consideration only if the sale is consummated upon full payment of the purchase price. Hence, there must first be a perfected contract of sale before we can speak of earnest money. As found by the trial court, the ₱15,500 paid by Lopez is merely a deposit for the exclusion of the subject property from the list of the properties to be auctioned off by GSIS. In principle, GSIS should return the ₱15,500 deposit made by Lopez since the Board of Trustees rejected Lopez's offer to repurchase the property, as evidenced by the Compromise Agreement where GSIS asserted its ownership of the property. However, Lopez admittedly owes GSIS for the accumulated rental arrears in the sum of ₱16,800 as of 26 February 1993. Considering these circumstances, partial legal compensation, under Articles 1278, 1279, and 1281 of the Civil Code, applies in this case. In short, both parties are creditors and debtors of each other, although in different amounts which are already due and demandable. Hence, GSIS is justified in retaining the ₱15,500 deposit and automatically applying it to Lopez's unpaid rentals totaling ₱16,800 as of 26 February 1993.

APPEARANCES OF COUNSEL

Chief Legal Counsel (GSIS) for petitioner.
Franklin C. Sunga 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 10 February 2004 Decision[2] and 4 October 2004 Resolution[3] of the Court

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

[2] *Rollo*, pp. 7-18. Penned by Associate Justice Godardo A. Jacinto with Associate Justices Elvi John S. Asuncion and Lucas P. Bersamin, concurring.

[3] *Id.* at 19-20. Penned by Associate Justice Godardo A. Jacinto with Associate Justices Lucas P. Bersamin and Jose Catral Mendoza, concurring.

of Appeals in CA-G.R. CV No. 56322. The Court of Appeals reversed the 26 September 1996 Decision[4] of the Regional Trial Court, Branch 163, Pasig, which dismissed the complaint for specific performance filed by respondent Abraham Lopez (Lopez) against petitioner Government Service Insurance System (GSIS).

The Facts

Lopez obtained a loan of ₱22,500 from the GSIS. To secure the loan, Lopez mortgaged on 6 June 1982 his house and lot on No. 15 M. Cruz Street, Sto. Niño, Marikina, Metro Manila. When he defaulted on the loan, GSIS foreclosed on the real estate mortgage on 6 February 1984 and obtained title to the property under Transfer Certificate of Title (TCT) No. 125201. Meanwhile, GSIS allowed Lopez to remain on the property for a monthly rent of ₱1,200.

Thereafter, Lopez accumulated arrears in rent. Thus, in a letter dated 20 October 1986, GSIS demanded payment as follows:

> Our records disclose that you have been remiss in the payment of the rentals for the premises you are now occupying. Your arrears have accumulated to the total sum of TWENTY TWO THOUSAND EIGHT HUNDRED PESOS (₱22,800.00) as of 9/30/86.
>
> You are, therefore, advised to pay in full the aforementioned arrears, plus interest, and to vacate the premises within fifteen (15) days from receipt hereof, otherwise, this Office will be constrained to file the corresponding legal action against you for ejectment, x x x[5]

When no payment was made, GSIS sent another letter dated 8 April 1988, inviting Lopez to bid for the subject property on 22 April 1988.[6] The scheduled bidding was cancelled when Lopez obtained on 21 April 1988 a temporary restraining order from the Regional Trial Court, Branch CLX of Pasig.[7]

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[4] *Id.* at 44-49. Penned by Judge Aurelio C. Trampe.

[5] Records, p. 39 (Exh. "3").

[6] *Id.* at 42 (Exh. "6").

[7] *Id.* at 45 (Exh. "8").

In a letter dated 7 July 1988, Lopez offered to repurchase the property from the GSIS, thus:

> This refers to our former property at #15 M. Cruz St., Sto. Niño, Marikina, Metro Manila which was foreclosed by the Government Service Insurance System, Manila.
>
> In this connection we would like to inform you that we are requesting your good office to please allow us to repurchase the said property.
>
> It will be highly appreciated if you could please inform us about the outstanding obligation we will pay the GSIS, as of July 31, 1988.[8]

The GSIS, through its Acquired Assets Administration, sent a reply dated 2 August 1988, which reads:

> x x x we wish to inform you that you may be allowed to repurchase the property subject to the approval by our Board of Trustees on cash basis for an amount based on the current market value of the property plus unpaid rentals and accrued real estate taxes, if any.
>
> Accordingly, you should put up a 10% deposit as earnest money subject to refund, should the Board reject your offer, or forfeiture should you fail to come up with the terms that may be imposed by the Board.
>
> As determined by this Office, the current market value of subject property is ₱155,000.00 and the back rentals as of July 31, 1988, amount to ₱62,919.80.
>
> If you are, therefore, willing to repurchase your former property for the amount of ₱155,000.00 plus back rentals, please remit to this Office the required 10% deposit earnest money of ₱15,500.00 either in cash or cashier's/manager's check payable to the GSIS within fifteen (15) days from receipt of this letter, otherwise, subject property will be included in the public auction sale of GSIS acquired properties to be conducted at some future date.[9] (Underscoring in the original)

On 22 August 1988, Lopez paid GSIS ₱15,500, as evidenced by a receipt which indicated that the amount represented "payment of 10% cash deposit."[10]

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[8] *Id.* at 36 (Exh. "1").

[9] *Id.* at 7 (Exh. "A").

[10] *Id.* at 8 (Exh. "B").

No contract of sale was executed. Instead, in notices dated 25 September 1989 and 18 October 1989, GSIS demanded from Lopez payment of arrears in rent.[11] The notice of 18 October 1989 reads:

> Our records disclose that you have been remiss in the payment of the rentals for the premises you are now occupying. Your arrears have accumulated to the total sum of SIXTY SIX THOUSAND PESOS (₱66,000.00) as of September 30, 1989.
>
> You are, therefore, advised to pay in full the aforementioned arrears, plus interest, and to vacate the premises within fifteen (15) days from receipt hereof, otherwise, this Office will be constrained to file the corresponding legal action against you for ejectment, x x x

Thereafter, GSIS filed a complaint for ejectment against Lopez with the Metropolitan Trial Court, Branch 76, Marikina City (MeTC).[12] The parties entered into a Compromise Agreement, which the MeTC approved in a Decision dated 7 March 1991.[13] The Compromise Agreement is quoted as follows:

> COMPROMISE AGREEMENT
>
> COME NOW the parties assisted by their respective counsels and unto this Honorable Court most respectfully submit this Compromise Agreement for the approval of this Honorable Court under the following terms and conditions to wit:
>
> 1. The plaintiff is the owner of a two-storey residential house located at No. 15 Marcos Cruz (G. Luna) Street, Sto. Niño, Marikina, Metro Manila.
>
> 2. The defendants, despite demands, failed to execute a lease contract and were in arrears in the payment of the reasonable compensation for the use and occupancy of the said premises.
>
> 3. To forestall their inevitable and justified eviction from the premises as a result of their inexcusable failure to comply with their legitimate obligations, the defendants have agreed to liquidate their arrearages in full and to execute a formal lease agreement.

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[11] *Id.* at 40-41 (Exhs. "4" and "5").

[12] *Id.* at 73-78.

[13] *Id.* at 79-81.

4. As a manifestation of their good faith, the defendants offered a compromise settlement by paying the reasonable compensation as follows:

1. ₱30,000 payable within five (5) days from receipt of notice of Board approval;

2. ₱10,000 monthly thereafter until the balance of the rental arrearages is fully paid;

3. ₱1,200 monthly starting January 1, 1991 to December 31, 1991.

5. The defendants' offer was recommended to the plaintiff's Board of Trustees and approved in toto under Board Resolution No. 55 adopted on February 14, 1991 with additional condition that the defendants shall be charged a new and reasonable rental rate based on current rates starting January 1, 1992.

6. In case the defendants fail to comply with any of the terms and conditions hereof, and the terms and conditions of the lease contract that will be executed by them, the plaintiff shall be entitled to the immediate issuance of a writ of execution without the prior notice to the defendants. This compromise agreement shall be immediately executory.[14]

In a letter dated 13 February 1992, GSIS-Acquired Assets Administration Vice-President Z. C. Beltran, Jr. wrote Lopez as follows:

This refers to your letter of January 14, 1992 offering to buy back your former property located at 15 M. Cruz St., Sto. Niño, Marikina, Metro Manila.

Please be informed that the property now commands a current market value of ₱844,000.00. Our records also show that you have incurred rental arrearages of ₱9,600.00 from May 1991 to January 31, 1992.

Commission on Audit rules and our policies require that we sell our acquired assets thru public bidding. We may, however, recommend an exception to your case, if you are willing to buy it back at its current market value at ₱844,000.00 plus all rental dues but unpaid, to be paid for in full and in cash 30 days from receipt of notice of

[14] *Id.* at 79-80.

Board approval. If agreeable, please inform us immediately so that we can submit your offer to our Board of Trustees for consideration.[15]

There is no copy of the 14 January 1992 letter referred to in Beltran's letter. At any rate, Lopez, through counsel, replied on 5 March 1992, thus:

> With respect to your letter dated February 13, 1992 to my client x x x I would like to request your office in his behalf for a reduction of the price set by your office from ₱844,000.00 to the previous agreed price of ₱155,000.00.
>
> Way back August 2, 1988, the Acquired Assets Administration of GSIS has set the price for said repurchase at ₱155,000.00 with the notice that my client may deposit a 10% earnest money of ₱15,500.00 x x x. Accordingly, Mr. Lopez deposited said amount x x x. Mr. Lopez [has been waiting] up to the present for your Board's action for said repurchase x x x. Unfortunately, x x x, your Board has not yet acted on said repurchase though he has already made the required deposit.[16]

GSIS did not act on his request. Instead, it sent a notice dated 1 February 1993 of the inclusion of the subject property in a public auction scheduled on 19 February 1993.[17] This prompted Lopez to file with the Regional Trial Court, Branch 163, Pasig, a Complaint for Specific Performance to enjoin the sale of the subject property and compel GSIS to execute the necessary contract of sale upon full payment of the purchase price of ₱155,000.[18]

The Ruling of the Trial Court

The trial court agreed with the contention of GSIS that there was no perfected contract of sale for lack of consent. Exhibit "A" (GSIS' letter dated 2 August 1988) is clear that the sale shall be "subject to the approval of the Board of Trustees."

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[15] *Id.* at 9 (Exh. "C").

[16] *Id.* at 10 (Exh. "D").

[17] *Id.* at 11 (Exh. "E").

[18] *Id.* at 1-6.

No such approval has been secured. Therefore, despite the payment of ₱15,500, the transaction could not be considered a perfected contract of sale. The trial court found that the ₱15,500 was a mere deposit, which was for the purpose of holding the inclusion of the subject property in the public auction.

The dispositive portion of the 26 September 1996 Decision of the trial court reads:

> WHEREFORE, foregoing premises considered, this Court renders judgment in favor of defendant and against plaintiff ordering:
>
> 1. The dismissal of this case for lack of merit;
> 2. The plaintiff to pay defendant the sum of ₱30,000.00 as reimbursement of the expenses in the publication for the invitation to bid;
> 3. The plaintiff to pay defendant the sum of ₱20,000.00 for attorney's fees;
> 4. The cost of suit.[19]

The Ruling of the Court of Appeals

The Court of Appeals similarly found that the ₱15,500 paid by Lopez to GSIS was earnest deposit. According to the Court of Appeals, earnest deposit is only a deposit of what would become earnest money or down payment should a contract of sale be executed. It merely guarantees that the seller would not back out of the sale. In this case, the money paid was not treated as proof of perfection of contract. In fact, it was made subject to refund should the Board of Trustees reject the offer of Lopez.

However, the Court of Appeals found that there was tacit acceptance of Lopez's offer to repurchase the property. Indicative of such decision of the GSIS is its failure to refund Lopez's deposit. The deposit was paid on 22 August 1988. Yet, GSIS did not refund the same even up to the time Lopez filed the complaint for specific performance in February 1993. There was no explanation offered for the retention of the deposit.

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[19] *Rollo*, p. 49.

The Court of Appeals also found that GSIS sought to enforce the terms of the contract to sell. GSIS sought to collect from Lopez arrears in rent. The appellate court opined that the arrears in rent were part of the repurchase price under the contract to sell. In demanding payment of the arrears in rent, GSIS was in effect implementing the contract to sell.

In addition, the Court of Appeals held that promissory estoppel would operate against GSIS from backing out of its commitment to allow Lopez to repurchase the property at the price mentioned in its 2 August 1988 letter. Under the doctrine of promissory estoppel, the act and assurance given by GSIS to Lopez to allow the latter to repurchase the property at the price indicated in its offer bind GSIS, which should not be allowed to turn around and adopt an inconsistent position in its transaction with Lopez to the prejudice of Lopez who relied upon them.

In view of these findings, the Court of Appeals held that there was a perfected contract of sale between the parties since all the elements of such a contract exist in this case, namely, (1) consent or meeting of the minds; (2) determinative subject matter; and (3) price certain in money or its equivalent. GSIS must, therefore, execute the necessary contract of sale upon full payment in cash by Lopez of the purchase price of ₱155,000 plus arrears in rent and real property taxes, if any.

The dispositive portion of the 10 February 2004 Decision of the Court of Appeals reads:

> WHEREFORE, under the premises, the assailed decision of the RTC is REVERSED and SET ASIDE. Defendant-appellee is ENJOINED from conducting the public auction of the subject property, and is further ORDERED to execute a contract of sale in favor of plaintiff-appellant upon payment in cash of the full purchase price of PhP155,000.00 plus arrears in rent and accrued real property taxes, if any.
>
> SO ORDERED.[20]

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[20] *Id.* at 17.

The Issues

GSIS raises the following issues:

I.

THE COURT OF APPEALS ERRED IN CONCLUDING THAT GSIS TACITLY ACCEPTED LOPEZ'S OFFER TO REPURCHASE UNDER THE TERMS AND CONDITIONS OF GSIS' LETTER DATED 2 AUGUST 1988.

II.

THE COURT OF APPEALS ERRED IN HOLDING THERE WAS PROMISSORY ESTOPPEL.[21]

The Ruling of the Court

The petition is meritorious.

The stages of a contract of sale are: (1) *negotiation*, starting from the time the prospective contracting parties indicate interest in the contract to the time the contract is perfected; (2) *perfection*, which takes place upon the concurrence of the essential elements of the sale;[22] and (3) *consummation*, which commences when the parties perform their respective undertakings under the contract of sale, culminating in the extinguishment of the contract.[23]

In the present case, the parties never got past the negotiation stage. Nothing shows that the parties had agreed on any final arrangement containing the essential elements of a contract of sale, namely, (1) consent or the meeting of the minds of the

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[21] *Id.* at 33.

[22] Article 1475 of the Civil Code provides:

The contract of sale is perfected at the moment there is a meeting of the minds upon the thing which is the object of the contract and upon the price.

From that moment, the parties may reciprocally demand performance, subject to the provisions of the law governing the form of contracts.

[23] *Serrano v. Caguiat*, G.R. No. 139173, 28 February 2007, 517 SCRA 57, 63, citing *San Miguel Properties Phils., Inc. v. Spouses Huang*, 391 Phil. 636 (2000).

parties; (2) object or subject matter of the contract; and (3) price or consideration of the sale.[24]

The 2 August 1988 letter of the GSIS cannot be classified as a perfected contract of sale which binds the parties. The letter was in reply to Lopez's offer to repurchase the property. Both the trial and appellate courts found that Lopez's offer to repurchase the property was subject to the approval of the Board of Trustees of the GSIS, as explicitly stated in the 2 August 1988 GSIS' letter. No such approval appears in the records. When there is merely an offer by one party without acceptance by the other, there is no contract of sale.[25] Since there was no acceptance by GSIS, which can validly act only through its Board of Trustees,[26] of Lopez's offer to repurchase the property, there was no perfected contract of sale.

The Court of Appeals, however, held that there was a tacit approval by the Board of Trustees of the GSIS of Lopez's offer to repurchase the subject property since GSIS never returned the ₱15,500 paid by Lopez.

This is error. The Court of Appeals overlooked the fact that in an ejectment suit, GSIS and Lopez entered into a court-approved Compromise Agreement regarding the lease of the property. The Compromise Agreement was approved on 7 March 1991, **or almost three years after the 2 August 1988 letter.** The Compromise Agreement pertinently states, thus:

1. The plaintiff (GSIS) is the owner of a two-storey residential house located at No. 15 Marcos Cruz (G. Luna) Street, Sto. Niño, Marikina, Metro Manila.

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[24] *Coronel v. Court of Appeals*, G.R. No. 103577, 7 October 1996, 263 SCRA 15, 26.

[25] *Manila Metal Container Corporation v. Philippine National Bank,* G.R. No. 166862, 20 December 2006, 511 SCRA 444, 464, citing *Palattao v. Court of Appeals*, 431 Phil. 438, 450 (2002).

[26] See *Manila Metal Container Corporation v. Philippine National Bank, supra* at 467-468.

2. The defendants (Lopez), despite demands, failed to execute a lease contract and were in arrears in the payment of the reasonable compensation for the use and occupancy of the said premises.

3. To forestall their inevitable and justified eviction from the premises as a result of their inexcusable failure to comply with their legitimate obligations, the defendants have agreed to liquidate their arrearages in full and to execute a formal lease agreement.[27]

The acts of the GSIS in seeking to evict Lopez from the property and in demanding payment of arrears in rent emphasize its ownership of the subject property and clearly negate any form of approval by GSIS of Lopez's offer to repurchase the property. Likewise, Lopez's recognition of GSIS' ownership of the property and his status as a defaulting lessee in the Compromise Agreement, which was entered into after Lopez's offer to repurchase, undoubtedly refutes his claim of a perfected contract of sale. If Lopez was under the impression that he had a perfected contract of sale with GSIS, which meant that Lopez could compel GSIS to perform its obligations as a seller, then Lopez could have objected to the Compromise Agreement. However, Lopez assented to the contents of the Compromise Agreement.

Considering that there was no perfected contract of sale, the concept of earnest money is certainly not applicable to this case. Article 1482 of the Civil Code states that: "Whenever earnest money is given in a contract of sale, it shall be considered as part of the price and as proof of the perfection of the contract." The earnest money forms part of the consideration only if the sale is consummated upon full payment of the purchase price.[28] Hence, there must first be a perfected contract of sale before we can speak of earnest money. As found by the trial court, the ₱15,500 paid by Lopez is merely a deposit for the exclusion of the subject property from the list of the properties to be auctioned off by GSIS.

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[27] Records, p. 79.

[28] *Serrano v. Caguiat, supra* note 23 at 66, citing *Chua v. Court of Appeals*, 449 Phil. 25 (2003).

In principle, GSIS should return the ₱15,500 deposit made by Lopez since the Board of Trustees rejected Lopez's offer to repurchase the property, as evidenced by the Compromise Agreement where GSIS asserted its ownership of the property. However, Lopez admittedly owes GSIS for the accumulated rental arrears in the sum of ₱16,800 as of 26 February 1993.[29] Considering these circumstances, partial legal compensation,[30] under Articles 1278, 1279, and 1281 of the Civil Code, applies in this case. In short, both parties are creditors and debtors of each other, although in different amounts which are already due and demandable. Hence, GSIS is justified in retaining the ₱15,500 deposit and automatically applying it to Lopez's unpaid rentals totaling ₱16,800 as of 26 February 1993.

In view of the foregoing, the Court finds no need to discuss the other issue raised by GSIS.

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[29] Records, p. 57 (Exhibit "13").

[30] Article 1278 of the Civil Code provides:

Compensation shall take place when two persons, in their own right, are creditors and debtors of each other.

Article 1279 of the Civil Code provides:

In order that compensation may be proper, it is necessary:

(1) That each one of the obligors be bound principally, and that he be at the same time a principal creditor of the other;

(2) That both debts consist in a sum of money, or if the things due are consumable, they be of the same kind, and also of the same quality if the latter has been stated;

(3) That the two debts be due;

(4) That they be liquidated and demandable;

(5) That over neither of them there be any retention or controversy, commenced by third persons and communicated in due time to the debtor.

Article 1281 of the same Code provides:

Compensation may be total or partial. When the two debts are of the same amount, there is total compensation.

WHEREFORE, the Court *GRANTS* the petition. The Court *SETS ASIDE* the 10 February 2004 Decision and 4 October 2004 Resolution of the Court of Appeals in CA-G.R. CV No. 56322 and *REINSTATES* the 26 September 1996 Decision of the Regional Trial Court, Branch 163, Pasig in Civil Case No. 62890.

SO ORDERED.

Puno, C.J. (Chairperson), Corona, Chico-Nazario,[*] and *Leonardo-de Castro, JJ.*, concur.

FIRST DIVISION

[G.R. No. 168406. July 13, 2009]

CLUB FILIPINO, INC. and ATTY. ROBERTO F. DE LEON, *petitioners, vs.* **BENJAMIN BAUTISTA, RONIE SUALOG, JOEL CALIDA, JOHNNY ARINTO and ROBERTO DE GUZMAN,**[1] *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR ORGANIZATIONS; STRIKE; ATTACHING THE COUNTER PROPOSAL OF THE COMPANY TO THE NOTICE OF STRIKE IS DEEMED IMPOSSIBLE; PRESENT IN CASE AT BAR.— The Implementing Rules use the words "*as far as practicable*." In this case, attaching the counter-proposal of the company to the notice of strike of the union was not

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[*] Designated additional member per Raffle dated 6 July 2009.

[1] Benjamin Bautista and Carlito Precentacion were improperly impleaded in this petition because the Court of Appeals dismissed the petition for *certiorari* as far as they were concerned. *See* note 17.

practicable. It was absurd to expect the union to produce the company's counter-proposal which it did not have. One cannot give what one does not have. Indeed, compliance with the requirement was impossible because no counter-proposal existed at the time the union filed a notice of strike. The law does not exact compliance with the impossible. *Nemo tenetur ad impossibile*.

2. ID.; ID.; ID.; ILLEGALITY OF STRIKE SHOULD NOT BE AUTOMATICALLY FOLLOWED BY THE DISMISSAL FROM EMPLOYMENT OF THE STRIKERS; RATIONALE.— Another error committed by the labor arbiter was his declaration that respondents, as union officers, automatically severed their employment with the company due to the alleged illegal strike. In the first place, there was no illegal strike. Moreover, it is hornbook doctrine that a mere finding of the illegality of the strike should not be automatically followed by the wholesale dismissal of the strikers from employment. The law is clear: Any union officer who **knowingly** participates in an illegal strike and any worker or union officer who knowingly participates in the commission of illegal acts during a strike may be declared to have lost his employment status. Note that the verb "participates" is preceded by the adverb "knowingly." This reflects the intent of the legislature to require "knowledge" as a condition *sine qua non* before a union officer can be dismissed from employment for participating in an illegal strike. The provision is worded in such a way as to make it very difficult for employers to circumvent the law by arbitrarily dismissing employees in the guise of exercising management prerogative. This is but one aspect of the State's constitutional and statutory mandate to protect the rights of employees to self-organization. Nowhere in the ruling of the labor arbiter can we find any discussion of how respondents, as union officers, knowingly participated in the alleged illegal strike. Thus, even assuming *arguendo* that the strike was illegal, their automatic dismissal had no basis.

APPEARANCES OF COUNSEL

Westwood Law for petitioners.
Apolinario N. Lomabao, Jr. for respondents.

R E S O L U T I O N

CORONA, *J.*:

Petitioner Club Filipino, Inc. (the company) is a non-stock, non profit corporation duly formed, organized and existing under Philippine laws, with petitioner Atty. Roberto F. de Leon as its president. Respondents Ronnie Sualog, Joel Calida, Johnny Arinto and Roberto de Guzman, on the other hand, were former officers and members of the Club Filipino Employees Association (the union).

The union and the company had a collective bargaining agreement (CBA) which expired on May 31, 2000. Prior to the expiration of the CBA and within the freedom period,[2] the union made several demands for negotiation but the company replied that it could not muster a quorum, thus no CBA negotiations could be held.

Sometime in 2000, the union submitted its formal CBA proposal to the company's negotiating panel and repeatedly asked for the start of negotiations. No negotiations, however, took place for various reasons proffered by the company, among them the illness of the chairman of the management panel.

In order to compel the company to negotiate, respondents, as officers of the union, filed a request for preventive mediation with the National Conciliation and Mediation Board (NCMB). Their strategy, however, failed to bring the management to the negotiating table. The union and management only met on April 5, 2001, but the meeting concluded with a declaration by both parties of a deadlock in their negotiations.

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[2] Labor Code, Article 253. *Duty to bargain collectively when there exists a collective bargaining agreement.* — When there is a collective bargaining agreement, the duty to bargain collectively shall also mean that neither party shall terminate nor modify such agreement during its lifetime. **However, either party can serve a written notice to terminate or modify the agreement at least sixty (60) days prior to its expiration date. It shall be the duty of both parties to keep the *status quo* and to continue in full force and effect the terms and conditions of the existing agreement during the 60-day period and/or until a new agreement is reached by the parties**. (emphasis supplied)

On April 6, 2001, the union filed a notice of strike with the NCMB on the grounds of bargaining deadlock and failure to bargain. On April 22, 2001, the company formally responded to the demands of the union when it submitted the first part of its economic counter-proposal; the second part was submitted on May 11, 2001.

Meanwhile, on May 4, 2001, the union conducted a strike vote under the supervision of the Department of Labor and Employment.

In response to the company's counter-proposal, the union sent the company its improved proposal, but the company refused to improve on its offer. This prompted the union to stage a strike on May 26, 2001 on the ground of a CBA bargaining deadlock.

On May 31, 2001, the company filed before the National Labor Relations Commission (NLRC) a petition to declare the strike illegal. The company further prayed that all union officers who participated in the illegal strike be considered separated from the service.[3]

In a decision dated November 28, 2001, the labor arbiter[4] declared the strike "procedurally [infirm] and therefore illegal."[5] The labor arbiter noted that the union failed to attach its written CBA proposal and the company's counter-proposal to the notice of strike and to provide proof of a request for a conference to settle the dispute. Thus, the notice to strike was deemed not to have been filed and the strike illegal. As a consequence, all the officers of the union were deemed terminated from service. However, these employees were entitled to separation pay equivalent to that granted to employees affected by the retrenchment program which the company had earlier launched.[6]

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[3] *Rollo*, pp. 59-64.

[4] Labor Arbiter Manuel P. Asuncion. CA *rollo*, pp. 40-48.

[5] *Id.*, p. 47.

[6] *Id.*, pp. 45-48.

Respondents appealed but on September 30, 2002, the NLRC in a decision[7] affirmed the labor arbiter. The NLRC did not see fit to pass upon the issues raised by respondents because, by the time they appealed on December 20, 2001, they had either resigned from the company or were no longer part of the union because of the election of new set of officers.[8]

Respondents' motion for reconsideration was consequently denied.[9] Aggrieved, they elevated the matter to the Court of Appeals (CA) via a petition for *certiorari*.[10]

On May 31, 2005, the CA issued its assailed decision,[11] holding that the labor arbiter and the NLRC "took a selective view of the attendant facts of the case" and in "negating thereby the effects of the notice of strike the union filed."[12] What was more, the NLRC's reasoning was flawed because "a worker ordered dismissed under a tribunal's decision has every right to question his or her dismissal."[13] The labor arbiter's ruling was likewise wrong because it was based on a "flimsy technicality" that conveniently booted out the union officers from the company.[14]

Thus, the CA set aside the rulings of the NLRC and the labor arbiter as far as respondents Sualog, Calida, De Guzman and Arinto were concerned and ordered petitioners to pay them full backwages and benefits from the time of their dismissal up

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[7] Penned by Commissioner Lourdes C. Javier and concurred in by Commissioner Ireneo B. Bernardo. Commissioner Tito F. Genilo took no part. *Id.*, pp. 76-79.

[8] *Rollo*, pp. 78-79.

[9] *Id.*, pp. 80-81.

[10] Under Rule 65 of the Rules of Court. CA *rollo*, pp. 2-16.

[11] Penned by Justice Arturo D. Brion (now a member of the Supreme Court) and concurred in by Associate Justices Eugenio S. Labitoria (retired) and Eliezer R. De Los Santos (deceased). *Rollo*, pp. 38-58.

[12] *Id.*, p. 48.

[13] *Id.*, p. 47.

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

to the finality of its decision, plus separation pay computed at one month salary per year of service from the time they were hired up to the finality of its decision.[15] On the other hand, the CA dismissed the petition as far as Laureano Fegalquin,[16] Bautista and Precentacion were concerned.[17]

Petitioners then sought redress from this Court by filing a petition for review on *certiorari*[18] hoisting the issue of whether or not the strike staged by respondents on May 26, 2001 was legal.

We rule in the affirmative.

It is undisputed that the notice of strike was filed by the union without attaching the counter-proposal of the company. This, according to petitioners and the labor arbiter, made the ensuing strike of respondents illegal because the notice of strike of the union was defective.

The contention is untenable.

Rule XXII, Section 4 of the Omnibus Rules Implementing the Labor Code states:

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[15] *Id.*, p. 56.

[16] Not impleaded in the instant case.

[17] The petition was dismissed insofar as Fegalquin and Bautista were concerned because according to the CA, "In the present case where the recipients are responsible union officers who have regularly acted in behalf of their members in the discharge of their union duties and where there is no direct evidence of coercion or vitiation of consent, we believe we can safely conclude that the petitioners Bautista and Fegalquin fully knew what they entered into when they accepted their retirement benefits and when they executed their quitclaims." *Rollo*, p. 55. On the other, the petition was dismissed insofar as Precentacion was concerned because he "does not appear to be covered by the assailed Labor Arbiter and NLRC decisions because he was not a union officer and was not dismissed under the assailed decisions, and who had sought redress through a separately-filed case." *Id.*

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

In cases of bargaining deadlocks, the notice shall, **as far as practicable**, further state the unresolved issues in the bargaining negotiations and be accompanied by the written proposals of the union, the counter-proposals of the employer and the proof of a request for conference to settle differences. In cases of unfair labor practices, the notice shall, as far as practicable, state the acts complained of, and efforts taken to resolve the dispute amicably.

Any notice which does not conform with the requirements of this and the foregoing section shall be deemed as not having been filed and the party concerned shall be so informed by the regional branch of the Board. (emphasis supplied)

In the instant case, the union cannot be faulted for its omission. The union could not have attached the counter-proposal of the company in the notice of strike it submitted to the NCMB as there was no such counter-proposal. To recall, the union filed a notice of strike on April 6, 2001 after several requests to start negotiations proved futile. It was only on April 22, 2001, or after two weeks, when the company formally responded to the union by submitting the first part of its counter-proposal. Worse, it took the company another three weeks to complete it by submitting on May 11, 2001 the second part of its counter-proposal. This was almost a year after the expiration of the CBA sought to be renewed.

The Implementing Rules use the words "*as far as practicable*." In this case, attaching the counter-proposal of the company to the notice of strike of the union was not practicable. It was absurd to expect the union to produce the company's counter-proposal which it did not have. One cannot give what one does not have. Indeed, compliance with the requirement was impossible because no counter-proposal existed at the time the union filed a notice of strike. The law does not exact compliance with the impossible. *Nemo tenetur ad impossibile*.

Another error committed by the labor arbiter was his declaration that respondents, as union officers, automatically severed their employment with the company due to the alleged illegal strike. In the first place, there was no illegal strike. Moreover, it is hornbook doctrine that a mere finding of the illegality of the

strike should not be automatically followed by the wholesale dismissal of the strikers from employment.[19]

The law is clear:

> Any union officer who **knowingly** participates in an illegal strike and any worker or union officer who knowingly participates in the commission of illegal acts during a strike may be declared to have lost his employment status.[20] (emphasis supplied)

Note that the verb "participates" is preceded by the adverb "knowingly." This reflects the intent of the legislature to require "knowledge" as a condition *sine qua non* before a union officer can be dismissed from employment for participating in an illegal strike.[21] The provision is worded in such a way as to make it very difficult for employers to circumvent the law by arbitrarily

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[19] *Progressive Worker's Union v. Aguas*, G.R. Nos. 59711-12, 29 May 1987, 150 SCRA 429, 440; *Bacus v. Ople*, G.R. No. 56856, 23 October 1984, 132 SCRA 690, 703; *Almira v. B.F. Goodrich Philippines, Inc.*, G.R. No. L-34974, 25 July 1974, 58 SCRA 120; *Shell Oil Workers' Union v. Shell Company of the Philippines, Ltd.*, G.R. No. L-28607, 31 May 1971, 39 SCRA 276; *Cebu Portland Cement Co. v. Workers Union*, G.R. Nos. L-25032 and L-25037-38, 14 October 1968, 25 SCRA 504; *Ferrer v. Court of Industrial Relations, et al.*, G.R. Nos. L-24267-8, 31 May 1966, 17 SCRA 352; *Progressive Worker's Union v. Aguas*, G.R. Nos. 59711-12, 29 May 1987, 150 SCRA 429, 440.

[20] Labor Code, Article 264(a).

[21] See *Stamford Marketing Corp. v. Julian*, G.R. No. 145496, 24 February 2004, 423 SCRA 633, 648 where the Court held: "Article 264 of the Labor Code, in providing for the consequences of an illegal strike, makes a distinction between union officers and members who participated thereon. Thus, **knowingly participating in an illegal strike is a valid ground for termination from employment of a union officer.** The law, however, treats differently mere union members. Mere participation in an illegal strike is not a sufficient ground for termination of the services of the union members. The Labor Code protects an ordinary, rank-and-file union member who participated in such a strike from losing his job, provided that he did not commit an illegal act during the strike. Thus, absent any clear, substantial and convincing proof of illegal acts committed during an illegal strike, an ordinary striking worker or employee may not be terminated from work." (emphasis supplied)

dismissing employees in the guise of exercising management prerogative. This is but one aspect of the State's constitutional[22] and statutory[23] mandate to protect the rights of employees to self-organization.

Nowhere in the ruling of the labor arbiter can we find any discussion of how respondents, as union officers, knowingly participated in the alleged illegal strike. Thus, even assuming *arguendo* that the strike was illegal, their automatic dismissal had no basis.

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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[22] CONSTITUTION, Section 18, Article II. The State affirms labor as a primary social economic force. It shall protect the rights of workers and promote their welfare.

Id., Section 8, Article III. The right of the people, including those employed in the public and private sectors, to form unions, associations, or societies, for purposes not contrary to law, shall not be abridged.

Id., Section 3, Article XIII. The State is mandated to "guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law."

[23] Labor Code, Article 243. *Coverage and employees' right to self-organization.* — All persons employed in commercial, industrial or educational institutions, whether operating for profit or not, shall have the right to self-organization and to form, join, or assist labor organizations of their own choosing for purposes of collective bargaining. Ambulant, intermittent and itinerant workers, self-employed people, rural workers and those without any definite employers may form labor organizations for their mutual aid and protection.

THIRD DIVISION

[G.R. No. 171275. July 13, 2009]

VICTOR METEORO, REY CAGA, JIMMY CORONEL, COSME TAMOR, FELIXES LATONERO, ENRIQUE SALAZAR, MAYLA LAQUI, ORLY BANUA, BERNARDO MADRID, ARIEL REYES, ALFREDO REYES, JAVIER TIMERESA, ARMANDO MACA, JR., ROLANDO FALQUERA, JOSE BENITEZ, RODOLFO TIMERESA, ROLANDO LUCENA, NOEL SUBTINIENTE, GUILLERMA QUIMADO, BENIGNO REGALADO, RANDY DELA CRUZ, JUVY MACA, AMBROSIO CANARIA, JR., FELICIANO PAJARO, PETER BADIANA, DANILO JORDAN, DENNIS EDIESCA, JOGIL AVILA, ABRAHAM BURCE, ONOFRE VINAS, DENNIS VITARA, ARIEL GALUPO and ALBERT AUSTERO, *petitioners, vs.* **CREATIVE CREATURES, INC.,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; DEPARTMENT OF LABOR AND EMPLOYMENT; VISITORIAL AND ENFORCEMENT POWERS OF THE SECRETARY THROUGH THE REGIONAL DIRECTORS; CONSTRUED.— The DOLE Secretary and her authorized representatives, such as the DOLE-NCR Regional Director, have jurisdiction to enforce compliance with labor standards laws under the broad visitorial and enforcement powers conferred by Article 128 of the Labor Code, and expanded by Republic Act (R.A.) No. 7730, x x x As it is now worded, and as consistently held in a number of cases, the visitorial and enforcement powers of the Secretary, exercised through his representatives, encompass compliance with all labor standards laws and other labor legislation, regardless of the amount of the claims filed by workers. It is well to note that the Regional Director's visitorial and enforcement powers have undergone a series of amendments. Confusion was engendered with the promulgation of the decision in *Servando's Inc. v. Secretary of Labor*

and Employment. In that case, this Court held that to harmonize Articles 217 (a) (6), 129, and 128 of the Labor Code, the Secretary of Labor should be deemed as clothed with plenary visitorial powers to order the inspection of all establishments where labor is employed, and to look into all possible violations of labor laws and regulations; but the power to hear and decide employees' claims exceeding ₱5,000.00 for each employee should be left to the Labor Arbiter as the exclusive repository of the power to hear and decide such claims. Jurisprudence, however, rendered the *Servando* ruling inapplicable. In *Guico, Jr. v. Quisumbing, Allied Investigation Bureau, Inc. v. Sec. of Labor*, and *Cirineo Bowling Plaza, Inc. v. Sensing*, we had occasion to explain that while it is true that under Articles 129 and 217 of the Labor Code, the Labor Arbiter has jurisdiction to hear and decide cases where the aggregate money claim of each employee exceeds ₱5,000.00, these provisions of law do not contemplate or cover the visitorial and enforcement powers of the Secretary of Labor or his duly authorized representatives. Thus, we upheld the jurisdiction of the Regional Director, notwithstanding the fact that the amount awarded exceeded ₱5,000.00 per employee. In order to do away with the jurisdictional limitations imposed by the *Servando* ruling and to finally settle any lingering doubts on the extent of the visitorial and enforcement powers of the Secretary of Labor and Employment, R.A. 7730 was enacted, amending Article 128 (b) to its present formulation, so as to free it from the jurisdictional restrictions found in Articles 129 and 217.

2. ID.; ID.; ID.; EXCEPTION CLAUSE; ELEMENTS; EXPLAINED.— This notwithstanding, the power of the Regional Director to hear and decide the monetary claims of employees is not absolute. The last sentence of Article 128 (b) of the Labor Code, otherwise known as the "exception clause," provides an instance when the Regional Director or his representatives may be divested of jurisdiction over a labor standards case. Under prevailing jurisprudence, the so-called "exception clause" has the following elements, all of which must concur: (a) that the employer contests the findings of the labor regulations officer and raises issues thereon; (b) that in order to resolve such issues, there is a need to examine evidentiary matters; and (c) that such matters are not verifiable in the normal course of inspection. x x x We would like to

emphasize that "to contest" means to raise questions as to the amounts complained of or the absence of violation of labor standards laws; or, as in the instant case, issues as to the complainants' right to labor standards benefits. To be sure, raising lack of jurisdiction alone is not the "contest" contemplated by the exception clause. It is necessary that the employer contest the findings of the labor regulations officer during the hearing or after receipt of the notice of inspection results. More importantly, the key requirement for the Regional Director and the DOLE Secretary to be divested of jurisdiction is that the evidentiary matters be not verifiable in the course of inspection. Where the evidence presented was verifiable in the normal course of inspection, even if presented belatedly by the employer, the Regional Director, and later the DOLE Secretary, may still examine it; and these officers are not divested of jurisdiction to decide the case. In sum, respondent contested the findings of the labor inspector during and after the inspection and raised issues the resolution of which necessitated the examination of evidentiary matters not verifiable in the normal course of inspection. Hence, the Regional Director was divested of jurisdiction and should have endorsed the case to the appropriate Arbitration Branch of the NLRC. Considering, however, that an illegal dismissal case had been filed by petitioners wherein the existence or absence of an employer-employee relationship was also raised, the CA correctly ruled that such endorsement was no longer necessary.

3. ID.; LABOR RELATIONS; EMPLOYER-EMPLOYEE RELATIONSHIP; ELEMENTS TO DETERMINE EXISTENCE THEREOF.— To resolve the issue raised by respondent, that is, the existence of an employer-employee relationship, there is need to examine evidentiary matters. The following elements constitute the reliable yardstick to determine such relationship: (a) the selection and engagement of the employee; (b) the payment of wages; (c) the power of dismissal; and (d) the employer's power to control the employee's conduct. There is no hard and fast rule designed to establish the aforesaid elements. Any competent and relevant evidence to prove the relationship may be admitted. Identification cards, cash vouchers, social security registration, appointment letters or employment contracts, payrolls, organization charts, and personnel lists, serve as evidence of employee status. These pieces of evidence are readily available, as they are in the possession of either

> the employee or the employer; and they may easily be looked into by the labor inspector (in the course of inspection) when confronted with the question of the existence or absence of an employer-employee relationship. Some businessmen, however, try to avoid an employer-employee relationship from arising in their enterprises, because that juridical relation spawns obligations connected with workmen's compensation, social security, medicare, termination pay, and unionism. Thus, in addition to the above-mentioned documents, other pieces of evidence are considered in ascertaining the true nature of the parties' relationship. This is especially true in determining the element of "control." The most important index of an employer-employee relationship is the so-called "control test," that is, whether the employer controls or has reserved the right to control the employee, not only as to the result of the work to be done, but also as to the means and methods by which the same is to be accomplished.

APPEARANCES OF COUNSEL

Julian R. Torcuator, Jr. for petitioners.
Laguesma Magsalin Consulta & Gastardo for respondent.

D E C I S I O N

NACHURA, *J.*:

Assailed in this petition for review on *certiorari* are the Court of Appeals Decision[1] dated May 31, 2005 and Resolution[2] dated January 27, 2006 in CA-G.R. SP No. 76942.

The facts of the case are as follows:

Respondent is a domestic corporation engaged in the business of producing, providing, or procuring the production of set designs and set construction services for television exhibitions, concerts, theatrical performances, motion pictures and the like. It primarily

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[1] Penned by Associate Justice Perlita J. Tria Tirona, with Associate Justices Delilah Vidallon-Magtolis and Jose C. Reyes, Jr., concurring; *rollo*, pp. 322-333.

[2] *Id.* at 353.

caters to the production design requirements of ABS-CBN Broadcasting Corporation in Metro Manila and nationwide.[3] On the other hand, petitioners were hired by respondent on various dates as artists, carpenters and welders. They were tasked to design, create, assemble, set-up and dismantle props, and provide sound effects to respondent's various TV programs and movies.[4]

Sometime in February and March 1999, petitioners filed their respective complaints for non-payment of night shift differential pay, overtime pay, holiday pay, 13th month pay, premium pay for Sundays and/or rest days, service incentive leave pay, paternity leave pay, educational assistance, rice benefits, and illegal and/or unauthorized deductions from salaries against respondent, before the Department of Labor and Employment (DOLE), National Capital Region (NCR). Their complaints were consolidated and docketed as NCR00-9902-IS-011.[5]

After the inspection conducted at respondent's premises, the labor inspector noted that "the records were not made available at the time of the inspection;" that respondent claimed that petitioners were contractual employees and/or independent talent workers; and that petitioners were required to punch their cards.[6]

In its position paper, respondent argued that the DOLE-NCR had no jurisdiction over the complaint of the petitioners because of the absence of an employer-employee relationship. It added that petitioners were free-lance individuals, performing special services with skills and expertise inherently exclusive to them like actors, actresses, directors, producers, and script writers, such that they were treated as special types of workers.[7]

Petitioners, on the other hand, averred that they were employees of respondent, as the elements of an employer-employee relationship existed.

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[3] *Id.* at 323.

[4] *Id.* at 324.

[5] *Id.*

[6] *Id.* at 56.

[7] *Id.* at 169.

Meanwhile, on April 12, 1999, petitioners filed a complaint for illegal dismissal against respondent, with prayer for payment of overtime pay, premium pay for holiday and rest day, holiday pay, service incentive leave pay, 13th month pay and attorney's fees before the National Labor Relations Commission (NLRC). The case was docketed as NLRC-NCR Case No. 00-04-04459-9.[8]

On October 11, 1999, DOLE Regional Director Maximo Baguyot Lim issued an Order[9] directing respondent to pay petitioners the total amount of ₱2,694,709.00. The dispositive portion of the Order reads as follows:

> WHEREFORE, premises considered, this Office finds merit in the complaint. Accordingly, Respondent Creative Creatures, Inc. and/or Mr. Edmond Ty, is hereby ordered to pay thirty three (33) Complainants, within ten (10) days from receipt hereof, the total amount of TWO MILLION SIX HUNDRED NINETY FOUR THOUSAND SEVEN HUNDRED NINE PESOS (₱2,694,709.00) representing unpaid 13th month pay, vacation and sick leave benefits, regular holiday pay, rest day and holiday premiums, overtime pay, educational allowance, and rice allowance presented as follows:
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> x x x x x x x x x
>
> Failure to pay Complainants within the given period will constrain this Office to issue a WRIT OF EXECUTION for the immediate enforcement of this order.
>
> SO ORDERED.[10]

The Regional Director sustained petitioners' claim on the existence of an employer-employee relationship using the determinants set forth by the Labor Code, specifically, the elements of control and supervision, power of dismissal, payment of wages, and the selection and engagement of employees. He added that since the petitioners had worked for more than one year doing the same routine work, they were regular employees with respect

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[8] *Id.* at 324-325.

[9] *Id.* at 169-176.

[10] *Id.* at 174-176.

to the activity in which they were employed. Lastly, he upheld the DOLE-NCR's jurisdiction to hear and determine cases in violation of labor standards law.[11]

On appeal, then DOLE Secretary Patricia A. Sto. Tomas affirmed the findings of the DOLE Regional Director.[12] In upholding the jurisdiction of the DOLE-NCR, she explained that the Secretary of Labor or his duly authorized representative is allowed to use his visitorial and enforcement powers to give effect to labor legislation, regardless of the amount involved, pursuant to Article 128 of the Labor Code, as amended by Republic Act (R.A.) No. 7730.

For failure to obtain a favorable decision, respondent elevated the matter to the Court of Appeals in CA-G.R. SP No. 76942. On May 31, 2005, the appellate court rendered the assailed decision, the dispositive portion of which reads:

> WHEREFORE, premises considered, the instant petition is **GRANTED.** For lack of jurisdiction, the Orders dated October 18, 2002 and February 5, 2003, issued by respondent Secretary are hereby declared NULL and VOID. However, in view of the filing of a similar case before the NLRC, referral of the instant case to the NLRC for appropriate determination is no longer necessary.
>
> SO ORDERED.[13]

While recognizing the visitorial and enforcement powers of the Regional Director and his jurisdiction to entertain money claims, the appellate court noted that Article 128 of the Labor Code provides an instance when he (Regional Director) may be divested of jurisdiction. The CA pointed out that respondent had consistently disputed the existence of employer-employee relationship, thereby placing the case beyond the jurisdiction of the Regional Director.

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[11] *Id.* at 171-173.

[12] Embodied in an Order dated October 18, 2002; *id.* at 55-58.

[13] *Id.* at 332-333.

Petitioners now come before this Court in this petition for review on *certiorari* raising the lone issue of:

> Whether or not the Court of Appeals committed an error when it ruled that the instant case falls within the exception clause of Article 128 (b) of the Labor Code, as amended, and in annulling and setting aside the Orders of the Secretary of Labor which affirmed the Order of the Regional Director of DOLE-NCR awarding the claims of the petitioners for benefits under the Labor Standards laws, namely, 13th month benefit, overtime pay, night shift differentials, premium on rest days, vacation and sick leave and other benefits accorded to employees of the responden[t] in the exercise of its visitorial powers pursuant to Article 128 (b) of the Labor Code as amended.[14]

In fine, we are tasked to determine which body/tribunal has jurisdiction over petitioners' money claims — the DOLE Secretary or his duly authorized representative, or the NLRC.

We sustain the appellate court's conclusion that the instant case falls within the exclusive jurisdiction of the NLRC.

The DOLE Secretary and her authorized representatives, such as the DOLE-NCR Regional Director, have jurisdiction to enforce compliance with labor standards laws under the broad visitorial and enforcement powers conferred by Article 128 of the Labor Code, and expanded by Republic Act (R.A.) No. 7730,[15] to wit:[16]

> Art. 128. *Visitorial and Enforcement Power* –
>
> (a) The Secretary of Labor or his duly authorized representatives, including labor regulation officers, shall have access to employer's records and premises at anytime of the day or night whenever work is being undertaken therein, and the right to copy therefrom, to

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[14] *Id.* at 484-485.

[15] Entitled "AN ACT FURTHER STRENGTHENING THE VISITORIAL AND ENFORCEMENT POWERS OF THE SECRETARY OF LABOR AND EMPLOYMENT, AMENDING FOR THE PURPOSE ARTICLE 128 (b) OF PRESIDENTIAL DECREE NUMBERED FOUR HUNDRED FORTY-TWO AS AMENDED, OTHERWISE KNOWN AS THE LABOR CODE OF THE PHILIPPINES"

[16] *Bayhaven, Inc., et al. v. Abuan, et al.*, G.R. No. 160859, July 30, 2008.

question any employee and investigate any fact, condition or matter which may be necessary to determine violations or which may aid in the enforcement of this Code and of any labor law, wage order or rules and regulations issued pursuant thereto.

(b) Notwithstanding the provisions of Article 129 and 217 of this Code to the contrary, and in cases where the relationship of employer-employee relation still exists, the Secretary of Labor and Employment or his duly authorized representatives shall have the power to issue compliance orders to give effect to the labor standards provisions of this Code and other labor legislation based on the findings of labor employment and enforcement officers or industrial safety engineers made in the course of inspection. The Secretary or his duly authorized representatives shall issue writs of execution, to the appropriate authority for the enforcement of their orders, except in cases where the employer contests the findings of the labor employment and enforcement officer and raises issues supported by documentary proofs which were not considered in the course of inspection.

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As it is now worded, and as consistently held in a number of cases,[17] the visitorial and enforcement powers of the Secretary, exercised through his representatives, encompass compliance with all labor standards laws and other labor legislation, regardless of the amount of the claims filed by workers.

It is well to note that the Regional Director's visitorial and enforcement powers have undergone a series of amendments. Confusion was engendered with the promulgation of the decision in *Servando's Inc. v. Secretary of Labor and Employment.*[18] In that case, this Court held that to harmonize Articles 217 (a)

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[17] *Cirineo Bowling Plaza, Inc. v. Sensing*, G.R. No. 146572, January 14, 2005, 448 SCRA 175; *V.L. Enterprises v. Court of Appeals*, G.R. No. 167512, March 12, 2007, 518 SCRA 174; *Ex-Bataan Veterans Security Agency, Inc. v. Laguesma*, G.R. No. 152396, November 20, 2007, 537 SCRA 651; *Allied Investigation Bureau, Inc. v. Sec. of Labor*, 377 Phil. 80 (1999); *Guico, Jr. v. Quisumbing*, G.R. No. 131750, November 16, 1998, 298 SCRA 666 cited in *Bayhaven, Inc., et al. v. Abuan, et al., Id.*

[18] G.R. No. 85840, June 5, 1991, 198 SCRA 156.

(6),[19] 129,[20] and 128 of the Labor Code, the Secretary of Labor should be deemed as clothed with plenary visitorial powers to order the inspection of all establishments where labor is employed, and to look into all possible violations of labor laws and regulations; but the power to hear and decide employees' claims exceeding ₱5,000.00 for each employee should be left to the Labor Arbiter as the exclusive repository of the power to hear and decide such claims.

Jurisprudence, however, rendered the *Servando* ruling inapplicable. In *Guico, Jr. v. Quisumbing*,[21] *Allied Investigation Bureau, Inc. v. Sec. of Labor*,[22] and *Cirineo Bowling Plaza, Inc. v. Sensing*,[23] we had occasion to explain that while it is

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[19] Art. 217. *Jurisdiction of Labor Arbiters and the Commission.* — (a) Except as otherwise provided under this Code, the Labor Arbiters shall have original and exclusive jurisdiction to hear and decide, within thirty (30) calendar days after the submission of the case by the parties for decision without extension, even in the absence of stenographic notes, the following cases involving all workers, whether agricultural or non-agricultural:

x x x x x x x x x

6. Except claims for Employees Compensation, Social Security, Medicare and maternity benefits, all other claims, arising from employer-employee relations, including those of persons in domestic or household service, involving an amount exceeding five thousand pesos (₱5,000.00) regardless of whether accompanied with a claim for reinstatement. .

[20] Art. 129. *Recovery of wages, simple money claims and other benefits.* — Upon complaint of any interested party, the regional director of the Department of Labor and Employment or any of the duly authorized hearing officers of the Department is empowered, through summary proceeding and after due notice, to hear and decide any matter involving the recovery of wages and other monetary claims and benefits, including legal interest, owing to an employee or person employed in domestic or household service or househelper under this Code, arising from employer-employee relations: Provided, That such complaint does not include a claim for reinstatement; Provided further, that the aggregate money claims of each employee or househelper does not exceed five thousand pesos (₱5,000.00). x x x

[21] *Supra*.

[22] *Supra*.

[23] *Supra*.

true that under Articles 129 and 217 of the Labor Code, the Labor Arbiter has jurisdiction to hear and decide cases where the aggregate money claim of each employee exceeds ₱5,000.00, these provisions of law do not contemplate or cover the visitorial and enforcement powers of the Secretary of Labor or his duly authorized representatives. Thus, we upheld the jurisdiction of the Regional Director, notwithstanding the fact that the amount awarded exceeded ₱5,000.00 per employee.

In order to do away with the jurisdictional limitations imposed by the *Servando* ruling and to finally settle any lingering doubts on the extent of the visitorial and enforcement powers of the Secretary of Labor and Employment, R.A. 7730 was enacted, amending Article 128 (b) to its present formulation, so as to free it from the jurisdictional restrictions found in Articles 129 and 217.

This notwithstanding, the power of the Regional Director to hear and decide the monetary claims of employees is not absolute. The last sentence of Article 128 (b) of the Labor Code, otherwise known as the "exception clause," provides an instance when the Regional Director or his representatives may be divested of jurisdiction over a labor standards case.

Under prevailing jurisprudence, the so-called "exception clause" has the following elements, all of which must concur:

(a) that the employer contests the findings of the labor regulations officer and raises issues thereon;

(b) that in order to resolve such issues, there is a need to examine evidentiary matters; and

(c) that such matters are not verifiable in the normal course of inspection.[24]

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[24] *Bayhaven, Inc., et al. v. Abuan, et al., supra* note 16; *Ex-Bataan Veterans Security Agency, Inc. v. Laguesma, supra* note 17, at 663; *Batong Buhay Gold Mines, Inc. v. Sec. Dela Serna*, 370 Phil. 872, 887 (1999); *SSK Parts Corporation v. Camas*, G.R. No. 85934, January 30, 1990, 181 SCRA 675, 678 (1990).

In the present case, the CA aptly applied the "exception clause." At the earliest opportunity, respondent registered its objection to the findings of the labor inspector. The labor inspector, in fact, noted in its report that "respondent alleged that petitioners were contractual workers and/or independent and talent workers without control or supervision and also supplied with tools and apparatus pertaining to their job."[25] In its position paper, respondent again insisted that petitioners were not its employees. It then questioned the Regional Director's jurisdiction to entertain the matter before it, primarily because of the absence of an employer-employee relationship. Finally, it raised the same arguments before the Secretary of Labor and the appellate court. It is, therefore, clear that respondent contested and continues to contest the findings and conclusions of the labor inspector.

To resolve the issue raised by respondent, that is, the existence of an employer-employee relationship, there is need to examine evidentiary matters. The following elements constitute the reliable yardstick to determine such relationship: (a) the selection and engagement of the employee; (b) the payment of wages; (c) the power of dismissal; and (d) the employer's power to control the employee's conduct.[26] There is no hard and fast rule designed to establish the aforesaid elements. Any competent and relevant evidence to prove the relationship may be admitted. Identification cards, cash vouchers, social security registration, appointment letters or employment contracts, payrolls, organization charts, and personnel lists, serve as evidence of employee status.[27] These pieces of evidence are readily available, as they are in the possession of either the employee or the employer; and they may easily be looked into by the labor inspector (in the course of inspection) when confronted with the question of the existence or absence of an employer-employee relationship.

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[25] *Rollo*, pp. 330-331.

[26] *Tongko v. The Manufacturers Life Insurance Co. (Phils.) Inc., et al*, G.R. No. 167622, November 7, 2008 citing *Pacific Consultants International Asia, Inc. v. Schonfeld*, G.R. No. 166920, February 19, 2007, 516 SCRA 209.

[27] I Azucena, *The Labor Code, with Comments and Cases*, 125-126 (1999).

Some businessmen, however, try to avoid an employer-employee relationship from arising in their enterprises, because that juridical relation spawns obligations connected with workmen's compensation, social security, medicare, termination pay, and unionism.[28] Thus, in addition to the above-mentioned documents, other pieces of evidence are considered in ascertaining the true nature of the parties' relationship. This is especially true in determining the element of "control." The most important index of an employer-employee relationship is the so-called "control test," that is, whether the employer controls or has reserved the right to control the employee, not only as to the result of the work to be done, but also as to the means and methods by which the same is to be accomplished.[29]

In the case at bar, whether or not petitioners were independent contractors/project employees/free lance workers is a question of fact that necessitates the examination of evidentiary matters not verifiable in the normal course of inspection. Indeed, the contracts of independent services, as well as the check vouchers, were kept and maintained in or about the premises of the workplace and were, therefore, verifiable in the course of inspection. However, respondent likewise claimed that petitioners were not precluded from working outside the service contracts they had entered into with it (respondent); and that there were instances when petitioners abandoned their service contracts with the respondent, because they had to work on another project with a different company. Undoubtedly, the resolution of these issues requires the examination of evidentiary matters not verifiable in the normal course of inspection. Verily, the Regional Director and the Secretary of Labor are divested of jurisdiction to decide the case.

We would like to emphasize that "to contest" means to raise questions as to the amounts complained of or the absence of violation of labor standards laws; or, as in the instant case, issues as to the complainants' right to labor standards benefits.

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[28] *Id.* at 123.

[29] *Tongko v. The Manufacturers Life Insurance Co. (Phils.) Inc., et al, supra*.

To be sure, raising lack of jurisdiction alone is not the "contest" contemplated by the exception clause.[30] It is necessary that the employer contest the findings of the labor regulations officer during the hearing or after receipt of the notice of inspection results.[31] More importantly, the key requirement for the Regional Director and the DOLE Secretary to be divested of jurisdiction is that the evidentiary matters be not verifiable in the course of inspection. Where the evidence presented was verifiable in the normal course of inspection, even if presented belatedly by the employer, the Regional Director, and later the DOLE Secretary, may still examine it; and these officers are not divested of jurisdiction to decide the case.[32]

In sum, respondent contested the findings of the labor inspector during and after the inspection and raised issues the resolution of which necessitated the examination of evidentiary matters not verifiable in the normal course of inspection. Hence, the Regional Director was divested of jurisdiction and should have endorsed the case to the appropriate Arbitration Branch of the NLRC.[33] Considering, however, that an illegal dismissal case had been filed by petitioners wherein the existence or absence of an employer-employee relationship was also raised, the CA correctly ruled that such endorsement was no longer necessary.

WHEREFORE, premises considered, the petition is *DENIED* for lack of merit. The Court of Appeals Decision dated May 31, 2005 and its Resolution dated January 27, 2006 in CA-G.R. SP No. 76942, are *AFFIRMED*.

SO ORDERED.

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

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[30] *Batong Buhay Gold Mines, Inc. v. Sec. Dela Serna*, *supra* note 24 at 888.

[31] *Ex-Bataan Veterans Security Agency, Inc. v. Laguesma, supra* note 24.

[32] *Bayhaven, Inc., et al. v. Abuan, et al., supra* note 24.

[33] Section 1, Rule III of the Rules on the Disposition of Labor Standards Cases in the Regional Offices.

SECOND DIVISION

[G.R. No. 172342. July 13, 2009]

LWV CONSTRUCTION CORPORATION, *petitioner, vs.* **MARCELO B. DUPO,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; A CONTRACT OF EMPLOYMENT FOR A DEFINITE PERIOD TERMINATED BY ITS OWN TERMS AT THE END OF SUCH PERIOD; APPLICATION IN CASE AT BAR.— Respondent's employment contracts expressly stated that his employment ended upon his departure from work. Each year he departed from work and successively new contracts were executed before he reported for work anew. His service was not cumulative. Pertinently, in *Brent School, Inc. v. Zamora*, we said that "a fixed term is an essential and natural appurtenance" of overseas employment contracts, as in this case. We also said in that case that under American law, "[w]here a contract specifies the period of its duration, it terminates on the expiration of such period. A contract of employment for a definite period terminates by its own terms at the end of such period." As it is, Article 72 of the Saudi Labor Law is also of similar import. It reads: A labor contract concluded for a specified period shall terminate upon the expiry of its term. If both parties continue to enforce the contract, thereafter, it shall be considered renewed for an unspecified period.

2. ID.; ID.; MONEY CLAIMS; THE THREE-YEAR PRESCRIPTIVE PERIOD UNDER THE LABOR CODE APPLIES ALSO TO CLAIMS OF OVERSEAS CONTRACT WORKERS; SUSTAINED.— On the matter of prescription, however, we cannot agree with petitioner that respondent's action has prescribed under Article 13 of the Saudi Labor Law. What applies is Article 291 of our Labor Code which reads: **ART. 291.** ***Money claims.*** — All money claims arising from employer-employee relations accruing during the effectivity of this Code shall be filed within three (3) years from the time the cause of action accrued; otherwise they shall be forever barred. x x x In *Cadalin v. POEA's Administrator*, we held

that Article 291 covers all money claims from employer-employee relationship and is broader in scope than claims arising from a specific law. It is not limited to money claims recoverable under the Labor Code, but applies also to claims of overseas contract workers. The following ruling in *Cadalin v. POEA's Administrator* is instructive: First to be determined is whether it is the Bahrain law on prescription of action based on the Amiri Decree No. 23 of 1976 or a Philippine law on prescription that shall be the governing law. Article 156 of the Amiri Decree No. 23 of 1976 provides: "A claim arising out of a contract of employment shall not be actionable after the lapse of one year from the date of the expiry of the contract" x x x. As a general rule, a foreign procedural law will not be applied in the forum. Procedural matters, such as service of process, joinder of actions, period and requisites for appeal, and so forth, are governed by the laws of the forum. This is true even if the action is based upon a foreign substantive law (Restatement of the Conflict of Laws, Sec. 685; Salonga, Private International Law, 131 [1979]). A law on prescription of actions is *sui generis* in Conflict of Laws in the sense that it may be viewed either as procedural or substantive, depending on the characterization given such a law. x x x However, the characterization of a statute into a procedural or substantive law becomes irrelevant when the country of the forum has a "borrowing statute." Said statute has the practical effect of treating the foreign statute of limitation as one of substance (Goodrich, Conflict of Laws, 152-153 [1938]). A "borrowing statute" directs the state of the forum to apply the foreign statute of limitations to the pending claims based on a foreign law (Siegel, Conflicts, 183 [1975]). While there are several kinds of "borrowing statutes," one form provides that an action barred by the laws of the place where it accrued, will not be enforced in the forum even though the local statute has not run against it (Goodrich and Scoles, Conflict of Laws, 152-153 [1938]). Section 48 of our Code of Civil Procedure is of this kind. Said Section provides: "If by the laws of the state or country where the cause of action arose, the action is barred, it is also barred in the Philippine Islands." Section 48 has not been repealed or amended by the Civil Code of the Philippines. Article 2270 of said Code repealed only those provisions of the Code of Civil Procedure as to which were inconsistent with it. There is no provision in the Civil Code of the Philippines,

> which is inconsistent with or contradictory to Section 48 of the Code of Civil Procedure (Paras, Philippine Conflict of Laws, 104 [7th ed.]). In the light of the 1987 Constitution, however, Section 48 [of the Code of Civil Procedure] cannot be enforced *ex proprio vigore* insofar as it ordains the application in this jurisdiction of [Article] 156 of the Amiri Decree No. 23 of 1976. The courts of the forum will not enforce any foreign claim obnoxious to the forum's public policy x x x. To enforce the one-year prescriptive period of the Amiri Decree No. 23 of 1976 as regards the claims in question would contravene the public policy on the protection to labor. x x x Thus, in our considered view, respondent's complaint was filed well within the three-year prescriptive period under Article 291 of our Labor Code.

APPEARANCES OF COUNSEL

Corpuz and Associates for petitioner.
Basa Balagtey and Associates Law Offices for respondent.

D E C I S I O N

QUISUMBING, *J.*:

Petitioner LWV Construction Corporation appeals the Decision[1] dated December 6, 2005 of the Court of Appeals in CA-G.R. SP No. 76843 and its Resolution[2] dated April 12, 2006, denying the motion for reconsideration. The Court of Appeals had ruled that under Article 87 of the Saudi Labor and Workmen Law (Saudi Labor Law), respondent Marcelo Dupo is entitled to a *service award or longevity pay* amounting to US$12,640.33.

The antecedent facts are as follows:

Petitioner, a domestic corporation which recruits Filipino workers, hired respondent as Civil Structural Superintendent to work in Saudi Arabia for its principal, Mohammad Al-Mojil

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[1] *Rollo*, pp. 17-29. Penned by Associate Justice Lucenito N. Tagle, with Associate Justices Rodrigo V. Cosico and Regalado E. Maambong, concurring.

[2] *Id.* at 30-31.

Group/Establishment (MMG). On February 26, 1992, respondent signed his first overseas employment contract, renewable after one year. It was renewed five times on the following dates: May 10, 1993, November 16, 1994, January 22, 1996, April 14, 1997, and March 26, 1998. All were fixed-period contracts for one year. The sixth and last contract stated that respondent's employment starts upon reporting to work and ends when he leaves the work site. Respondent left Saudi Arabia on April 30, 1999 and arrived in the Philippines on May 1, 1999.

On May 28, 1999, respondent informed MMG, through the petitioner, that he needs to extend his vacation because his son was hospitalized. He also sought a promotion with salary adjustment.[3] In reply, MMG informed respondent that his promotion is subject to management's review; that his services are still needed; that he was issued a plane ticket for his return flight to Saudi Arabia on May 31, 1999; and that his decision regarding his employment must be made within seven days, otherwise, MMG "will be compelled to cancel [his] slot."[4]

On July 6, 1999, respondent resigned. In his letter to MMG, he also stated:

x x x x x x x x x

I am aware that I still have to do a final settlement with the company and hope that during my more than seven (7) [years] services, as the Saudi Law stated, I am entitled for a *long service award*.[5] (Emphasis supplied.)

x x x x x x x x x

According to respondent, when he followed up his claim for *long service award* on December 7, 2000, petitioner informed him that MMG did not respond.[6]

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[3] CA *rollo*, p. 26.

[4] *Id.* at 27.

[5] *Id.* at 28.

[6] *Id.* at 19.

On December 11, 2000, respondent filed a complaint[7] for payment of *service award* against petitioner before the National Labor Relations Commission (NLRC), Regional Arbitration Branch, Cordillera Administrative Region, Baguio City. In support of his claim, respondent averred in his position paper that:

x x x x x x x x x

Under the Law of Saudi Arabia, an employee who rendered at least five (5) years in a company within the jurisdiction of Saudi Arabia, is entitled to the so-called *long service award which is known to others as longevity pay* of at least one half month pay for every year of service. In excess of five years an employee is entitled to one month pay for every year of service. In both cases inclusive of all benefits and allowances.

This benefit was offered to complainant before he went on vacation, hence, this was engrained in his mind. He reconstructed the computation of his long service award or longevity pay and he arrived at the following computation exactly the same with the amount he was previously offered [which is US$12,640.33].[8] (Emphasis supplied.)

x x x x x x x x x

Respondent said that he did not grab the offer for he intended to return after his vacation.

For its part, petitioner offered payment and prescription as defenses. Petitioner maintained that MMG "pays its workers their *Service Award or Severance Pay* every conclusion of their Labor Contracts pursuant to Article 87 of the [Saudi Labor Law]." Under Article 87, "payment of the award is at the end or termination of the Labor Contract concluded for a specific period." Based on the payroll,[9] respondent was already paid his *service award or severance pay* for his latest (sixth) employment contract.

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[7] *Id.* at 8.

[8] *Id.* at 20-21.

[9] *Id.* at 93.

Petitioner added that under Article 13[10] of the Saudi Labor Law, the action to enforce payment of the *service award* must be filed within one year from the termination of a labor contract for a specific period. Respondent's six contracts ended when he left Saudi Arabia on the following dates: April 15, 1993, June 8, 1994, December 18, 1995, March 21, 1997, March 16, 1998 and April 30, 1999. Petitioner concluded that the one-year prescriptive period had lapsed because respondent filed his complaint on December 11, 2000 or one year and seven months after his sixth contract ended.[11]

In his June 18, 2001 Decision,[12] the Labor Arbiter ordered petitioner to pay respondent *longevity pay* of US$12,640.33 or ₱648,562.69 and attorney's fees of ₱64,856.27 or a total of ₱713,418.96.[13]

The Labor Arbiter ruled that respondent's seven-year employment with MMG had sufficiently oriented him on the benefits given to workers; that petitioner was unable to convincingly refute respondent's claim that MMG offered him longevity pay before he went on vacation on May 1, 1999; and that respondent's claim was not barred by prescription since his claim on July 6, 1999, made a month after his cause of action accrued, interrupted the prescriptive period under the Saudi Labor Law until his claim was categorically denied.

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[10] *Id.* at 153.

Article 13

No complaint shall be heard by any Commission in respect of violations of the provisions of this Law or of the rules, decisions or orders issued in accordance therewith, after the lapse of twelve months from the date of the occurrence of such violation. No case or claim relating to any of the rights provided for in this Law shall be heard after the lapse of twelve months from the date of termination of the contract. Also, no action or claim relating to any of the rights provided for in any previous regulations shall be heard after the lapse of one full year from the effective date of this Law.

[11] *Id.* at 11-13.

[12] *Id.* at 34-38.

[13] *Id.* at 38.

Petitioner appealed. However, the NLRC dismissed the appeal and affirmed the Labor Arbiter's decision.[14] The NLRC ruled that respondent is entitled to *longevity pay which is different from severance pay*.

Aggrieved, petitioner brought the case to the Court of Appeals through a petition for *certiorari* under Rule 65 of the Rules of Court. The Court of Appeals denied the petition and affirmed the NLRC. The Court of Appeals ruled that *service award is the same as longevity pay*, and that the *severance pay* received by respondent *cannot be equated with service award*. The dispositive portion of the Court of Appeals decision reads:

> WHEREFORE, finding no grave abuse of discretion amounting to lack or in (sic) excess of jurisdiction on the part of public respondent NLRC, the petition is denied. The NLRC decision dated November 29, 2002 as well as and (sic) its January 31, 2003 *Resolution* are hereby **AFFIRMED *in toto***.
>
> SO ORDERED.[15]

After its motion for reconsideration was denied, petitioner filed the instant petition raising the following issues:

I.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN FINDING NO GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION ON THE PART OF PUBLIC RESPONDENT NATIONAL LABOR RELATIONS COMMISSION.

II.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN FINDING THAT THE SERVICE AWARD OF THE RESPONDENT [HAS] NOT PRESCRIBED WHEN HIS COMPLAINT WAS FILED ON DECEMBER 11, 2000.

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[14] *Id.* at 99.

[15] *Rollo*, p. 28.

III.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN APPLYING IN THE CASE AT BAR [ARTICLE 1155 OF THE CIVIL CODE].

IV.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN APPLYING ARTICLE NO. 7 OF THE SAUDI LABOR AND WORKMEN LAW TO SUPPORT ITS FINDING THAT THE BASIS OF THE SERVICE AWARD IS LONGEVITY [PAY] OR LENGTH OF SERVICE RENDERED BY AN EMPLOYEE.[16]

Essentially, the issue is whether the Court of Appeals erred in ruling that respondent is entitled to a *service award or longevity pay* of US$12,640.33 under the provisions of the Saudi Labor Law. Related to this issue are petitioner's defenses of payment and prescription.

Petitioner points out that the Labor Arbiter awarded *longevity pay* although the Saudi Labor Law grants no such benefit, and the NLRC confused *longevity pay and service award*. Petitioner maintains that the benefit granted by Article 87 of the Saudi Labor Law is *service award* which was already paid by MMG each time respondent's contract ended.

Petitioner insists that prescription barred respondent's claim for *service award* as the complaint was filed one year and seven months after the sixth contract ended. Petitioner alleges that the Court of Appeals erred in ruling that respondent's July 6, 1999 claim interrupted the running of the prescriptive period. Such ruling is contrary to Article 13 of the Saudi Labor Law which provides that no case or claim relating to any of the rights provided for under said law shall be heard after the lapse of 12 months from the date of the termination of the contract.

Respondent counters that he is entitled to *longevity pay* under the provisions of the Saudi Labor Law and quotes extensively the decision of the Court of Appeals. He points

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[16] *Id.* at 185.

out that petitioner has not refuted the Labor Arbiter's finding that MMG offered him *longevity pay* of US$12,640.33 before his one-month vacation in the Philippines in 1999. Thus, he "submits that such offer indeed exists" as he sees no reason for MMG to offer the benefit if no law grants it.

After a careful study of the case, we are constrained to reverse the Court of Appeals. We find that respondent's *service award* under Article 87 of the Saudi Labor Law has already been paid. Our computation will show that the *severance pay* received by respondent was his *service award*.

Article 87 clearly grants a **service award**. It reads:

Article 87

Where the term of a labor contract concluded for a specified period comes to an end or where the employer cancels a contract of unspecified period, **the employer shall pay to the workman an award for the period of his service** to be computed on the basis of half a month's pay for each of the first five years and one month's pay for each of the subsequent years. The last rate of pay shall be taken as basis for the computation of the award. For fractions of a year, the workman shall be entitled to an award which is proportionate to his service period during that year. Furthermore, the workman shall be entitled to the **service award** provided for at the beginning of this article in the following cases:

A. If he is called to military service.
B. If a workman resigns because of marriage or childbirth.
C. If the workman is leaving the work as a result of a *force majeure* beyond his control.[17] (Emphasis supplied.)

Respondent, however, has called the benefit other names such as *long service award* and *longevity pay*. On the other hand, petitioner claimed that the *service award* is the same as *severance pay*. Notably, the Labor Arbiter was unable to specify any law to support his award of *longevity pay*.[18] He anchored the award on his finding that respondent's allegations were

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[17] CA *rollo*, pp. 172-173.

[18] *Id.* at 36-37.

more credible because his seven-year employment at MMG had sufficiently oriented him on the benefits given to workers. To the NLRC, respondent is entitled to *service award or longevity pay* under Article 87 and that *longevity pay is different from severance pay*. The Court of Appeals agreed.

Considering that Article 87 expressly grants a service award, why is it correct to agree with respondent that service award is the same as longevity pay, and wrong to agree with petitioner that service award is the same as severance pay? And why would it be correct to say that service award is severance pay, and wrong to call service award as longevity pay?

We found the answer in the pleadings and evidence presented. Respondent's position paper mentioned how his long service award or longevity pay is computed: half-month's pay per year of service and one-month's pay per year after five years of service. Article 87 has the same formula to compute the service award.

The payroll submitted by petitioner showed that respondent received **severance pay** of SR2,786 for his sixth employment contract covering the period April 21, 1998 to April 29, 1999.[19] The computation below shows that respondent's **severance pay** of SR2,786 was his **service award** under Article 87.

Service Award = ½ (SR5,438)[20] **+ (9 days/365 days)**[21] **x ½ (SR5,438)**

Service Award = SR2,786.04

Respondent's service award for the sixth contract is equivalent only to half-month's pay plus the proportionate amount for the additional nine days of service he rendered after one year. Respondent's employment contracts expressly stated that his employment ended upon his departure from work. Each year he departed from work and successively new

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[19] *Id.* at 93.

[20] *Id.* Respondent's monthly salary is SR5,438.

[21] April 21, 1999 to April 29, 1999 is 9 days.

contracts were executed before he reported for work anew. His service was not cumulative. Pertinently, in *Brent School, Inc. v. Zamora*,[22] we said that "a fixed term is an essential and natural appurtenance" of overseas employment contracts,[23] as in this case. We also said in that case that under American law, "[w]here a contract specifies the period of its duration, it terminates on the expiration of such period. A contract of employment for a definite period terminates by its own terms at the end of such period."[24] As it is, Article 72 of the Saudi Labor Law is also of similar import. It reads:

> A labor contract concluded for a specified period shall terminate upon the expiry of its term. If both parties continue to enforce the contract, thereafter, it shall be considered renewed for an unspecified period.[25]

Regarding respondent's claim that he was offered US$12,640.33 as longevity pay before he returned to the Philippines on May 1, 1999, we find that he was not candid on this particular point. His categorical assertion about the offer being "engrained in his mind" such that he "reconstructed the computation … and arrived at the … computation exactly the same with the amount he was previously offered" is not only beyond belief. Such assertion is also a stark departure from his July 6, 1999 letter to MMG where he could only express his hope that he was entitled to a long service award and where he never mentioned the supposed previous offer. Moreover, respondent's claim that his monthly compensation is SR10,248.92[26] is belied by the payroll which shows that he receives SR5,438 per month.

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[22] G.R. No. L-48494, February 5, 1990, 181 SCRA 702.

[23] *Id.* at 714.

[24] *Id.* at 709.

[25] CA *rollo*, p. 166.

[26] *Id.* at 21.

We therefore emphasize that such payroll should have prompted the lower tribunals to examine closely respondent's computation of his supposed longevity pay before adopting that computation as their own.

On the matter of prescription, however, we cannot agree with petitioner that respondent's action has prescribed under Article 13 of the Saudi Labor Law. What applies is Article 291 of our Labor Code which reads:

ART. 291. ***Money claims.*** — All money claims arising from employer-employee relations accruing during the effectivity of this Code shall be filed within three (3) years from the time the cause of action accrued; otherwise they shall be forever barred.

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In *Cadalin v. POEA's Administrator*,[27] we held that Article 291 covers all money claims from employer-employee relationship and is broader in scope than claims arising from a specific law. It is not limited to money claims recoverable under the Labor Code, but applies also to claims of overseas contract workers.[28] The following ruling in *Cadalin v. POEA's Administrator* is instructive:

First to be determined is whether it is the Bahrain law on prescription of action based on the Amiri Decree No. 23 of 1976 or a Philippine law on prescription that shall be the governing law.

Article 156 of the Amiri Decree No. 23 of 1976 provides:

"A claim arising out of a contract of employment shall not be actionable after the lapse of one year from the date of the expiry of the contract" x x x.

As a general rule, a foreign procedural law will not be applied in the forum. Procedural matters, such as service of process,

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[27] G.R. Nos. 104776 and 104911-14, December 5, 1994, 238 SCRA 721.

[28] *Degamo v. Avantgarde Shipping Corp.*, G.R. No. 154460, November 22, 2005, 475 SCRA 671, 676-677, reiterating the ruling in *Cadalin v. POEA's Administrator*, *supra* at 721.

joinder of actions, period and requisites for appeal, and so forth, are governed by the laws of the forum. This is true even if the action is based upon a foreign substantive law (Restatement of the Conflict of Laws, Sec. 685; Salonga, Private International Law, 131 [1979]).

A law on prescription of actions is *sui generis* in Conflict of Laws in the sense that it may be viewed either as procedural or substantive, depending on the characterization given such a law.

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However, the characterization of a statute into a procedural or substantive law becomes irrelevant when the country of the forum has a "borrowing statute." Said statute has the practical effect of treating the foreign statute of limitation as one of substance (Goodrich, Conflict of Laws, 152-153 [1938]). A "borrowing statute" directs the state of the forum to apply the foreign statute of limitations to the pending claims based on a foreign law (Siegel, Conflicts, 183 [1975]). While there are several kinds of "borrowing statutes," one form provides that an action barred by the laws of the place where it accrued, will not be enforced in the forum even though the local statute has not run against it (Goodrich and Scoles, Conflict of Laws, 152-153 [1938]). Section 48 of our Code of Civil Procedure is of this kind. Said Section provides:

"If by the laws of the state or country where the cause of action arose, the action is barred, it is also barred in the Philippine Islands."

Section 48 has not been repealed or amended by the Civil Code of the Philippines. Article 2270 of said Code repealed only those provisions of the Code of Civil Procedure as to which were inconsistent with it. There is no provision in the Civil Code of the Philippines, which is inconsistent with or contradictory to Section 48 of the Code of Civil Procedure (Paras, Philippine Conflict of Laws, 104 [7th ed.]).

In the light of the 1987 Constitution, however, Section 48 [of the Code of Civil Procedure] cannot be enforced *ex proprio vigore* insofar as it ordains the application in this jurisdiction of [Article] 156 of the Amiri Decree No. 23 of 1976.

The courts of the forum will not enforce any foreign claim obnoxious to the forum's public policy x x x. To enforce the one-year prescriptive period of the Amiri Decree No. 23 of 1976 as regards the claims in question would contravene the public policy on the protection to labor.[29]

x x x x x x x x x

Thus, in our considered view, respondent's complaint was filed well within the three-year prescriptive period under Article 291 of our Labor Code. This point, however, has already been mooted by our finding that respondent's service award had been paid, albeit the payroll termed such payment as severance pay.

WHEREFORE, the petition is *GRANTED*. The assailed Decision dated December 6, 2005 and Resolution dated April 12, 2006, of the Court of Appeals in CA-G.R. SP No. 76843, as well as the Decision dated June 18, 2001 of the Labor Arbiter in NLRC Case No. RAB-CAR-12-0649-00 and the Decision dated November 29, 2002 and Resolution dated January 31, 2003 of the NLRC in NLRC CA No. 028994-01 (NLRC RAB-CAR-12-0649-00) are *REVERSED* and *SET ASIDE*. The Complaint of respondent is hereby *DISMISSED*.

No pronouncement as to costs.

SO ORDERED.

Carpio Morales, Chico-Nazario,[*] *Leonardo-de Castro,*[**] and *Brion, JJ.,* concur.

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[29] *Cadalin v. POEA's Administrator, supra* at 760-762.

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

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

SECOND DIVISION

[G.R. No. 172796. July 13, 2009]

SPS. ARTEMIO and ESPERANZA ADUAN, *petitioners, vs.* **LEVI CHONG,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; PROBABLE CAUSE; DETERMINATION THEREOF IS LEFT AT THE DISCRETION OF THE PROSECUTORS SUBJECT TO REVIEW BY THE SECRETARY OF JUSTICE.— The Court held in *First Women's Credit Corporation v. Perez* that: It is settled that **the determination of whether probable cause exists to warrant the prosecution in court of an accused should be consigned and entrusted to the Department of Justice, as reviewer of the findings of public prosecutors.** The court's duty in an appropriate case is confined to a determination of whether the assailed executive or judicial determination of probable cause was done without or in excess of jurisdiction or with grave abuse of discretion amounting to want of jurisdiction. This is consistent with the general rule that criminal prosecutions may not be restrained or stayed by injunction, preliminary or final, albeit in extreme cases, exceptional circumstances have been recognized. **The rule is also consistent with this Court's policy of non-interference in the conduct of preliminary investigations, and of leaving to the investigating prosecutor sufficient latitude of discretion in the exercise of determination of what constitutes sufficient evidence as will establish probable cause for the filing of an information against a supposed offender. While prosecutors are given sufficient latitude of discretion in the determination of probable cause, their findings are subject to review by the Secretary of Justice.** And it held in *UCPB v. Looyuko*: Consistent with this policy, **courts do not reverse the Secretary of Justice's findings and conclusions on the matter of probable cause except in clear cases of grave abuse of discretion.** x x x In other words, **judicial review of the resolution of the Secretary of Justice** is **limited to a determination of whether there has been a grave abuse of discretion amounting to lack or excess of**

jurisdiction considering that full discretionary authority has been delegated to the executive branch in the determination of probable cause during a preliminary investigation. Courts are not empowered to substitute their judgment for that of the executive branch; it may, however, look into the question of whether such exercise has been made in grave abuse of discretion.

2. ID.; ID.; APPEALS; GRAVE ABUSE OF DISCRETION, DEFINED; NOT PRESENT IN CASE AT BAR.— It is hornbook principle that the term "grave abuse of discretion" means such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be grave as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law. *The DOJ, in reversing* the City Prosecutor's finding of probable cause and ordering the discharge of Esperanza, noted that although the evidence on record fully supported the finding of probable cause against Sagum based on his admission that he forged herein respondent's signature on the Deed of Real Estate Mortgage without the participation of Esperanza, there was no basis to hold that Esperanza conspired with him to effect the forgery. The DOJ, citing *Dans, Jr. v. People*, ruled that conspiracy, like the crime itself, must be proven by competent proof, independently and beyond reasonable doubt. A reading of the Resolution of the Office of the City Prosecutor does not at all indicate why conspiracy was present between Esperanza and her uncle. The City Prosecutor's Resolution merely states: In other words, **Sagum did it in conspiracy with Aduan, his niece, who stands to benefit from the forgery as she is the purported mortgagee** of the house that belongs to the Chongs. There was thus no grave abuse of discretion on the part of the DOJ in issuing its Resolutions.

3. CRIMINAL LAW; FORGERY; CONSPIRACY; NOT PRESENT IN CASE AT BAR.— Contrary to the City Prosecutor's finding, which was adopted by the appellate court in its assailed Decision, that Esperanza was the mortgagee of the subject property does not, without more, show conspiracy in the commission of the forgery admitted to have been done

by Sagum alone. If everyone who stands to be benefited from a forged document can be deemed a conspirator, then Nelia Chong as mortgagor may likewise be held liable since the mortgage deed which she signed, albeit under duress according to her, was used to guarantee the loan she admittedly contracted. In loan transactions secured by mortgages, both mortgagee and mortgagor stand to benefit from the execution of the documents. To assume that Esperanza is a conspirator in the commission of the forgery simply because she was to benefit as mortgagee from the execution of the Deed of Real Estate Mortgage is thus absurd. Absent then any evidence to indicate conspiracy, the City Prosecutor's finding of probable cause against Esperanza fails, as correctly held by the DOJ.

APPEARANCES OF COUNSEL

Homer Jay D. Ragonjan for petitioners.
Albon & Serrano Law Office for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

Via petition for review on *certiorari*, spouses Artemio and Esperanza Aduan (petitioners) assail the Decision[1] of the Court of Appeals dated March 27, 2006 and the Resolution[2] dated May 22, 2006 reversing the Department of Justice (DOJ) Resolutions dated November 5, 2004[3] and March 14, 2005[4] which modified the Manila City Prosecutor's Office Resolution[5]

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[1] Annex "A" of the Petition, *rollo*, pp. 21-26. Penned by Associate Justice Eliezer R. de los Santos and concurred in by Associate Justices Jose C. Reyes, Jr., and Arturo G. Tayag.

[2] Annex "D" of the Petition, *id.* at 37-38. Penned by Associate Justice Eliezer R. de los Santos and concurred in by Associate Justices Jose C. Reyes, Jr., and Arturo G. Tayag.

[3] CA *rollo*, pp. 95-98.

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

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

— finding probable cause to indict petitioner Esperanza and her uncle Ernesto Sagum for falsification of public document — by ordering the discharge of petitioner Esperanza from the Information filed in court.

It appears that on September 20, 2001, respondent Levi Chong's wife Nelia issued an Allied Bank check in the amount of ₱850,000 postdated November 20, 2001 to secure the payment of a loan. On even date, a Deed of Real Estate Mortgage[6] over a house and lot in Tondo, Manila was executed in favor of petitioners by Nelia, who was later to claim that she was coerced into signing the deed, together purportedly with her husband whose signature thereon was allegedly forged.

When the loan was on maturity not settled, despite demand, petitioners presented the check for payment but it was dishonored due to Account Closed.

Petitioners thereupon instituted criminal complaints against Nelia, as well as her husband, for violation of Batas Pambansa Blg. 22 (B.P. 22) and for Estafa before the City Prosecutors Office of Manila.[7] In a separate move, they filed an action for foreclosure of mortgage before the Regional Trial Court of Manila.

On the other hand, the Chongs filed a complaint for forgery against petitioner Esperanza and her uncle Ernesto Sagum, alleging that Esperanza induced said uncle to forge the signature of respondent Levi Chong in the Deed of Real Estate Mortgage.[8]

The City Prosecutor of Manila found probable cause to hold respondent Levi Chong's wife Nelia liable for violation of B.P. 22 and for estafa. It also found probable cause to hold Sagum and petitioner Esperanza liable for falsification of public document as in fact an Information therefor was filed against Sagum and Esperanza before the Metropolitan Trial Court (MeTC) of Manila.

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[6] *Id.* at 21-22.

[7] *Id.* at 72-73.

[8] *Id.* at 18.

Petitioner Esperanza sought the review by the DOJ of the City Prosecutor's Resolution indicting her for falsification of public document. The DOJ, by Resolution of November 5, 2004, modified the City Prosecutor's resolution by ordering the discharge of Esperanza from the Information filed before the MeTC, it holding that in light of her uncle-co-accused Sagum's admission against his own interest that he was the one who actually forged the signature of Levi Chong, without Esperanza's assistance or participation, and in the absence of clear and convincing evidence that Esperanza conspired with him, she should be discharged from the Information. And the DOJ denied the Motion for Reconsideration of its November 5, 2004 Resolution by Resolution of March 14, 2005.

Respondent assailed the DOJ Resolutions before the Court of Appeals. In the interim, acting on Esperanza's Omnibus Motion in light of the DOJ directive for her discharge,[9] the MeTC, Branch 4, Manila dropped her from the Information by Order[10] dated March 8, 2006.

By the assailed Decision of March 27, 2006, the appellate court set aside the DOJ Resolutions and ruled that the Information against both Sagum and Esperanza filed before the MeTC by the City Prosecutor of Manila stands, it holding that the DOJ Resolutions had "no basis except the self-serving denial of . . . Esperanza Aduan," and that "there is strong indication that Esperanza Aduan, who was to benefit from the performance of the act complained of, acted in concert with Sagum" (Underscoring supplied). The appellate court went on to state as follows:

> It is noticed that the Information had clearly and accurately mentioned the elements of the crime charged. The use of allegations of basic facts constituting the offense charged is sufficient (*Serapio vs. Sandiganbayan*, 396 SCRA 443). The purpose of preliminary investigation is merely to determine whether a crime has been committed and whether there is probable cause to believe that the

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[9] *Id.* at 186-187.

[10] *Id.* at 184-185. Penned by Judge Nicanor A. Manalo, Jr.

person accused of the crime is probably guilty thereof and should be held for trial (*Serapio vs. Sandiganbayan, id*.).

The test for the correctness of the ground that the facts alleged in the Information do not constitute an offense is the sufficiency of the averments in the Information, that is, whether the facts alleged, if hypothetically admitted, constitute the elements of the offense (*Mustang Lumber, Inc. vs. CA*, 257 SCRA 430). In the present case, the Resolution of the Asst. City Prosecutor of Manila and approved by the City Prosecutor, with the attached Information, had correctly determined the persons to be prosecuted. Thus, it was patently erroneous for the public respondent to discharge Esperanza Aduan from the Information.[11] (Underscoring supplied)

Esperanza and her co-petitioner husband's Motion for Reconsideration, in which they insisted that the petition before the appellate court had become moot and academic in view of the trial court's grant of petitioner Esperanza's Omnibus Motion,[12] was denied by the appellate court by Resolution dated May 22, 2006 which reiterated its previous ruling and noted that with its grant of the writ of *certiorari* prayed for by the spouses Chong, the DOJ Resolution has been declared null and void, hence, all actions emanating from such Resolution are also null and void.

Hence, this petition.

The petition is impressed with merit.

The Court held in *First Women's Credit Corporation v. Perez* that:[13]

It is settled that **the determination of whether probable cause exists to warrant the prosecution in court of an accused should be consigned and entrusted to the Department of Justice, as reviewer of the findings of public prosecutors.** The court's duty in an appropriate case is confined to a determination of whether the assailed executive or judicial determination of probable cause was done without or in excess of jurisdiction or with grave abuse of

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[11] *Id.* at 162.

[12] Annex "F", *rollo*, pp. 49-50. Penned by Judge Nicanor A. Manalo, Jr.

[13] G.R. No. 169026, June 15, 2006, 490 SCRA 774, 777.

discretion amounting to want of jurisdiction. This is consistent with the general rule that criminal prosecutions may not be restrained or stayed by injunction, preliminary or final, albeit in extreme cases, exceptional circumstances have been recognized. **The rule is also consistent with this Court's policy of non-interference in the conduct of preliminary investigations, and of leaving to the investigating prosecutor sufficient latitude of discretion in the exercise of determination of what constitutes sufficient evidence as will establish probable cause for the filing of an information against a supposed offender.**

While prosecutors are given sufficient latitude of discretion in the determination of probable cause, their findings are subject to review by the Secretary of Justice. (Emphasis supplied)

And it held in *UCPB v. Looyuko*:[14]

Consistent with this policy, courts do not reverse the Secretary of Justice's findings and conclusions on the matter of probable cause except in clear cases of grave abuse of discretion.

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In other words**, judicial review of the resolution of the Secretary of Justice is limited to a determination of whether there has been a grave abuse of discretion amounting to lack or excess of jurisdiction considering that full discretionary authority has been delegated to the executive branch in the determination of probable cause during a preliminary investigation.** Courts are not empowered to substitute their judgment for that of the executive branch; it may, however, look into the question of whether such exercise has been made in grave abuse of discretion. (Emphasis and underscoring supplied)

The issue on appeal before the Court of Appeals was whether the DOJ committed grave abuse of discretion in determining that there was insufficient evidence showing probable cause to hale petitioner Esperanza into court.

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[14] G.R. No. 156337, September 28, 2007, 534 SCRA 322, 331 citing *Metropolitan Bank & Trust Co. v. Tonda*, 392 Phil. 797, 814.

It is hornbook principle that the term "grave abuse of discretion" means such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction.[15] The abuse of discretion must be grave as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law.[16]

The DOJ, in reversing the City Prosecutor's finding of probable cause and ordering the discharge of Esperanza, noted that although the evidence on record fully supported the finding of probable cause against Sagum based on his admission that he forged herein respondent's signature on the Deed of Real Estate Mortgage without the participation of Esperanza, there was no basis to hold that Esperanza conspired with him to effect the forgery. The DOJ, citing *Dans, Jr. v. People*,[17] ruled that conspiracy, like the crime itself, must be proven by competent proof, independently and beyond reasonable doubt.

A reading of the Resolution of the Office of the City Prosecutor does not at all indicate why conspiracy was present between Esperanza and her uncle. The City Prosecutor's Resolution merely states:[18]

> In other words, **Sagum did it in conspiracy with Aduan, his niece, who stands to benefit from the forgery as she is the purported mortgagee** of the house that belongs to the Chongs. (Emphasis supplied)

There was thus no grave abuse of discretion on the part of the DOJ in issuing its Resolutions.

Contrary to the City Prosecutor's finding, which was adopted by the appellate court in its assailed Decision, that Esperanza

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[15] *People v. Terrado*, G.R. No. 148226, July 14, 2008.

[16] *Ibid*.

[17] G.R. No. 127073, January 29, 1998, 285 SCRA 504.

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

was the mortgagee of the subject property does not, without more, show conspiracy in the commission of the forgery admitted to have been done by Sagum alone. If everyone who stands to be benefited from a forged document can be deemed a conspirator, then Nelia Chong as mortgagor may likewise be held liable since the mortgage deed which she signed, albeit under duress according to her, was used to guarantee the loan she admittedly contracted.

In loan transactions secured by mortgages, both mortgagee and mortgagor stand to benefit from the execution of the documents. To assume that Esperanza is a conspirator in the commission of the forgery simply because she was to benefit as mortgagee from the execution of the Deed of Real Estate Mortgage is thus absurd. Absent then any evidence to indicate conspiracy, the City Prosecutor's finding of probable cause against Esperanza fails, as correctly held by the DOJ.

WHEREFORE, the Court of Appeals Decision of dated March 27, 2006 and Resolution dated May 22, 2006 are *REVERSED* and *SET ASIDE*. The Department of Justice Resolution dated November 5, 2004, as well as that of March 14, 2005, is *REINSTATED*.

SO ORDERED.

Quisumbing (Chairperson), Chico-Nazario,[*] *Leonardo-de Castro,*[**] and *Brion, JJ.*, concur.

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[*] Additional member per Special Order No. 658.

[**] Additional member per Special Order No. 635.

SECOND DIVISION

[G.R. No. 174803. July 13, 2009]

MARYWIN ALBANO-SALES, *petitioner, vs.* **MAYOR REYNOLAN T. SALES and COURT OF APPEALS,** *respondents.*

SYLLABUS

CIVIL LAW; MARRIAGE; DECLARATION OF NULLITY OF MARRIAGE; SETTLEMENT OF PROPERTY RELATIONS IS FACTUAL IN NATURE; REMAND TO THE LOWER COURT FOR PROPER RECEPTION OF EVIDENCE IS PROPER.— Incidentally, however, there were matters of genuine concern that had to be addressed prior to the dissolution of the property relations of the parties as a result of the declaration of nullity of their marriage. Allegations regarding the collection of rentals without proper accounting, sale of common properties without the husband's consent and misappropriation of the proceeds thereof, are factual issues which have to be addressed in order to determine with certainty the fair and reasonable division and distribution of properties due to each party. The extent of properties due to respondent is not yet discernible without further presentation of evidence on the incidental matters he had previously raised before the RTC. Since the RTC resolved these matters in its Orders dated November 28, 2003 and April 12, 2004, disregarding its previous order calling for the reception of evidence, said orders became final orders as it finally disposes of the issues concerning the partition of the parties' common properties. As such, it may be appealed by the aggrieved party to the Court of Appeals via ordinary appeal. **WHEREFORE,** the Decision dated July 26, 2006 of the Court of Appeals in CA-G.R. CV No. 82869 is hereby *AFFIRMED.* The instant case is remanded to the lower court for further reception of evidence in accordance with the RTC's Order dated September 3, 2003. No pronouncement as to costs.

APPEARANCES OF COUNSEL

E.B. Espejo Law Office for petitioner.
Vicente D. Millora for private respondent.

D E C I S I O N

QUISUMBING, *J.*:

The instant petition for review assails the Decision[1] dated July 26, 2006, of the Court of Appeals in CA-G.R. CV No. 82869. The Court of Appeals had set aside the Orders dated November 28, 2003[2] and April 12, 2004[3] of the Regional Trial Court (RTC) of Quezon City, Branch 102 in Civil Case Nos. Q-94-19236 and Q-97-32303, and remanded the case to the RTC for further hearing in accordance with the RTC Order[4] dated September 3, 2003.

The present controversy stemmed from Civil Case No. Q-94-19236 filed by Marywin Albano Sales against her husband, Mayor Reynolan T. Sales, for the dissolution of the conjugal partnership and separation of properties, and Civil Case No. Q-97-32303 filed by Mayor Reynolan T. Sales for the declaration of nullity of their marriage. The two cases were consolidated and tried jointly.

On January 4, 2000, the RTC rendered judgment[5] declaring the marriage of Marywin and Reynolan void on the ground of mutual psychological incapacity. It also ordered the dissolution of their conjugal partnership. The *fallo* of the decision reads:

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[1] *Rollo*, pp. 21-29. Penned by Associate Justice Mario L. Guariña III, with Associate Justices Roberto A. Barrios and Arcangelita Romilla-Lontok, concurring.

[2] CA *rollo*, pp. 120-122.

[3] *Id.* at 146-147.

[4] Records, Vol. II, p. 661.

[5] *Rollo*, pp. 147-174. Penned by Judge Perlita J. Tria Tirona.

WHEREFORE, judgment is hereby rendered as follows:

1) The marriage between plaintiff/defendant Reynolan Sales and defendant/plaintiff Marywin Albano Sales is hereby declared void *ab initio* on the ground of mutual psychological incapacity of the parties pursuant to Article 36 of the Family Code;

2) The parties Reynolan Sales and Marywin Albano Sales are hereby directed to liquidate, partition and distribute their common property as defined in Article 147 of the Family Code within sixty (60) days from receipt of this decision, and to comply with the provisions of Articles 50, 51 and 52 of the Family Code insofar as they may be applicable;

3) Reynolan Sales and Marywin Sales shall share in the expenses for the support and education of their only child Maindryann Sales in proportion with their respective resources.

x x x x x x x x x

SO ORDERED.[6]

On June 16, 2003, after the decision became final, Marywin filed a motion for execution and a manifestation listing her assets with Reynolan for the purpose of having them partitioned. Reynolan opposed the motion arguing that the RTC Decision had ordered the distribution of their common properties without specifying what they were. He also claimed that Marywin has no share in the properties she specified because said properties were the fruits solely of his industry. He added that their property relations should not be governed by the rules of co-ownership because they did not live together as husband and wife. He also alleged that Marywin appropriated the rentals of his properties and even disposed one of them without his consent, in violation of Article 147[7] of the Family Code. Accordingly, he prayed for the deferral of the resolution of the motion for execution,

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[6] *Id.* at 173-174.

[7] **Art. 147**. When a man and a woman who are capacitated to marry each other, live exclusively with each other as husband and wife without the benefit of marriage or under a void marriage, their wages and salaries shall be owned by them in equal shares and the property acquired by both of them through their work or industry shall be governed by the rules on co-ownership.

maintaining that no partition of properties can be had until after all the matters he raised are resolved after due notice and hearing.

In an Order dated September 3, 2003, the RTC set the case for hearing on September 25, 2003 and ordered the reception of evidence on the parties' respective claims. The hearing was reset twice to November 13, 2003 and January 22, 2004. The November 13, 2003 hearing was cancelled due to the absence of the presiding judge who was on a seminar at Tagaytay during that time. But the minutes of the session that day shows that the counsels for both parties signed for the next hearing on January 22, 2004.

On November 24, 2003, Marywin filed a reiterative motion for execution to implement the decision and to order partition of their common properties.[8] She brought to the attention of the court the 12 units of townhouses at Xavierville Subdivision, Quezon City, four units of which were sold, leaving eight units for disposition between her and Reynolan. She proposed to give out two units to their son Maindryann and equally divide the remaining six units between her and Reynolan. She also

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In the absence of proof to the contrary, properties acquired while they lived together shall be presumed to have been obtained by their joint efforts, work or industry, and shall be owned by them in equal shares. For purposes of this Article, a party who did not participate in the acquisition by the other party of any property shall be deemed to have contributed jointly in the acquisition thereof if the former's efforts consisted in the care and maintenance of the family and of the household.

Neither party can encumber or dispose by acts *inter vivos* of his or her share in the property acquired during cohabitation and owned in common, without the consent of the other, until after the termination of their cohabitation.

When only one of the parties to a void marriage is in good faith, the share of the party in bad faith in the co-ownership shall be forfeited in favor of their common children. In case of default of or waiver by any or all of the common children or their descendants, each vacant share shall belong to the respective surviving descendants. In the absence of descendants, such share shall belong to the innocent party. In all cases, the forfeiture shall take place upon termination of the cohabitation.

[8] *Rollo,* pp. 87-93.

alleged that she tried to obtain Reynolan's approval on the proposed partition of properties, but to no avail.

The reiterative motion was set for hearing on November 28, 2003 with the words at the foot of the last page "copy furnished Atty. Oscar G. Raro", Reynolan's counsel and a rubber stamped imprint showing receipt. Said stamp imprint reads, "Raro Palomique Pagunuran Acosta and Villanueva, RECEIVED, date: 24 Nov. 2003, Time: 11:45 am, By: Amy."[9]

On November 28, 2003, the reiterative motion was heard in the absence of Reynolan and his counsel. On the same date, the RTC issued an order approving the proposed project of partition since the proposal appears to be reasonable and there has been no opposition or appearance from Reynolan despite several resetting of hearings. Consequently, the branch clerk of court was ordered to execute the necessary deeds of conveyance to distribute the eight townhouse units in accordance with the motion.

On December 16, 2003, Reynolan moved to reconsider the RTC's Order dated November 28, 2003, prayed for its reversal and the reinstatement of the RTC's previous Order dated September 25, 2003, which ordered the reception of evidence before resolving the proper partition of their properties. In his motion, he alleged that the sudden grant of Marywin's reiterative motion preempted the issues he previously raised, *i.e.*, the alleged fraudulent sale and non-accounting of rentals of the townhouses, and whether their property relations is governed by the rules on co-ownership.

Marywin opposed Reynolan's motion and argued that the issues of alleged fraudulent sale and non-accounting of rentals were already waived by Reynolan when he failed to set them up as compulsory counterclaims in the case. She also contends that the court has ordered the liquidation and distribution of their common property; thus, the question on their property relations was already a resolved issue. Reynolan replied that the reiterative

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[9] *Id.* at 93.

motion was itself superfluous because the RTC had ordered the reception of evidence in its September 3, 2003 Order.

On April 12, 2004, the RTC denied Reynolan's motion for reconsideration. It ruled that reception of evidence is no longer necessary because the parties were legally married prior to its nullification and the fact that they begot a son whom they raised together proved that their connubial relations were more than merely transient.

Aggrieved, Reynolan appealed to the Court of Appeals claiming that the RTC hastily and improvidently granted the reiterative motion without regard to its previous order calling for the reception of evidence before ordering the partition of their properties. He averred that there is a genuine need for a hearing to adjudicate the matters he raised because it is decisive of the proper liquidation and partition of their properties. He also alleged that there was no proof of notice to him of the reiterative motion.

In a Decision dated July 26, 2006, the Court of Appeals ruled in favor of Reynolan. The appellate court set aside the RTC Orders dated November 28, 2003 and April 12, 2004 and remanded the case to the lower court for reception of evidence in accordance with the RTC's Order dated September 3, 2003. The Court of Appeals held that the RTC's recall of its previous order for further reception of evidence deprives and violates Reynolan's constitutional right to property. While the RTC is not prohibited from setting aside an interlocutory order, the Court of Appeals said that due process must still be observed.

The Court of Appeals further held that the reiterative motion was an ingenious strategy to circumvent the September 3, 2003 Order of the RTC. It stated that there was nothing in the reiterative motion that calls for the review of the previous RTC order calling for further reception of evidence. Thus, when the RTC treated the reiterative motion as a motion for reconsideration when it was not such a motion, it had unwittingly denied Reynolan of his right to be heard which emanated from the RTC's September 3, 2003 Order. Accordingly, the Court of Appeals disposed of the case as follows:

IN VIEW OF THE FOREGOING, the orders of November 28, 2003 and April 12, 2004 are SET ASIDE, and the case is remanded to the lower court for a hearing in accordance with its order of September 3, 2003.

SO ORDERED.[10]

Hence, the instant petition, assigning the following as errors:

I.

THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT ENTERTAINED THE APPEAL FROM AN ORDER WHICH IS IN THE NATURE OF A WRIT OF EXECUTION.

II.

THE [HONORABLE] COURT OF APPEALS ABUSED ITS DISCRETION IN RENDERING JUDGMENT BASED ON MISAPPREHENSION OF FACTS, SPECULATIONS, SURMISES, CONJECTURES THAT ARE MANIFESTLY MISTAKEN AND ABSURD.

III.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT PETITIONER MANIPULATED THE ISSUANCE OF THE ORDER DATED 28 NOVEMBER 2003.[11]

Stated simply, the issue is: did the Court of Appeals err when it entertained respondent's appeal from an order granting the issuance of a writ of execution?

Petitioner contends that the Court of Appeals exceeded its jurisdiction when it decided respondent's appeal because under Section 1,[12] Rule 41 of the Rules of Court, no appeal can be

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[10] *Id.* at 28-29.

[11] *Id.* at 11-12.

[12] SECTION 1. *Subject of appeal.* – An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.

taken from an order of execution. She further contends that respondent was not deprived of his right to due process when the RTC approved the project of partition of their common properties without prior hearing because the right to be heard does not only refer to the right to present verbal arguments in court, but also includes the right to be heard through one's pleadings. Respondent's right to due process was not violated as he was given sufficient opportunity to submit his written opposition but failed to do so.

Respondent counters that the RTC should not have granted the reiterative motion to implement the decision and order the partition of their common properties without prior hearing because its previous order calling for the reception of evidence had long become final and executory. He also posits that no partition can be had without proper accounting and determination of the extent of their common properties. He alleges that: (1) for 10 long years, petitioner had been collecting all the rentals from their townhouse units; (2) she had sold some units without his consent; and (3) she misappropriated the proceeds thereof.

After carefully considering the parties' contentions and submissions, we reject petitioner's claim that the Court of Appeals erred when it entertained respondent's appeal assailing the RTC Orders dated November 28, 2003 and April 12, 2004, which had reversed its previous Order dated September 3, 2003 and dispensed with the need for the reception of evidence before ordering the partition and liquidation of the parties' common properties.

To emphasize, what is being questioned by respondent was not really the January 4, 2000 Decision of the RTC declaring their marriage void *ab initio* on the ground of mutual psychological incapacity, but the Orders of the trial court dividing their common properties in accordance with the proposed project of partition

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No appeal may be taken from:

x x x

(f) An order of execution;

x x x

without the benefit of a hearing. The issue on the validity of their marriage has long been settled in the main decision and may no longer be the subject of review.

Incidentally, however, there were matters of genuine concern that had to be addressed prior to the dissolution of the property relations of the parties as a result of the declaration of nullity of their marriage. Allegations regarding the collection of rentals without proper accounting, sale of common properties without the husband's consent and misappropriation of the proceeds thereof, are factual issues which have to be addressed in order to determine with certainty the fair and reasonable division and distribution of properties due to each party.

The extent of properties due to respondent is not yet discernible without further presentation of evidence on the incidental matters he had previously raised before the RTC. Since the RTC resolved these matters in its Orders dated November 28, 2003 and April 12, 2004, disregarding its previous order calling for the reception of evidence, said orders became final orders as it finally disposes of the issues concerning the partition of the parties' common properties. As such, it may be appealed by the aggrieved party to the Court of Appeals via ordinary appeal.[13]

WHEREFORE, the Decision dated July 26, 2006 of the Court of Appeals in CA-G.R. CV No. 82869 is hereby *AFFIRMED*. The instant case is remanded to the lower court for further reception of evidence in accordance with the RTC's Order dated September 3, 2003. No pronouncement as to costs.

SO ORDERED.

Carpio Morales, Chico-Nazario,[*] *Leonardo-de Castro,*[**] and *Brion, JJ.,* concur.

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[13] See *Mercado-Fehr v. Fehr*, G.R. No. 152716, October 23, 2003, 414 SCRA 288, 295.

[*] 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. 177624. July 13, 2009]

MODESTA LUNA, *petitioner, vs.* **JULIANA P. LUNA, CORNELIO, MILAGROS, RENATO, FLORDELITA, AURORA, ANDRITO and GEORGE all surnamed GARCILLA,** *respondents.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; THE APPELLATE COURT MAY *MOTU PROPRIO* DISMISS AN ACTION FOR HAVING PRESCRIBED, EVEN IF THE CASE HAS BEEN ELEVATED FOR REVIEW ON DIFFERENT GROUNDS, WHERE PRESCRIPTION CLEARLY APPEARS FROM THE COMPLAINT WITH THE TRIAL COURT; CASE AT BAR.— Entrenched in our jurisprudence is the rule that the appellate court may *motu proprio* dismiss an action for having prescribed, even if the case has been elevated for review on different grounds, where prescription clearly appears from the complaint filed with the trial court. Here, the CA correctly dismissed the case on the ground of prescription. Let it be noted that the free patent and the original certificate of title were issued to respondent Juliana, who is in possession of the subject property found to be a public land, on May 3, 1976. Petitioner instituted the personal action for reconveyance only in May 1999 or after 23 years. We have held in prior cases that the order or decision granting an application for a free patent can be reviewed only within one year from its issuance on the ground of actual fraud via a petition for review in the Regional Trial Court, provided that no innocent purchaser for value has acquired the property or any interest thereon. However, an aggrieved party may still file an action for reconveyance based on implied or constructive trust, but the right of action prescribes in 10 years counted from the date of the issuance of the certificate of title over the property, provided that it has not been acquired by an innocent purchaser for value. This 10-year prescriptive period applies only when the person enforcing the trust is not in possession of the property. If the person claiming to be its owner is in

actual possession thereof, the right to seek reconveyance, which in effect is an action to quiet title thereto, does not prescribe. In the instant case, petitioner's action to recover the property and to annul the patent and title issued to the respondents was filed beyond the prescriptive period. Thus, it ought to be dismissed.

APPEARANCES OF COUNSEL

Mañacop Law Office for petitioner.
Oscar I. Mercado for respondents.

D E C I S I O N

NACHURA, *J.*:

Petitioner assails in this Rule 45 petition the January 29, 2007 Decision[1] and the April 20, 2007 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 90749. The appellate court, in the assailed decision, dismissed petitioner's complaint on the ground of prescription, and, in the challenged resolution, denied her motion for reconsideration for lack of merit.

The antecedent facts and proceedings follow.

Petitioner Modesta A. Luna filed with the Municipal Trial Court (MTC) of Pulilan, Bulacan, on March 9, 1999, a Complaint[3] docketed as Civil Case No. 767 for the recovery of ownership and possession of a parcel of land situated in the municipality. On May 11, 1999, petitioner amended her complaint to include, among others, additional defendants and to incorporate added allegations.

In the Amended Complaint,[4] petitioner related that she and respondent Juliana P. Luna were the daughters of the late Pedro

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[1] Penned by Associate Justice Rosmari D. Carandang, with Associate Justices Martin S. Villarama, Jr. and Magdangal M. de Leon, concurring; *rollo*, pp. 148-161.

[2] *Id.* at 220-222.

[3] *Id.* at 25-29.

[4] *Id.* at 43-47.

Luna, the alleged owner of a 1-ha. property, a portion of which is the subject of this case. On June 20, 1950, Pedro donated 2,268 sq m of the said land to petitioner. When Pedro died in 1957, petitioner declared the land for taxation purposes in her name and paid the real estate taxes thereon. She nevertheless allowed respondent to cultivate the land, harvest fruits, and use the proceeds of the harvest to pay for the debts left by their father. Subsequently, petitioner discovered that respondent applied for, and was issued in 1976, a free patent over 3,431 sq m of the land, which included 1,100 sq m of the portion donated to her. The land was later subdivided in 1994 and titles transferred in the names of their other siblings.[5] Transfer Certificate of Title (TCT) No. T-53813 included 211 sq m of the donated land, and TCT No. T-53814 covered 889 sq m thereof. Petitioner thus prayed that the first TCT be declared as null and void insofar as the 211 sq m portion was concerned, and the second TCT be voided in its entirety. She further pleaded that all persons occupying the said donated land be ordered to vacate the premises and pay damages.

On October 6, 2003, the MTC rendered its Decision[6] granting the complaint. It ruled, among others, that the subject property was a private land donated by the parties' father to the petitioner; therefore, respondent's free patent was null and void, for it covered property of private ownership. The MTC consequently disposed of the case as follows:

WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendants, as follows:

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[5] As alleged in the amended complaint, Original Certificate of Title (OCT) No. RP-2318 (P-6715) / Free Patent No. (III-6) 006542 was issued to respondent on May 3, 1976. The land covered by the patent was subdivided into four lots—Nos. 2929-A, 2929-B, 2929-C and 2929-D. OCT No. RP-2318 (P-6715) was then cancelled and TCT Nos. T-53811, T-53812, T-53813 and T-53814 were issued in the names of Pedro P. Luna, Jr., Pastora P. Luna, respondents Cornelio, Milagros, Renato, Flordelita, Aurora, Andrito and George, all surnamed Garcilla; and Juliana P. Luna.

[6] *Rollo*, pp. 75-87.

1. Declaring TCT No. 53814 (sic) null and void in so far as 211 sq.m. thereof while TCT 53814 is hereby declared null and void in its entirety.

2. Ordering the defendant and all persons claiming under them to vacate the 1,100 sq.m. of land donated by Pedro Luna to plaintiff Modesta Luna and to pay ₱10,000.00 a year for the reasonable compensation from their continued stay thereat to plaintiff in proportion to the area they respectively withhold from the plaintiff.

3. Defendants jointly and severally is (sic) ordered to pay plaintiff the amount of ₱50,000.00 as attorney's fees.

4. To pay the cost of suit.

SO ORDERED.[7]

On appeal, the Regional Trial Court (RTC) of Malolos City, in its June 7, 2005 Decision[8] in Civil Case No. 362-M-2004, affirmed the ruling of the MTC. The RTC ruled that while the complaint was captioned as an action for recovery of ownership and possession, the same was actually an action for annulment of title, and the MTC had no jurisdiction over the case. However, the RTC, instead of dismissing the case, assumed jurisdiction over it, pursuant to Rule 40, Sections 7 and 8 of the Rules of Court, and, as aforesaid, ruled in favor of the petitioner.

Relentless despite the adverse rulings of both trial courts, respondents elevated the case to the CA. In the assailed January 29, 2007 Decision,[9] the appellate court set aside the ruling of the RTC and dismissed the complaint upon a finding that the action had prescribed. The CA said that petitioner failed to question, on the ground of actual fraud, the decision or order granting the application for free patent within one year from the issuance thereof. Petitioner likewise failed to institute an action for reconveyance, based on implied or constructive trust, within 10 years from the issuance of the certificates of title. Thus, petitioner's complaint was time-barred.

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[7] *Id.* at 86-87.

[8] *Id.* at 108-113.

[9] *Supra* note 1.

Importantly, the CA found that the subject property was not private land. The records revealed that the parties claimed to be beneficiaries/donees of their deceased parents, and that petitioner had no title to the property independent of her deceased fathers' alleged right. It was also shown that petitioner even applied for a free patent on the adjoining lot. The CA thus ruled that the property was, at inception, public land, and no proof was introduced that it had already been withdrawn from the public domain prior to the award of the free patent to respondent.

On the issue of jurisdiction, the CA ruled that the MTC had jurisdiction, the suit being one for recovery of ownership and possession and the assessed value of the property being within the jurisdictional competence of the MTC. The prayer for the consequent annulment of the issued titles was merely incidental to the main action for recovery of ownership and possession.

The appellate court disposed of the case as follows:

> WHEREFORE, premises considered, the assailed Decision of the Regional Trial Court dated June 07, 2005 is hereby SET ASIDE and a new one is entered DISMISSING Modesta's "*Complaint for Recovery of Ownership and Possession*" on the ground of prescription.
>
> SO ORDERED.[10]

In the further challenged April 20, 2007 Resolution,[11] as earlier stated, the CA denied petitioner's motion for reconsideration.

Displeased, petitioner filed the instant petition for review on *certiorari* on the following grounds:

> I.
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> The Court of Appeals erred in considering the issue of prescription, despite the fact that it was not assigned as an error in the Petition for Review of respondents.

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[10] *Rollo*, p. 160.

[11] *Supra* note 2.

II.

The Court of Appeals erroneously held that it has the discretion to dismiss an action on ground of prescription, even without the said defense being raised in the pleadings.

III.

The Court of Appeals erred in holding that petitioner's action prescribed after ten (10) years.

IV.

The Court of Appeals erred in holding that the free patent issued in favor of respondent Luna is a valid title.

V.

The Court of Appeals erred in holding that prescription cannot be waived.

Petitioner argues in the main that the appellate court should not have dismissed the complaint on the ground of prescription, considering that the issue was never raised in any of respondents' pleadings. She maintains that the CA, being an appellate court, has the jurisdiction merely to review the correctness of the trial court's ruling; it does not have the power to dismiss an action on the ground of prescription even when the parties' pleadings and the other facts on record show that the action is time-barred. Petitioner moreover asserts that the prescriptive period in this case is 30 years and not 10 as erroneously ruled by the CA.

We deny the petition. We find no reversible error in the assailed issuances of the CA.

Entrenched in our jurisprudence is the rule that the appellate court may *motu proprio* dismiss an action for having prescribed, even if the case has been elevated for review on different grounds, where prescription clearly appears from the complaint filed with the trial court.[12]

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[12] *Katon v. Palanca, Jr.*, G.R. No. 151149, September 7, 2004, 437 SCRA 565, 567; *Gicano v. Gegato*, No. 63575, January 20, 1988, 157 SCRA 140, 145-146.

Here, the CA correctly dismissed the case on the ground of prescription. Let it be noted that the free patent and the original certificate of title were issued to respondent Juliana, who is in possession of the subject property found to be a public land, on May 3, 1976.[13] Petitioner instituted the personal action for reconveyance[14] only in May 1999 or after 23 years.

We have held in prior cases that the order or decision granting an application for a free patent can be reviewed only within one year from its issuance on the ground of actual fraud via a petition for review in the Regional Trial Court, provided that no innocent purchaser for value has acquired the property or any interest thereon. However, an aggrieved party may still file an action for reconveyance based on implied or constructive trust, but the right of action prescribes in 10 years counted from the date of the issuance of the certificate of title over the property, provided that it has not been acquired by an innocent purchaser for value.[15] This 10-year prescriptive period applies only when the person enforcing the trust is not in possession of

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[13] *Rollo*, p. 50.

[14] An action for reconveyance respects the decree of registration as incontrovertible but seeks the transfer of property, which has been wrongfully or erroneously registered in other persons' names, to its rightful and legal owners or to those who claim to have a better right. There is no special ground for an action for reconveyance. It is enough that the aggrieved party has a legal claim on the property superior to that of the registered owner and that the property has not yet passed to the hands of an innocent purchaser for value. (*Heirs of Valeriano S. Concha, Sr. v. Lumocso*, G.R. No. 158121, December 12, 2007, 540 SCRA 1, 13-14.)

[15] *Khemani v. Heirs of Anastacio Trinidad*, G.R. No. 147340, December 13, 2007, 540 SCRA 83, 96-97; *Heirs of Maximo Sanjorjo v. Heirs of Manuel Y. Quijano*, G.R. No. 140457, January 19, 2005, 449 SCRA 15, 26; *Katon v. Palanca, supra* note 12, at 579; *Millena v. Court of Appeals*, 381 Phil. 132, 138 (2000). Section 32 of Presidential Decree No. 1529, further, provides that "[t]he 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 judgments, 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

the property. If the person claiming to be its owner is in actual possession thereof, the right to seek reconveyance, which in effect is an action to quiet title thereto, does not prescribe.[16]

In the instant case, petitioner's action to recover the property and to annul the patent and title issued to the respondents was filed beyond the prescriptive period. Thus, it ought to be dismissed.

WHEREFORE, premises considered, the petition is *DENIED*. The January 29, 2007 Decision and the April 20, 2007 Resolution of the Court of Appeals (CA) in CA-G.R. SP No. 90749 are *AFFIRMED*.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 179061. July 13, 2009]

SHEALA P. MATRIDO, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

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or confirmation of title obtained by actual fraud, to file in the proper Court of First Instance [now, Regional Trial Court] 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 any equivalent phrase occurs in this Decree, it shall be deemed to include an innocent lessee, mortgagee, or other encumbrancer for value." [Underscoring supplied.]

[16] *Mendizabel v. Apao*, G.R. No. 143185, February 20, 2006, 482 SCRA 587, 609.

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; INFORMATION; THE ALLEGATIONS IN THE INFORMATION DETERMINE THE NATURE OF THE OFFENSE, NOT THE TECHNICAL NAME GIVEN BY THE PUBLIC PROSECUTOR IN THE PREAMBLE OF THE INFORMATION; CASE AT BAR.— It is settled that it is the allegations in the Information that determine the nature of the offense, not the technical name given by the public prosecutor in the preamble of the Information. From a legal point of view, and in a very real sense, it is of no concern to the accused what is the technical name of the crime of which he stands charged. It in no way aids him in a defense on the merits. That to which his attention should be directed, and in which he, above all things else, should be most interested, are the facts alleged. The real question is not did he commit a crime given in the law some technical and specific name, but *did he perform the acts alleged in the body of the information in the manner therein set forth*. Gauging such standard against the wording of the Information in this case, the Court finds no violation of petitioner's rights. The recital of facts and circumstances in the Information sufficiently constitutes the crime of qualified theft. As alleged in the Information, petitioner took, intending to gain therefrom and without the use of force upon things or violence against or intimidation of persons, a personal property consisting of money in the amount ₱18,000 belonging to private complainant, without its knowledge and consent, thereby gravely abusing the confidence reposed on her as credit and collection assistant who had access to payments from private complainant's clients, specifically from one Amante Dela Torre.

2. CRIMINAL LAW; THEFT; DEFINED.— As defined, theft is committed by any person who, with intent to gain, but without violence against, or intimidation of persons nor force upon things, shall take the personal property of another without the latter's consent. If committed with grave abuse of confidence, the crime of theft becomes qualified.

3. ID.; QUALIFIED THEFT; ELEMENTS.— In précis, the elements of qualified theft punishable under Article 310 in relation to Articles 308 and 309 of the Revised Penal Code (RPC) are as follows: 1. There was a taking of personal property. 2. The

said property belongs to another. 3. The taking was done without the consent of the owner. 4. The taking was done with intent to gain. 5. The taking was accomplished without violence or intimidation against person, or force upon things. 6. The taking was done under any of the circumstances enumerated in Article 310 of the RPC, *i.e.*, with grave abuse of confidence.

4. ID.; ID.; ID.; ESTABLISHED IN CASE AT BAR.— In the present case, both the trial court and the appellate court noted petitioner's testimonial admission of unlawfully taking the fund belonging to private complainant and of paying a certain sum to exculpate herself from liability. That the money, taken by petitioner without authority and consent, belongs to private complainant, and that the taking was accomplished without the use of violence or intimidation against persons, nor force upon things, there is no issue. x x x The taking was also clearly done with grave abuse of confidence. As a credit and collection assistant of private complainant, petitioner made use of her position to obtain the amount due to private complainant. As gathered from the nature of her functions, her position entailed a high degree of confidence reposed by private complainant as she had been granted access to funds collectible from clients. Such relation of trust and confidence was amply established to have been gravely abused when she failed to remit the entrusted amount of collection to private complainant.

5. ID.; ID.; INTENT TO GAIN OR *ANIMUS LUCRANDI*; DEFINED.— Intent to gain or *animus lucrandi* is an internal act that is presumed from the unlawful taking by the offender of the thing subject of asportation. Actual gain is irrelevant as the important consideration is the intent to gain.

6. ID.; ESTAFA THROUGH MISAPPROPRIATION AND THEFT, DISTINGUISHED; JURIDICAL AND MATERIAL POSSESSION, DISTINGUISHED.— The Court finds no rhyme or reason in petitioner's contention that what the prosecution tried to prove during trial was estafa through misappropriation under Article 315(1)(b) of the RPC. x x x The principal distinction between the two crimes is that in theft the thing is taken while in estafa the accused receives the property and converts it to his own use or benefit. However, there may be theft even if the accused has possession of the property. If he was entrusted only with the material or physical (natural) or *de facto* possession of the thing, his misappropriation of the same

constitutes theft, but if he has the juridical possession of the thing, his conversion of the same constitutes embezzlement or estafa. The appellate court correctly explained that conversion of personal property in the case of an employee having material possession of the said property constitutes theft, whereas in the case of an agent to whom both material and juridical possession have been transferred, misappropriation of the same property constitutes estafa. x x x A sum of money received by an employee in behalf of an employer is considered to be only in the material possession of the employee. The material possession of an employee is adjunct, by reason of his employment, to a recognition of the juridical possession of the employer. So long as the juridical possession of the thing appropriated did not pass to the employee-perpetrator, the offense committed remains to be theft, qualified or otherwise. x x x When the money, goods, or any other personal property is received by the offender from the offended party (1) in trust or (2) on commission or (3) for administration, the offender acquires both material or physical possession and juridical possession of the thing received. Juridical possession means a possession which gives the transferee a right over the thing which the transferee may set up even against the owner. In this case, petitioner was a cash custodian who was primarily responsible for the cash-in-vault. Her possession of the cash belonging to the bank is akin to that of a bank teller, **both being mere bank employees.**

7. ID.; QUALIFIED THEFT; MAY BE COMMITTED WHEN THE PERSONAL PROPERTY IS IN THE LAWFUL POSSESSION OF THE ACCUSED PRIOR TO THE COMMISSION OF THE FELONY.— The taking *away* of the thing physically from the offended party is not elemental, as qualified theft may be committed when the personal property is in the lawful possession of the accused prior to the commission of the alleged felony.

8. ID.; ID.; PENALTY; CASE AT BAR.— The penalty for qualified theft is two degrees higher than the applicable penalty for simple theft. The amount stolen in this case was ₱18,000.00. In cases of theft, if the value of the personal property stolen is more than ₱12,000.00 but does not exceed ₱22,000.00, the penalty shall be *prision mayor* in its minimum and medium periods. Two degrees higher than this penalty is *reclusion temporal* in its medium and maximum periods or 14 years, 8 months and

1 day to 20 years. Applying the Indeterminate Sentence Law, the minimum shall be *prision mayor* in its maximum period to *reclusion temporal* in its minimum period or within the range of 10 years and 1 day to 14 years and 8 months. The mitigating circumstance of voluntary surrender being present, the maximum penalty shall be the minimum period of *reclusion temporal* in its medium and maximum periods or within the range of 14 years, 8 months and 1 day to 16 years, 5 months and 20 days.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
The Solicitor General for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

Sheala Matrido (petitioner) assails the May 31, 2007 Decision and August 1, 2007 Resolution of the Court of Appeals,[1] which affirmed the trial court's Decision of December 13, 2004 convicting her of qualified theft.

As a credit and collection assistant of private complainant Empire East Land Holdings, Inc., petitioner was tasked to collect payments from buyers of real estate properties such as Laguna Bel-Air developed by private complainant, issue receipts therefor, and remit the payments to private complainant in Makati City.

On June 10, 1999, petitioner received amortization payment from one Amante dela Torre in the amount of ₱22,470.66 as evidenced by the owner's copy[2] of Official Receipt No. 36547, but petitioner remitted only ₱4,470.66 to private complainant as reflected in the treasury department's copy[3] of Official Receipt

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[1] The assailed issuances were penned by Justice Andres B. Reyes, Jr. with the concurrence of Justices Jose C. Mendoza and Ramon M. Bato, Jr.; *rollo*, pp. 53-64, 73.

[2] Records, p. 107.

[3] *Id.* at 108.

No. 36547 submitted to private complainant, both copies of which bear the signature of petitioner and reflect a difference of ₱18,000.

On private complainant's investigation, petitioner was found to have failed to remit payments received from its clients, prompting it to file various complaints, one of which is a Complaint-Affidavit of September 21, 2000[4] for estafa, docketed as I.S. No. 2000-I-32381 in the Makati Prosecutor's Office.

In the meantime or in October 2000, petitioner paid private complainant the total amount of ₱162,000,[5] drawing private complainant to desist from pursuing some related complaints. A few other cases including I.S. No. 2000-I-32381 pushed through, however, since the amount did not sufficiently cover petitioner's admitted liability of ₱400,000.[6]

By Resolution of November 15, 2000,[7] the City Prosecution Office of Makati dismissed the Complaint for estafa for insufficiency of evidence but found probable cause to indict petitioner for qualified theft under an Information which reads:

> That on or about the 10th day of June 1999, in the City of Makati, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being then a Credit and Collection Assistant employed by complainant, EMPIRE EAST LAND HOLDINGS, INC., herein represented by Leilani N. Cabuloy, and as such had access to the payments made by complainant's clients, with grave abuse of confidence, intent of gain and without the knowledge and consent of the said complainant company, did then and there willfully, unlawfully and feloniously take, steal and carry away the amount of ₱18,000.00 received from Amante Dela Torre, a buyer of a house and lot being marketed by complainant company, to the damage and prejudice of the said complainant in the aforementioned amount of ₱18,000.00.
>
> CONTRARY TO LAW.[8]

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[4] *Id.* at 6-8. Signed by its authorized representative, Junior Treasury Manager Leilani Cabuloy.

[5] *Id.* at 116-117.

[6] TSN, January 15, 2004, p. 16.

[7] Records, p. 2.

[8] *Id.* at 1.

On arraignment, petitioner entered a plea of "not guilty."[9] After trial, Branch 56 of the Regional Trial Court (RTC) of Makati, by Decision of December 13, 2004 which was promulgated on April 28, 2005, convicted petitioner of qualified theft, disposing as follows:

> WHEREFORE, accused SHEALA P. MATRIDO is hereby sentenced to suffer the indeterminate penalty of ten (10) years and one (1) day to twelve (12) years[,] five (5) months and ten (10) days.
>
> Accused is further ordered to pay complainant EMPIRE EAST LAND HOLDINGS, INC., the amount of ₱18,000.00.
>
> SO ORDERED.[10]

By the challenged Decision of May 31, 2007,[11] the Court of Appeals affirmed the trial court's decision, hence, the present petition which raises the sole issue of whether the appellate court "gravely erred in affirming the decision of the trial [court] convicting the petitioner of the crime of qualified theft despite the fact that the prosecution tried to prove during the trial the crime of estafa thus denying the petitioner the right to be informed of the nature and cause of accusation against her"[12]

Petitioner posits that despite her indictment for qualified theft, the prosecution was trying to prove estafa during trial, thus violating her right to be informed of the nature and cause of the accusation against her.

The petition fails.

In *Andaya v. People*,[13] the Court expounded on the constitutional right to be informed of the nature and cause of the accusation against the accused.

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[9] *Id.* at 62.

[10] *Id.* at 141.

[11] Penned by Presiding Judge Nemesio S. Felix.

[12] *Rollo*, p. 14.

[13] G.R. No. 168486, June 27, 2006, 493 SCRA 539.

x x x As early as the 1904 case of *U.S. v. Karelsen*, the rationale of this fundamental right of the accused was already explained in this wise:

> The object of this written accusation was – First. To furnish the accused with such a description of the charge against him as will enable him to make his defense; and second, to avail himself of his conviction or acquittal for protection against a further prosecution for the same cause; and third, to inform the court of the facts alleged, so that it may decide whether they are sufficient in law to support a conviction, if one should be had. In order that this requirement may be satisfied, facts must be stated, not conclusions of law. Every crime is made up of certain acts and intent; these must be set forth in the complaint with reasonable particularity of time, place, names (plaintiff and defendant), and circumstances. In short, the complaint must contain a specific allegation of every fact and circumstances necessary to constitute the crime charged.

It is fundamental that every element constituting the offense must be alleged in the information. The main purpose of requiring the various elements of a crime to be set out in the information is to enable the accused to suitably prepare his defense because he is presumed to have no independent knowledge of the facts that constitute the offense. The allegations of facts constituting the offense charged are substantial matters and an accused's right to question his conviction based on facts not alleged in the information cannot be waived. No matter how conclusive and convincing the evidence of guilt may be, an accused cannot be convicted of any offense unless it is charged in the information on which he is tried or is necessarily included therein. To convict him of a ground not alleged while he is concentrating his defense against the ground alleged would plainly be unfair and underhanded. The rule is that a variance between the allegation in the information and proof adduced during trial shall be fatal to the criminal case if it is material and prejudicial to the accused so much so that it affects his substantial rights.[14] (Citations omitted; underscoring supplied)

It is settled that it is the allegations in the Information that determine the nature of the offense, not the technical name

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[14] *Id.* at 557-558.

given by the public prosecutor in the preamble of the Information. From a legal point of view, and in a very real sense, it is of no concern to the accused what is the technical name of the crime of which he stands charged. It in no way aids him in a defense on the merits. That to which his attention should be directed, and in which he, above all things else, should be most interested, are the facts alleged. The real question is not did he commit a crime given in the law some technical and specific name, but *did he perform the acts alleged in the body of the information in the manner therein set forth*.[15]

Gauging such standard against the wording of the Information in this case, the Court finds no violation of petitioner's rights. The recital of facts and circumstances in the Information sufficiently constitutes the crime of qualified theft.

As alleged in the Information, petitioner took, intending to gain therefrom and without the use of force upon things or violence against or intimidation of persons, a personal property consisting of money in the amount ₱18,000 belonging to private complainant, without its knowledge and consent, thereby gravely abusing the confidence reposed on her as credit and collection assistant who had access to payments from private complainant's clients, specifically from one Amante Dela Torre.

As defined, theft is committed by any person who, with intent to gain, but without violence against, or intimidation of persons nor force upon things, shall take the personal property of another without the latter's consent.[16] If committed with grave abuse of confidence, the crime of theft becomes qualified.[17]

In précis, the elements of qualified theft punishable under Article 310 in relation to Articles 308 and 309 of the Revised Penal Code (RPC) are as follows:

1. There was a taking of personal property.

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[15] *Id.* at 552-553 citing *U.S. v. Lim San*, 17 Phil. 273, 278-279 (1910).

[16] REVISED PENAL CODE, Art. 308, par. 1.

[17] *Id.* at Art. 310.

2. The said property belongs to another.

3. The taking was done without the consent of the owner.

4. The taking was done with intent to gain.

5. The taking was accomplished without violence or intimidation against person, or force upon things.

6. The taking was done under any of the circumstances enumerated in Article 310 of the RPC, *i.e.*, with grave abuse of confidence.[18]

In the present case, both the trial court and the appellate court noted petitioner's testimonial admission of unlawfully taking the fund belonging to private complainant and of paying a certain sum to exculpate herself from liability. That the money, taken by petitioner without authority and consent, belongs to private complainant, and that the taking was accomplished without the use of violence or intimidation against persons, nor force upon things, there is no issue.

Intent to gain or *animus lucrandi* is an internal act that is presumed from the unlawful taking by the offender of the thing subject of asportation. Actual gain is irrelevant as the important consideration is the intent to gain.[19]

The taking was also clearly done with grave abuse of confidence. As a credit and collection assistant of private complainant, petitioner made use of her position to obtain the amount due to private complainant. As gathered from the nature of her functions, her position entailed a high degree of confidence reposed by private complainant as she had been granted access to funds collectible from clients. Such relation of trust and confidence was amply established to have been gravely abused when she failed to remit the entrusted amount of collection to private complainant.

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[18] *Vide People v. Bago*, 386 Phil. 310, 334-335 (2000).

[19] *Vide People v. Bustinera*, G.R. No. 148233, June 8, 2004, 431 SCRA 284, 296.

The Court finds no rhyme or reason in petitioner's contention that what the prosecution tried to prove during trial was estafa through misappropriation under Article 315(1)(b) of the RPC.

> x x x The principal distinction between the two crimes is that in theft the thing is taken while in estafa the accused receives the property and converts it to his own use or benefit. However, there may be theft even if the accused has possession of the property. If he was entrusted only with the material or physical (natural) or *de facto* possession of the thing, his misappropriation of the same constitutes theft, but if he has the juridical possession of the thing, his conversion of the same constitutes embezzlement or estafa.[20] (Underscoring supplied)

The appellate court correctly explained that conversion of personal property in the case of an employee having material possession of the said property constitutes theft, whereas in the case of an agent to whom both material and juridical possession have been transferred, misappropriation of the same property constitutes estafa.[21] Notably, petitioner's belated argument that she was not an employee but an agent of private complainant[22] grants her no respite in view of her stipulation[23] during pre-trial and her admission[24] at the witness stand of the fact of employment. Petitioner's reliance on estafa cases involving factual antecedents of agency transactions is thus misplaced.

That petitioner did not have juridical possession over the amount or, in other words, she did not have a right over the thing which she may set up even against private complainant is clear.[25] In fact, petitioner never asserted any such right, hence, juridical possession was lodged with private complainant and, therefore, estafa was not committed.

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[20] *Santos v. People*, G.R. No. 77429, January 29, 1990, 181 SCRA 487, 492.

[21] *Rollo*, p. 60.

[22] *Id.* at 17.

[23] Records, p. 65.

[24] TSN, January 15, 2004, pp. 3, 5.

[25] *Rollo*, p. 61.

Petitioner's view that there could be no element of taking since private complainant had no actual possession of the money fails. The argument proceeds from the flawed premise that there could be no theft if the accused has possession of the property. The taking *away* of the thing physically from the offended party is not elemental,[26] as qualified theft may be committed when the personal property is in the lawful possession of the accused prior to the commission of the alleged felony.[27]

A sum of money received by an employee in behalf of an employer is considered to be only in the material possession of the employee.[28] The material possession of an employee is adjunct, by reason of his employment, to a recognition of the juridical possession of the employer. So long as the juridical possession of the thing appropriated did not pass to the employee-perpetrator, the offense committed remains to be theft, qualified or otherwise.[29]

> x x x When the money, goods, or any other personal property is received by the offender from the offended party (1) in trust or (2) on commission or (3) for administration, the offender acquires both material or physical possession and juridical possession of the thing received. Juridical possession means a possession which gives the transferee a right over the thing which the transferee may set up even against the owner. In this case, petitioner was a cash custodian who was primarily responsible for the cash-in-vault. Her possession of the cash belonging to the bank is akin to that of a bank teller, **both being mere bank employees**.[30] (Italics in the original omitted; underscoring and emphasis supplied)

That the transaction occurred outside the company premises of private complainant is of no moment, given that not all business deals are transacted by employees within the confines of an office, and that field operations do not define an agency. What is of consequence is the nature of possession by petitioner over the property subject of the unlawful taking.

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[26] Luis B. Reyes, *THE REVISED PENAL CODE* (1998), pp. 687, 691.

[27] *Roque v. People*, 486 Phil. 288, 304 *et seq.* (2004).

[28] *Id.* at 310.

[29] *Vide id.* at 307.

[30] *Chua-Burce v. Court of Appeals*, 387 Phil. 15, 26 (2000).

On the penalty imposed by the trial court, which was affirmed by the appellate court — indeterminate penalty of 10 years and 1 day to 12 years, 5 months and 10 days:

The penalty for qualified theft is two degrees higher than the applicable penalty for simple theft. The amount stolen in this case was ₱18,000.00. In cases of theft, if the value of the personal property stolen is more than ₱12,000.00 but does not exceed ₱22,000.00, the penalty shall be *prision mayor* in its minimum and medium periods. Two degrees higher than this penalty is *reclusion temporal* in its medium and maximum periods or 14 years, 8 months and 1 day to 20 years.

Applying the Indeterminate Sentence Law, the minimum shall be *prision mayor* in its maximum period to *reclusion temporal* in its minimum period or within the range of 10 years and 1 day to 14 years and 8 months.[31] The mitigating circumstance of voluntary surrender being present, the maximum penalty shall be the minimum period of *reclusion temporal* in its medium and maximum periods or within the range of 14 years, 8 months and 1 day to 16 years, 5 months and 20 days.

The Court thus affirms the minimum penalty, but modifies the maximum penalty imposed.

WHEREFORE, the Decision of May 31, 2007 and Resolution of August 1, 2007 of the Court of Appeals in CA-G.R. CR No. 29593 is *AFFIRMED* with *MODIFICATION* as to the imposed penalty, such that petitioner, Sheala P. Matrido, is sentenced to suffer the indeterminate penalty of 10 years and 1 day of *prision mayor*, as minimum, to 14 years, 8 months and 1 day of *reclusion temporal*, as maximum.

SO ORDERED.

Quisumbing (Chairperson), Chico-Nazario,[*] *Leonardo-de Castro,*[**] and *Brion, JJ.*, concur.

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[31] *Cruz v. People*, G.R. No. 176504, September 3, 2008.

[*] Additional member per Special Order No. 658.

[**] Additional member per Special Order No. 635.

THIRD DIVISION

[G.R. No. 180568. July 13, 2009]

LYDIA MONTEBON, *a.k.a.* JINGLE MONTEBON, *petitioner, vs.* **THE HONORABLE COURT OF APPEALS, THE HON. SILVINO PAMPILO, JR., in his capacity as Presiding Judge of Branch 26, Regional Trial Court of Manila, CARLOS P. BAJAR, in his capacity as Branch-Sheriff of Branch 26, RTC-Manila, and JOSE RIZAL LOPEZ, as represented by EDWIN PASTOR,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; LEGAL ETHICS; POWERS AND DUTIES OF COURTS; INHERENT POWERS OF COURTS; EVERY COURT HAS THE POWER TO AMEND AND CONTROL ITS PROCESS AND ORDERS SO AS TO MAKE THEM CONFORMABLE TO LAW AND JUSTICE; CASE AT BAR.— The CA correctly held that the RTC did not commit grave abuse of discretion in ordering the issuance of a writ of execution with the correct address of the subject property. Such act was well within a court's inherent power "to amend and control its process and orders so as to make them conformable to law and justice." At the time the motion for execution pending appeal was filed, the RTC had already assumed jurisdiction over the case. Hence, the MeTC was no longer in a position to correct the error contained in the dispositive portion. The duty devolved upon the RTC, before which the appeal was pending, to rectify the error contained in the dispositive portion of the judgment sought to be executed. Clerical error or ambiguity in the dispositive portion of a judgment may be rectified or clarified by reference primarily to the body of the decision itself and, suppletorily, to the pleadings previously filed.

2. ID.; CIVIL PROCEDURE; JUDGMENTS; A JUDGMENT IS NOT RENDERED DEFECTIVE JUST BECAUSE OF A TYPOGRAPHICAL ERROR IN THE DISPOSITIVE PORTION; CASE AT BAR.— The rule that a writ of execution must conform to the dispositive portion of the decision applies with equal force to the case. In directing that a writ of execution

be issued with the correct address of the subject property, the RTC did not veer away from the MeTC judgment, which, without a doubt, referred to the plaintiff's property. The complaint states that the plaintiff's property is the place where the petitioner is living and maintaining a business establishment, that is, at 1459 Paz St., Paco, Manila. Edwin Pastor, private respondent's representative, is the one who lives at 1457 Paz St., Paco, Manila. By filing this patently unmeritorious case, obviously, petitioner has unjustly prevented the execution of the MeTC judgment. A judgment is not rendered defective just because of a typographical error in the dispositive portion. The judgment remains valid and subject to execution.

APPEARANCES OF COUNSEL

Margarita P. Tamunda for petitioner.
Nathaniel F. Sauz for private respondent.

R E S O L U T I O N

NACHURA, *J.*:

This is a petition for review on *certiorari* of the Court of Appeals (CA) Decision[1] dated May 9, 2007 and Resolution dated November 13, 2007, which dismissed a petition for *certiorari* for lack of merit. Petitioner questions the respondent court's issuance of a writ of execution pending appeal of a decision, the dispositive portion of which contained an incorrect address of the subject property.

The facts of the case are as follows:

On July 4, 2004, private respondent Jose Rizal Lopez, represented by Edwin Pastor who lives at 1457 Paz St., Paco, Manila, instituted an action for ejectment and damages against petitioner, Lydia Montebon. Private respondent alleged that he is the owner of a residential/commercial unit located at 1459

[1] Penned by Associate Justice Vicente S.E. Veloso with Associate Justices Juan Q. Enriquez, Jr. and Ricardo R. Rosario, concurring; *rollo*, pp. 41-51.

Paz St. Paco, Manila, which he leased to petitioner for a monthly rental of ₱20,000.00. When petitioner defaulted in the payment of the monthly rentals, private respondent made several demands on the petitioner for the payment of the accumulated rentals due, amounting to ₱384,900.00, but petitioner refused to pay. When his final demand remained unheeded, private respondent filed the ejectment case against petitioner.

On December 27, 2005, the Metropolitan Trial Court (MeTC) ruled in favor of private respondent. The dispositive portion of the MeTC Decision reads:

> WHEREFORE, judgment is hereby rendered in favor of herein plaintiff and against defendant, ordering the latter and all persons claiming rights under her:
>
> 1. To vacate the subject premises located at 1457 Paz Street, Paco, Manila and peacefully surrender possession thereof to plaintiff;
> 2. To pay plaintiff the amount of Php384,900.00 representing the back rentals as of May 2004;
> 3. To pay plaintiff the amount of Php20,000.00 as current rental, beginning June 2004 until the premises had been fully vacated;
> 4. To pay plaintiff the amount of Php10,000.00 for and as attorney's fees; and
> 5. To pay the costs of suit.
>
> SO ORDERED.[2]

On January 3, 2006, petitioner filed a Notice of Appeal,[3] but she failed to file a supersedeas bond. On account of this, private respondent filed a Motion for Issuance of Writ of Execution pending appeal before the Regional Trial Court (RTC). On March 30, 2006, the RTC issued an Order[4] granting the Motion for Issuance of Writ of Execution. A writ of execution was issued subsequently.[5]

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[2] *Rollo,* pp. 56-57.

[3] *Id.* at 58.

[4] *Rollo,* p. 55.

[5] *Id.* at 59.

Noticing the erroneous address indicated in the MeTC Decision, private respondent filed a Manifestation and Motion[6] before the RTC asking that the address found in the Writ of Execution be changed from 1457 Paz Street, Paco, Manila to 1459 Paz Street, Paco, Manila, the latter being the correct address of the subject premises. The RTC granted the motion in an Order dated June 13, 2006.[7]

On June 15, 2006, the RTC issued the assailed *Alias* Writ of Execution Pending Appeal[8] with the correct address. Implementation of the writ was suspended pending petitioner's offer of an amicable settlement.[9]

For failure of the petitioner to submit a written proposal on how to liquidate her past due rentals, the RTC issued an Order[10] dated October 27, 2006, granting private respondent's motion and implementing the *Alias* Writ of Execution. Accordingly, Sheriff Carlos P. Bajar issued the assailed Notice to Vacate Premises.[11]

Aggrieved, petitioner filed a petition for *certiorari* with the CA, assailing the (1) March 30, 2006 Order, (2) June 13, 2006 Order, (3) *Alias* Writ of Execution Pending Appeals, (4) October 27, 2006 Order, and (5) Notice to Vacate Premises.

On May 9, 2007, the CA dismissed the petition.[12] The CA later denied the petitioner's motion for reconsideration.

In this petition, petitioner submits the following issues:

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

[7] *Id.* at 61.

[8] *Id.* at 62-63.

[9] *Id.* at 65.

[10] *Id.* at 64.

[11] *Id.* at 66.

[12] *Rollo,* p. 149.

A.

THE HONORABLE COURT OF APPEALS COMMITTED AN ERROR OF LAW WHEN IT ISSUED THE DECISION DATED MAY 09, 2007 AND SUBSEQUENT DENIAL OF THE MOTION FOR RECONSIDERATION DATED NOVEMBER 13, 2007 AND RULED THAT THE HONORABLE REGIONAL COURT DID NOT COMMIT GRAVE ABUSE OF DISCRETION WHEN IT GRANTED THE MOTION TO CORRECT THE ADDRESS INDICATED IN THE DECISION OF THE HONORABLE METROPOLITAN TRIAL COURT AND SUBSEQUENTLY ISSUING AN *ALIAS* WRIT OF EXECUTION PENDING APPEAL ON THE CORRECTED ADDRESS.

B.

THE HONORABLE COURT OF APPEALS COMMITTED AN ERROR OF LAW IN NOT FINDING THAT THE DECISION OF THE METROPOLITAN TRIAL COURT IS DEFECTIVE FOR IT CONTAINS AN ERRONEOUS ADDRESS OF THE SUBJECT PREMISES.[13]

Petitioner posits that the error in the dispositive portion was not merely typographical as it pertained to the address of the subject matter of the ejectment case. She then argues that the RTC may not issue a writ of execution over a decision that is defective on its face. After all, the province of a writ of execution pending appeal is to implement the decision as rendered by the court of origin. Private respondent should have sought first the correction of the decision before asking for its execution. Since the MeTC Decision states a wrong address of the subject premises, it cannot be implemented without giving the MeTC an opportunity to correct its error.

The petition is absolutely without merit.

The CA correctly held that the RTC did not commit grave abuse of discretion in ordering the issuance of a writ of execution with the correct address of the subject property. Such act was well within a court's inherent power "to amend and control its process and orders so as to make them conformable to law and justice."[14]

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[13] *Id.* at 25.

[14] RULES OF COURT, Rule 135, Sec. 5, par. (g).

At the time the motion for execution pending appeal was filed, the RTC had already assumed jurisdiction over the case. Hence, the MeTC was no longer in a position to correct the error contained in the dispositive portion. The duty devolved upon the RTC, before which the appeal was pending, to rectify the error contained in the dispositive portion of the judgment sought to be executed. Clerical error or ambiguity in the dispositive portion of a judgment may be rectified or clarified by reference primarily to the body of the decision itself and, suppletorily, to the pleadings previously filed.[15]

The rule that a writ of execution must conform to the dispositive portion of the decision applies with equal force to the case. In directing that a writ of execution be issued with the correct address of the subject property, the RTC did not veer away from the MeTC judgment, which, without a doubt, referred to the plaintiff's property. The complaint states that the plaintiff's property is the place where the petitioner is living and maintaining a business establishment, that is, at 1459 Paz St., Paco, Manila. Edwin Pastor, private respondent's representative, is the one who lives at 1457 Paz St., Paco, Manila.

By filing this patently unmeritorious case, obviously, petitioner has unjustly prevented the execution of the MeTC judgment. A judgment is not rendered defective just because of a typographical error in the dispositive portion. The judgment remains valid and subject to execution.

WHEREFORE, premises considered, the petition is *DENIED*. The Court of Appeals' Decision dated May 9, 2007 and Resolution dated November 13, 2007 are *AFFIRMED*.

SO ORDERED.

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

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[15] *Reinsurance Company of the Orient, Inc. v. Court of Appeals,* G.R. No. 61250, June 3, 1991, 198 SCRA 19, 28.

THIRD DIVISION

[G.R. No. 182567. July 13, 2009]

GUILLERMO M. TELMO, *petitioner, vs.* **LUCIANO M. BUSTAMANTE,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE PROCEEDINGS; THE DESISTANCE OF THE COMPLAINANT DOES NOT NECESSARILY RESULT IN THE DISMISSAL OF THE ADMINISTRATIVE COMPLAINT; CASE AT BAR.— The desistance of the complainant does not necessarily result in the dismissal of the administrative complaint because the Court attaches no persuasive value to a desistance, especially when executed as an afterthought. It should be remembered that the issue in an administrative case is not whether the complaint states a cause of action against the respondent, but whether the public officials have breached the norms and standards of the public service. Considering that petitioner admitted in his pleadings that he summarily removed the concrete posts erected by respondent, allegedly within the parameters of his authority as Municipal Engineer of Naic, Cavite, it is only proper that this case be decided on its merits rather than on the basis of the desistance of respondent.

2. CIVIL LAW; PROPERTY; PRESIDENTIAL DECREE NO. 1096 (NATIONAL BUILDING CODE); ABATEMENT OF DANGEROUS BUILDINGS; DANGEROUS BUILDINGS, DEFINED.— Petitioner claims that his act of summarily removing respondent's concrete posts was authorized under the National Building Code (Presidential Decree No. 1096). The provision he cites correctly pertains to Section 215, which reads— Sec. 215. *Abatement of Dangerous Buildings.*—When any building or structure is found or declared to be dangerous or ruinous, the Building Official shall order its repair, vacation or demolition depending upon the decree of danger to life, health, or safety. This is without prejudice to further action that may be taken under the provisions of Articles 482 and 694 to 707 of the Civil Code of the Philippines. To better

understand this provision, we refer to Section 214 of the same law, which defines what are dangerous and ruinous buildings or structures susceptible of abatement. It provides— Sec. 214. *Dangerous and Ruinous Buildings or Structures.* Dangerous buildings are those which are herein declared as such or are structurally unsafe or not provided with safe egress, or which constitute a fire hazard, or are otherwise dangerous to human life, or which in relation to existing use, constitute a hazard to safety or health or public welfare because of inadequate maintenance, dilapidation, obsolescence, or abandonment, or which otherwise contribute to the pollution of the site or the community to an intolerable degree. A careful reading of the foregoing provisions would readily show that they do not apply to the respondent's situation. Nowhere was it shown that the concrete posts put up by respondent in what he believed was his and his co-owners' property were ever declared dangerous or ruinous, such that they can be summarily demolished by petitioner.

3. ID.; ID.; ID.; THE WORD "STRUCTURE" SHOULD BE CONSTRUED IN THE CONTEXT OF THE DEFINITION OF THE WORD "BUILDING."— What is more, it appears that the concrete posts do not even fall within the scope of the provisions of the National Building Code. The Code does not expressly define the word "building." However, we find helpful the dictionary definition of the word "building," *viz*: [A] constructed edifice designed usually covered by a roof and more or less completely enclosed by walls, and serving as a dwelling, storehouse, factory, shelter for animals, or other useful structure – distinguished from structures not designed for occupancy (as fences or monuments) and from structures not intended for use in one place (as boats or trailers) even though subject to occupancy. The provisions of the National Building Code would confirm that "building" as used therein conforms to this definition. Thus, applying the statutory construction principle of *ejusdem generis*, the word "structure" should be construed in the context of the definition of the word "building." The concrete posts put up by respondent on the property are not properly covered by the definition of the word "building" nor is it embraced in the corresponding interpretation of the word "structure."

4. ID.; ID.; NUISANCE; DEFINED.— A nuisance *per se* is that which affects the immediate safety of persons and property and may be summarily abated under the undefined law of necessity. Evidently, the concrete posts summarily removed by petitioner did not at all pose a hazard to the safety of persons and properties, which would have necessitated immediate and summary abatement. What they did, at most, was to pose an inconvenience to the public by blocking the free passage of people to and from the national road.

5. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE AGENCIES; DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS; GUIDELINES FOR THE REMOVAL OF OBSTRUCTIONS AND PROHIBITED USES WITHIN THE RIGHT-OF WAY OF NATIONAL ROADS, NOT COMPLIED WITH IN CASE AT BAR.— Department Order No. 52 directs all District Engineers to immediately remove or cause the removal of all obstructions and prohibited uses within the right-of-way of all national roads in their respective jurisdictions. These obstructions and prohibited uses include, among others, all kinds of private, temporary and permanent structures, such as buildings, houses, shanties, stores, shops, stalls, sheds, *posts*, canopies, billboards, signages, advertisements, *fences*, walls, railings, basketball courts, garbage receptacles, and the like. The Department Order requires the District Engineers to issue notices to the concerned persons to remove the obstructions and prohibited uses within the right-of-way, and shall follow through prompt compliance with these notices and full implementation of the Order. It further provides that appropriate sanctions will be taken against those who fail to comply with its provisions. Gauging the action of petitioner based on the guidelines set by Department Order No. 52, from which he claims his authority, we cannot but conclude that petitioner went beyond the scope of his official power because it is the concerned District Engineer of the Department of Public Works and Highways who should have ordered respondent to remove the concrete posts. The petitioner failed to show that he was duly authorized by the District Engineer to implement the Department Order in Naic, Cavite. More importantly, even assuming that petitioner had been duly authorized to order the removal of the concrete posts of respondent, he failed to prove that he issued the required notice to respondent to remove the said structures before he

did the removal himself. Note that petitioner, in fact, admitted in his pleadings that he summarily removed the said posts.

6. ID.; ID.; UNIFORM RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE; DISCOURTESY IN THE COURSE OF OFFICIAL DUTIES; COMMITTED IN CASE AT BAR; PENALTY.— The Revised Philippine Highway Act and Department Order No. 52 do not expressly provide for the administrative sanction to be taken against public officials violating their provisions. Hence, we must refer to the Uniform Rules on Administrative Cases in the Civil Service. We believe that the administrative offense committed by petitioner through the questioned act was only Discourtesy in the Course of Official Duties, which is a light offense under Rule IV, Section 52 of the said Rules. The penalties imposable for such an offense are a reprimand for the first offense, a suspension from 1 day to 30 days for the second offense, and dismissal from public service for the third offense. Since this appears to be petitioner's first offense, his action warrants only a REPRIMAND.

APPEARANCES OF COUNSEL

Siccuan and Francisco Law Office for petitioner.
Reynante L. San Gaspar for respondent.

D E C I S I O N

NACHURA, *J.*:

For our consideration is a Petition[1] for Review on *Certiorari* under Rule 45 of the Rules of Court in relation to Section 27, paragraph 3 of the Ombudsman Act of 1989 (Republic Act No. 6770). Subject of the Petition is the Decision[2] dated October 13, 2005 and the Order[3] dated March 17, 2006 of the Office of the Deputy Ombudsman for Luzon.

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[1] *Rollo*, pp. 3-13.

[2] *Id.* at 22-27.

[3] *Id.* at 14-21.

This case arose from the Verified Complaint[4] filed by respondent Luciano M. Bustamante before the Office of the Deputy Ombudsman for Luzon against petitioner Guillermo Telmo, Municipal Engineer of Naic, Cavite, Danilo Consumo, Barangay (Brgy.) Chairman, Brgy. Halang, Naic, Cavite, and Elizalde Telmo, a private individual.

The complaint alleged that respondent is a co-owner of a real property of 616 square meters in Brgy. Halang, Naic, Cavite, known as Lot 952-A and covered by Transfer Certificate of Title No. T-957643 of the Register of Deeds of Cavite. Petitioner and Elizalde Telmo (Telmos) are the owners of the two (2) parcels of land denominated as Lot 952-B and 952-C, respectively, located at the back of respondent's lot. When his lot was transgressed by the construction of the Noveleta-Naic-Tagaytay Road, respondent offered for sale the remaining lot to the Telmos. The latter refused because they said they would have no use for it, the remaining portion being covered by the road's 10-meter easement.

The complaint further alleged that, on May 8, 2005, respondent caused the resurvey of Lot 952-A in the presence of the Telmos. The resurvey showed that the Telmos encroached upon respondent's lot. Petitioner then uttered, "*Hangga't ako ang municipal engineer ng Naic, Cavite, hindi kayo makakapagtayo ng anuman sa lupa n'yo; hindi ko kayo bibigyan ng* building permit."

On May 10, 2005, respondent put up concrete poles on his lot. However, around 7:00 p.m. of the same day, the Telmos and their men allegedly destroyed the concrete poles. The following day, respondent's relatives went to Brgy. Chairman Consumo to report the destruction of the concrete poles. Consumo told them that he would not record the same, because he was present when the incident occurred. Consumo never recorded the incident in the *barangay* blotter.

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[4] Ombudsman Records, pp. 1-5.

Respondent complained that he and his co-owners did not receive any just compensation from the government when it took a portion of their property for the construction of the Noveleta-Naic-Tagaytay Road. Worse, they could not enjoy the use of the remaining part of their lot due to the abusive, Illegal, and unjust acts of the Telmos and Consumo. Respondent charged the latter criminally—for violation of Article 312[5] of the Revised Penal Code and Section 3(e)[6] of Republic Act No. 3019[7]

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[5] Art. 312. *Occupation of real property or usurpation of real rights in property.*— Any person who, by means of violence against or intimidation of persons, shall take possession of any real property or shall usurp any real rights in property belonging to another, in addition to the penalty incurred for the acts of violence executed by him, shall be punished by a fine from 50 to 100 *per centum* of the gain which he shall have obtained, but not less than 75 pesos.

If the value of the gain cannot be ascertained, a fine of from 200 to 500 pesos shall be imposed.

[6] Section 3. *Corrupt practices of public officers.*— In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x x x x x x x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licences or permits or other concessions.

[7] Anti-Graft and Corrupt Practices Act.

— and administratively—for violation of Section 4 (a)[8], (b)[9], (c)[10], and (e)[11] of Republic Act No. 6713.[12]

In his Counter-Affidavit,[13] petitioner denied having uttered the words attributed to him by respondent, and claimed that he only performed his official duties in requiring an application for a building permit before any structure can be erected on government

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[8] Section 4. *Norms of Conduct of Public Officials and Employees*. – (A) Every public official and employee shall observe the following as standards of personal conduct in the discharge and execution of official duties:

(a) *Commitment to public interest.* – Public officials and employees shall always uphold the public interest over and above personal interest. All government resources and powers of their respective offices must be employed and used efficiently, effectively, honestly and economically, particularly to avoid wastage in public funds and revenues.

[9] (b) *Professionalism.* – Public officials and employees shall perform and discharge their duties with the highest degree of excellence, professionalism, intelligence and skill. They shall enter public service with utmost devotion and dedication to duty. They shall endeavor to discourage wrong perceptions of their roles as dispensers or peddlers of undue patronage.

[10] (c) *Justness and sincerity*. – Public officials and employees shall remain true to the people at all times. They must act with justness and sincerity and shall not discriminate against anyone, especially the poor and the underprivileged. They shall at all times respect the rights of others, and shall refrain from doing acts contrary to law, good morals, good customs, public policy, public order, public safety and public interest. They shall not dispense or extend undue favors on account of their office to their relatives whether by consanguinity or affinity except with respect to appointments of such relatives to positions considered strictly confidential or as members of their personal staff whose terms are coterminous with theirs.

[11] (e) *Responsiveness to the public.* – Public officials and employees shall extend prompt, courteous, and adequate service to the public. Unless otherwise provided by law or when required by the public interest, public officials and employees shall provide information of their policies and procedures in clear and understandable language, ensure openness of information, public consultations and hearings whenever appropriate, encourage suggestions, simplify and systematize policy, rules and procedures, avoid red tape and develop an understanding and appreciation of the socio-economic conditions prevailing in the country, especially in the depressed rural and urban areas.

[12] Code of Conduct and Ethical Standards for Public Officials and Employees.

[13] Ombudsman Records, pp. 16-17.

property. He said that respondent insisted on enclosing with barbed wire and concrete posts the lot that already belonged to the national government, which had now been converted into a national road. He also alleged that if he allowed the enclosures erected by the respondent, other residents would be denied ingress to and egress from their own properties.

In his own counter-affidavit, Consumo denied collusion with petitioner in not recording in the *barangay* blotter the subject incident. He explained that on May 10, 2005 at around 5:00 p.m., he was summoned by petitioner to intercede, because the respondent and his men were fencing the subject property. Consumo obliged, personally saw the fence being built, and observed that even the trucks owned by petitioner were enclosed therein. When he asked respondent if he had the necessary permit and the proper *barangay* clearance to do so, respondent's lawyer, Atty. San Gaspar, replied that there was no need for the permit and clearance since respondent was just fencing his own property. Thus, Consumo could not prevent the ongoing fencing, but told respondent and company to wait for petitioner to decide the matter.

Consumo further alleged that after putting up the fence, respondent and his companions left without waiting for the arrival of petitioner. When petitioner arrived, he explained to the people present that the property enclosed by respondent is owned by the government and that no one is allowed to construct any fence without a permit from him, as the Municipal Engineer, or from any building official of the local government of Naic, Cavite. Consumo said that the residents affected by the fence constructed by respondent were the ones who pulled out the concrete posts in order to provide access to the national road. These residents included the petitioner, whose trucks used for delivering sand and hollow blocks were enclosed and also denied access.

In his Counter-Affidavit,[14] Elizalde Telmo denied having encroached, occupied or taken possession of respondent's property. He claimed that, on May 10, 2005, he was merely an onlooker to the altercation between petitioner and respondent.

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[14] *Id.* at 28.

He said that petitioner, his brother, insisted that respondent could not enclose the property in question unless the latter obtains a building permit from the Office of the Municipal Engineer/ Building Official, since it appeared that the subject property was no longer a property of respondent but was converted into government property by virtue of the 30-meter road set-back imposed by the Zoning Ordinance of the Municipality of Naic, Cavite. Elizalde Telmo stated that he did not offer any resistance to the fencing of the property in question. He observed, though, that when they learned that petitioner was arriving at the place, respondent and his companions just left the vicinity.

Later, petitioner and respondent filed their respective position papers[15] upon the directive of the Graft Investigating and Prosecuting Officer. Their position papers reiterated the allegations made in their respective affidavits earlier submitted.

In the Decision[16] dated October 13, 2005, the Office of the Deputy Ombudsman for Luzon found petitioner and Danilo Consumo administratively liable, but dismissed the charge against Elizalde Telmo for lack of jurisdiction over his person, he being a private individual. The dispositive portion of the Decision states—

WHEREFORE, premises considered, the undersigned investigator respectfully recommends the following, to wit:

(1) That the administrative complaint against respondent Elizalde Telmo be **DISMISSED** for lack of jurisdiction;

(2) That respondent Guillermo Telmo be meted the **PENALTY OF FINE EQUIVALENT TO SIX (6) MONTHS SALARY** for violation of Section 4 of Republic Act No. 6713; and

(3) That respondent Danilo Consumo be meted the **PENALTY OF FINE EQUIVALENT TO THREE (3) MONTHS HONORARIA** for violation of Section 4 of Republic Act No. 6713.

SO DECIDED.[17]

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[15] For the respondents, *id.* at 30-33; for the complainant, *id.* at 38-45.

[16] *Rollo*, pp. 22-27.

[17] *Id.* at 26.

Petitioner filed a Motion for Reconsideration,[18] wherein he elaborated that he just performed his official duties when he summarily removed the concrete posts erected by respondent to enclose the property.

In the Order[19] dated March 17, 2006, the Office of the Deputy Ombudsman for Luzon denied the Motion for Reconsideration for lack of merit.

Hence, this petition anchored on the following grounds:

A. THE HONORABLE DEPUTY OMBUDSMAN FOR LUZON SERIOUSLY ERRED WHEN HE DECLARED THAT THERE WAS NO VALID TAKING OF RESPONDENT'S LOT BY MEANS OF EXPROPRIATION.

B. THE HONORABLE DEPUTY OMBUDSMAN FOR LUZON SERIOUSLY ERRED WHEN HE DECLARED THAT PETITIONER SHOULD BE AUTHORIZED BY THE MUNICIPAL MAYOR OR BY THE COURT TO ABATE PUBLIC NUISANCE OR NUISANCE *PER SE*.

C. THE HONORABLE DEPUTY OMBUDSMAN FOR LUZON ERRED WHEN HE METED THE PENALTY OF FINE EQUIVALENT TO SIX (6) MONTHS SALARY FOR VIOLATION OF SECTION 4 OF REPUBLIC ACT NO. 6713.[20]

In essence, petitioner contends that the property claimed and enclosed with concrete posts by respondent was validly taken by the National Government through its power of eminent domain, pursuant to Executive Order No. 113, as amended by Executive Order No. 253, creating the Noveleta-Naic-Tagaytay Road. In this context, petitioner contends that the concrete posts erected by respondent were a public nuisance under Article 694 (4)[21]

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[18] *Id.* at 49-56.

[19] *Id.* at 14-21.

[20] *Id.* at 6.

[21] Art. 694. A nuisance is any act, omission, establishment, business, condition of property, or anything else which:

x x x x x x x x x

(4) Obstructs or interferes with the free passage of any public highway or street, or any body of water; x x x.

of the Civil Code, more particularly a nuisance *per se*, which may be summarily abated under Article 699 (3)[22] of the same Code. Petitioner says that as the Municipal Engineer, he is also the Building Official of Naic, Cavite; and thus, it was well within his authority, pursuant to Section 214, paragraph two (2) of the National Building Code, to order the removal of the concrete posts. Petitioner likewise claims that Section 23 of Revised Philippine Highway Act (Presidential Decree No. 17)[23] mandated him to remove respondent's concrete posts. Petitioner concludes that since he merely performed his official duties in removing the concrete posts erected by petitioner from the property, which is already owned by the government, he must be absolved of any administrative liability.

Instead of filing his comment on the petition, respondent manifested through counsel that he is no longer interested in pursuing this case, submitting therewith his Affidavit of Desistance[24] dated December 5, 2007. Respondent alleged in the affidavit that the administrative charges he lodged against petitioner were brought about by a misunderstanding between them, which differences have already been settled. Consequently, this case should now be dismissed.

We disagree.

The desistance of the complainant does not necessarily result in the dismissal of the administrative complaint because the Court attaches no persuasive value to a desistance, especially when executed as an afterthought.[25] It should be remembered that the issue in an administrative case is not whether the

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[22] Art. 699. The remedies against a public nuisance are:

x x x x x x x x x

(3) Abatement, without judicial proceedings.

[23] "It shall be unlawful for any person to usurp any portion of a right of way, to convert any part of any public highway, bridge, wharf or trail to his own private use or to obstruct the same in any manner."

[24] *Rollo*, p. 68.

[25] *People v. Dimaano*, G.R. No. 168168, September, 14, 2005, 469 SCRA 647, 663.

complaint states a cause of action against the respondent, but whether the public officials have breached the norms and standards of the public service.[26] Considering that petitioner admitted in his pleadings that he summarily removed the concrete posts erected by respondent, allegedly within the parameters of his authority as Municipal Engineer of Naic, Cavite, it is only proper that this case be decided on its merits rather than on the basis of the desistance of respondent.

It cannot be denied that respondent's property was taken by the National Government thru the Department of Public Works and Highways when it constructed the Noveleta-Naic-Tagaytay Road. What is not clear from the records of this case is whether respondent's property was taken as part of the national road itself or only as part of the right-of-way easement therefor. We observe that the re-survey plan[27] of his property attached by respondent to his complaint and the survey plan[28] of the Noveleta-Naic-Tagaytay Road submitted by petitioner appear to be different. Nevertheless, it is evident from the sketch plans that respondent could not enclose his property because it is now being used by the National Government. Therefore, whatever cause of action respondent may have in his claim for just compensation for the taking of his property, the same should be lodged against the National Government.

While it is settled that respondent does not have the legal right to enclose the property, we should now determine whether petitioner indeed performed his official functions properly.

First. Petitioner claims that his act of summarily removing respondent's concrete posts was authorized under the National Building Code (Presidential Decree No. 1096). The provision he cites correctly pertains to Section 215, which reads—

Sec. 215. *Abatement of Dangerous Buildings.*—When any building or structure is found or declared to be dangerous or ruinous, the Building

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[26] *Vilar v. Angeles*, A.M. No. P-06-2276, February 5, 2007, 514 SCRA 147, 156.

[27] Ombudsman Records, p. 8.

[28] *Rollo*, p. 28.

Official shall order its repair, vacation or demolition depending upon the decree of danger to life, health, or safety. This is without prejudice to further action that may be taken under the provisions of Articles 482 and 694 to 707 of the Civil Code of the Philippines.

To better understand this provision, we refer to Section 214 of the same law, which defines what are dangerous and ruinous buildings or structures susceptible of abatement. It provides—

Sec. 214. *Dangerous and Ruinous Buildings or Structures.* Dangerous buildings are those which are herein declared as such or are structurally unsafe or not provided with safe egress, or which constitute a fire hazard, or are otherwise dangerous to human life, or which in relation to existing use, constitute a hazard to safety or health or public welfare because of inadequate maintenance, dilapidation, obsolescence, or abandonment, or which otherwise contribute to the pollution of the site or the community to an intolerable degree.

A careful reading of the foregoing provisions would readily show that they do not apply to the respondent's situation. Nowhere was it shown that the concrete posts put up by respondent in what he believed was his and his co-owners' property were ever declared dangerous or ruinous, such that they can be summarily demolished by petitioner.

What is more, it appears that the concrete posts do not even fall within the scope of the provisions of the National Building Code. The Code does not expressly define the word "building." However, we find helpful the dictionary definition of the word "building," *viz*:

[A] constructed edifice designed usually covered by a roof and more or less completely enclosed by walls, and serving as a dwelling, storehouse, factory, shelter for animals, or other useful structure – distinguished from structures not designed for occupancy (as fences or monuments) and from structures not intended for use in one place (as boats or trailers) even though subject to occupancy.[29]

The provisions of the National Building Code would confirm that "building" as used therein conforms to this definition. Thus,

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[29] Webster's *Third New International Dictionary* (Unabridged), 1993, p. 292.

applying the statutory construction principle of *ejusdem generis,*[30] the word "structure" should be construed in the context of the definition of the word "building." The concrete posts put up by respondent on the property are not properly covered by the definition of the word "building" nor is it embraced in the corresponding interpretation of the word "structure."

Second. Petitioner contends that respondent's concrete posts were in the nature of a nuisance *per se*, which may be the subject of summary abatement *sans* any judicial proceedings. Again, we disagree.

A nuisance *per se* is that which affects the immediate safety of persons and property and may be summarily abated under the undefined law of necessity.[31] Evidently, the concrete posts summarily removed by petitioner did not at all pose a hazard to the safety of persons and properties, which would have necessitated immediate and summary abatement. What they did, at most, was to pose an inconvenience to the public by blocking the free passage of people to and from the national road.

Third. Petitioner likewise maintains that his authority to perform the assailed official act sprang from Section 23 of the Revised Philippine Highway Act. He posits that this provision is particularly implemented by Department Order No. 52,[32] Series of 2003 of the Department of Public Works and Highways for the Removal of Obstructions and Prohibited Uses within the Right-of-Way of National Roads.

Department Order No. 52 directs all District Engineers to immediately remove or cause the removal of all obstructions and prohibited uses within the right-of-way of all national roads

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[30] Under the principle of *ejusdem generis*, where a statute describes a thing 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 as those particularly enumerated, unless there be something in the context of the statute that would repel such inference.

[31] *Tayaban v. People*, G.R. No. 150194, March 6, 2007, 517 SCRA 488, 507.

[32] Ombudsman Records, pp. 69-70.

in their respective jurisdictions. These obstructions and prohibited uses include, among others, all kinds of private, temporary and permanent structures, such as buildings, houses, shanties, stores, shops, stalls, sheds, **posts**, canopies, billboards, signages, advertisements, **fences**, walls, railings, basketball courts, garbage receptacles, and the like. The Department Order requires the District Engineers to issue notices to the concerned persons to remove the obstructions and prohibited uses within the right-of-way, and shall follow through prompt compliance with these notices and full implementation of the Order. It further provides that appropriate sanctions will be taken against those who fail to comply with its provisions.

Gauging the action of petitioner based on the guidelines set by Department Order No. 52, from which he claims his authority, we cannot but conclude that petitioner went beyond the scope of his official power because it is the concerned District Engineer of the Department of Public Works and Highways who should have ordered respondent to remove the concrete posts. The petitioner failed to show that he was duly authorized by the District Engineer to implement the Department Order in Naic, Cavite. More importantly, even assuming that petitioner had been duly authorized to order the removal of the concrete posts of respondent, he failed to prove that he issued the required notice to respondent to remove the said structures before he did the removal himself. Note that petitioner, in fact, admitted in his pleadings that he summarily removed the said posts.

The Revised Philippine Highway Act and Department Order No. 52 do not expressly provide for the administrative sanction to be taken against public officials violating their provisions. Hence, we must refer to the Uniform Rules on Administrative Cases in the Civil Service. We believe that the administrative offense committed by petitioner through the questioned act was only Discourtesy in the Course of Official Duties, which is a light offense under Rule IV, Section 52 of the said Rules. The penalties imposable for such an offense are a reprimand for the

first offense, a suspension from 1 day to 30 days for the second offense, and dismissal from public service for the third offense. Since this appears to be petitioner's first offense, his action warrants only a REPRIMAND.

WHEREFORE, the Decision dated October 13, 2005 and the Order dated March 17, 2006 of the Office of the Deputy Ombudsman for Luzon finding petitioner Guillermo M. Telmo, Municipal Engineer of Naic, Cavite, administratively culpable for violation of Section 4 of Republic Act No. 6713, imposing upon him the penalty of fine equivalent to his six 6-month salary, must be *MODIFIED.* Guillermo M. Telmo is instead found administratively guilty of *DISCOURTESY IN THE COURSE OF OFFICIAL DUTIES* and is hereby *REPRIMANDED.* Costs against petitioner.

SO ORDERED.

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

EN BANC

[A.M. No. 03-7-170-MCTC. July 14, 2009]

RE: REPORT ON THE JUDICIAL AUDIT CONDUCTED IN THE MUNICIPAL CIRCUIT TRIAL COURT, JIMENEZ-SINACABAN, MISAMIS OCCIDENTAL/ JUDGE PRISCILLA HERNANDEZ.

SYLLABUS

1. JUDICIAL ETHICS; JUDGES; MUST KNOW THAT THE ORDER OR RESOLUTION OF THE SUPREME COURT IS NOT TO BE CONSTRUED AS A MERE REQUEST, NOR SHOULD IT BE COMPLIED WITH PARTIALLY, INADEQUATELY OR SELECTIVELY.— The Court will not

tolerate the indifference of respondent judges to resolutions requiring their written explanations. An order or resolution of this Court is not to be construed as a mere request, nor should it be complied with partially, inadequately or selectively. To do so shows disrespect to the Court, an act only too deserving of reproof. … [Respondent] refused to heed the directives of this Court and the OCA to explain his shortcomings. Respondent ought to know that a resolution of the Court is not to be construed as a mere request nor should it be complied with partially, inadequately or selectively. At the core of the judge's esteemed position is obedience to the dictates of law and justice. A judge must be first to exhibit respect for authority.

2. ID.; ID.; GROSS INEFFICIENCY; FAILURE TO DECIDE CASES WITHIN THE PRESCRIBED PERIOD, A CASE OF.— Even respondent admitted that she was in delay but cited as excuse her designations in other courts resulting in a heavy caseload. This explanation is far from acceptable. She cannot hide behind the much-abused excuse of heavy caseload to justify her failure to decide and resolve cases promptly. She could have asked the Court for a reasonable period of extension to dispose of the cases but she did not. x x x The Constitution mandates that all cases or matters filed before all lower courts shall be decided or resolved within 90 days from the time they are submitted for decision. Respondent repeatedly ignored this mandate. She also violated Canon 3, Rule 3.05 of the New Code of Judicial Conduct which requires judges to dispose of the court's business promptly and decide cases within the required periods. Failure to comply within the mandated period constitutes a serious violation of the constitutional right of the parties to a speedy disposition of their cases. The Court has always considered a judge's delay in deciding cases within the prescribed period of three months as gross inefficiency. It undermines the people's faith and confidence in the judiciary, lowers its standards and brings it to disrepute. Undue delay cannot be countenanced at a time when the clogging of the court dockets is still the bane of the judiciary.

3. REMEDIAL LAW; COURTS; MANDATED NOT ONLY TO PROPERLY DISPENSE JUSTICE BUT ALSO TO DO SO SEASONABLY.— The *raison d' etre* of courts lies not only in properly dispensing justice but also in being able to do so seasonably. Delay derails the administration of justice. It

postpones the rectification of wrong and the vindication of the unjustly prosecuted. It crowds the dockets of the courts, increasing the costs for all litigants, pressuring judges to take short cuts, interfering with the prompt and deliberate disposition of those causes in which all parties are diligent and prepared for trial, and overhanging the entire process with the pall of disorganization and insolubility. More than this, possibilities for error in fact-finding multiply rapidly as time elapses between the original fact and its judicial determination. If the facts are not fully and accurately determined, then the wisest judge cannot distinguish between merit and demerit. If courts do not get the facts right, there is little chance for their judgment to be right.

4. JUDICIAL ETHICS; JUDGES; SHOULD EXERCISE UTMOST DILIGENCE AND CARE IN HANDLING THE RECORDS OF CASES.— Section 14 of Rule 136 of the Rules of Court expressly provides that "[no] record shall be taken from the clerk's office without an order of the court except as otherwise provided by these rules." Further, Article 226 of the Revised Penal Code punishes any public officer who removes, conceals or destroys documents or papers officially entrusted to him. With such heavy responsibilities, judges are therefore expected to exercise utmost diligence and care in handling the records of cases.

5. ID.; ID.; FAILURE OF A JUDGE TO COMPLY FULLY AND FAITHFULLY WITH THE TASKS SET BEFORE HIM, PENALTY; CASE AT BAR.— Considering the gravity of respondent's omissions and the absence of any explanation whatsoever on her part, her dismissal from the service is called for. The administration of justice demands that those who don judicial robes be able to comply fully and faithfully with the task set before them. In this regard, respondent miserably failed. The wheels of justice would hardly move if respondent is allowed to continue working in the judiciary. Therefore, as recommended by the OCA, after a thorough judicial audit, and considering the unrebutted audit reports on record, the penalty of dismissal from the service is in order. For her repeated violations of Supreme Court directives and rules (a less serious offense punishable with suspension for not less than one month nor more than three months or a fine of more than ₱10,000 but not exceeding ₱20,000), she is fined the maximum amount of ₱20,000. x x x Violation of the fundamental tenets of judicial conduct embodied in the Code of Judicial Conduct constitutes

a breach of Canons 1 and 11 of the Code of Professional Responsibility (CPR).

R E S O L U T I O N

PER CURIAM:

On February 26 to 28, 2003, a judicial audit of the Fourth Municipal Circuit Trial Court (MCTC) of Jimenez-Sinacaban, Misamis Occidental, presided by respondent Judge Priscilla Hernandez, was conducted. As a result, a resolution dated August 13, 2003[1] was issued directing respondent to:

1) submit her explanation on her failure to regularly report for work at the 4th MCTC, Jimenez-Sinacaban, Misamis Occidental and why she reports for work only in the afternoon of her scheduled dates of hearings in said court;

2) submit her explanation on her failure to decide [nine civil cases and 16 criminal cases][2] and to decide the same within 30 days from notice;

3) submit her explanation on her failure to resolve the pending incidents in [three civil cases and one criminal case][3] and to resolve the same within 30 days from notice;

4) submit her explanation on her failure to resolve the preliminary investigation in [six criminal cases][4] and to resolve the same within 30 days from notice;

5) submit her explanation on her failure to take further action on [11 civil cases and 19 criminal cases][5] and to take appropriate action thereon within 30 days from notice;

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[1] *Rollo*, pp. 27-28.

[2] Civil Case Nos. 745, 746, 747, 749, 757, 758, 764, 766, 787 and Criminal Case Nos. 7483, 7518, 7522, 7606, 7627, 7659, 7660, 7661, 7662, 7707, 7760, 7781, 7816, 7817, 7841, and 7846.

[3] Civil Case Nos. 761, 781, 789 and Criminal Case No. 7989.

[4] Criminal Case Nos. 7680, 7814, 7926, 7977, 7965 and 7992.

[5] Civil Case Nos. 748, 759, 769, 770, 776, 782, 783, 784, 786, 788, 790 and Criminal Case Nos. 7674, 7682, 7722, 7757, 7761, 7776, 7800, 7804, 7809, 7835, 7855, 7870, 7907, 7945, 7967, 7968, 7969, 7975, 7987, and 7990.

6) submit her explanation on her failure to transmit the resolutions and case folders in [two criminal cases][6] to the Office of the Provincial Prosecutor, Misamis Occidental within the 10-day period in violation of Section 5, Rule 11 of the Revised Rules on Criminal Procedure and

7) submit her explanation on the apparent loss of [records of one civil case and two criminal cases].[7]

However, respondent failed to comply with these directives.[8] The Office of the Court Administrator (OCA)[9] issued a memorandum dated October 18, 2004 directing her anew to comply with the same but there was no response.[10] In this Court's resolution dated October 3, 2005, she was directed to show cause why she should not be administratively dealt with or held in contempt for failure to comply with the August 13, 2003 resolution.[11]

Meanwhile, on October 10, 2005, a second audit was conducted on the 4th MCTC of Jimenez-Sinacaban, as well as on the 5th MCTC of Clarin-Tudela, Misamis Occidental where respondent was also Acting Presiding Judge.[12] The OCA reported its findings in its Memorandum dated January 6, 2006:[13]

In summary, out of the **130** caseload of this court at the time of the second audit, [**10**] criminal and civil cases have unresolved pending incidents, [**27**] criminal and civil cases are still undecided despite the lapse of the [90-day] reglementary period, [**one**] civil case which the court failed to take any action from the time of its filing and [**47**] criminal and civil cases without further action or setting for a

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[6] Criminal Case Nos. 7997 and 8005.

[7] Civil Case No. 771 and Criminal Case Nos. 7881 and 7889.

[8] *Rollo*, p. 115.

[9] Through Court Administrator Presbitero J. Velasco, Jr., now Supreme Court Associate Justice.

[10] *Rollo*, pp. 110, 226.

[11] *Id.*, p. 117.

[12] *Id.*, p. 118.

[13] To then Chief Justice Artemio V. Panganiban.

considerable length of time or a total of [**85**] **problematic cases**. Thus, only [**34.616%**] of cases are moving and [**65.384%**] of these cases need the required appropriate action from [respondent].

[Respondent] is complemented with [seven] staff members headed by **Mr. Michael Angelo O. Saa**, Court Interpreter who acts as the court's Officer-in-Charge.

The team was not able to audit the [five] criminal and [seven] civil cases which according to Mr. Michael Saa were in the possession of [respondent].

x x x x x x x x x

Aside from these cases, [two civil cases and eight criminal cases][14] included in the first audit, were also not presented to the second audit team. Verification from the court's Monthly Report of Cases starting from January 2004 to August 2005 (excepting June 2005 wherein the court did not submit any report) failed to show that these cases were either decided, disposed of, archived or in any way acted upon by the court.

It was also noted that no orders were issued in some cases that would indicate whether or not these cases are being tried under the New Rules on Summary Procedure, the folders/*rollo*/*expediente* are not paginated; the marked exhibits are not signed and dated; the minutes are not properly filled up (without indicating the personal circumstances and the substance of the testimonies of witnesses), the certificates of arraignment are unsigned by the accused and his/her counsel and the docket books need to be updated.

It is quite manifest that [respondent], instead of acting on the cases subject of the adverse findings of the first audit, continuously added unacted cases to her file.

x x x x x x x x x

In a letter dated April 14, 2005, Atty. Benjamin C. Galindo, then a Sangguniang member of the Municipality of Jimenez during the May 2004 elections, reminded the [OCA] that the audit of the [MCTCs] in Jimenez-Sinacaban and Aloran-Panaon was made upon the request of the Integrated Bar of the Philippines (Misamis

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[14] Civil Case Nos. 787 and 788 and Criminal Case Nos. 7627, 7804, 7814, 7835, 7881, 7968, 7997 and 8005.

Occidental Chapter) wherein [respondent] was directed "to resolve some [70] pending cases in her sala which remained undecided long after the [90] day period" per memorandum of the court. Even the Sangguniang Bayan passed a resolution requesting [respondent] to decide these cases which remains unheeded.[15]

x x x x x x x x x (Emphasis in the original)

Regarding the first audit of the 5th MCTC of Clarin-Tudela, the findings were as follows:

An analysis of the data above shows that out of the **186** pending cases at the time of [audit,] there are [**11**] criminal and civil cases with unresolved motions, [**33**] undecided criminal and civil cases submitted for decision, [**six**] unacted criminal and civil cases and [**64**] criminal and civil cases without further action or setting or a total of one hundred fourteen [**114**] cases or [**61.29%**] of the court's total case load need to be acted upon by respondent.

[Respondent] is complemented with [eight] staff members headed by **Ms. Merilla O. Adecir**, Clerk of Court II. [Respondent] holds hearings in both courts **only in the afternoons** claiming the non-availability of prosecutors and public attorneys. However, she was not able to explain her failure to report to the courts concerned during mornings.

Further findings of the team show that case records/*rollo* are not chronologically arranged; documents/pleadings received are not properly stamped as to date, time and staff who received the same; marked exhibits are not initialed by the interpreter; certificates of arraignment are unsigned by accused and his/her counsel; and some cases have no orders indicating whether or not these cases are governed by the Rule on Summary Procedure as mandated by Section 2 thereof.[16]

x x x x x x x x x (Emphasis in the original)

The OCA, in its recommendation, stated:

[Respondent] was appointed Presiding Judge [of MCTC], Jimenez-Sinacaban on **October 29, 1993** and assumed her duties on **December 1, 1993** per her service [record]. In connection with her designation

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[15] *Rollo*, pp. 125-127, citation omitted.

[16] *Id.*, pp. 137-138.

as Acting Presiding Judge of the [5th MCTC of Clarin-Tudela], records were unavailable as to her exact date of assumption although according to [Ms. Merilla O. Adecir], [respondent] assumed as Acting Presiding Judge of the 5th MCTC on **August 1, 1994**.

Taking into consideration her date of assumption, the adverse findings of the audit teams are clearly attributable to her gross incompetence, inefficiency, negligence and dereliction of duty. To reiterate, out of the [27] criminal and civil cases submitted for decision in the **4th MCTC, Jimenez-Sinacaban**, [four] were submitted for decision as early as **1996** and still remain undecided, [10] motions remain unresolved with at least [one] motion being filed as early as **1996** and out of the [47] cases that remain unacted upon, [six] cases remain at the preliminary investigation stage since **1996**. With regard to the cases at the [**5th MCTC of Clarin-Tudela**], cases should have been decided, resolved or set for hearing as early as 1996. Out of the [40] cases submitted for decision, [three] cases were submitted as early as 1996, in the [11] unresolved motions, [one] was filed as early as 1997 and of the [64] cases without further action or setting, [one] case remains at the preliminary investigation stage since 1997. Furthermore, a sampling of the consolidated certificates of service of [respondent] in the 4th and 5th MCTCs failed to disclose that there were undecided cases submitted for decision and unresolved motions submitted for resolution.

x x x x x x x x x

With regard to [the] problematic state of cases in the [5th MCTC of Clarin-Tudela] and the corresponding plight of the parties and their [counsels,] the revocation of the designation of [respondent] and the consequent designation of another in her [place] is not only appropriate but also imperative.

x x x x x x x x x

Considering the case loads of [the other] judges and the distance to the [5th MCTC of Clarin-Tudela], Judge Teresita Saa may be designated as Acting Presiding Judge thereat.[17]

x x x x x x x x x (Emphasis in the original)

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[17] *Id.*, pp. 137-141.

It recommended that respondent be dismissed on grounds of gross incompetence, inefficiency, negligence and dereliction of duty and that her designation as Acting Presiding Judge of the 5th MCTC of Clarin-Tudela be revoked.[18] Consequently, pursuant to Administrative Order No. 05-2006, respondent's designation was revoked.[19]

Despite a long interregnum, respondent still did not comply with the Court's directives. Because of such inaction, the OCA, in its memorandum dated August 9, 2007, not only reiterated its earlier recommendation for respondent's dismissal but also recommended her immediate suspension pending the resolution of this administrative matter.[20] As a result, the Court suspended respondent in a resolution dated October 10, 2007.[21]

Respondent filed a motion for reconsideration dated November 19, 2007. She admitted her culpability in the delay of the disposition of cases but claimed as contributory factors the volume of her work and designations in other courts. She begged for the Court's compassion in the resolution of her motion.[22] Her motion was denied in a resolution dated January 28, 2008.[23]

In the meantime, Judge Henry B. Damasing, Executive Judge of the Regional Trial Court of Oroquieta City, Misamis Occidental, Branch 14, furnished the OCA a copy of his letter dated November 21, 2007 to respondent requesting her to forward or return certain records of seven criminal and eight civil cases in her possession.[24] Later, records of one of the criminal cases

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[18] *Id.*, pp. 141-142.

[19] Pursuant to the same order, Judge Teresita N. Saa was designated as Acting Presiding Judge of the 5th MCTC of Clarin-Tudela. *Id.*, p. 189.

[20] *Id.*, pp. 227-228.

[21] *Id.*, p. 229. Now, Acting Presiding Judge of 4th MCTC of Jimenez-Sinacaban is Judge Grace Monica N. Zapatos-Lariba.

[22] *Id.*, pp. 231-232.

[23] *Id.*, p. 271.

[24] These cases, as provided by Ms. Rosa Peligres, Clerk of Court, 4th MCTC, Jimenez-Sinacaban and Mr. Sulpicio S. Buscato, Clerk of Court II,

were found in the 4th MCTC of Jimenez-Sinacaban.[25] On the rest, respondent said nothing. Neither did she return the said case records.[26] It was only on September 26, 2008 that the OCA was informed that respondent personally returned all the missing records except for one.[27] Thus, the OCA again recommended that respondent be dismissed from the service.

We approve the findings and recommendations of the OCA.

Respondent continually failed to comply fully with the Court's directives. After several orders and reminders to submit her explanation, her one and only move was to file a two-page motion for reconsideration of the resolution ordering her suspension:

> Respondent admits her culpability in the delay of the disposition of the cases as reported, and begged for the court's compassion to consider the volume of her work as contributory factor for the delay.
>
> The respondent, aside from presiding at 4th [MCTC], Jimenez, Misamis Occidental, had also been designated presiding judge of 5th [MCTC] Clarin-Tudela from August 1995 to February 2005, respondent was also designated presiding judge of Branch III MTCC Ozamiz City on January 27, 1998 until December 2000 as well as designated Executive Judge of MTCC Ozamiz City from November, 1998 to November, 2000.

3rd MCTC, Aloran-Panaon, were Criminal Case Nos. 7881, 7889, 8072, 8061, 7846, 8052 and Civil Case Nos. 764, 771, 781, 795, 792, 793, 820 and 824 coming from MCTC, Jimenez-Sinacaban and *People v. Rico L. Tome* for Arbitrary Detention from MCTC, Aloran-Panaon.

[25] Criminal Case No. 8052.

[26] *Rollo*, p. 272.

[27] The OCA received a copy of a letter dated September 12, 2008 of Ms. Rosa T. Peligres, Clerk of Court II, 4th Municipal Circuit Trial Court of Jimenez-Sinacaban, Misamis Occidental, to Judge Damasing. The returned records were of Criminal Case Nos. 7846, 7881, 7889, 8061, 8072 and Civil Case Nos. 764, 771, 781, 792, 793, 795, 820, and 824. However, no mention was made as to whether the records of *People v. Rico L. Tome* for Arbitrary Detention, from the MCTC, Aloran-Panaon were returned or not.

> The [respondent,] after the revocation of all her [designations] to preside over the other courts, had been working for unclogging the caseload of the 4th [MCTC], Jimenez-Sinacaban, Misamis Occidental. In support of this [allegation,] respondent attached a copy of the certification issued by the clerk of court to the fact that respondent had decided seventy-seven (77) cases over the period stated therein.[28]

As early as August 2003, the Court had already ordered respondent to explain and resolve the problems in her court. But it was only in November 2007, or three long years after when the Court finally suspended her, that she decided to give the Court a two-page motion. She never complied with the Court's directives, not even partially, and did not offer any reason for her non-compliance. She made a bare statement that she allegedly decided 77 cases from November 2006 to October 2007 but did not elaborate what these cases were.

The Court will not tolerate the indifference of respondent judges to resolutions requiring their written explanations. An order or resolution of this Court is not to be construed as a mere request, nor should it be complied with partially, inadequately or selectively.[29] To do so shows disrespect to the Court, an act only too deserving of reproof.[30]

> … [Respondent] refused to heed the directives of this Court and the OCA to explain his shortcomings. Respondent ought to know that a resolution of the Court is not to be construed as a mere request not (sic) should it be complied with partially, inadequately or selectively. At the core of the judge's esteemed position is obedience to the dictates of law and justice. A judge must be first to exhibit respect for authority.[31]

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[28] *Rollo*, pp. 231-232, citations omitted.

[29] *Goforth v. Huelar, Jr.*, A.M. No. P-07-2372, 23 July 2008, citing *Lumapas v. Tamin*, A.M. No. RTJ-99-1519, 26 June 2003, 405 SCRA 30.

[30] *Id.*

[31] *Office of the Court Administrator v. Legaspi, Jr.*, A.M. No. MTJ-06-1661, 25 January 2007, 512 SCRA 570, 583.

Moreover, the findings of the OCA show that respondent was clearly remiss in the performance of her judicial duties. Despite the lapse of more than two years from the time the first audit was made, there was no improvement in the resolution of cases in her *sala*. At the time of the second audit, she had only 130 pending cases (indeed a light load by the usual standards) but more than half of those (65.384% or 85 cases) were unacted upon.

Even respondent admitted that she was in delay but cited as excuse her designations in other courts resulting in a heavy caseload. This explanation is far from acceptable. She cannot hide behind the much-abused excuse of heavy caseload to justify her failure to decide and resolve cases promptly.[32] She could have asked the Court for a reasonable period of extension to dispose of the cases but she did not.

That a judge had been given additional work as acting presiding judge in other courts, as in the case of Judge Ramos, cannot justify his failure to resolve any pending incident. In *Casia v. Gestopa*, we already held a similar contention as unmeritorious. We even reminded respondent judge therein that:

> . . . if his caseload prevented the disposition of cases within the reglementary period, all he had to do was ask from this Court for a reasonable extension of time to dispose of the cases involved. The Court, cognizant of the caseload of judges and mindful of the difficulty encountered by them in the reasonable disposition of cases, would almost always grant the request.[33]

The Constitution mandates that all cases or matters filed before all lower courts shall be decided or resolved within 90 days from the time they are submitted for decision.[34] Respondent repeatedly ignored this mandate. She also violated Canon 3,

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[32] *Report on the Judicial Audit and Physical Inventory of Cases in the METC of Manila Br. 2*, 456 Phil. 30, 48 (2003).

[33] *Atty. Ala v. Judge Ramos, Jr.*, 431 Phil. 275, 288-289 (2002).

[34] Constitution, Article VIII, Section 15.

Rule 3.05 of the New Code of Judicial Conduct which requires judges to dispose of the court's business promptly and decide cases within the required periods.

Failure to comply within the mandated period constitutes a serious violation of the constitutional right of the parties to a speedy disposition of their cases.[35] The Court has always considered a judge's delay in deciding cases within the prescribed period of three months as gross inefficiency.[36] It undermines the people's faith and confidence in the judiciary,[37] lowers its standards and brings it to disrepute.[38] Undue delay cannot be countenanced at a time when the clogging of the court dockets is still the bane of the judiciary.[39] The *raison d' etre* of courts lies not only in properly dispensing justice but also in being able to do so seasonably.[40]

Delay derails the administration of justice. It postpones the rectification of wrong and the vindication of the unjustly prosecuted. It crowds the dockets of the courts, increasing the costs for all litigants, pressuring judges to take short cuts, interfering with the prompt and deliberate disposition of those causes in which all parties are diligent and prepared for trial, and overhanging the entire process with the pall of disorganization and insolubility. More than this, possibilities for error in fact-finding multiply rapidly as time elapses

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[35] *Salvador v. Limsiaco*, A.M. No. MTJ-08-1695, 16 April 2008, 551 SCRA 373, 377, citing *Mosquero v. Legaspi*, A.M. No. RTJ-99-1511, 10 July 2000, 335 SCRA 326.

[36] *Pantig v. Daing, Jr.*, A.M. No. RTJ-03-1791, 8 July 2004, 434 SCRA 7, 17, citing *Guintu v. Judge Lucero*, A.M. No. MTJ-93-794, 23 August 1996, 261 SCRA 1, 7.

[37] *Concerned Trial Lawyers of Manila v. Veneracion*, A.M. No. RTJ-05-1920, 26 April 2006, 488 SCRA 285, 296.

[38] *Espineli v. Español*, A.M. No. RTJ-03-1785, 10 March 2005, 453 SCRA 96, 99, citing *Office of the Court Administrator v. Quilala*, A.M. No. MTJ-01-1341, 15 February 2001, 351 SCRA 597.

[39] *Concerned Trial Lawyers of Manila v. Veneracion*, *supra* note 15, citing *Re: Report on the Judicial Audit in the RTC, Branch 71, Antipolo City*, A.M. No. 03-11-652-RTC, 21 July 2004, 434 SCRA 555.

[40] *Lim, Jr. v. Magallanes*, A.M. No. RTJ-05-1932, 2 April 2007, 520 SCRA 12, 18, citing *Vicente Pichon v. Judge Lucilo Rallos*, 444 Phil. 131 (2003).

between the original fact and its judicial determination. If the facts are not fully and accurately determined, then the wisest judge cannot distinguish between merit and demerit. If courts do not get the facts right, there is little chance for their judgment to be right.[41]

Additionally, respondent was repeatedly asked to explain the whereabouts of certain missing case records. She never bothered to do so and worse, it took her five years to return such records. Section 14 of Rule 136 of the Rules of Court expressly provides that "[no] record shall be taken from the clerk's office without an order of the court except as otherwise provided by these rules." Further, Article 226 of the Revised Penal Code punishes any public officer who removes, conceals or destroys documents or papers officially entrusted to him. With such heavy responsibilities, judges are therefore expected to exercise utmost diligence and care in handling the records of cases.[42]

Considering the gravity of respondent's omissions and the absence of any explanation whatsoever on her part, her dismissal from the service is called for.[43] The administration of justice demands that those who don judicial robes be able to comply fully and faithfully with the task set before them.[44] In this regard, respondent miserably failed.[45] The wheels of justice would hardly move if respondent is allowed to continue working in the judiciary.[46] Therefore, as recommended by the OCA, after a thorough judicial audit, and considering the unrebutted audit reports on record, the penalty of dismissal from the service is in order.[47]

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[41] *Orocio v. Roxas*, A.M. Nos. 07-115-CA-J and CA-08-46-J, 19 August 2008, citing *Pac. Transport. Co. v. Stoot*, 530 S.W.2d 930, 931 (Tex. 1975).

[42] *Atty. Ala v. Judge Ramos, Jr.*, *supra* note 33, pp. 287-288.

[43] *Office of the Court Administrator v. Legaspi, Jr.*, *supra* note 31.

[44] *Re: Report of Bernardo Ponferrada Re Judicial Audit Conducted in Br. 21, RTC, Cebu City – Judge Genis B. Balbuena, Presiding*, A.M. No. 00-4-08-SC, 31 July 2002, 385 SCRA 490, 498.

[45] *Id.*

[46] *Id.*

[47] *Office of the Court Administrator v. Legaspi, Jr.*, *supra* 31.

For her repeated violations of Supreme Court directives and rules (a less serious offense punishable with suspension for not less than one month nor more than three months or a fine of more than ₱10,000 but not exceeding ₱20,000), she is fined the maximum amount of ₱20,000.

Pursuant to A.M. No. 02-9-02-SC,[48] this administrative case against respondent as a judge based on grounds which are also grounds for the disciplinary action against members of the Bar, shall be considered as disciplinary proceedings against such judge as a member of the Bar.[49]

Violation of the fundamental tenets of judicial conduct embodied in the Code of Judicial Conduct constitutes a breach of Canons 1 and 11 of the Code of Professional Responsibility (CPR):

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

CANON 11 — A LAWYER SHALL OBSERVE AND MAINTAIN THE RESPECT DUE TO THE COURTS AND TO JUDICIAL OFFICERS AND SHOULD INSIST ON SIMILAR CONDUCT BY OTHERS.

Certainly, a judge who falls short of the ethics of the judicial office tends to diminish the people's respect for the law and legal processes. She also fails to observe and maintain the esteem due to the courts and judicial officers.[50] Respondent must always bear in mind that it is a magistrate's duty to uphold the integrity of the judiciary at all times.

Respondent's delay also runs counter to Canon 12 and Rule 12.04 of the CPR which provides:

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[48] Dated September 17, 2002 and took effect on October 1, 2002.

[49] *Maddela v. Dallong-Galicinao*, A.C. No. 6491, 31 January 2005, 450 SCRA 19, 25.

[50] *Juan de la Cruz (Concerned Citizen of Legazpi City) v. Carretas*, A.M. No. RTJ-07-2043, 5 September 2007, 532 SCRA 218, 232.

CANON 12 — A LAWYER SHALL EXERT EVERY EFFORT AND CONSIDER IT HIS DUTY TO ASSIST IN THE SPEEDY AND EFFICIENT ADMINISTRATION OF JUSTICE.

x x x x x x x x x

Rule 12.04 – A lawyer shall not unduly delay a case, impede the execution of a judgment or misuse Court processes.

For such violation of Canons 1, 11, 12 and Rule 12.04 of the CPR, she should be further fined the amount of ₱5,000.

WHEREFORE, respondent Judge Priscilla T. Hernandez, Presiding Judge of the Fourth Municipal Circuit Trial Court of Jimenez-Sinacaban, Misamis Occidental is found *LIABLE* for gross neglect of judicial duty and gross inefficiency. She is hereby ordered *DISMISSED* from the service, with forfeiture of all benefits except accrued leave credits, if any, and with prejudice to re-employment in any government branch or instrumentality, including government-owned or controlled corporations. For her repeated violations of Supreme Court directives and Section 14 of Rule 136 of the Rules of Court, she is *FINED* ₱20,000.

Respondent is further hereby *FINED* ₱5,000 for her violation of Canons 1, 11, 12 and Rule 12.04 of the Code of Professional Responsibility payable within the same period stated above. She is *STERNLY WARNED* that commission of the same or similar acts shall be dealt with more severely.

Let copies of this resolution be furnished the Office of the Court Administrator and the Office of the Bar Confidant to be attached to respondent's records.

SO ORDERED.

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

Velasco, Jr., J., no part due to prior action in OCA.

EN BANC

[A.M. No. 2008-24-SC. July 14, 2009]

RE: FIGHTING INCIDENT BETWEEN TWO (2) SC SHUTTLE BUS DRIVERS, NAMELY, MESSRS. EDILBERTO L. IDULSA and ROSS C. ROMERO.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; EVERY ACT AND WORD OF THE EMPLOYEES OF THE JUDICIARY MUST BE MARKED BY PRUDENCE, RESTRAINT, COURTESY AND DIGNITY.— Employees of the Judiciary, being engaged in government service which is people-oriented, are expected to accord respect to the person and rights of others, including a co-employee. Their every act and word must be marked by prudence, restraint, courtesy and dignity. Misbehavior by court employees within and around their vicinity necessarily diminishes their dignity. Any fighting or misunderstanding becomes a disgraceful sight reflecting adversely on the good image of the Judiciary.

2. ID.; ID.; UNIFORM RULE ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE; CONDUCT UNBECOMING OF COURT EMPLOYEE AMOUNTING TO SIMPLE MISCONDUCT; PENALTY.— Indeed, the two are guilty of conduct unbecoming of court employee amounting to simple misconduct, classified as a less grave offense under the Uniform Rules on Administrative Cases in the Civil Service which merits suspension for one month and one day to six months for the first offense, and dismissal for the second offense.

3. ID.; ID.; ID.; IMPOSITION OF PENALTIES, HOW DETERMINED.— Under Section 53 of the Uniform Rules on Administrative Cases in the Civil Service, in the determination of the penalties to be imposed, the extenuating, mitigating, aggravating or alternative circumstances, among other considerations, may be taken into account. As recommended then, the length of service, the performance ratings, and t5he number of times an employee has been administratively charged may be considered.

D E C I S I O N

CARPIO MORALES, *J.*:

By 1st Indorsement dated November 19, 2008,[1] Eduardo V. Escala, Chief Judicial Staff Officer of the Security Division of this Court, forwarded to Atty. Eden T. Candelaria, Deputy Clerk of Court and Chief Administrative Officer, for her information and appropriate action, the November 19, 2008 Incident Report[2] of Security Officer Antonio Tuason (Tuason).

Based on the Incident Report, the facts which spawned the present administrative case are as follows:

At around 7:25 a.m. of November 19, 2008, while Tuason was conducting post and inventory inspection of the security force, Watchman II Anson Balana received a radio call from Macario Torres, Jr. (Torres), the close-in security of Justice Presbitero J. Velasco, Jr., regarding a fistfighting incident at the Paco Park area between two unidentified drivers of the Supreme Court shuttle buses. Tuason, together with Police Officer (PO)2 Rolando Gabat and PO1 Lester Lira, immediately proceeded to the area where they identified the drivers as Ross Romero (Romero) and Edilberto Idulsa (Idulsa).

The fistfight was witnessed by pedicab drivers who narrated that Romero approached Idulsa in front of *Kho Kahrs Carinderia* located at the corner of Gen. Luna and P. Faura Streets and for no apparent reason punched the face of Idulsa with the use of a brass knuckle.

Jun Sepulveda (Sepulveda),[3] the driver of Bus #10, tried to separate the two but was pushed away. The fighting stopped only when Torres pacified the protagonists. The two were later brought to the *Ospital ng Maynila* by PO2 Gabat for medical attention.

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[1] *Rollo*, p. 32.

[2] *Id.* at 33.

[3] Also referred to as Proceso U. Sepulveda in the records.

In her December 3, 2008 Memorandum[4] for the Chief Justice, Atty. Candelaria summarized the versions of Sepulveda, Idulsa and Romero as follows:

Idulsa's Version

. . . [A]t around three forty-five (3:45) p.m. of November 18, 2008, while Romero was having his *merienda* in a *carinderia* at Paco Park, he requested Romero to move his bus saying, *"Ross, pakisuyo, pa-abante yung bus mo dahil lalabas na ako. Bakit naman itinutok mo sa akin."* Romero did not answer him but Idulsa knew that he heard his request because Romero looked at him. Idulsa then went back to his bus to wait for Romero. Minutes pass but Romero did not show up. Idulsa asked a certain Rodel, allegedly a driver of a DOJ bus, to help him move his bus out from the parking area. When Romero arrived in the area, Idulsa had already moved out his bus with the guidance of Rodel. Idulsa said to Romero "*Pambihira ka naman, bakit tinutok mo dyan eh ang hirap ng atras abante*." Thereafter, Idulsa left the area.

In the morning of November 19, 2008, he allegedly approached Romero in the same *carinderia* to talk to him about the incident that happened the day before which he narrated, *viz:*

> *"Nung inapproach ko siya kaninang umaga ma'am, hindi away ang sadya ko doon. Nag-uusap silang dalawa ng bus #10. Paglapit ko sa kanya, sumandal ho ako dun sa may kahoy sa tapat ng karinderya. Sabi ko, 'Pambihira ka naman Ross, si Larry ang maghapon nagparada, binigyan na ako ng puwang, x x x Ibig sabihin, away ba ang sadya ko, ma'am, nakasandal po ako dun sa may kahoy… Puro sagot niya sa akin ma'am mabibigat ang dating. Kasi may balak na talaga siya siguro ma'am na anuman ang kahinatnan, makikipagsuntukan siya. Nakasandal lang ako sa kahoy tapos ganun ang sagot niya."*

When asked by the investigators as to who provoked the fistfight, he answered that he could no longer remember. x x x

x x x x x x x x x

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[4] *Rollo,* pp. 1-7.

He admits that they were pacified by Sepulveda, but still they had their second round of fistfight which was pacified by the driver of Justice Velasco.[5] (Italics in the original)

Romero's Version

. . . On November 18, 2008, at around four o'clock (4:00) p.m., he was having *merienda* in a *carinderia* at Paco Park together with his fellow drivers. Edilberto Idulsa approached him and allegedly demanded him to move his bus because Idulsa could not get the bus out from where it was parked. He jokingly answered "*Makakalabas ka naman ah kahit hindi ko igalaw yung bus ko*.", to which Idulsa replied, "*Ayokong mahirapan, alisin mo yung bus mo*." He answered that he would finish his *merienda* first. He went to the parking area after finishing his *merienda* but at that time, Idulsa had already moved his bus out even without moving the bus of Romero. He then boarded his bus, put on the engine and started to move out. When the windows of their buses were in parallel with each other, Idulsa allegedly said, "*Tang-ina mo! Ang lawak-lawak sa unahan, hindi mo inabante",* to which he answered, *"Doy, mas malawak kanina. Kayo ang unang dumating dapat inabante nyo na para naman kami may maparadahan sa susunod…yung mga huling dadating.*" He subsequently left the area and decided to just let the incident pass.

In the morning of November 19, 2008, also in Paco Park, he was about to get down from his bus when he saw Idulsa approaching. He went back inside the bus to avoid Idulsa and when Idulsa was no longer in the vicinity, he went down from the bus and proceeded to the *carinderia* where they usually drink coffee. Mr. Proceso Sepulveda, also a SC Shuttle Bus driver, was there so he joined him. He was talking to Sepulveda when Idulsa approached him and confronted him about the incident which happened the day before . . .

x x x x x x x x x

When he punched Idulsa, he was allegedly holding his cellphone and that its edge hit Idulsa's face. They were at the heat of the fight when Sepulveda approached and tried to pacify them. When they were pacified, he uttered, *"Ikaw eh, ang init kasi agad ng ulo mo eh. Dinadaan mo sa sigaw.",* to which Idulsa replied, *"Tang-inamo may hawak ka lang eh. Tanggalin mo yang hawak mo."* They again

[5] *Id.* at 2-3.

exchanged blows, and this time, he was knocked down.[6] (Italics in the original)

Sepulveda's Version

. . . He recounts that in the morning of November 19, 2008, he was having coffee at a *carinderia* in Paco Park with Mr. Ross Romero. A few minutes later, Mr. Edilberto Idulsa arrived and talked to Romero. Idulsa and Romero were a few meters away from him. He did not mind the two as they were talking about the prior incident regarding the parking of the SC shuttle buses. He was surprised when he saw that Idulsa and Romero were already exchanging blows and he approached the two to pacify them. At that time, both had already received blows from each other and Idulsa already had a cut on his face. He separated them and even offered to bring Idulsa to the clinic but he refused. Convinced that he had stopped the two, he went back to the *carinderia* to finish his coffee. A few minutes later, Idulsa and Romero again faced each other and had another round of fistfight. At that time, Justice Velasco, whose car was passing by the area, witnessed the incident. The driver of Justice Velasco went out of the car to pacify Idulsa and Romero. Sepulveda also helped separate the two and, thereafter, security personnel arrived at the area.

x x x x x x x x x[7] (Italics in the original)

By Memorandum of December 3, 2008,[8] Atty. Candelaria found both drivers guilty of simple misconduct in this wise:

After a thorough evaluation of the respective claims of the two (2) drivers, this Office finds more weight and gives credence to the claims of Romero. It was established that Idulsa was the one who provoked Romero. He was the one who went to the place where the incident happened and confronted him. Analyzing the series of events which transpired and led to the fist fight, the incident on November 19, 2008 was only the "smoke" of the fire which actually started and heated up a day before, when Idulsa requested Romero to move the latter's bus to enable him to move out his bus out of the parking area, as Idulsa's bus was parked between Romero's bus and bus # 1.

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[6] *Id.* at 3-4.

[7] *Id.* at 4.

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

As pointed out by Romero, when he proceeded to the parking area, Idulsa had already moved out his bus. The furious Idulsa shouted at him, saying that he should give more space when parking his bus. The next day, Romero tried to avoid Idulsa. When he was having coffee with Sepulveda at the *carinderia,* Idulsa approached and confronted him. The conversation led to a heated argument and both lost their temper. Whoever gave the first punch was not established but it was clear that Idulsa suffered severe blows on his face while Romero, on his lower left chest. For failure to present the brass knuckle as evidence of the alleged weapon used, the testimony to this effect is set aside by this Office as even Idulsa himself was not sure of what object was used by Romero to his face. These facts were corroborated by Sepulveda's testimony when the latter testified that it was Idulsa who approached them at the *carinderia*.

Idulsa's claim that his purpose of confronting Romero was not to initiate a fistfight as his back was even leaning on a wood, cannot hold water. Assuming *arguendo* that his purpose was not to fight with Romero, the fact that he was the one who approached Romero and confronted him is enough proof that he had ill-feelings against Romero. Being furious about the incident between them, the ingredients were complete to start a fire. The provocation came from Idulsa to which Romero retaliated.

The statements of the by-standers and kibitzers in the area of the incident that it was Romero who approached Idulsa, appeared in contrast with the established facts. It was admitted by Idulsa and Romero that it was the former who approached the latter when the latter was drinking coffee with Sepulveda. This was also confirmed by Sepulveda. The testimonies or statements of the witnesses that Romero had a brass knuckle in his hand when he punched Idulsa, deserves scant consideration. Idulsa expressed doubts on what was in Romero's hand that landed on his face. Moreover, the Security Officers who conducted an investigation right after the incident found no brass knuckle in the area.

x x x x x x x x x

Be that as it may, Ross C. Romero is not absolved from any administrative liability either. Engaging in a fistfight is an unacceptable behavior....It is interesting to note that despite being pacified already by Sepulveda, Idulsa and Romero still continued their fight for a second round and stopped only when Justice Velasco and his driver came into the picture.

Taking all these things into consideration, this Office finds both Edilberto Idulsa and Ross Romero guilty of conduct unbecoming of a court employee which amounts to **simple misconduct**. (Emphasis and underscoring supplied)

In recommending the penalty for both, Atty. Candelaria noted:

> . . . the presence of mitigating circumstances such as Idulsa's length of service of five (5) years in the Court; his Very Satisfactory performance ratings for the past three consecutive semesters; and this being the first administrative charge filed against him. On the part of Mr. Romero, his three (3) years of service in the Court; his Very Satisfactory performance ratings for the past three (3) consecutive semesters; and this being the first administrative charge filed against him, should also be considered.
>
> She further noted that since **Idulsa** was the aggressor in this case and who actually started the fight, this Office deems that a suspension of one (1) month and one (1) day would be enough for his offense, while for **Romero** a suspension of fifteen (15) days would be sufficient. (Emphasis and underscoring supplied)

Atty. Candelaria's evaluation and recommendation are well-taken.

Employees of the Judiciary, being engaged in government service which is people-oriented, are expected to accord respect to the person and rights of others, including a co-employee. Their every act and word must be marked by prudence, restraint, courtesy and dignity.[9]

Misbehavior by court employees within and around their vicinity necessarily diminishes their dignity. Any fighting or misunderstanding becomes a disgraceful sight reflecting adversely on the good image of the Judiciary.[10]

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[9] *De la Cruz v. Zapico*, A.M. No. 2007-25-SC, September 18, 2008, 565 SCRA 658; *Court Personnel of the Office of the Clerk of Court of Regional Trial Court-San Carlos City v. Llamas*, 488 Phil. 62, 70-71 (2004).

[10] *Nacionales v. Madlangbayan*, A.M. No. P-06-2171, June 15, 2006, 490 SCRA 538, 545.

Indeed, the two are guilty of conduct unbecoming of court employee amounting to simple misconduct, classified as a less grave offense under the Uniform Rules on Administrative Cases in the Civil Service[11] which merits suspension for one month and one day to six months for the first offense, and dismissal for the second offense.[12]

Under Section 53[13] of the Uniform Rules on Administrative Cases in the Civil Service, in the determination of the penalties to be imposed, the extenuating, mitigating, aggravating or alternative circumstances, among other considerations, may be taken into account. As recommended then, the length of service, the performance ratings, and the number of times an employee has been administratively charged may be considered.

WHEREFORE, Edilberto Idulsa, Driver II, Property Division of the Office of the Administrative Services, is guilty of Simple Misconduct and is *SUSPENDED* for One (1) Month and One (1) Day without pay, while Ross Romero, Driver II of the same office, is guilty of the same offense and is *SUSPENDED* for Fifteen (15) Days without pay.

Both are *WARNED* that a repetition of the same or similar offense shall be dealt with more severely.

SO ORDERED.

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

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[11] CSC Resolution No. 991936, August 31, 1999.

[12] Section 52 (B)(2), CSC Resolution No. 991936.

[13] Section 53. ***Extenuating, Mitigating, Aggravating, or Alternative Circumstances***.— In the determination of the penalties to be imposed, *mitigating, aggravating and alternative circumstances* attendant to the commission of the offense shall be considered.

The following circumstances shall be appreciated:

a. Physical illness

b. Good faith

c. Taking undue advantage of official position

EN BANC

[A.M. No. P-06-2212. July 14, 2009]

GERONIMO FRANCISCO, *petitioner, vs.* **SEBASTIAN BOLIVAR, Sheriff IV, Regional Trial Court, Branch 19, Naga City,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; SHERIFFS; DUTY IN THE EXECUTION OF WRITS; PURELY MINISTERIAL.— In *De La Cruz v. Bato,* the Court held that a sheriff's duty in the execution of the writ is purely ministerial. He is to execute the order of the court strictly to the letter, and has no discretion whether to execute the judgment or not. As an officer tasked with the administration of justice, he is also expected to expeditiously enforce rules and implement orders of the court within the limits of his authority.

2. ID.; ID.; ID.; ID.; ID.; SHOULD MAINTAIN THE PRESTIGE AND INTEGRITY OF THE COURT.— Indeed, at the grassroots of our judicial machinery, sheriffs and deputy sheriffs are indispensably in close contact with the litigants; hence, their conduct should be geared towards maintaining the prestige and integrity of the court, for the image of a court of justice is necessarily mirrored in the conduct, official or otherwise, of the men and women who work thereat, from the judge to the least and lowest of its personnel; hence, it becomes the

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d. Taking undue advantage of subordinate
e. Undue disclosure of confidential information
f. Use of government property in the commission of the offense
g. Habituality
h. Offense is committed during office hours and within the premises of the office or building
i. Employment of fraudulent means to commit or conceal the offense
j. Length of service in the government
k. Education, or
l. Other analogous circumstances (Emphasis and italics in the original)

imperative sacred duty of each and everyone in the court to maintain its good name and standing as a temple of justice.

3. ID.; ID.; ID.; ID.; ID.; GRAVE MISCONDUCT, DISHONESTY AND ABUSE OF AUTHORITY; COMMITTED IN CASE AT BAR.— The Court has declared that lapses in procedure, coupled with unlawful exaction of unauthorized fees, are equivalent to grave misconduct and dishonesty. Herein respondent's conduct of unilaterally demanding sums of money from a party-litigant, herein complainant, purportedly to defray expenses of execution, without obtaining the approval of the trial court for such purported expense and without rendering an accounting, constitutes dishonesty and extortion and falls short of the required standards of public service. Such conduct threatens the very existence of the system of administration of justice. Moreover, by completely disregarding the proper procedure for implementation of the writ of execution and failing to notify the trial court of the compromise agreement entered into between the complainant and therein defendant in the subject civil case, respondent also committed abuse of authority or oppression, which the Court has defined as an act of cruelty, severity, or excessive use of authority.

4. ID.; ID.; ID.; ID.; ID.; ID.; PENALTY; CASE AT BAR.— [T]his is not the first time that an administrative complaint has been filed against respondent. Upon verification from the OCA, we found that respondent was charged with grave abuse of authority, which was dismissed in a Resolution dated October 17, 2006 (Third Division). To date, there is also a pending administrative case against respondent for violation of Republic Act No. 6713 and dereliction of duty, which has been referred to the OCA for evaluation, report and recommendation and is awaiting its appropriate action. The frequency of his offenses demonstrates respondent's tendency to wilfully and deliberately exceed the scope of his functions as exhibited by his uncalled for remarks and arrogance in dealing with party-litigants, like herein complainant. In view of respondent's propensity to violate the Rules of Court and the Code of Conduct for Court Personnel, the Court deems it appropriate to impose upon him the penalty of suspension for a period of two (2) years for dishonesty and grave abuse of authority in the implementation of the writ of execution with regard to Civil Case No. RTC-3811, instead of the penalty of dismissal.

APPEARANCES OF COUNSEL

Committee on Legal Aid for petitioner.
Elias A. Torallo, Jr. for respondent.

D E C I S I O N

PERALTA, *J.*:

Before this Court is a verified complaint dated October 6, 2005 filed by complainant Geronimo Francisco alleging that respondent Sebastian Bolivar, Sheriff IV of the Regional Trial Court (RTC), Branch 19 of Naga City, acted with dishonesty and abuse of authority in implementing the writ of execution in connection with the judgment rendered by the said court in Civil Case No. RTC-3811, entitled *Geronimo F. Francisco, et al. v. Danilo Soreta, et al.*

Herein complainant was one of the plaintiffs in a civil case for damages, docketed as Civil Case No. RTC-3811, entitled *Geronimo F. Francisco, et al. v. Danilo Soreta, et al.*, filed with the RTC, Branch 19 of Naga City, where judgment was rendered in his favor.[1] The dispositive portion of the Decision dated October 22, 2003, reads as follows:

WHEREFORE, the Court renders judgment in favor of the plaintiffs and against the defendants, ordering the latter:

1) to pay plaintiffs the sum of ₱50,000.00 as civil indemnity for the death of Cheyserr B. Francisco;

2) to pay plaintiffs the sum of ₱28,797.10, less the sum of ₱10,800.00 already paid to plaintiffs, as actual damages for hospitalization, medical and funeral expenses;

3) to pay plaintiffs the sum of ₱50,000.00 as exemplary damages;

4) to pay plaintiffs the sum of ₱50,000.00 as moral damages;

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[1] Based on the records, the veracity of the proceedings that transpired in the trial court cannot be determined with certainty.

5) to reimburse plaintiff Geronimo Francisco the sum of ₱4,200.00, representing lost income for twenty-one (21) days at ₱200.00 per day;

6) to pay plaintiffs the sum of ₱50,000.00 as attorney's fees and ₱10,000.00 litigation expense; and

to pay the costs of suit.

SO ORDERED.[2]

On February 19, 2005, the judgment in Civil Case No. RTC-3811 became final and executory. On May 13, 2005, the RTC granted therein plaintiffs' Motion for Execution and, on May 23, 2005, issued a Writ of Execution[3] of the judgment. Herein respondent was the Sheriff assigned to implement the writ of execution.

In his Complaint, complainant alleged that before the writ of execution was implemented, respondent submitted his Sheriff's Itemized Estimated Account of Expenses[4] dated May 24, 2005 in the total amount of ₱7,500.00 which he demanded that complainant deposit in his name with the Office of the Clerk of Court, RTC, Naga City. However, complainant was able to deposit only ₱2,000.00. Respondent then proceeded to lambast and humiliate complainant at the lobby of the Hall of Justice, Naga City. Respondent, in a loud voice, told them that they should not talk to the other sheriffs, as he was the only sheriff assigned to implement the writ. Respondent gave complainant a run-around. On another occasion, Francisco and his wife approached respondent who was then taking his snack at a canteen near the court, but the latter angrily told them that the canteen was not the proper place to discuss about the execution of judgment. After respondent Sheriff had eaten, they followed him to his office where complainant and his wife pleaded for the implementation of the writ. Aside from paying the ₱2,000.00 already deposited, they offered to shoulder the other expenses

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[2] Writ of Execution dated May 23, 2005, *rollo* pp. 23-24.

[3] *Id.*

[4] *Id.* at 15.

during the actual implementation of the writ, but respondent ignored their pleas.[5] Complainant later discovered that respondent had withdrawn the ₱2,000.00. Complainant also gave respondent an additional amount of ₱500.00, which the latter demanded as additional expense. Without a court order, respondent demanded that complainant file a bond, as there was a third-party claimant.

On June 6, 2005, as advised by respondent, complainant hired a truck and three laborers in order to haul properties belonging to the defendants. However, upon their arrival at the defendants' residence, respondent merely listed down and levied upon defendants' properties, attaching two tricycles registered in defendant Merly Soreta's name.[6]

On June 18, 2005, complainant and therein defendant Merly Soreta entered into a compromise agreement to reduce the amount of the money judgment from ₱232,997.10 to ₱210,000.00, after which defendant made a partial payment of ₱180,000.00. Defendant then executed a promissory note,[7] in which she promised to pay complainant the balance of ₱30,000.00 as follows: ₱20,000.00 on or before August 30, 2005, and ₱10,000.00 on or before September 15, 2005. However, as of September 13, 2005, when the instant complaint was filed, defendant had not yet paid the balance of ₱30,000.00. Respondent also deducted the amount of ₱10,000.00 from the partial payment of ₱180,000.00 without any explanation as to what expenses it represented.

On June 22, 2005, complainant sent a letter[8] to the Presiding Judge of the RTC, Branch 19 of Naga City, requesting the latter to require respondent to make a proper liquidation of the expenses incurred in enforcing the writ of execution and to return the excess amount to complainant.

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[5] Affidavit dated May 28, 2007, *id.* at 100-103.

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

[7] *Id.* at 18.

[8] *Id.* at 20.

On July 21, 2005, complainant wrote respondent, demanding, among others, the return of the excess amount of the sheriff's fees collected within five (5) days; otherwise, he would file an administrative complaint.

In his Counter-Affidavit[9] dated January 17, 2006, respondent denied being the cause of the delay in the implementation of the writ pursuant to the judgment rendered by the trial court in Civil Case No. RTC-3811. He claimed that after the issuance of the writ, he required complainant to deposit the amount of ₱7,500.00 with the Office of the Clerk of Court to cover incidental expenses, but complainant deposited only ₱2,000.00. Respondent added that despite complainant's failure to pay the amount in full, respondent still implemented the writ by attaching two (2) tricycles belonging to therein defendant Merly Soreta as partial satisfaction of the judgment. Thereafter, on June 18, 2005, the parties in the civil case agreed to settle the money judgment in the amount of ₱210,000.00. Respondent admitted the existence of the acknowledgment receipt[10] dated June 18, 2005 covering the amount of ₱10,000.00, as evidence of payment by complainant, but claimed that it was therein defendant who paid the said amount which she borrowed from complainant because the latter insisted that defendant should pay the balance of the sheriff's fees. Respondent also averred that the total amount of ₱12,500.00 he received was insufficient as shown by the breakdown of expenses. He denied having knowledge of the complainant's expenses because it was the former who paid for all the expenses. Moreover, respondent stated that he submitted the itemized breakdown of the expenses to the complainant's lawyer, and when complainant requested a report on the liquidation of expenses, the writ had not yet been fully satisfied. Respondent insisted that the amount being claimed by complainant as exorbitant had already been duly liquidated and was covered by a supplemental breakdown of expenses.

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[9] *Id.* at 40-42.

[10] *Id.* at 9.

In its Report[11] dated May 19, 2006, the Office of the Court Administrator (OCA) recommended that respondent Sheriff be found guilty of simple misconduct and suspended for one (1) month and one (1) day without pay, with a warning that a repetition of the same or similar acts be dealt with more severely. The pertinent portions of the said Report state:

> In the discharge of the sheriff's duty of enforcing writs issued pursuant to court orders for which expenses are to be incurred, Section 10 of Rule 141 of the Rules of Court, as amended by A.M. No. 04-2-04-SC which took effect on August 16, 2004, expressly provides:
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> x x x x x x x x x
>
> **With regard to sheriff's expenses in executing writs issued pursuant to court orders or decisions** or safeguarding the property levied upon, attached or seized, including kilometrage for each kilometer of travel, guard's fees, warehousing and similar charges, **the interested party shall pay said expenses in an amount estimated by the sheriff, subject to the approval of the court. Upon approval of said estimated expenses, the interested party shall deposit such amount with the clerk of court and *ex officio* sheriff, who shall disburse the same to the deputy sheriff assigned to effect the process, subject to liquidation within the same period for rendering a return on the process. The liquidation shall be approved by the court.** Any unspent amount shall be refunded to the party making the deposit. A full report shall be submitted by the deputy sheriff assigned with his return, and the sheriff's expenses shall be taxed as costs against the judgment debtor. (Emphasis and underscoring supplied).

The clear import of the above-mentioned provision is that the interested party shall deposit the court-approved estimate of the sheriffs' expenses with the Clerk of Court. The Clerk of Court shall then disburse the same to the executing sheriff subject to liquidation within the same period for rendering a return on the writ. The liquidation shall then be approved by the court.

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[11] *Id.* at 86-89.

Although respondent seemingly observed the procedure laid down under Section 10 of Rule 141 by submitting an estimate of the expenses and a liquidation of the same, it appears that he did not completely follow the procedure. Aside from directly receiving sums of money from the party litigants, respondent received an amount more than the court-approved sheriff's fees. There is also no showing that the liquidation of expenses he submitted to the court was approved.

Record shows that the estimate of expenses amounting to ₱7,500.00 was approved by the court. However, respondent admitted that he received the total amount of ₱12,500.00 as sheriff's fees. Out of the amount he received, ₱2,000.00 was disbursed by the Clerk of Court, the rest were received by the respondent directly from the party litigants. Respondent did not deny demanding and receiving the additional amount of ₱500.00 from the complainant. He also acknowledged receiving the amount of ₱10,000.00 which he claims to have been paid by the defendant as sheriff's fees.

Respondent knew fully well, as it was he who submitted the estimate of expenses to the court, that the amount of ₱12,500.00 he received is beyond the court-approved sheriff's fees. His contention that it was the defendant in the civil case and not herein complainant who paid the amount of ₱10,000.00 is of no moment. Likewise, the justification that the amount he received was insufficient to cover the amount of expenses incurred in the implementation of the writ is unacceptable. A sheriff may receive only the court-approved sheriff's fees and acceptance of any other amount is improper. *(Bernabe v. Eguia, A.M. No. P-03-1742, 18 September 2003).*

There is also no showing that the court has approved the liquidation of expenses submitted by the respondent wherein he itemized his expenses in the implementation of the writ amounting to ₱13,000.00. Said liquidation is not even supported by documents. In his counter-affidavit, respondent was only able to attach two (2) receipts representing payment of guarding fee for the [(2) levied] units of tricycles and hiring fee for the jeepney used in the implementation of the writ amounting to ₱2,000.00 and ₱1,500.00, respectively. The said receipts are not sufficient to cover the amount of the expenses that the respondent allegedly incurred in the implementation of the writ.

x x x x x x x x x

Respondent's act of demanding and receiving sums of money, for expenses incurred in the implementation of the writ, directly from party- litigants shows his propensity to disregard the procedural steps in defraying expenses in the implementation of court processes, which puts at risk the integrity of the judiciary. Such demand and receipt of money compounded by the fact that he received an amount exceeding the court-approved sheriff's fees and by submitting an unsupported liquidation report may arouse suspicion and impression that the same were received for less than noble purposes.

To our mind, respondent's deviation from the procedure of requiring the party interested to deposit the court-approved sheriff's fees with the Clerk of Court by directly receiving the same compounded by the fact that he received an amount more than the court-approved sheriff's fees is clearly a misconduct in office.[12]

In a Resolution[13] dated February 14, 2007, the Court referred the matter to the Executive Judge of the RTC, Naga City, for investigation, report and recommendation within ninety (90) days from notice.

On September 20, 2007, Executive Judge Jaime Contreras submitted his Report[14] which contained the following findings:

The defense of the respondent that the Php10,000.00 which he received was given to him by the defendants, who borrowed the said amount from the complainant, as payment for sheriff's expenses per their agreements, do not evince belief even if said version was corroborated by fellow sheriff, Pielagio Papa, Jr., and court interpreter, Jesus Almero. Why should the defendants (losing party) pay for the sheriff's expenses which must be borne by the prevailing party (complainant)? Such tale was not in accordance [with] the ordinary course of human nature and experience that the prevailing party, who was not fully satisfied of the money judgment would still lend money to the losing party just to pay for the sheriff's expenses.

Further, complainant bewailed the shabby treatment he received and the conduct or arrogance displayed by the respondent in several

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[12] *Id.* at 87-89.

[13] *Id.* at 91.

[14] *Id.* at 182-184.

occasions thereby causing him (complainant) embarrassments when he persistently made several follow-ups for the enforcement of the writ, and the same were as follows: (1) for seeking the reduction of the court-approved sheriff's estimated expense of Php7,500.00, (2) for publicly berating the complainant by telling him while at the lobby of the Hall of Justice that he must not talk with other sheriffs because he was the only one who could enforce the writ; (3) When he approached the respondent while the latter was taking his snack at the canteen and respondent rudely told complainant that such was not the proper place but at their office where they must talk about the enforcement of the writ.

Receiving money from the litigants without being covered with official receipt under the guise of sheriff's expenses is an act of dishonesty. So with the failure of a sheriff to account or liquidate the money he received as sheriff's expense.

Also, one's conduct to treat a litigant or one with official transactions in court shabbily, rudely or in a manner that would cause insult, embarrassment or humiliation, to whom they must serve, is condemnable conduct not befitting of a public servant.

RECOMMENDATION

It is respectfully recommended that respondent be held liable as charged and be penalized with suspension from service for two (2) months without pay with the admonition to tone his conduct in dealing with the public most especially court litigants.

RESPECTFULLY SUBMITTED.

In a Resolution[15] dated November 14, 2007, the Court referred the report dated September 20, 2007 to the OCA for evaluation, report and recommendation within thirty (30) days from notice.

On January 18, 2008, the OCA submitted its evaluation, report, and recommendation[16] with the following observation:

The expenses to be incurred by the sheriff in the execution of a judgment are clearly treated in the Rules of Court. Section 10 of Rule

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[15] *Id.* at 386.

[16] *Id.* at 387-391.

141 of the Rules of Court, as amended by A.M. No. 04-2-04-SC which took effect on August 16, 2004, expressly provides: x x x

x x x x x x x x x

Verily, the clear import of the above-mentioned provision is that the interested party shall deposit the court-approved estimate of the sheriff's expenses with the Clerk of Court. The Clerk of Court shall then disburse the same to the executing sheriff subject to liquidation within the same period for rendering a return on the writ. The liquidation shall then be approved by the court.

Although respondent seemingly observed the procedure set forth under Section 10 of Rule 141 submitting an estimate of the expenses and a liquidation of the same, it appears that he did not completely follow the procedure. Aside from directly receiving sums of money from the party litigants, respondent received an amount more than the court-approved sheriff's fees. There is also no showing that the liquidation of expenses he submitted to the court was approved.

Record shows that the estimate of expenses amounting to ₱7,500.00 was approved by the court. However, respondent admitted that he received the total amount of ₱12,500.00 as sheriff's fees. Out of the amount received, ₱2,000.00 was disbursed by the Clerk of Court, the rest was received by the respondent directly from the party-litigants. Respondent did not deny demanding and receiving the additional amount of ₱500.00 from the complainant. He also acknowledged receiving the amount of ₱10,000.00 which he claims to have been paid by the defendant as sheriff's fees. This contention, however, was found by the investigating judge to be perplexing and contrary to human experience.

It was, likewise, noted that there is no showing that the court has approved the liquidation of expenses submitted by the respondent wherein he itemized his expenses in the implementation of the writ amounting to ₱13,000.00. Said liquidation is not even supported by documents. In this counter-affidavit, respondent was only able to attach two (2) receipts representing payment of "guarding" fee for the two (2) levied units of tricycles and hiring fee for the [jeepneys] used in the implementation of the writ amounting to ₱2,000.00 and ₱1,500.00, respectively. The said receipts are not sufficient to cover the amount of the expenses that the respondent allegedly incurred in the implementation of the writ.

x x x x x x x x x

Respondent's act of demanding and receiving sums of money, for expenses incurred in the implementation of the writ, directly from party-litigants shows his disregard of procedural steps in defraying expenses in the implementation of court processes. This puts at risk the integrity of the judiciary. Such demand and receipt of money compounded by the fact that he received an amount exceeding the court-approved sheriff's fees, and the submission of an undocumented liquidation report created suspicion and the impression that the same were received for less than noble purposes. The respondent's deviation from procedure compounded by his receipt of an amount more than that which the court approved is clearly misconduct in office.

Finally, during the investigation it was found by the investigating judge that respondent likewise acted in a hostile way in dealing with complainant concerning the progress of the execution of the decision. While the matter was not included in the complaint and respondent was not able to file his comment thereon, this Office deems it wise to call nonetheless the attention of respondent regarding his manners in dealing with the public and court users. It is believed that the finding made as a result of an investigation participated in by respondent can rightfully be made an additional basis for administrative penalty.

Wherefore, premises considered, the undersigned most respectfully recommends that respondent Sebastian Bolivar, Sheriff IV, RTC, Branch 19, Naga City after having been found guilty of simple misconduct in office be penalized with SUSPENSION for One (1) Month without pay with STERN warning that the commission of the same or similar acts in the future shall be dealt with more severely.

In a Resolution[17] dated February 20, 2008, 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 ten (10) days from notice, to which the respondent complied on April 14, 2008 and, likewise, the complainant on May 30, 2008.

The Court modifies the recommendation of the OCA.

Respondent alleged that complainant refused to reimburse the expenses he incurred in implementing the writ, and that it

[17] *Id.* at 399.

was only after the parties had entered into a compromise agreement that complainant agreed to pay respondent ₱10,000.00 on behalf of therein defendant.

On the other hand, complainant stated that aside from giving the ₱2,000.00 which he and his wife deposited with the trial court on May 26, 2005, he gave respondent an additional amount of ₱500.00 on June 6, 2005 for the implementation of the writ. Moreover, complainant pointed out that he offered to shoulder the other expenses and even rented a truck, then again paid respondent ₱10,000.00 on June 18, 2005.

The Court is more inclined to believe the complainant's contention. The procedure for payment and liquidation of sheriff's expenses is provided under Section 10, Rule 141 of the Rules of Court.[18] Thus,

> SEC. 10. *Sheriffs, process servers and other persons serving processes*. – x x x
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> With regard to sheriff's expenses in executing writs issued pursuant to court orders or decisions, or safeguarding the property levied upon, attached or seized, including kilometrage for each kilometer of travel, guards' fees, warehousing and similar charges, the interested party shall pay said expenses in an amount estimated by the sheriff, subject to the approval of the court. Upon approval of said estimated expenses, the interested party shall deposit such amount with the clerk of court and *ex officio* sheriff, who shall disburse the same to the deputy sheriff assigned to effect the process, subject to liquidation within the same period for rendering a return on the process. The liquidation shall be approved by the court. Any unspent amount shall be refunded to the party making the deposit. A full report shall be submitted by the deputy sheriff assigned with his return, and the sheriff's expenses shall be taxed as costs against the judgment debtor.

The said provision clearly states that it is the interested party, herein complainant, who shall pay the sheriff's expenses and deposit the same with the clerk of court. In the present case, however, respondent would like the Court to believe that the

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[18] Revised by A.M. No. 04-2-04-SC, effective August 16, 2004.

₱10,000.00 he received was for the payment of defendant's loan from complainant. His explanation is implausible. There would be no reason for the defendant to pay respondent in order to effect the levy on execution on his own property. Moreover, the receipt for the said ₱10,000.00 confirms that payment was made by complainant.

Even assuming that the payment of ₱10,000.00 was made on behalf of the defendant, respondent acknowledged having received a total of ₱12,500.00 as sheriff's expenses. The estimated expenses which he submitted to and were later approved by the RTC amounted to only ₱7,500.00, which reveals that complainant had, in fact, overpaid him by ₱2,500.00. While respondent was able to submit a Liquidation of Expenses[19] dated August 30, 2005 in which he claimed to have spent ₱13,000.00, he was only able to present two receipts[20] to prove his expenses: (1) ₱1,500.00 issued on June 6, 2005 as rent for the jeep hired to haul objects and (2) ₱2,000.00 issued on July 1, 2005 as guarding fee for two (2) tricycles. Notably, it does not appear that said liquidation was approved by the RTC. Respondent has undoubtedly violated Section 4, Canon I of the Code of Conduct for Court Personnel,[21] which provides that court personnel shall not accept any fee or remuneration beyond what they receive or are entitled to in their official capacity. Respondent failed to substantiate that the expenses amounting to ₱9,500.00, without receipts to qualify the same, was actually incurred and duly accounted for.

Respondent likewise did not follow the correct procedure under Section 10, Rule 141 of the Rules of Court and exceeded the scope of his duties. Aside from receiving an amount more than the stated estimated expenses, he collected sums of money directly from the party litigants instead of coursing them through the clerk of court. Without a court order, he allowed the parties to enter into a compromise agreement, and as a consequence

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[19] *Rollo*, p. 85.

[20] *Id.* at 54 & 53, respectively.

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

thereof, the money judgment in favor of the complainant was reduced. There is also no showing that he rendered a sheriff's report to clear himself from any accountability. During trial, respondent testified:

ATTY. CAAYAO:

> Did you hear or were you able to get the statement just manifested a while ago by your counsel about your role as sheriff?

RESPONDENT:

> Yes, it is ministerial.

Q: Meaning, you have no discretion?

A: Nothing.

Q: Will you agree with me that on June 18, 2005 you allowed partial payment of the monetary obligation of the judgment?

A: Yes, sir.

Q: Is that an exercise of discretion?

A: I think that is not an exercise of discretion because…

x x x x x x x x x

COURT:

> Continue with your answer.

A: On that date, it was the idea of the plaintiff's counsel to initiate that both parties must meet at plaintiff's [counsel's] office, so I did really contacted (sic) the plaintiff and the defendant so that both minds will meet.

ATTY. CAAYAO:

Q: In whose instinct was that agreement discussed?

A: It was called for by Atty. Luis Ruben General that plaintiff and defendant must meet so we decided that since the prevailing party was his client we must go on with the discussion at his counsel's office.

Q: As Sheriff, do you not know that your powers are limited to the faithful execution of the court's orders?

A: Yes, sir.

Q: Did you faithfully execute the court's order that you implement the decision?

A: Yes, sir.

Q: Were you able to collect the entire amount due complainant on June 18, 2005?

A: Not yet.

Q: So you did not faithfully comply with the execution of the order?

A: I complied, he complied, both parties complied because when we were already at his counsel's office, Atty. General told us "okay, let us discuss the matter so that if matters are all in place, let me know. I will just go out of my office." When we agreed to a certain idea beneficial to both parties, we informed Atty. General already.

Q: Did it not occur to your mind that by acceding to a partial payment of the monetary judgment you were extending undue favor to the defendant?

A: No, sir.

Q: But you are aware as Sheriff that you have no discretion to receive partial payment?

A: No discretion, sir.

Q: But yet you agreed to the payment of partial payment?

A: It was agreed by both parties, something of that kind.[22]

In *De La Cruz v. Bato*,[23] the Court held that a sheriff's duty in the execution of the writ is purely ministerial. He is to execute the order of the court strictly to the letter,[24] and has no discretion

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[22] TSN dated July 18, 2007, pp. 17-20.

[23] A.M. No. P-05-1959, February 15, 2005, 451 SCRA 330.

[24] *Id.* at 336, citing *Wenceslao v. Madrazo*, 247 SCRA 696, 704 (1995); *Eduarte v. Ramos*, 238 SCRA 36, 40 (1994).

whether to execute the judgment or not.[25] As an officer tasked with the administration of justice, he is also expected to expeditiously enforce rules and implement orders of the court within the limits of his authority. Clearly, respondent deviated from the mandated duties and responsibilities expected of him in the implementation of the writ of execution.

Lastly, complainant claimed that he had been humiliated and lambasted by respondent. In his Affidavit[26] dated May 28, 2007, he alleged that:

> 7. x x x There were times when I and my wife were seen by respondent talking with some court personnel at the court lobby. Then and there, **respondent sheriff berated us in public in a loud voice that we should not talk to other sheriffs as he is the only existing sheriff that could implement the writ.** At one time, we saw respondent sheriff taking his snack at a canteen near the court and courteously approached him, but as we approached he angrily told us that the canteen was not the proper place to discuss the matter regarding execution. We thus waited. When respondent sheriff was done eating his snack, we followed him to his office where again we pleaded for the implementation of the writ. We thus offered him that aside from the ₱2,000.00 already deposited, we will just shoulder the other expenses during the actual implementation of the writ. But **respondent simply ignored our pleas**; x x x

In his Affidavit[27] dated July 17, 2007, respondent denied that the execution of the writ had been delayed, without refuting complainant's allegation about his abrasive behavior.

Indeed, at the grassroots of our judicial machinery, sheriffs and deputy sheriffs are indispensably in close contact with the litigants; hence, their conduct should be geared towards maintaining the prestige and integrity of the court, for the image of a court of justice is necessarily mirrored in the conduct,

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[25] *Id.*, citing *Aristorenas v. Molina*, 246 SCRA 134 (1995); *Evangelista v. Penserga*, 242 SCRA 702, 709 (1995).

[26] *Rollo*, pp. 100-103. (Emphasis supplied).

[27] *Id.* at 139-142.

official or otherwise, of the men and women who work thereat, from the judge to the least and lowest of its personnel; hence, it becomes the imperative sacred duty of each and everyone in the court to maintain its good name and standing as a temple of justice.[28] Respondent's discourtesy and braggadocio in dealing with complainant and his wife with regard to an official matter should not be tolerated. The Court will not allow respondent to use his position to throw his weight around when dealing with party-litigants like herein complainant.

In addition, respondent failed to abide by Section 2, Canon IV of the Code of Conduct for Court Personnel, which states that court personnel shall carry out their responsibilities as public servants in as courteous a manner as possible.[29]

The Court has declared that lapses in procedure, coupled with unlawful exaction of unauthorized fees, are equivalent to grave misconduct and dishonesty. Herein respondent's conduct of unilaterally demanding sums of money from a party-litigant, herein complainant, purportedly to defray expenses of execution, without obtaining the approval of the trial court for such purported expense and without rendering an accounting, constitutes dishonesty and extortion and falls short of the required standards of public service. Such conduct threatens the very existence of the system of administration of justice.[30] Moreover, by completely disregarding the proper procedure for implementation of the writ of execution and failing to notify the trial court of the compromise agreement entered into between the complainant and therein defendant in the subject civil case, respondent also committed abuse of authority or oppression, which the Court has defined as an act of cruelty, severity, or excessive use of authority.[31]

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[28] *Danao v. Franco*, 440 Phil. 181 (2002).

[29] *Supra* note 21.

[30] *Pag-asa G. Beltran v. Romeo Monteroso, etc.*, A.M. No. P-06-2237, December 4, 2008.

[31] *Rafael v. Sualog*, A.M. No. P-07-2330, June 12, 2008, 554 SCRA 278, 287, citing *Stilgrove v. Sabas*, 508 SCRA 383, 400 (2006).

As to the penalty to be imposed, the Investigating Judge recommended that respondent be suspended from the service for two (2) months, while the OCA recommended one (1) month suspension. Respondent having been found liable by the Court for dishonesty and abuse of authority or oppression, the corresponding penalty under Section 52(A)(1) and (14) of the Uniform Rules on Administrative Cases in the Civil Service Commission[32] would be dismissal.

In the following cases where therein respondent sheriffs were first-time offenders — in *De Guzman, Jr. v. Mendoza*[33] for grave misconduct and dishonesty; *Adoma v. Gatcheco*[34] for grave misconduct, dishonesty and conduct prejudicial to the best interest of the service; *Apuyan, Jr. v. Sta. Isabel*[35] for grave misconduct, dishonesty and conduct grossly prejudicial to the best interest of the service; and *Albello v. Galvez*[36] for dishonesty — the Court meted the penalty of one (1) year suspension.

However, this is not the first time that an administrative complaint has been filed against respondent. Upon verification from the OCA, we found that respondent was charged with grave abuse of authority, which was dismissed in a Resolution dated October 17, 2006 (Third Division).[37] To date, there is

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

[33] A.M. No. P-03-1693, March 17, 2005, 453 SCRA 565, 572.

[34] A.M. No. P-5-1942, January 17, 2005, 448 SCRA 299.

[35] A.M. No. P-01-1497, May 28, 2004, 430 SCRA 1.

[36] 443 Phil. 323 (2003).

[37] A.M. No. RTJ-06-2024 (Formerly OCA-IPI No. 06-2410-RTJ), entitled *Tirso P. Mariano v. Judge Zaida Aurora B. Garfin, Clerk of Court Jesusa I. Mambo, and Sheriff Sebastian T. Bolivar, Regional Trial Court, Branch 19, Naga City*.

also a pending administrative case[38] against respondent for violation of Republic Act No. 6713 and dereliction of duty, which has been referred to the OCA for evaluation, report and recommendation and is awaiting its appropriate action. The frequency of his offenses demonstrates respondent's tendency to wilfully and deliberately exceed the scope of his functions as exhibited by his uncalled for remarks and arrogance in dealing with party-litigants, like herein complainant. In view of respondent's propensity to violate the Rules of Court and the Code of Conduct for Court Personnel, the Court deems it appropriate to impose upon him the penalty of suspension for a period of two (2) years for dishonesty and grave abuse of authority in the implementation of the writ of execution with regard to Civil Case No. RTC-3811, instead of the penalty of dismissal.

WHEREFORE, respondent Sebastian Bolivar, Sheriff IV of the Regional Trial Court, Branch 19, Naga City, is found *GUILTY* of dishonesty and grave abuse of authority and is hereby *SUSPENDED* from the service without pay for a period of two (2) years, with a stern warning that a repetition of the same or similar acts in the future shall be dealt with more severely.

This Decision shall be immediately executory.

SO ORDERED.

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

Velasco, Jr., J. no part due to prior action in OCA.

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[38] OCA-IPI, No. 09-03110, entitled *Mary Jane Dychiao v. Jesusa I. Mambo, Clerk of Court V, and Sebastian Bolivar, Sheriff IV, Regional Trial Court, Branch 19, Naga City.*

EN BANC

[A.M. No. RTJ-09-2186. July 14, 2009]
(Formerly A.M. OCA-IPI No. 03-1893-RTJ)

ATTY. NELSON T. ANTOLIN and ATTY. DIOSDADO E. TRILLANA, *complainants, vs.* **JUDGE ALEX L. QUIROZ, SHERIFF EDWIN V. GARROBO, and SHERIFF MARIO PANGILINAN,** *respondents.*

[A.M. No. RTJ-09-2187. July 14, 2009]
(Formerly A.M. OCA IPI No. 04-1993-RTJ)

EDWIN V. GARROBO, *complainant, vs.* **JUDGE ALEX L. QUIROZ, RTC, Pasig City,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; SHERIFFS; DUTY IN EXECUTING A WRIT IS PURELY MINISTERIAL.— [Respecting A.M. OCA IPI No. 03-1893-RTJ], that sheriffs have an important role to play in the administration of justice cannot be overemphasized. They form an integral part, as they are called upon to serve writs, execute all the processes, and carry into effect the orders, of the court. When placed in their hands, it is their duty, in the absence of any instruction to the contrary, to proceed with reasonable celerity and promptness, to execute writs according to their mandate. As noted by the OCA, no restraining order was issued by the appellate court on October 17, 2003 to excuse the delay in the execution of the writ. It was only on October 21, 2003 or four days later that the appellate court issued a temporary restraining order pending resolution of the motion for reconsideration. At all events, even if a writ is later ruled to be improvidently or improperly issued, the sheriff is not in a position to question it, as his duty in executing the same is purely ministerial.

2. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; SUBSTANTIAL EVIDENCE; THE QUANTUM OF PROOF REQUIRED IN ADMINISTRATIVE

CASES.— Respecting A.M. OCA IPI No. 04-1993-RTJ, although administrative proceedings are not bound by technical rules of procedure in adjudication of cases, it does not do away with compliance with basic rules in proving allegations. The fundamental requirement of due process requires that if sanction must be meted out, the quantum of proof required in administrative cases should be met. In the present case, absent substantial evidence to support them, the complaint and the counter-charge are reduced to bare accusations and mere conjectures. They must necessarily be dismissed.

D E C I S I O N

CARPIO MORALES, *J.*:

These two administrative complaints, **A.M. OCA IPI No. 03-1893-RTJ** and **A.M. OCA IPI No. 04-1993-RTJ,** stemmed from the issuance, in Civil Case No. 59264, *"Fruehauf Electronics Philippines, Inc. v. Signetics Corp., U.S.A.,"* by then Judge Alex L. Quiroz (Judge Quiroz)[1] of Branch 156, Regional Trial Court (RTC) of Pasig City of a Writ of Execution, and its implementation.

By Decision of October 31, 1996, the RTC, in Civil Case No. 59264, found in favor of Fruehauf Electronics Philippines, Inc. (Fruehauf), which decision was affirmed on appeal by the Court of Appeals.

On May 21, 2001, Fruehauf filed a Motion for Execution of the decision. The motion was submitted for consideration of Judge Quiroz who had in the meantime assumed as Presiding Judge of Branch 156.

Fruehauf sought to enforce execution of the decision against Philips Semiconductors Philippines, Inc. (PSPI), a local subsidiary of Signetics Corp. U.S.A. (Signetics).

By Order of January 21, 2002, Judge Quiroz ruled that execution could not be directed against PSPI, which was not a party to the civil case. Fruehauf assailed this Order via *Certiorari* and *Mandamus* before the Court of Appeals.

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[1] Now an Associate Justice of the Sandiganbayan.

By Decision of September 10, 2003, the appellate court set aside Judge Quiroz' Order and directed him "to issue a writ of execution against Philips Semiconductors, Philippines, Incorporated as the local subsidiary of the original defendant, Signetics, USA, in accordance with the decision of the trial court dated October 31, 1996."

Re: A.M. OCA IPI NO. 03-1893-RTJ
(*"Atty. Nelson T. Antolin, et al. v. Judge Alex L. Quiroz, et al."*)

In compliance with the appellate court's above-said Decision of September 10, 2003, Judge Quiroz ordered on **October 9, 2003** the issuance of a writ of execution specifically designating Deputy Sheriff Edwin V. Garrobo (Garrobo) of Branch 156 to implement it.

With the authority of the Branch Clerk of Court, Garrobo and another sheriff, Mario Pangilinan of the Office of the Clerk of Court (Pangilinan),[2] proceeded to Cabuyao, Laguna to implement the writ. At that time, Judge Quiroz was on sick leave.

The sheriffs were told to wait for the counsels of PSPI, namely Atty. Nelson T. Antolin and Atty. Diosdado E. Trillana (complainants). Upon arrival, complainants informed respondent sheriffs that execution could not proceed as the appellate court's September 10, 2003 Decision was not yet final and executory pending resolution of their Motion for Reconsideration of said Decision. And complainants furnished respondent sheriffs a copy of their Motion to Set Aside the October 9, 2003 Order of Judge Quiroz. Respondent just the same proceeded with the implementation of the writ.

Hence, spawned complainants' letter-complaint of November 3, 2003 to the Chief Justice, they assailing the issuance of the Writ of Execution and respondent sheriffs' implementation thereof, *viz*:

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[2] For A.M. No. RTJ-03-1893, Sheriff Garrobo and Sheriff Pangilinan shall be collectively referred to as "respondent sheriffs."

> [Judge Quiroz] issued the Order of Oct. 9, 2003 despite the following: (1) the CA Decision that permitted execution of the lower court's judgment had not yet become final and executory; (2) he issued it *motu propio* (sic), without a motion having been filed by the party sustained in the CA Decision; and (3) he issued it without an entry of the judgment of the CA, as required by Rule 39, Sec. 1. x x x
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> Last Friday, Oct. 17, 2003, when the undersigned talked to the Sheriffs to explain the illegality of what they were doing, we saw the face of lawlessness. They would not listen to reason; they ignored the facts, insisting on the Writ as though they had duty to enforce even a Writ that was void on its face.
>
> We saw two men gone mad with power. We saw two officers of the court – for such they are as Sheriffs – who acted in flagrant violation of the rules they were sworn to uphold, simply because they had no courage to say no to what Fruehauf's representatives wanted. x x x[3]
>
> (Italics and underscoring in the original)

By Resolution of November 25, 2003, the Court required Judge Quiroz and respondent sheriffs to comment thereon. The letter-complaint, which was referred to the Office of the Court Administrator (OCA) for investigation and evaluation, was docketed as OCA- IPI No. 03-1893-RTJ.[4]

In his Comment of November 25, 2003, Judge Quiroz maintained that his challenged Order of October 9, 2003 was in compliance with the appellate court's directive in its Decision of September 10, 2003. He asserted that the Rules of Court only require a certified copy of the judgment/decision to be attached to the writ and not an entry of judgment as contended by the complainants.

Respondent Garrobo, upon the other hand, countered that sheriffs do not possess the discretion to defer the implementation of a writ of execution, it being a ministerial duty. Respondent Pangilinan, for his part, stressed that as a mere assisting sheriff, he did not have any participation prior to the implementation of the writ.

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[3] *Rollo*, pp. 16-22, 16, 19.

[4] *Id.* at p. 34.

The OCA came up with the following Evaluation:

After studiously considering the complaint, including the annexes appended thereto and the comments of respondent Judge Quiroz, we hold that the instant administrative complaint is not the appropriate action for the correction of the alleged erroneous order of the respondent Judge, for a judicial remedy exists and is available. If a party is prejudiced by the orders of a judge, his remedy lies with the proper court for the proper judicial action and not with the Office of the Court Administrator by means of an administrative complaint. x x x

As to the charges against respondent sheriffs, we note that respondent Sheriff Garrobo submitted a three-page comment while the other respondent Sheriff Pangilinan, filed a two and a half page comment, both of which submissions contain general averments. In addition, the complainant lawyers filed a Reply dated 23 December 2003 wherein they further assail the actuations of the respondent sheriffs for being in contravention of provisions of the Rules of Court. The veracity of the allegations and statements of the parties (complainant lawyers and respondent sheriffs) regarding the circumstances attendant to the enforcement of the writ cannot be determined solely on the basis of the pleadings on record. There is a need for a venue where the divergent versions of the contending parties relative to such circumstances can be reconciled or clarified and where they can further substantiate their respective positions. Hence, a formal investigation is deemed essential.

IN VIEW OF THE FOREGOING, it is respectfully recommended that:

1. The complaint against respondent Judge Alex Quiroz, RTC, Branch 156, Pasig City, be **DISMISSED** for lack of merit; and

2. The complaint against respondent sheriffs, Edwin V. Garrobo and Mario S. Pangilinan be **REFERRED** to Executive Judge of the Regional Trial Court at Pasig City for investigation, report and recommendation within sixty (60) days from receipt of the records. (Emphasis in the original; underscoring supplied)

By Resolution of July 6, 2004, the Court *En Banc*, acting upon the recommendation of the OCA, dismissed the complaint against Judge Quiroz for lack of merit but referred the charges against respondent sheriffs to the Executive Judge of the RTC of Pasig City for investigation, report and recommendation.

Per manifestation of then Executive Judge Edwin A. Villasor that one of the complainants was his former classmate at the University of the Philippines, the complaint was referred to 1st Vice Executive Judge Florito S. Macalino.

Re: A.M. OCA IPI NO. 04-1993-RTJ
(Edwin V. Garrobo v. Judge Alex L. Quiroz)

Upon Judge Quiroz' return to office from his sick leave on November 27, 2003, he called on the members of his staff for their monthly meeting. By the claim of Garrobo, for the duration of the meeting, Judge Quiroz berated and lambasted him for serving the writ on PSPI, hence, his filing of the administrative complaint against the judge for gross misconduct, docketed as OCA-IPI No. 04-1993-RTJ. Garrobo gave the following details of his complaint:

> On November 21, 2003, Four (4) days after Judge Quiroz reported back to the office after weeks of being on leave, Right away, he called a Staff meeting and conducted his usual loyalty check. Four (4) of the Staff said they still believe in my capacity and worthiness as Branch Sheriff, Still, Judge Quiroz lambasted me again infront of my fellow employees! He was so angry he refused to listen to the explanation of Atty. Lavandero who ventured that he was the one to blame. Judge Quiroz, using all his filthy words he can come up with insulted and threatened mo (sic) once more. I should resign, he said or he will make me resign. Even then, he promised, even if I did resign, he swore he will come after me. Better that I go on leave while I look for some other employment, he said. I had tainted his name, he alleged, at a time when his application with the Court of Appeals as an Associate Justice, is pending. And for that, he had shouted that I will be sorry."[5] (Underscoring supplied)

Judge Quiroz, denying the accusation, gave the following version:

> Time and again, before the undersigned took his leave of absence, Garrobo was advised to implement the writ in accordance with the Rules. While the subject of the writ was in Laguna, he was advised

[5] *Id.* at 2.

not to accept anything from the plaintiff and might prejudice the implementation of the writ. But on October 17, 2003, Garrobo, due to his lack of knowledge of his job, had to have two more sheriffs and Mr. Roman, just to serve the letter to comply against PSPI together with Plaintiff Mr. Litonjua who gave him money and accepted it before proceeding to Laguna. x x x

Since Garrobo accepted money from Mr. Litonjua, as expected, the implementation of the Writ was prejudiced for he failed to exercise the proper protocol/conduct to implement the same resulting to an administrative case filed by lawyer of PSPI against Garrobo and his two sheriffs and the undersigned was included.

During the meeting, each and everyone was asked to speak anent the problem encountered and the corruption committed by Garrobo and his incompetency in the implementation of the writ and the reason why he failed to follow instruction of the undersigned not to accept any consideration (money) from Mr. Litonjua (Plaintiff) for he might be subjected to the latter's control which would amount to the prejudice in the implementation of the writ.

The undersigned explained to him (Garrobo) that he should have been cautious in the implementation of the writ and must have been prudent thereof.

Throughout the meeting or even during the telephone conversation, the undersigned never lambasted Garrobo nor humiliated him. It is merely his scheme to get away from his corruption and incompetency committed after the undersigned informed him of the consequences of his action that may cause his removal from office.[6] (Underscoring supplied)

Judge Quiroz requested a formal investigation of his charge that Garrobo accepted monetary consideration in implementing the writ.

By Indorsement of December 5, 2003, the OCA directed the court personnel of Branch 156, RTC Pasig City, to comment on Garrobo's letter-complaint. In their Comment, the court personnel corroborated the version of Judge Quiroz.

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[6] *Id*. at 149-153, 151-152.

On recommendation of the OCA, A.M. OCA IPI No. 04-1993-RTJ and A.M. OCA IPI No. 03-1893-RTJ were consolidated by the Court *En Banc* Resolution of February 23, 2005. By Resolution of March 29, 2005, the Court *En Banc* resolved to refer the cases to Pasig City Regional Trial Court Judge Florito S. Macalino. During the pendency of the investigation, respondent Pangilinan passed away.

In his Report of December 10, 2007, Investigating Judge Macalino recommended the dismissal of the complaint against Garrobo and Pangilinan in A.M. OCA IPI No. 03-1893-RTJ.

In A.M. OCA IPI No. 04-1993-RTJ, Investigating Judge Macalino recommended that the complaint against Judge Quiroz by Garrobo and the counter-charge of corruption by Judge Quiroz be dismissed for lack of evidence.

On August 12, 2008, the OCA made the following Evaluation and Recommendation:

After a careful evaluation of the records of the consolidated complaints, this Office finds no merit in the instant complaints.

In A.M. OCA IPI No. 03-1893-RTJ, respondent Sheriff Edwin V. Garrobo and Mario S. Pangilinan implemented the writ of execution issued by the lower court in compliance with the decision of the Court of Appeals dated September 10, 2003 directing the trial court to issue a writ of execution against Philips Semiconductors Philippines, Inc., as local subsidiary of the defendant, Signetics, USA. While it is true that the complainants are still questioning the decision of the Court of Appeals, it is worth noting that the said court did not issue any temporary restraining order that would have justified delaying the implementation of the writ.

The filing of the instant complaint against respondent Sheriffs Garrobo and Pangilinan is thus not the appropriate action to take. As pointed out by the investigating Judge, the complainants themselves concede that the issues in the complaint border on questions of law that are too technical to decide on the spot. From this admission by the complainants, it can be deducted that they have yet to exhaust all judicial remedies available.

Well-settled is the doctrine that the duty of the sheriffs in the execution of the writ issued by a court is purely ministerial. Indeed,

it is their ministerial duty to proceed to execute a writ place in their hands, with reasonably celerity and promptness in accordance with their mandate. Unless restrained by a court order, they should see to it that the execution of judgment is not unduly delayed. Accordingly, they must comply with their mandate obligation as speedily as possible. (Underscoring supplied)

Anent OCA IPI No. 04-1993-RTJ, this Office finds the charges and countercharges imputed by the parties unmeritorious.

Sheriff Garrobo, aside from his bare allegations that he was berated by Judge Quiroz in the presence of his officemates, presented no evidence to support his assertions. On the other hand, the following personnel of RTC Branch 156, Pasig City, namely: Atty. Albert N. Lavandero, Branch Clerk of Court; Sylvia A. Lozada, Court Stenographer III; Ma. Lorina P. Uson, Interpreter III; Asuncion U. Cipriano, Court Stenographer III; Gina A. Talaro, Court Stenographer III; Floriza A. Guillermo, Court Stenographer III; Bryan Eduard Y. Flores, Clerk III; Arcelito C. Roman, Clerk III; Ronaldo R. Santos, Process Server; and Eileen C. Moraleta, Utility Worker I, when directed by Court Administrator to comment on the incident, unanimously belied the allegations of Sheriff Garrobo. Clearly, OCA IPI No. 04-1993-RTJ has no leg to stand on.

With regard to the counter-charges imputed by Judge Quiroz against Sheriff Garrobo for alleged "corrupt practice", we likewise sustain the findings of the Investigating Judge.

In administrative proceedings, the complainant has burden of the (sic) proving the allegations in the complaint with substantial evidence which a reasonable mind might accept as adequate to justify a conclusion.

Judge Quiroz failed to substantiate his allegations that Sheriff Garrobo acted with dishonesty, corruption or grave misconduct. The Investigating Judge dismissed the witness presented by Judge Quiroz as a "bias and prejudiced witness." The Investigating Judge noted the admission made by the witness that he was designated by Judge Quiroz to keep a close watch on Sheriff Garrobo *vis-à-vis* the implementation of the subject writ. The claim of the witness that he received money from Sheriff Garrobo was not fully established by convincing evidence.

FOREGOING considered, we respectfully submit to the Honorable Court the following recommendations:

(1) The Complaint docketed as A.M. OCA IPI No. 03-1893-RTJ against respondent Edwin V. Garrobo, Sheriff IV, Regional Trial Court, Branch 156, Pasig City, be DISMISSED for lack of sufficient merit;

(2) The charges docketed as A.M. OCA IPI No. 04-1993-RTJ against Judge Alex L. Quiroz be DISMISSED for lack of merit;

(3) The counter-charges docketed as A.M. OCA IPI No. 04-1993-RTJ against Sheriff Garrabo (sic) be DISMISSED for want of evidence. (Underscoring supplied)

The Court finds the evaluation and recommendations of the Investigating Judge and the OCA well-taken.

Respecting A.M. OCA IPI No. 03-1893-RTJ, that sheriffs have an important role to play in the administration of justice cannot be overemphasized. They form an integral part, as they are called upon to serve writs, execute all the processes, and carry into effect the orders, of the court. When placed in their hands, it is their duty, in the absence of any instruction to the contrary, to proceed with reasonable celerity and promptness, to execute writs according to their mandate.[7]

As noted by the OCA, no restraining order was issued by the appellate court on October 17, 2003 to excuse the delay in the execution of the writ. It was only on October 21, 2003 or four days later that the appellate court issued a temporary restraining order pending resolution of the motion for reconsideration. At all events, even if a writ is later ruled to be improvidently or improperly issued, the sheriff is not in a position to question it, as his duty in executing the same is purely ministerial.[8]

Respecting A.M. OCA IPI No. 04-1993-RTJ, although administrative proceedings are not bound by technical rules of procedure in adjudication of cases, it does not do away with compliance with basic rules in proving allegations. The fundamental requirement of due process requires that if sanction must be meted

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[7] *Alvarez v. Diaz, et al.*, A.M. No. MTJ-00-1283, March 3, 2004, 424 SCRA 213, 232.

[8] *Id.* at 232-233.

out, the quantum of proof required in administrative cases should be met. In the present case, absent substantial evidence to support them, the complaint and the counter-charge are reduced to bare accusations and mere conjectures. They must necessarily be dismissed.

WHEREFORE, the complaint against respondents Sheriffs Edwin V. Garrobo and Mario Pangilinan in **A.M. OCA IPI No. 03-1893-RTJ** is hereby *DISMISSED*.

The complaint filed by Sheriff Garrobo against respondent Judge Alex L. Quiroz, as well as the counter-charge, in **A.M. OCA IPI No. 04-1993-RTJ** is likewise *DISMISSED*.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 174610. July 14, 2009]

SORIAMONT STEAMSHIP AGENCIES, INC. and PATRICK RONAS, *petitioners, vs.* **SPRINT TRANSPORT SERVICES, INC. and RICARDO CRUZ PAPA, doing business under the style PAPA TRANSPORT SERVICES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW UNDER RULE 45 OF THE REVISED RULES OF COURT; LIMITED TO REVIEWING ERRORS OF LAW.— Basic is the rule in this jurisdiction that only questions of law may be raised in a petition for review

under Rule 45 of the Revised Rules of Court. The jurisdiction of the Supreme Court in cases brought to it from the Court of Appeals is limited to reviewing errors of law, the findings of fact of the appellate court being conclusive. We have emphatically declared that it is not the function of this Court to analyze or weigh such evidence all over again, its jurisdiction being limited to reviewing errors of law that may have been committed by the lower court. These questions of fact were threshed out and decided by the trial court, which had the firsthand opportunity to hear the parties' conflicting claims and to carefully weigh their respective sets of evidence. The findings of the trial court were subsequently affirmed by the Court of Appeals. Where the factual findings of both the trial court and the Court of Appeals coincide, the same are binding on this Court. We stress that, subject to some exceptional instances, only questions of law – not questions of fact – may be raised before this Court in a petition for review under Rule 45 of the Revised Rules of Court.

2. CIVIL LAW; SPECIAL CONTRACTS; AGENCY; A PERSON DEALING WITH AN AGENT SHOULD ASCERTAIN WHETHER THE AGENT IS ACTING WITHIN THE SCOPE OF HIS AUTHORITY.— It is true that a person dealing with an agent is not authorized, under any circumstances, to trust blindly the agent's statements as to the extent of his powers. Such person must not act negligently but must use reasonable diligence and prudence to ascertain whether the agent acts within the scope of his authority. The settled rule is that persons dealing with an assumed agent are bound at their peril; and if they would hold the principal liable, they must ascertain not only the fact of agency, but also the nature and extent of authority, and in case either is controverted, the burden of proof is upon them to prove it.

3. ID.; ID.; ID.; TO MAKE AN AGENT PERSONALLY LIABLE, IT MUST BE PROVED BY EVIDENCE THAT HE ACTED BEYOND HIS AUTHORITY AS AGENT; CASE AT BAR.— Alternatively, if PTS is found to be its agent, Soriamont argues that PTS is liable for the loss of the subject equipment, since PTS acted beyond its authority as agent. Soriamont cites Article 1897 of the Civil Code, which provides: Art. 1897. The agent who acts as such is not personally liable to the party with whom he contracts, unless he expressly binds himself or exceeds the limits of his authority without giving such party sufficient

notice of his powers. The burden falls upon Soriamont to prove its affirmative allegation that PTS acted in any manner in excess of its authority as agent, thus, resulting in the loss of the subject equipment. To recall, the subject equipment was withdrawn and used by PTS with the authority of Soriamont. And for PTS to be personally liable, as agent, it is vital that Soriamont be able to prove that PTS damaged or lost the said equipment because it acted contrary to or in excess of the authority granted to it by Soriamont. As the Court of Appeals and the RTC found, however, Soriamont did not adduce any evidence at all to prove said allegation. Given the lack of evidence that PTS was in any way responsible for the loss of the subject equipment, then, it cannot be held liable to Sprint, or even to Soriamont as its agent. In the absence of evidence showing that PTS acted contrary to or in excess of the authority granted to it by its principal, Soriamont, this Court cannot merely presume PTS liable to Soriamont as its agent. The only thing proven was that Soriamont, through PTS, withdrew the two chassis units from Sprint, and that these have never been returned to Sprint.

4. ID.; DAMAGES; ACTUAL OR COMPENSATORY DAMAGES; BREACH OF OBLIGATION NOT CONSTITUTING A LOAN OR FORBEARANCE OF MONEY; APPLICABLE RATE OF LEGAL INTEREST; CASE AT BAR.— Under Article 2209 of the Civil Code, when an obligation not constituting a loan or forbearance of money is breached, then an interest on the amount of damages awarded may be imposed at the discretion of the court at the rate of 6% per annum. Clearly, the monetary judgment in favor of Sprint does not involve a loan or forbearance of money; hence, the proper imposable rate of interest is six (6%) percent. Further, as declared in *Eastern Shipping Lines, Inc. v. Court of Appeals*, the interim period from the finality of the judgment awarding a monetary claim until payment thereof is deemed to be equivalent to a forbearance of credit. x x x [W]hen the judgment awarding a sum of money becomes final and executory, the rate of legal interest shall be 12% per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent of a forbearance of credit. Thus, from the time the judgment becomes final until its full satisfaction, the applicable rate of legal interest shall be twelve percent (12%).

APPEARANCES OF COUNSEL

Del Rosario & Del Rosario for petitioners.
Arellano Law Firm for respondents.

D E C I S I O N

CHICO-NAZARIO, *J.*:

Assailed in this Petition for Review on *Certiorari*, under Rule 45 of the Revised Rules of Court, is the Decision[1] dated 22 June 2006 and Resolution[2] dated 7 September 2006 of the Court of Appeals in CA-G.R. CV No. 74987. The appellate court affirmed with modification the Decision[3] dated 22 April 2002 of the Regional Trial Court (RTC), Branch 46, of Manila, in Civil Case No. 98-89047, granting the Complaint for Sum of Money of herein respondent Sprint Transport Services, Inc. (Sprint) after the alleged failure of herein petitioner Soriamont Steamship Agencies, Inc. (Soriamont) to return the chassis units it leased from Sprint and pay the accumulated rentals for the same.

The following are the factual and procedural antecedents:

Soriamont is a domestic corporation providing services as a receiving agent for line load contractor vessels. Patrick Ronas (Ronas) is its general manager.

On the other hand, Sprint is a domestic corporation engaged in transport services. Its co-respondent Ricardo Cruz Papa (Papa) is engaged in the trucking business under the business name "Papa Transport Services" (PTS).

Sprint filed with the RTC on 2 June 1998 a Complaint[4] for Sum of Money against Soriamont and Ronas, docketed as Civil

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[1] Penned by Associate Justice Fernanda Lampas-Peralta with Associate Justices Eliezer R. delos Santos and Myrna Dimaranan-Vidal, concurring; *rollo,* pp. 60-75.

[2] *Rollo,* p. 91.

[3] Issued by Judge Artemio S. Tipon; *rollo*, pp. 130-135.

[4] Records, pp. 1-6.

Case No. 98-89047. Sprint alleged in its Complaint that: (a) on 17 December 1993, it entered into a lease agreement, denominated as Equipment Lease Agreement (ELA) with Soriamont, wherein the former agreed to lease a number of chassis units to the latter for the transport of container vans; (b) with authorization letters dated 19 June 1996 issued by Ronas on behalf of Soriamont, PTS and another trucker, Rebson Trucking, were able to withdraw on 22 and 25 June 1996, from the container yard of Sprint, two chassis units (subject equipment),[5] evidenced by Equipment Interchange Receipts No. 14215 and No. 14222; (c) Soriamont and Ronas failed to pay rental fees for the subject equipment since 15 January 1997; (d) Sprint was subsequently informed by Ronas, through a letter dated 17 June 1997, of the purported loss of the subject equipment sometime in June 1997; and (e) despite demands, Soriamont and Ronas failed to pay the rental fees for the subject equipment, and to replace or return the same to Sprint.

Sprint, thus, prayed for the RTC to render judgment:

1. Ordering [Soriamont and Ronas] to pay [Sprint], jointly and severally, actual damages, in the amount of Five Hundred Thirty-Seven Thousand Eight Hundred Pesos (₱537,800.00) representing unpaid rentals and the replacement cost for the lost chassis units.

2. Ordering [Soriamont and Ronas], jointly and severally, to pay [Sprint] the amount of Fifty-Three Thousand Five Hundred Four Pesos and Forty-Two centavos (₱53,504.42) as interest and penalties accrued as of March 31, 1998 and until full satisfaction thereof.

3. Ordering [Soriamont and Ronas], jointly and severally, to pay [Sprint] the amount equivalent to twenty-five percent (25%) of the total amount claimed for and as attorney's fees plus Two Thousand Pesos (₱2,000.00) per court appearance.

4. Ordering [Soriamont and Ronas] to pay the cost of the suit.[6]

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[5] Sprint Chassis 2-07 with Plate No. NUP-261 Serial No. ICAZ-165118 and Sprint Chassis 2-55 with Plate No. NUP-533 Serial No. MOTZ-160080.

[6] Records, p. 5.

Soriamont and Ronas filed with the RTC their Answer with Compulsory Counterclaim.[7] Soriamont admitted therein to having a lease agreement with Sprint, but only for the period 21 October 1993 to 21 January 1994. It denied entering into an ELA with respondent Sprint on 17 December 1993 as alleged in the Complaint. Soriamont further argued that it was not a party-in-interest in Civil Case No. 98-89047, since it was PTS and Rebson Trucking that withdrew the subject equipment from the container yard of Sprint. Ronas was likewise not a party-in-interest in the case since his actions, assailed in the Complaint, were executed as part of his regular functions as an officer of Soriamont.

Consistent with their stance, Soriamont and Ronas filed a Third-Party Complaint[8] against Papa, who was doing business under the name PTS. Soriamont and Ronas averred in their Third-Party Complaint that it was PTS and Rebson Trucking that withdrew the subject equipments from the container yard of Sprint, and failed to return the same. Since Papa failed to file an answer to the Third-Party Complaint, he was declared by the RTC to be in default.[9]

After trial, the RTC rendered its Decision in Civil Case No. 98-89047 on 22 April 2002, finding Soriamont liable for the claim of Sprint, while absolving Ronas and Papa from any liability. According to the RTC, Soriamont authorized PTS to withdraw the subject equipment. The dispositive portion of the RTC Decision reads:

> WHEREFORE, judgment is hereby rendered in favor of [herein respondent] Sprint Transport Services, Inc. and against [herein petitioner] Soriamont Steamship Agencies, Inc., ordering the latter to pay the former the following:
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> ♦ Three hundred twenty thousand pesos (₱320,000) representing the value of the two chassis units with interest at the legal rate from the filing of the complaint;

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[7] *Id.* at 30-34.

[8] *Id.* at 50-53.

[9] Order dated 15 January 1999; Records, p. 84.

- Two hundred seventy thousand one hundred twenty four & 42/100 pesos (₱270,124.42) representing unpaid rentals with interest at the legal rate from the filing of the complaint;
- ₱20,000.00 as attorney's fees.

The rate of interest shall be increased to 12% per annum once this decision becomes final and executory.

Defendant Patrick Ronas and [herein respondent] Ricardo Cruz Papa are absolved from liability.[10]

Soriamont filed an appeal of the foregoing RTC Decision to the Court of Appeals, docketed as CA-G.R. CV No. 74987.

The Court of Appeals, in its Decision dated 22 June 2006, found the following facts to be borne out by the records: (1) Sprint and Soriamont entered into an ELA whereby the former leased chassis units to the latter for the specified daily rates. The ELA covered the period 21 October 1993 to 21 January 1994, but it contained an "automatic" renewal clause; (2) on 22 and 25 June 1996, Soriamont, through PTS and Rebson Trucking, withdrew Sprint Chassis 2-07 with Plate No. NUP-261 Serial No. ICAZ-165118, and Sprint Chassis 2-55 with Plate No. NUP-533 Serial MOTZ-160080, from the container yard of Sprint; (3) Soriamont authorized the withdrawal by PTS and Rebson Trucking of the subject equipment from the container yard of Sprint; and (4) the subject pieces of equipment were never returned to Sprint. In a letter to Sprint dated 19 June 1997, Soriamont relayed that it was still trying to locate the subject equipment, and requested the former to refrain from releasing more equipment to respondent PTS and Rebson Trucking.

Hence, the Court of Appeals decreed:

WHEREFORE, the appealed Decision dated April 22, 2002 of the trial court is affirmed, subject to the modification that the specific rate of legal interest per annum on both the ₱320,000.00 representing the value of the two chassis units, and on the ₱270,124.42 representing

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[10] *Rollo,* p. 134.

the unpaid rentals, is six percent (6%), to be increased to twelve percent (12%) from the finality of this Decision until its full satisfaction.[11]

In a Resolution dated 7 September 2006, the Court of Appeals denied the Motion for Reconsideration of Soriamont for failing to present any cogent and substantial matter that would warrant a reversal or modification of its earlier Decision.

Aggrieved, Soriamont[12] filed the present Petition for Review with the following assignment of errors:

I.

THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS ERROR IN LIMITING AS SOLE ISSUE FOR RESOLUTION OF WHETHER OR NOT AN AGENCY RELATIONSHIP EXISTED BETWEEN PRIVATE RESPONDENT SPRINT TRANSPORT AND HEREIN PETITIONERS SORIAMONT STEAMSHIP AGENCIES AND PRIVATE RESPONDENT PAPA TRUCKING BUT TOTALLY DISREGARDING AND FAILING TO RULE ON THE LIABILITY OF PRIVATE RESPONDENT PAPA TRUCKING TO HEREIN PETITIONERS. THE LIABILITY OF PRIVATE RESPONDENT PAPA TRUCKING TO HEREIN PETITIONERS SUBJECT OF THE THIRD-PARTY COMPLAINT WAS TOTALLY IGNORED;

II.

THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS ERROR IN HOLDING HEREIN PETITIONERS STEAMSHIP AGENCIES SOLELY LIABLE. EVIDENCE ON RECORD SHOW THAT IT WAS PRIVATE RESPONDENT PAPA TRUCKING WHICH WITHDREW THE SUBJECT CHASSIS. PRIVATE RESPONDENT PAPA TRUCKING WAS THE LAST IN POSSESSION OF THE SAID SUBJECT CHASSIS AND IT SHOULD BE HELD SOLELY LIABLE FOR THE LOSS THEREOF;

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

[12] Patrick Ronas was named as a petitioner in the title, but he did not actually join Soriamont in the instant Petition considering that he was already absolved from any liability by the RTC.

III.

THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS ERROR WHEN IT IGNORED A MATERIAL INCONSISTENCY IN THE TESTIMONY OF PRIVATE RESPONDENT SPRINT TRANSPORT'S WITNESS, MR. ENRICO G. VALENCIA. THE TESTIMONY OF MR. VALENCIA WAS ERRONEOUSLY MADE THE BASIS FOR HOLDING HEREIN PETITIONERS LIABLE FOR THE LOSS OF THE SUBJECT CHASSIS.

We find the Petition to be without merit.

The Court of Appeals and the RTC sustained the contention of Sprint that PTS was authorized by Soriamont to secure possession of the subject equipment from Sprint, pursuant to the existing ELA between Soriamont and Sprint. The authorization issued by Soriamont to PTS established an agency relationship, with Soriamont as the principal and PTS as an agent. Resultantly, the actions taken by PTS as regards the subject equipment were binding on Soriamont, making the latter liable to Sprint for the unpaid rentals for the use, and damages for the subsequent loss, of the subject equipment.

Soriamont anchors its defense on its denial that it issued an authorization to PTS to withdraw the subject equipment from the container yard of Sprint. Although Soriamont admits that the authorization letter dated 19 June 1996 was under its letterhead, said letter was actually meant for and sent to Harman Foods as shipper. It was then Harman Foods that tasked PTS to withdraw the subject equipment from Sprint. Soriamont insists that the Court of Appeals merely presumed that an agency relationship existed between Soriamont and PTS, since there was nothing in the records to evidence the same. Meanwhile, there is undisputed evidence that it was PTS that withdrew and was last in possession of the subject equipment. Soriamont further calls attention to the testimony of Enrico Valencia (Valencia), a witness for Sprint, actually supporting the position of Soriamont that PTS did not present any authorization from Soriamont when it withdrew the subject equipment from the container yard of Sprint. Assuming, for the sake of argument that an

agency relationship did exist between Soriamont and PTS, the latter should not have been exonerated from any liability. The acts of PTS that resulted in the loss of the subject equipment were beyond the scope of its authority as supposed agent of Soriamont. Soriamont never ratified, expressly or impliedly, such acts of PTS.

Soriamont is essentially challenging the sufficiency of the evidence on which the Court of Appeals based its conclusion that PTS withdrew the subject equipment from the container yard of Sprint as an agent of Soriamont. In effect, Soriamont is raising questions of fact, the resolution of which requires us to re-examine and re-evaluate the evidence presented by the parties below.

Basic is the rule in this jurisdiction that only questions of law may be raised in a petition for review under Rule 45 of the Revised Rules of Court. The jurisdiction of the Supreme Court in cases brought to it from the Court of Appeals is limited to reviewing errors of law, the findings of fact of the appellate court being conclusive. We have emphatically declared that it is not the function of this Court to analyze or weigh such evidence all over again, its jurisdiction being limited to reviewing errors of law that may have been committed by the lower court.[13]

These questions of fact were threshed out and decided by the trial court, which had the firsthand opportunity to hear the parties' conflicting claims and to carefully weigh their respective sets of evidence. The findings of the trial court were subsequently affirmed by the Court of Appeals. Where the factual findings of both the trial court and the Court of Appeals coincide, the same are binding on this Court. We stress that, subject to some exceptional instances, only questions of law – not questions of fact – may be raised before this Court in a petition for review under Rule 45 of the Revised Rules of Court.[14]

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[13] *Cristobal v. Court of Appeals*, 353 Phil. 318, 326 (1998).

[14] *National Steel Corporation v. Court of Appeals*, 347 Phil. 345, 365-366 (1997).

Given that Soriamont is precisely asserting in the instant Petition that the findings of fact of the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record,[15] we accommodate Soriamont by going over the same evidence considered by the Court of Appeals and the RTC.

In *Republic v. Court of Appeals*,[16] we explained that:

> In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. Stated differently, the general rule in civil cases is that a party having the burden of proof of an essential fact must produce a preponderance of evidence thereon (I Moore on Facts, 4, cited in Vicente J. Francisco, The Revised Rules of Court in the Philippines, Vol. VII, Part II, p. 542, 1973 Edition). By preponderance of evidence is meant simply evidence which is of greater weight, or more convincing than that which is offered in opposition to it (32 C.J.S., 1051), The term 'preponderance of evidence' means the weight, credit and value of the aggregate evidence on either side and is usually considered to be synonymous with the terms 'greater weight of evidence' or 'greater weight, of the credible evidence.' Preponderance of the evidence is a phrase which, in the last analysis, means probability of the truth. Preponderance of the evidence means evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto. x x x." (20 Am. Jur., 1100-1101)

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[15] Generally, factual findings of the trial court, affirmed by the Court of Appeals, are final and conclusive and may not be reviewed on appeal. The established exceptions are: (1) when the inference made is manifestly mistaken, absurd or impossible; (2) when there is grave abuse of discretion; (3) when the findings are grounded entirely on speculations, surmises or conjectures; (4) when the judgment of the Court of Appeals is based on misapprehension of facts; (5) when the findings of fact are conflicting; (6) when the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) when the findings of fact are conclusions without citation of specific evidence on which they are based; (8) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion; and (9) when the findings of fact of the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record. (*Child Learning Center, Inc. v. Tagorio*, G.R. No. 150920, 25 November 2005, 476 SCRA 236, 241-242.)

[16] G.R. No. 84966, 21 November 1991, 204 SCRA 160, 168-169.

After a review of the evidence on record, we rule that the preponderance of evidence indeed supports the existence of an agency relationship between Soriamont and PTS.

It is true that a person dealing with an agent is not authorized, under any circumstances, to trust blindly the agent's statements as to the extent of his powers. Such person must not act negligently but must use reasonable diligence and prudence to ascertain whether the agent acts within the scope of his authority. The settled rule is that persons dealing with an assumed agent are bound at their peril; and if they would hold the principal liable, they must ascertain not only the fact of agency, but also the nature and extent of authority, and in case either is controverted, the burden of proof is upon them to prove it. Sprint has successfully discharged this burden.

The ELA executed on 17 December 1993 between Sprint, as lessor, and Soriamont, as lessee, of chassis units, explicitly authorized the latter to appoint a representative who shall withdraw and return the leased chassis units to Sprint, to wit:

EQUIPMENT LEASE AGREEMENT
between
SPRINT TRANSPORT SERVICES, INC. (LESSOR)
And
SORIAMONT STEAMSHIP AGENCIES, INC.
(LESSEE)
TERMS and CONDITIONS

x x x x x x x x x

4. Equipment Interchange Receipt (EIR) as mentioned herein is a document accomplished every time a chassis is withdrawn and returned to a designated depot. The EIR relates the condition of the chassis at the point of on-hire/off-hire duly acknowledged by the LESSOR, Property Custodian **and the LESSEE'S authorized representative**.

x x x x x x x x x

5. Chassis Withdrawal/Return Slip as mentioned herein is that document where the **LESSEE authorizes his representative to withdraw/return the chassis on his behalf.** Only persons with a duly accomplished and signed authorization slip shall be entertained by the LESSOR for purposes of withdrawal/return of the chassis. The signatory in the Withdrawal/Return Slip has to be the signatory of the corresponding Lease Agreement **or the LESSEE's duly authorized representative(s).**[17] (Emphases ours.)

Soriamont, though, avers that the aforequoted ELA was only for 21 October 1993 to 21 January 1994, and no longer in effect at the time the subject pieces of equipment were reportedly withdrawn and lost by PTS. This contention of Soriamont is without merit, given that the same ELA expressly provides for the "automatic" renewal thereof in paragraph 24, which reads:

There shall be an automatic renewal of the contract subject to the same terms and conditions as stipulated in the original contract unless terminated by either party in accordance with paragraph no. 23 hereof. However, in this case, termination will take effect immediately.[18]

There being no showing that the ELA was terminated by either party, then it was being automatically renewed in accordance with the afore-quoted paragraph 24.

It was, therefore, totally regular and in conformity with the ELA that PTS and Rebson Trucking should appear before Sprint in June 1996 with authorization letters, issued by Soriamont, for the withdrawal of the subject equipment.[19] On the witness stand, Valencia testified, as the operations manager of Sprint, as follows:

Atty. Porciuncula:

Q. Mr. Witness, as operation manager, are you aware of any transactions between Sprint Transport Services, Inc. and the defendant Soriamont Steamship Agencies, Inc.?

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[17] Records, p. 9.

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

[19] *Id.* at 213-214.

A. Yes, Sir.

Q. What transactions are these, Mr. Witness?

A. They got from us chassis, Sir.

Court:

Q. Who among the two, who withdrew?

A. The representative of Soriamont Steamship Agencies, Inc., Your Honor.

Atty. Porciuncula:

Q. And when were these chassis withdrawn, Mr. Witness?

A. June 1996, Sir.

Q. Will you kindly tell this Honorable Court what do you mean by withdrawing the chassis units from your container yard?

Witness:

Before they can withdraw the chassis they have to present withdrawal authority, Sir.

Atty. Porciuncula:

And what is this withdrawal authority?

A. This is to prove that they are authorizing their representative to get from us a chassis unit.

Q. And who is this authorization send to you, Mr. Witness?

A. Sometime a representative bring to our office the letter or the authorization or sometime thru fax, Sir.

Q. In this particular incident, Mr. Witness, how was it sent?

A. By fax, Sir.

Q. Is this standard operating procedure of Sprint Transport Services, Inc.?

A. Yes, Sir, if the trucking could not bring to our office the original copy of the authorization they have to send us thru fax, but the original copy of the authorization will be followed.

Atty. Porciuncula:

Q. Mr. Witness, I am showing to you two documents of Soriamont Steamship Agencies, Inc. letter head with the headings Authorization, are these the same withdrawal authority that you mentioned awhile ago?

A. Yes, Sir.

Atty. Porciuncula:

Your Honor, at this point may we request that these documents identified by the witness be marked as Exhibits JJ and KK, Your Honor.

Court:

Mark them.

x x x x x x x x x

Q. Way back Mr. Witness, who withdrew the chassis units 2-07 and 2-55?

A. The representative of Soriamont Steamship Agencies, Inc., the Papa Trucking, Sir.

Q. And are these trucking companies authorized to withdraw these chassis units?

A. Yes, Sir, it was stated in the withdrawal authority.

Atty. Porciuncula:

Q. Showing you again Mr. Witness, this authorization previously marked as Exhibits JJ and KK, could you please go over the same and tell this Honorable Court where states there that the trucking companies which you mentioned awhile ago authorized to withdraw?

A. Yes, Sir, it is stated in this withdrawal authority.

Atty. Porciuncula:

At this juncture, Your Honor, may we request that the Papa trucking and Rebson trucking identified by the witness be bracketed and mark as our Exhibits JJ-1 and KK-1, Your Honor.

Court:

Mark them. Are these documents have dates?

Atty. Porciuncula:

Yes, Your Honor, both documents are dated June 19, 1996.

Q. Mr. Witness, after this what happened next?

A. After they presented to us the withdrawal authority, we called up Soriamont Steamship Agencies, Inc. to verify whether the one sent to us through truck and the one sent to us through fax are one and the same.

Q. Then what happened next, Mr. Witness?

A. Then after the verification whether it is true, then we asked them to choose the chassis units then my checker would see to it whether the chassis units are in good condition, then after that we prepared the outgoing Equipment Interchange Receipt, Sir.

Q. Mr. Witness, could you tell this Honorable Court what an outgoing Equipment Interchange Receipt means?

A. This is a document proving that the representative of Soriamont Steamship Agencies, Inc. really withdraw (sic) the chassis units, Sir.

x x x x x x x x x

Atty. Porciuncula:

Q. Going back Mr. Witness, you mentioned awhile ago that your company issued outgoing Equipment Interchange Receipt?

A. Yes, Sir.

Q. Are there incoming Equipment Interchange Receipt Mr. Witness?

A. We have not made Incoming Equipment Interchange Receipt with respect to Soriamont Steamship Agencies, Inc., Sir.

Q. And why not, Mr. Witness?

A. Because they have not returned to us the two chassis units.[20]

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[20] TSN, 4 August 2000, pp. 5-16.

In his candid and straightforward testimony, Valencia was able to clearly describe the standard operating procedure followed in the withdrawal by Soriamont or its authorized representative of the leased chassis units from the container yard of Sprint. In the transaction involved herein, authorization letters dated 19 June 1996 in favor of PTS and Rebson Trucking were faxed by Sprint to Soriamont, and were further verified by Sprint through a telephone call to Soriamont. Valencia's testimony established that Sprint exercised due diligence in its dealings with PTS, as the agent of Soriamont.

Soriamont cannot rely on the outgoing Equipment Interchange Receipts as proof that the withdrawal of the subject equipment was not authorized by it, but by the shipper/consignee, Harman Foods, which actually designated PTS and Rebson Trucking as truckers. However, a scrutiny of the Equipment Interchange Receipts will show that these documents merely identified Harman Foods as the shipper/consignee, and the location of said shipping line. It bears to stress that it was Soriamont that had an existing ELA with Sprint, not Harman Foods, for the lease of the subject equipment. Moreover, as stated in the ELA, the outgoing Equipment Interchange Receipts shall be signed, upon the withdrawal of the leased chassis units, by the lessee, Soriamont, or its authorized representative. In this case, we can only hold that the driver of PTS signed the receipts for the subject equipment as the authorized representative of Soriamont, and no other.

Finally, the letter[21] dated 17 June 1997, sent to Sprint by Ronas, on behalf of Soriamont, which stated:

> As we are currently having a problem with regards to the whereabouts of the subject trailers, may we request your kind assistance in refraining from issuing any equipment to the above trucking companies.

reveals that PTS did have previous authority from Soriamont to withdraw the leased chassis units from Sprint, hence, necessitating an express request from Soriamont for Sprint to discontinue recognizing said authority.

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[21] Records, p. 178.

Alternatively, if PTS is found to be its agent, Soriamont argues that PTS is liable for the loss of the subject equipment, since PTS acted beyond its authority as agent. Soriamont cites Article 1897 of the Civil Code, which provides:

> Art. 1897. The agent who acts as such is not personally liable to the party with whom he contracts, unless he expressly binds himself or exceeds the limits of his authority without giving such party sufficient notice of his powers.

The burden falls upon Soriamont to prove its affirmative allegation that PTS acted in any manner in excess of its authority as agent, thus, resulting in the loss of the subject equipment. To recall, the subject equipment was withdrawn and used by PTS with the authority of Soriamont. And for PTS to be personally liable, as agent, it is vital that Soriamont be able to prove that PTS damaged or lost the said equipment because it acted contrary to or in excess of the authority granted to it by Soriamont. As the Court of Appeals and the RTC found, however, Soriamont did not adduce any evidence at all to prove said allegation. Given the lack of evidence that PTS was in any way responsible for the loss of the subject equipment, then, it cannot be held liable to Sprint, or even to Soriamont as its agent. In the absence of evidence showing that PTS acted contrary to or in excess of the authority granted to it by its principal, Soriamont, this Court cannot merely presume PTS liable to Soriamont as its agent. The only thing proven was that Soriamont, through PTS, withdrew the two chassis units from Sprint, and that these have never been returned to Sprint.

Considering our preceding discussion, there is no reason for us to depart from the general rule that the findings of fact of the Court of Appeals and the RTC are already conclusive and binding upon us.

Finally, the adjustment by the Court of Appeals with respect to the applicable rate of legal interest on the ₱320,000.00, representing the value of the subject equipment, and on the ₱270,124.42, representing the unpaid rentals awarded in favor of Sprint, is proper and with legal basis. Under Article 2209 of the Civil Code, when an obligation not constituting a loan or

forbearance of money is breached, then an interest on the amount of damages awarded may be imposed at the discretion of the court at the rate of 6% per annum. Clearly, the monetary judgment in favor of Sprint does not involve a loan or forbearance of money; hence, the proper imposable rate of interest is six (6%) percent. Further, as declared in *Eastern Shipping Lines, Inc. v. Court of Appeals*,[22] the interim period from the finality of the judgment awarding a monetary claim until payment thereof is deemed to be equivalent to a forbearance of credit. *Eastern Shipping Lines, Inc. v. Court of Appeals*[23] explained, to wit:

I. When an obligation, regardless of its source, *i.e.*, law, contracts, quasi-contracts, delicts or quasi-delicts is breached, the contravenor can be held liable for damages. The provisions under Title XVIII on "Damages" of the Civil Code govern in determining the measure of recoverable damages.

II. With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:

1. When the obligation is breached, and it consists in the payment of a sum of money, *i.e.*, a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 12% per annum to be computed from default, *i.e.*, from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.

2. When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the discretion of the court at the rate of 6% per annum. No interest, however, shall be adjudged on unliquidated claims or damages except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil

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[22] *Eastern Shipping Lines, Inc. v. Court of Appeals*, G.R. No. 97412, 12 July 1994, 234 SCRA 78.

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

Code) but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.

3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 12% per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.

Consistent with the foregoing jurisprudence, and later on affirmed in more recent cases,[24] when the judgment awarding a sum of money becomes final and executory, the rate of legal interest shall be 12% per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent of a forbearance of credit. Thus, from the time the judgment becomes final until its full satisfaction, the applicable rate of legal interest shall be twelve percent (12%).

WHEREFORE, premises considered, the instant Petition for Review on *Certiorari* is hereby *DENIED*. The Decision dated 22 June 2006 and Resolution dated 7 September 2006 of the Court of Appeals in CA-G.R. CV No. 74987 are hereby *AFFIRMED*. Costs against petitioner Soriamont Steamship Agencies, Inc.

SO ORDERED.

Ynares-Santiago (Chairperson), Carpio Morales,[*] *Velasco, Jr.,* and *Nachura, JJ.,* concur.

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[24] *National Power Corporation v. Alonzo-Legasto*, G.R. No. 148318, 22 November 2004, 443 SCRA 342, 376; *Equitable Banking Corporation v. Sadac*, G.R. No. 164772, 8 June 2006, 490 SCRA 380, 423; *Prudential Guarantee and Assurance, Inc. v. Trans-Asia Shipping Lines, Inc.*, G.R. Nos. 151890/151991, 20 June 2006, 491 SCRA 411, 450.

[*] Associate Justice Conchita Carpio Morales was designated to sit as additional member replacing Associate Justice Diosdado M. Peralta per raffle dated 25 May 2009.

SECOND DIVISION

[G.R. No. 175551. July 14, 2009]

REPUBLIC OF THE PHILIPPINES represented by the MANILA INTERNATIONAL AIRPORT AUTHORITY (MIAA), *petitioner, vs.* **HON. FRANCISCO G. MENDIOLA, Presiding Judge, RTC-Pasay City, Branch 115; LITTLE VIN-VIN'S FOOD CORPORATION,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; ACTIONS; JUDGMENTS OR ORDERS; INTERLOCUTORY ORDER AND FINAL JUDGMENT, DISTINGUISHED.— The trial court's Order of July 15, 2004 was not a final judgment; consequently, its entry in the Book of Entries of Judgment on August 10, 2004 was premature and, therefore, void. *De la Cruz v. Paras* enlightens: x x x The test to determine whether an order or judgment is interlocutory or final is this: "Does it leave something to be done in the trial court with respect to the merits of the case? If it does, it is interlocutory; if it does not, it is final." A court order is final in character if it puts an end to the *particular* matter resolved or settles the matter therein disposed of, such that no further questions can come before the court except the execution of the order. The term "final" judgment or order signifies a judgment or an order which disposes of the cause as to all the parties, reserving no further questions or directions for further determination. The order or judgment may validly refer to the entire controversy or to some definite and separate branch thereof. "In the absence of a statutory definition, a final judgment, order or decree has been held to be *** one that finally disposes of, adjudicates, or determines the rights, *or some right or rights of the parties*, either on the entire controversy *or on some definite and separate branch thereof* and which concludes them until it is reversed or set aside." The central point to consider is, therefore, the effects of the order on the rights of the parties. A court order, on the other hand, is **merely interlocutory in character if it is provisional and leaves substantial proceeding to be had in connection**

with the subject. The word "interlocutory" refers to "something intervening between the commencement and the end of a suit which decides some point or matter but not a final decision of the whole controversy." In the case at bar, the July 15, 2004 Order did not dispose of all the issues in the case, as the issues of LVV's unearned earnings and attorney's fees remained unresolved. ***It was only on November 23, 2004 when the trial court noted LVV's voluntary desistance from presenting evidence on these issues that they were disposed of.***

2. ID.; ID.; APPEALS; FAILURE TO APPEAL THE INTERLOCUTORY ORDER IN CASE AT BAR, EFFECT.— LVV, however, argues: "In its [Manifestation and Motion for Resolution], LVV already stated that it would no longer "present evidence as regards any residual issues, *e.g.* lost earnings or attorney's fees." But for the sake of precision, it was on 07 May 2004 when LVV, through undersigned counsel, received the trial court's Order dated 26 April 2004. Hence, when LVV did not file a motion for reconsideration nor seek appellate redress therefrom, the trial court's resolution as to the amount and the type of damages became final and thus bound LVV. **Simply put, from a legal perspective, since LVV did not file a motion for reconsideration nor seek appellate redress as to the trial court's Order dated April 26, 2004, then by the time LVV filed its "Manifestation and Motion for Resolution" on 04 August 2004, LVV had already lost the right to present evidence as regards any residual issues, *e.g.*, lost earnings or attorney's fees.**" This Court is not impressed. LVV could not yet have appealed the April 26, 2004 Order as the same was interlocutory, it not having disposed all the issues in the case. Its failure to appeal said Order did not thus preclude it from presenting evidence on residual issues such as lost earnings or attorney's fees.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Bernas Law Offices for private respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

The only issue raised in the present petition for review on *certiorari* is whether the Notice of Appeal of herein petitioner Republic of the Philippines, represented by the Manila International Airport Authority (MIAA), was filed on time.

A factual background of the case is in order.

On May 21, 2001, MIAA entered into a Contract of Lease and Concessions with herein respondent Little Vin-Vin's Food Corporation (LVV).[1] The contract authorized LVV to operate retail and catering outlets at the Ninoy Aquino International Airport (NAIA) Centennial Airport Terminal II and granted it six months to complete all the required works in the area.

Upon the expiration of the six-month period, LVV requested a three-month extension because the existing power supply was insufficient for the actual requirements of the concession outlets. The request was granted upon finding that the electrical set-up of the terminal needed to be revised. LVV completed the works within the extended period, but finding the need for re-wiring, asked for another two-month extension. MIAA did not respond, drawing LVV to file on May 16, 2002 a complaint[2] against MIAA for specific performance before the Regional Trial Court (RTC) of Pasay City, which prayed for judgment

a. declaring defendant liable, under its implied warranty for hidden defects, for the rectification of the electrical defects at the Concession Areas at its cost;

b. ordering defendant to grant plaintiff an extension of the construction period until such time that the electrical defects shall have been rectified by the defendant;

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[1] Records, pp. 88-105.

[2] *Id.* at 2-12.

c. directing defendant to deliver the Concession Areas with the electrical power output installation rectified so as to render the said Concession Areas fully operational;

d. directing the offsetting of the expenses incurred by plaintiff on the electrical installations against the rentals already paid to defendant and/or yet to be paid to defendant;

e. absolving plaintiff from the charges stated in the Contract of Lease and Concessions until such time that the electrical defects shall have been rectified; and

f. ordering defendant to pay plaintiff damages and attorney's fees as may be proved, plus the costs of suit,[3]

and for other just and equitable reliefs.

By Order of August 19, 2003, Branch 115 of the Pasay City RTC rendered a partial summary judgment in favor of LVV, the dispositive portion of which reads:

WHEREFORE, a partial summary judgment is hereby rendered directing defendant Manila International Airport Authority:

1. To deliver to the plaintiff the leased concession areas with its electrical power facilities completely rectified;

2. To grant plaintiff an extension of the construction period until such time the electrical defects shall have been corrected. In the meanwhile, the plaintiff is absolved from the payment of rentals, charges or fees.

The issue on damages will be heard on September 16, 2003 at 8:30 A. M.

SO ORDERED.[4]

LVV subsequently filed on September 4, 2003 a Supplemental Complaint[5] alleging as follows: MIAA failed to meet the passenger forecasts two years after the execution of the contract of lease;

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[3] *Id.* at 11.

[4] *Id.* at 341.

[5] *Id.* at 347-366.

refused to deliver an area occupied by the retail establishment Tinder Box which MIAA was contractually obliged to deliver to LVV as part of the latter's exclusive right to conduct retail and catering operations at NAIA Terminal 2; and barricaded numerous areas at NAIA Terminal 2, thereby blocking access of "well-wishers" to numerous retail and catering outlets and causing it (LVV) to suffer damages. LVV thus prayed for judgment

(1) Under the First Cause of Action, declaring that Plaintiff is entitled to a suspension of rentals under Section 3.04 of the Contract of Lease until realization of Defendant's passenger forecasts and Plaintiff's full operations of the Leased Premises;

(2) Under the Second Cause of Action, ordering Defendant to deliver to Plaintiff the area where the catering outlet named "Tinder Box" has been and is operating, in order that Plaintiff realize full operations of the Leased Premises by exercising its right, under the Contract of Lease, to exclusively operate and manage the retail and catering outlets within the Airport, extending to its immediate curbside and outermost canopy, "without competition whatsoever," and until such time, suspending payment of rentals under Section 3.04 of the Contract of Lease;

(3) Under the Third Cause of Action, as the barricades erected by Defendant prevent Plaintiff from engaging in full operations, declaring that Plaintiff is entitled to a suspension of rental payments, consistent with Section 3.04 of the Contract of Lease; or, in the alternative, ordering a reduction of rent to be paid by Plaintiff, in proportion to the area of the Leased/Concession Premises that have been decreased by the barricades erected by Defendant;

(4) Under the First Cause of Action, ordering Defendant to pay Plaintiff temperate or moderate damages, in an amount adjudged proper by this Honorable Court;

(5) Under the Second Cause of Action, ordering Defendant to pay Plaintiff actual damages, as may be proved, in terms of lost earnings from the unwarranted competition (in breach of Plaintiffs contractual right to exclusively develop, manage, and operate all catering outlets at the Airport), arising from the operation of the retail outlet named "Tinder Box";

(6) Under the Second Cause of Action, in the alternative, ordering Defendant to pay Plaintiff nominal damages in the amount of Five Hundred Thousand (₱500,000.00) Pesos;

(7) Under the Third Cause of Action, ordering Defendant to pay Plaintiff damages, in terms of lost earnings, either in the form of actual damages, as may be proved; or, in the alternative, temperate or moderate damages, both owing to Defendant's barricades preventing "well-wishers" from accessing and/or patronizing outlets within the Concession Area; and

(8) Ordering Defendant to pay Plaintiff attorney's fees of at least Five Hundred Thousand (₱500,000.00) Pesos and costs of suit,

and for other just and equitable reliefs.

The trial court, by Order of April 26, 2004, rendered another partial summary judgment, the dispositive portion of which reads:

Wherefore, considering that there is an undeniable breach of contract on the part of the defendant, this Court rules that, as prayed for by the plaintiff, in the interests of justice and fair play, the plaintiff is entitled to a corresponding reduction of the rental payments. Meanwhile, the payment of rentals is suspended until the proportionate reduction of rent shall have been determined.

As the plaintiff's pecuniary loss was not proven, no actual damages is awarded except, pursuant to the plaintiff's prayer on its second cause of action, nominal damages in the amount of Five Hundred Thousand Pesos (₱500,000.00).

The hearing as to the amount of reduction is set on May 26, 2004 at 10:00 A.M.

SO ORDERED.[6] (Underscoring supplied)

On July 12, 2004, MIAA filed a Manifestation[7] that it intended to appeal the Order of April 26, 2004 at the proper time, and that assuming for the sake of argument that LVV was entitled

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[6] *Id.* at 659-660.

[7] *Id.* at 694-696.

to a reduction of rent, the rates under Administrative Order No. 1 should prevail pending full operation by LVV.

By Order[8] of July 14, 2004, the trial court noted and directed as follows:

> Record shows that this Court, On August 19, 2003, issued an Order which granted a partial summary judgment in favor of the plaintiff's original complaint but set the issue on the amount of damages for further hearing. Shortly thereafter, the plaintiff submitted its estimate and documents to establish the value of the installation of the appropriate power load documents for the plaintiff's concession at NAIA Terminal II.
>
> Record further shows that based on the Answer to the interrogatories to parties executed by the General Manager and Manager of the Electrical Division of the defendant, the defendant's estimate does not vary much from that of the plaintiff.
>
> There being no objections or counter valuation from the plaintiff to the defendant's estimate, this Court accepts the valuation of the defendant.
>
> WHEREFORE, as prayed for in the original complaint, the defendant is directed to offset the expenses incurred by the plaintiff in the electrical installation, as per the amount estimated by the defendant, against the rentals already paid or yet to be paid to the defendant by the plaintiff.
>
> SO ORDERED.[9] (Underscoring supplied)

The trial court subsequently issued an **Order[10] of July 15, 2004** the dispositive portion of which reads:

> WHEREFORE, the plaintiff and the defendant in this case are allowed to adhere to the rates prescribed in the Administrative Order No. 1, series of 2000 as their bases in determining the "proportionate reduction of rent" which was mandated by this Court in its Order dated April 26, 2004.
>
> SO ORDERED.[11] (Underscoring supplied)

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[8] *Id.* at 706.

[9] *Ibid.*

[10] *Id.* at 707-708.

[11] *Id.* at 708.

LVV later filed on August 4, 2004 a Manifestation and Motion for Resolution manifesting that the Orders dated August 19, 2003 and July 14, 2004 substantially granted the reliefs enumerated in the prayer of the *original* complaint, while the Orders dated April 26, 2004 and July 15, 2004 substantially granted the reliefs enumerated in the prayer of the *Supplemental* Complaint, hence, it no longer intended to present evidence as regards any residual issues such as lost earnings or attorney's fees.[12] It, however, moved that the trial court resolve its Motion to Admit its Supplemental Pleading or, in the alternative, that MIAA stipulate as to the authenticity and due execution of the annexes to the said Motion to Admit.[13]

The trial court entered on August 10, 2004 its July 15, 2004 Order in the Book of Entries of Judgment.[14] It merely noted, by Order of November 23, 2004, above-said LVV's Manifestation and Motion as being moot and academic.

MIAA, having received a copy of the November 23, 2004 Order on November 30, 2004, filed on December 15, 2004 a Manifestation with Notice of Appeal[15] of the Orders dated August 19, 2003, April 26, 2004, July 14, 2004, and July 15, 2004. The trial court denied the Notice of Appeal for having been filed out of time.[16] MIAA's Motion for Reconsideration[17] having been denied,[18] it filed a petition for *certiorari*[19] before the Court of Appeals which it dismissed, by Decision[20] of October 17,

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[12] *Id.* at 711-713.

[13] *Id.* at 712.

[14] *Id.* at 716.

[15] *Id.* at 717-720.

[16] *Id.* at 721.

[17] *Id.* at 723-727.

[18] *Id.* at 742-743.

[19] CA *rollo*, pp. 2-24.

[20] Penned by Court of Appeals Associate Justice Mario L. Guariña III, with the concurrence of Associate Justices Roberto A. Barrios and Lucenito N. Tagle. *Id.* at 218-225.

2006, hence, the present petition for review on *certiorari* of the Republic, represented by MIAA (hereafter petitioner), arguing that

PETITIONER'S NOTICE OF APPEAL WAS PERFECTED WITHIN THE FIFTEEN DAY REGLEMENTARY PERIOD, HENCE, APPROVAL THEREOF IS A PLAINLY MINISTERIAL DUTY OF THE TRIAL COURT.[21]

The petition is impressed with merit. The trial court's Order of July 15, 2004 was not a final judgment; consequently, its entry in the Book of Entries of Judgment on August 10, 2004 was premature and, therefore, void.[22]

De la Cruz v. Paras[23] enlightens:

x x x The test to determine whether an order or judgment is interlocutory or final is this: "Does it leave something to be done in the trial court with respect to the merits of the case? If it does, it is interlocutory; if it does not, it is final." A court order is final in character if it puts an end to the *particular* matter resolved or settles the matter therein disposed of, such that no further questions can come before the court except the execution of the order. The term "final" judgment or order signifies a judgment or an order which disposes of the cause as to all the parties, reserving no further questions or directions for further determination. The order or judgment may validly refer to the entire controversy or to some definite and separate branch thereof. "In the absence of a statutory definition, a final judgment, order or decree has been held to be *** one that finally disposes of, adjudicates, or determines the rights, *or some right or rights of the parties*, either on the entire controversy *or on some definite and separate branch thereof* and which concludes them until it is reversed or set aside". The central point to consider is, therefore, the effects of the order on the rights of the parties. A court order, on the other hand, is **merely interlocutory in character if it is provisional and leaves substantial proceeding to be had in connection with the subject**. The word "interlocutory"

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[21] *Rollo*, p. 62.

[22] *Vide Office of the Court Administrator v. Garong*, A.M. No. P-99-1311, August 15, 2001, 363 SCRA 18, 22.

[23] G.R. No. L-41053, February 27, 1976, 69 SCRA 556.

refers to "something intervening between the commencement and the end of a suit which decides some point or matter but not a final decision of the whole controversy."[24] (Emphasis and underscoring supplied)

In the case at bar, the July 15, 2004 Order did not dispose of all the issues in the case, as the issues of LVV's unearned earnings and attorney's fees remained unresolved. It was only on November 23, 2004 when the trial court noted LVV's voluntary desistance from presenting evidence on these issues that they were disposed of.

LVV, however, argues:

> In its [Manifestation and Motion for Resolution], LVV already stated that it would no longer "present evidence as regards any residual issues, *e.g.* lost earnings or attorney's fees."
>
> But for the sake of precision, it was on 07 May 2004 when LVV, through undersigned counsel, received the trial court's Order dated 26 April 2004. Hence, when LVV did not file a motion for reconsideration nor seek appellate redress therefrom, the trial court's resolution as to the amount and the type of damages became final and thus bound LVV.
>
> **Simply put, from a legal perspective, since LVV did not file a motion for reconsideration nor seek appellate redress as to the trial court's Order dated April 26, 2004, then by the time LVV filed its "Manifestation and Motion for Resolution" on 04 August 2004, LVV had already lost the right to present evidence as regards any residual issues, *e.g.*, lost earnings or attorney's fees**.[25] (Underscoring and emphasis in the original)

This Court is not impressed. LVV could not yet have appealed the April 26, 2004 Order as the same was interlocutory, it not having disposed all the issues in the case. Its failure to appeal said Order did not thus preclude it from presenting evidence on residual issues such as lost earnings or attorney's fees.

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[24] *Id.* at 720-722 (citations omitted).

[25] *Rollo*, p. 169.

In fine, petitioner's filing of Notice of Appeal was filed on time.

WHEREFORE, the petition is *GRANTED.* The recording of the July 15, 2004 Order in the Book of Entries of Judgment of Branch 115 of the Regional Trial Court of Pasay City is declared *NULL AND VOID*. The assailed October 17, 2006 Decision of the Court of Appeals is *REVERSED* and *SET ASIDE*. The case is *REMANDED* to the Court of Appeals for resolution of petitioner's appeal.

SO ORDERED.

Quisumbing (Chairperson), Chico Nazario,[*] *Leonardo-de Castro,*[**] and *Brion, JJ.*, concur.

THIRD DIVISION

[G.R. No. 177007. July 14, 2009]

SANSIO PHILIPPINES, INC., *petitioner, vs.* **SPOUSES ALICIA AND LEODEGARIO MOGOL, JR.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; SUMMONS; WHERE THE ACTION IS *IN PERSONAM,* THE SERVICE OF SUMMONS MAY BE MADE THROUGH PERSONAL OR SUBSTITUTED SERVICE.— A summons is a writ by which the defendant is notified of the action brought against him or her. In a civil action, jurisdiction over the defendant is acquired either upon a valid service of summons or the defendant's voluntary appearance in court. When the defendant does not

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[*] Additional member per Special Order No. 658.

[**] Additional member per Special Order No. 635.

voluntarily submit to the court's jurisdiction, or when there is no valid service of summons, any judgment of the court, which has no jurisdiction over the person of the defendant, is null and void. Where the action is *in personam, i.e.*, one that seeks to impose some responsibility or liability directly upon the person of the defendant through the judgment of a court, and the defendant is in the Philippines, the service of summons may be made through personal or substituted service in the manner provided for in Sections 6 and 7, Rule 14 of the Rules of Court, which read: SEC. 6. *Service in person on defendant*. – Whenever practicable, the summons shall be served by handing a copy thereof to the defendant in person, or, if he refuses to receive and sign for it, by tendering it to him. SEC. 7. *Substituted service*. – If, for justifiable causes, the defendant cannot be served within a reasonable time as provided in the preceding section, service may be effected (a) by leaving copies of the summons at the defendant's residence with some person of suitable age and discretion then residing therein; or (b) by leaving the copies at defendant's office or regular place of business with some competent person in charge thereof.

2. ID.; ID.; ID.; PERSONAL SERVICE; THE ESSENCE IS THE HANDLING OR TENDERING OF A COPY OF THE SUMMONS TO THE DEFENDANT HIMSELF, WHEREVER HE MAY BE FOUND IN THE PHILIPPINES.— It is well-established that summons upon a respondent or a defendant must be served by handing a copy thereof to him in person or, if he refuses to receive it, by tendering it to him. Personal service of summons most effectively ensures that the notice desired under the constitutional requirement of due process is accomplished. The essence of personal service is the handing or tendering of a copy of the summons to the defendant himself, wherever he may be found; that is, wherever he may be, provided he is in the Philippines.

3. ID.; ID.; ID.; ID.; SERVICE OF SUMMONS ON THE DEFENDANT IN PERSON NEED NOT BE EFFECTED ONLY AT THE LATTER'S RESIDENCE AS STATED IN THE SUMMONS.— Section 6, Rule 14 of the Rules of Court does not require that the service of summons on the defendant in person must be effected only at the latter's residence as stated in the summons. On the contrary, said provision is crystal clear that, whenever practicable, summons shall be served by

handing a copy thereof to the defendant; or if he refuses to receive and sign for it, by tendering it to him. Nothing more is required.

4. ID.; ID.; ID.; PERSONAL SERVICE IS GENERALLY PREFERRED OVER SUBSTITUTED SERVICE; SUBSTITUTED SERVICE, WHEN JUSTIFIED.— Sections 6 and 7 of Rule 14 of the Rules of Court cannot be construed to apply simultaneously. Said provisions do not provide for alternative modes of service of summons, which can either be resorted to on the mere basis of convenience to the parties. Under our procedural rules, service of summons in the persons of the defendants is generally preferred over substituted service. Substituted service derogates the regular method of personal service. It is an extraordinary method, since it seeks to bind the respondent or the defendant to the consequences of a suit, even though notice of such action is served not upon him but upon another whom the law could only presume would notify him of the pending proceedings. For substituted service to be justified, the following circumstances must be clearly established: (a) personal service of summons within a reasonable time was impossible; (b) efforts were exerted to locate the party; and (c) the summons was served upon a person of sufficient age and discretion residing at the party's residence or upon a competent person in charge of the party's office or place of business.

5. ID.; ID.; ID.; VALIDLY SERVED IN CASE AT BAR.— As to the reliance of the Court of Appeals on the second paragraph of the Return on Service of Summons stating that the original and duplicate copies of the Summons were returned "UNSERVED," the Court finds the same utterly misplaced. A simple reading of the first paragraph of the Return on Service of Summons, which contains the circumstances surrounding the service of the summons on the persons of the respondent spouses Mogol, manifestly reveals that the summons and the copy of the complaint were already validly served on the said respondents. They merely refused to receive or obtain a copy of the same. The certificate of service of the process server is *prima facie* evidence of the facts as set out therein. This is fortified by the presumption of the regularity of performance of official duty. To overcome the presumption of regularity of official functions in favor of such sheriff's return, the

evidence against it must be clear and convincing. Sans the requisite quantum of proof to the contrary, the presumption stands deserving of faith and credit. In the instant case, it is worthwhile to note that the facts stated in the first paragraph of the Return on Service of Summons were not at all disputed by the respondent spouses Mogol. x x x To reiterate, respondent spouses Mogol were validly served summons and a copy of the complaint against them. At their explicit instructions, their counsel read the same and thereby learned of the nature of the claim against them. After being made aware of the complaint filed against them, they chose not to obtain a copy thereof and pretended that it did not exist. They, thus, took a gamble in not filing any responsive pleading thereto. Suffice it to say, they lost. The constitutional requirement of due process exacts that the service be such as may be reasonably expected to give the notice desired. Once the service provided by the rules reasonably accomplishes that end, the requirement of justice is answered; the traditional notions of fair play are satisfied and due process is served.

APPEARANCES OF COUNSEL

Chua and Associates and *Alquin B. Manguera* for petitioner.
Salva Salva & Salva for respondents.

D E C I S I O N

CHICO-NAZARIO, *J.*:

Challenged in this Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court are the Decision[2] dated 21 November 2006 and the Resolution[3] dated 12 March 2007 of the Court of Appeals in CA-G.R. SP No. 70029. The assailed Decision reversed and set aside the Order[4] dated 18 January 2002 of the

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[1] *Rollo*, pp. 8-27.

[2] Penned by Associate Justice Normandie B. Pizarro with Associate Justices Juan Q. Enriquez, Jr. and Aurora Santiago-Lagman, concurring; *rollo*, pp. 29-42.

[3] *Rollo*, pp. 45-46.

[4] Penned by Judge Romulo A. Lopez; *rollo*, pp. 109-112.

Regional Trial Court (RTC) of Manila, Branch 33, in Civil Case No. 01-101267, which dismissed the Petition for *Certiorari*, Prohibition and/or Injunction filed by herein respondent spouses Alicia and Leodegario Mogol, Jr. against herein petitioner Sansio Philippines, Inc. and Judge Severino B. de Castro, Jr. of the Metropolitan Trial Court (MeTC) of Manila, Branch 25. The assailed Resolution of the Court of Appeals denied the Motion for Reconsideration of its earlier Decision.

Petitioner Sansio Philippines, Inc. is a domestic corporation that is engaged in the business of manufacturing and selling appliances and other related products.

On 12 July 2000, petitioner filed a Complaint for Sum of Money and Damages[5] against respondent spouses Mogol before the MeTC of Manila. The case was docketed as Civil Case No. 167879CV and was raffled to Branch 25 of said court.

Petitioner stated in the Complaint that respondent spouses Alicia and Leodegario Mogol, Jr. were the owners and managers of MR Homes Appliances, with residence at 1218 Daisy St., Employee Village, Lucena City, where summons and other written legal processes of the court may be served. Petitioner further alleged that on 15 November 1993 and 27 January 1994, respondent spouses Mogol purchased from petitioner air-conditioning units and fans worth ₱217,250.00 and ₱5,521.20, respectively. Respondent spouses Mogol apparently issued postdated checks as payment therefor, but said checks were dishonored, as the account against which the checks were drawn was closed. Respondent spouses Mogol made partial payments, leaving a balance of ₱87,953.12 unpaid. Despite several demands by petitioner, respondent spouses Mogol failed to settle their obligation. Thus, petitioner prayed that respondent spouses Mogol be ordered to pay the former, jointly and severally, the amount of ₱87,953.12, with legal interest; as well as attorney's fees in the sum of twenty-five (25%) percent of the amount collectible, plus ₱2,000.00 for every appearance in court; and costs of suit.

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[5] *Rollo*, pp. 48-50.

On 3 October 2000, at the request of herein petitioner, the process server of the MeTC of Manila served the summons[6] and the copy of the complaint on respondent spouses Mogol at the courtroom of the MeTC of Manila, Branch 24. Respondent spouses were in the said premises, as they were waiting for the scheduled hearing of the criminal cases filed by petitioner against respondent Alicia Mogol for violations of Batas Pambansa Blg. 22. Upon being so informed of the summons and the complaint, respondent spouses Mogol referred the same to their counsel, who was also present in the courtroom. The counsel of respondent spouses Mogol took hold of the summons and the copy of the complaint and read the same.[7] Thereafter, he pointed out to the process server that the summons and the copy of the complaint should be served only at the address that was stated in both documents, *i.e.*, at 1218 Daisy St., Employee Village, Lucena City, and not anywhere else. The counsel of respondent spouses Mogol apparently gave back the summons and the copy of the complaint to the process server and advised his clients not to obtain a copy and sign for the same. As the process server could not convince the respondent spouses Mogol to sign for the aforementioned documents, he proceeded to leave the premises of the courtroom.

On 4 October 2000, the process server of the MeTC of Manila issued a Return on Service of Summons,[8] declaring that:

RETURN ON SERVICE OF SUMMONS

This is to certify that on October 3, 2000, **the undersigned tried to serve a copy of the Summons issued by the Court in the above-entitled case together with a copy of Complaint upon defendant Leodegario Mogol[,] Jr. and Alicia Mogol** doing business under the name/style of "Mr. Homes Appliance" (sic) **at MTC (sic) Branch 24 Ongpin (sic) (courtroom) as requested by plaintiff counsel, but failed for the reason that they refused to received (sic) with no valid reason at all**.

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[6] *Id.* at 56.

[7] *Id.* at 212.

[8] *Id.* at 57.

The original and duplicate copies of the Summons are hereby respectfully returned, (sic) **UNSERVED**.

Manila, Philippines, October 4, 2000.

(signed)
ALFONSO S. VALINO
Process Server (Emphases ours.)

Motion to Declare in Default

On 6 December 2000, petitioner filed a **Motion to Declare [Respondents] in Default**.[9] Petitioner averred that the summons and the copy of the complaint were already validly served upon the respondent spouses Mogol at the courtroom of the MeTC, Branch 24, which they refused to accept for no valid reason at all. From the date of said service up to the time of the filing of the above-stated motion, respondent spouses Mogol had yet to file any responsive pleading. Petitioner, thus, prayed that judgment be rendered against respondent spouses Mogol, and that the relief prayed for in its Complaint be granted.

On 15 December 2000, through a special appearance of their counsel, respondent spouses Mogol filed an Opposition[10] to the Motion to Declare [Respondents] in Default. They posited that Section 3, Rule 6[11] of the Rules of Court requires that the complaint must contain the names and residences of the plaintiff and defendant. Therefore, the process server should have taken notice of the allegation of the complaint, which referred to the address of respondent spouses Mogol wherein court processes may be served. If such service, as alleged in the complaint, could not be complied with within a reasonable time, then and only then may the process server resort to substituted service.

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[9] *Id.* at 58-59.

[10] *Id.* at 60-64.

[11] Section 3, Rule 6 of the Rules of Court provides:

Sec. 3. *Complaint.* — The complaint is the pleading alleging the plaintiff's cause or causes of action. The names and residences of the plaintiff and defendant must be stated in the complaint.

Respondent spouses Mogol further averred that there was no quarrel as to the requirement that the respondents must be served summons in person and, if they refused to receive and sign for it, by tendering it to them. They merely reiterated that the service should have been effected at the respondent spouses' residential address, as stated in the summons and the copy of the complaint.

On 6 April 2001, the MeTC of Manila, Branch 25, issued an Order,[12] the *fallo* of which provides:

> WHEREFORE, premises considered, **the Motion to Declare [Respondents] in Default dated December 5, 2000 filed by counsel for [petitioner] is hereby granted**. ACCORDINGLY, [respondents] Leodegario Mogol, Jr. and Alicia Mogol are hereby declared in default and [petitioner] is hereby allowed to present its evidence *ex-parte* (sic) before the Branch Clerk of Court on May 25, 2001 at 8:30 a.m. (Emphasis ours.)

The MeTC of Manila, Branch 25 ruled that Section 6, Rule 14[13] of the Rules of Court does not specify where service is to be effected. For obvious reasons, because service of summons is made by handing a copy thereof to the defendant in person, the same may be undertaken wherever the defendant may be found. Although the Return on the Service of Summons indicated that the original and the duplicate copies thereof were returned "UNSERVED," the same could not be taken to mean that respondent spouses Mogol had not yet been served with summons. That allegation in the return was clearly prompted by the statement in the first paragraph thereof that respondents spouses Mogol "refused to received (sic) [the summons and the copy of the complaint] with no valid reason at all." Respondent spouses Mogol were, thus, validly served with summons and a copy of the complaint. For failing to file any responsive pleading before the lapse of the reglementary period therefor, the Motion

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[12] Penned by Presiding Judge Severino B. de Castro, Jr.; *rollo*, pp. 71-73.

[13] Section 6, Rule 14 of the Rules of Court states:

> Sec. 6. *Service in person on defendant*. – Whenever practicable, the summons shall be served by handing a copy thereof to the defendant in person, or, if he refuses to receive and sign for it, by tendering it to him.

to Declare [Respondents] in Default filed by petitioner was declared to be meritorious.

Respondent spouses Mogol filed a Motion for Reconsideration[14] on the above Order, but the same was denied by the MeTC of Manila, Branch 25, in an Order[15] dated 11 June 2001.

On 17 July 2001, respondent spouses Mogol filed a **Petition for *Certiorari*, Prohibition and/or Injunction**[16] before the RTC of Manila against Judge Severino B. de Castro, Jr. of the MeTC of Manila, Branch 25 and herein petitioner. Said petition was docketed as **Civil Case No. 01-101267** and raffled to Branch 33 thereof.

Respondent spouses Mogol insisted there was no valid service of summons per return of the process server, which was binding on the MeTC judge, who did not acquire jurisdiction over the persons of respondent spouses. They contended that the MeTC of Manila, Branch 25, acted with grave abuse of discretion amounting to lack or excess of jurisdiction in declaring them in default in Civil Case No. 167879CV, thereby depriving them of their right to be heard with due process of law, despite their having a good defense against petitioner's complaint. Respondent spouses Mogol prayed that the Orders dated 6 April 2001 and 11 June 2001 of the MeTC of Manila, Branch 25, be declared null and void.

On 18 January 2002, the RTC of Manila, Branch 33, issued an Order, disposing of the petition in this wise:

> WHEREFORE, viewed from the foregoing observations and findings, the present petition is hereby DISMISSED for lack of merit.[17]

The RTC of Manila, Branch 33, held that Section 6, Rule 14 of the Rules of Court does not mandate that summons be served

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[14] *Rollo*, pp. 75-78.

[15] *Id.* at 85.

[16] *Id.* at 87-102.

[17] *Id.* at 112.

strictly at the address provided by the plaintiff in the complaint. Contrarily, said provision states that the service of summons may be made wherever such is possible and practicable. Therefore, it did not matter much that the summons and the copy of the complaint in this case were served inside the courtroom of the MeTC of Manila, Branch 24, instead of the address at 1218 Daisy St., Employee Village, Lucena City. The primordial consideration was that the service of summons was made in the person of the respondent spouses Mogol in Civil Case No. 167879CV. Lastly, the RTC of Manila, Branch 33, did not find any error in the interpretation of the MeTC of Manila, Branch 25, that summons had indeed been served on respondent spouses Mogol. On the face of the Return on Service of Summons, it was unmistakable that the summons and the copy of the complaint were served on respondent spouses, and that they refused to receive the same for no valid reason at all.

Respondent spouses Mogol filed a **Notice of Appeal**[18] on the above-mentioned Order of the RTC of Manila, Branch 33, which was given due course. The appeal was docketed in the Court of Appeals as CA-G.R. SP No. 70029.

On 21 November 2006, the Court of Appeals rendered the assailed Decision in CA-G.R. SP No. 70029, the relevant portions of which read:

We find the appeal meritorious.

After a careful perusal of the records, We hold that there was no valid service of summons upon the [respondent] Mogol spouses in Civil Case No. 167879. Perforce, the MeTC [Branch 25] never acquired jurisdiction over them. We explain.

x x x x x x x x x

In this case, it is indubitable that the [respondent] Mogol spouses, as defendants in Civil Case No. 167879, never received the summons against them, whether personally or by substituted service. **As stated earlier, the process server failed to effect personal service of summons against the [respondent] Mogol spouses at the**

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[18] *Id.* at 113-114.

courtroom of the MeTC of Manila, Branch 24, because the latter refused to receive it, arguing that the same should be served at their residence, and not anywhere else.

Concomitant to the trial court's duty to bring the defendant within its jurisdiction by the proper service of summons is its duty to apprise the plaintiff, as in the case of [petitioner] Sansio, whether or not the said summons was actually served upon the defendant. The proof of service of summons (or the lack of it) alluded to by the rules is found in Sec. 4, Rule 14 of the *Revised Rules of Court*, to wit:

> *SECTION 4. Return. — When the service has been completed, the server shall, within five (5) days therefrom, serve a copy of the return, personally or by registered mail, to the plaintiff's counsel, and shall return the summons to the clerk who issued it, accompanied by proof of service.*

In this case, the process server's *Return of Service of Summons* states, in clear and unequivocal terms, that:

> ***The original and duplicate copies of the Summons are hereby returned, UNSERVED.***

In the case of *Spouses Madrigal v. Court of Appeals* [G.R. No. 129955, 26 November 1999], it was held that the sheriff's certificate of service of summons is *prima facie* evidence of the facts therein set out. In the absence of contrary evidence, a presumption exists that a sheriff has regularly performed his official duties. To overcome the presumption arising from the sheriff's certificate, the evidence must be clear and convincing. **In the instant case, no proof of irregularity in the process server's return was shown by Sansio. A perusal of the said return readily shows that the summons was unserved upon the Mogol spouses. From the foregoing, We hold that the Mogol spouses were never in actual receipt of the summons in Civil Case 167879. Perforce, the trial court did not acquire jurisdiction over them.**

In one case, the Supreme Court ruled that the refusal of a defendant to receive the summons is a technicality resorted to in an apparent attempt to frustrate the ends of justice. It is precisely for this reason that the rules provide a remedy that, in case the defendant *refuses to receive and sign for it, [the same is served] by tendering it to him*. Moreover, even if tender of summons upon the defendant proves futile, the trial court may further resort to substituted service of summons, as provided under Sec. 7, Rule 14 of the Revised Rules of Court.

Stated otherwise, the trial court is not left with any other remedy in case the defendant refuses to receive and sign for his receipt of the summons, as in this case. Unfortunately, however, after the incident at the courtroom of the MeTC of Manila, Branch 24, there was no longer any further effort on the part of the trial court to serve anew the summons, together with a copy of the complaint, upon the Mogol spouses. Instead, the trial court assumed jurisdiction over the Mogol spouses; declared them in default for failure to file any responsive pleading; and, (sic) allowed Sansio to present its evidence *ex parte* in Civil Case No. 167879.

x x x x x x x x x

All told, it is clearly established that there was indeed no valid service of summons upon the Mogol spouses in Civil Case No. 167879. Consequently, the MeTC of Manila, Branch 24 did not acquire jurisdiction over their persons. Perforce, the order declaring them in default in the said civil case is nugatory and without effect, as it was issued with grave abuse of discretion amounting to lack or in excess of jurisdiction.[19] (Emphases ours.)

Thus, the Court of Appeals decreed:

WHEREFORE, premises considered, the *Appeal* is hereby **GRANTED**. The assailed **Order** dated January 18, 2002 of the Regional Trial Court (RTC) of Manila, National Capital Judicial Region, Branch 33, in SP Civil Case No. 01-101267 is hereby **REVERSED** and **SET ASIDE**. Accordingly, the **Order** dated April 6, 2001 of the Metropolitan Trial Court (MeTC) of Manila, Branch 25, in Civil Case No. 167879 is declared **NULL** and **VOID**. No pronouncement as to costs.[20]

Petitioner filed a Motion for Reconsideration[21] thereon, but the same was denied by the Court of Appeals in the assailed Resolution[22] dated 12 March 2007.

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

[20] *Id.* at 41.

[21] *Id.* at 172-178.

[22] *Id.* at 45-46.

Complaint for Sum of Money and Damages

In the interregnum, on 3 August 2001, petitioner presented its evidence *ex parte* in the main case. On the basis thereof, on 17 August 2001, the MeTC of Manila, Branch 25, rendered a Decision, adjudging that petitioner had sufficiently established its entitlement to the grant of the reliefs prayed for in its Complaint. The decretal portion of the Decision states:

> WHEREFORE, premises considered, **judgment is hereby rendered in favor of the [petitioner] and against the [respondent spouses Mogol]**, ordering the latter to pay the former jointly and severally the sum of ₱87,953.12 with interest thereon at the legal rate from date of demand until the same is fully paid; the sum equivalent to 25% of the amount due as and by way of attorney's fees, and the cost of suit.[23] (Emphasis ours.)

Respondent spouses Mogol **appealed**[24] the above Decision to the RTC of Manila. The appeal was docketed as **Civil Case No. 01-101963** and was raffled to Branch 50 of the trial court.

On 19 March 2004, the RTC of Manila, Branch 50, promulgated its Decision,[25] affirming *in toto* the Decision of the MeTC of Manila, Branch 25. The RTC declared that Section 6, Rule 14 of the Rules of Court clearly reveals that there is no requirement that the summons should only be served in the place stated in the summons. What is required is that a summons must be served by handing a copy thereof to the defendant in person, or, if he refuses to receive and sign for it, by tendering it to him. Under the circumstances of the case, the service of the copy of the summons and the complaint inside the courtroom of the MeTC of Manila, Branch 24 was the most practicable act. The process server need not wait for the respondent spouses Mogol to reach their given address before he could serve on the latter with summons and the copy of the complaint. The

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[23] *Id.* at 141.

[24] *Id.* at 143-144.

[25] Penned by Presiding Judge William Simon P. Peralta; *rollo*, pp. 165-169.

refusal of respondent spouses Mogol to receive the summons without valid cause was, thus, equivalent to a valid service of summons that vested jurisdiction in the MeTC of Manila, Branch 25.

Respondent spouses Mogol sought a reconsideration of the aforesaid Decision, but the RTC of Manila, Branch 50, denied the same in an Order[26] dated 4 October 2004, finding no cogent reason to disturb its earlier judgment. Thereafter, respondent spouses Mogol no longer filed any appeal on the above Decision of the RTC of Manila, Branch 50.

On 26 April 2007, petitioner filed the instant Petition for Review, questioning the rulings of the Court of Appeals in CA-G.R. SP No. 70029 and raising for resolution the following legal issues:

1. Whether or not the service of summons in the courtroom, before the hearing, [was] a valid service of summons;

2. Whether or not the clause "tendering it to him" when the defendant refuses to receive and sign for the summons under Section 6, Rule 14 of the Rules of Court means "leaving a copy of the summons to her or in the premises where the defendant could get it";

3. Whether or not summons refused to be received by [respondent spouses Mogol], upon advice of their counsel, need to be served anew to them;

4. Whether or not the court is bound by the conclusions of the Process Server in his Return of Service of Summons; and

5. Whether or not the appeal before the Court of Appeals denying the Petition for *Certiorari*, Prohibition and Injunction has become moot and academic when the [RTC of Manila, Branch 50] rendered a Decision affirming the Decision of the [MeTC of Manila, Branch 25], and which Decision of the [RTC of Manila, Branch 50] has become final and executory.

Contrary to the ruling of the Court of Appeals, petitioner argues that the service of summons inside the courtroom of the MeTC of Manila, Branch 24, was already valid. Such was a

[26] *Rollo*, p. 170.

more practicable and convenient procedure, as opposed to requesting the process server to serve the summons and the copy of the complaint upon the respondent spouses Mogol at their residence in Lucena City. Petitioner further contends that, when the respondent spouses Mogol declined to receive and sign for the summons, tendering of the same was sufficient, and the summons need not be served anew. Section 6, Rule 14 of the Rules of Court does not state that the personal service of summons fails because the defendant refuses to receive and sign for it. As regards the Return on Service of Summons, petitioner claims that the second paragraph thereof was a mere conclusion of law, which does not bind the independent conclusion of the courts. Although the second paragraph stated that the summons was returned UNSERVED, the first paragraph clearly indicated that, indeed, the summons and the copy of the complaint were already personally served upon the Mogol spouses. They merely refused to receive them for no valid reasons. Finally, petitioner asserts that the assailed Decision dated 21 November 2006 of the Court of Appeals has already become moot and academic. The Decision dated 19 March 2004 of the RTC of Manila, Branch 50, in Civil Case No. 01-101963, which affirmed the Decision of the MeTC of Manila, Branch 25, on the merits of the case has since become final and executory for failure of respondent spouses Mogol to interpose an appeal of the same before the Court of Appeals.

We find merit in the petition.

A summons is a writ by which the defendant is notified of the action brought against him or her. In a civil action, jurisdiction over the defendant is acquired either upon a valid service of summons or the defendant's voluntary appearance in court. When the defendant does not voluntarily submit to the court's jurisdiction, or when there is no valid service of summons, any judgment of the court, which has no jurisdiction over the person of the defendant, is null and void.[27] Where the action is *in*

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[27] *Manotoc v. Court of Appeals*, G.R. No. 130974, 16 August 2006, 499 SCRA 21, 33.

personam, *i.e.*, one that seeks to impose some responsibility or liability directly upon the person of the defendant through the judgment of a court,[28] and the defendant is in the Philippines, the service of summons may be made through personal or substituted service in the manner provided for in Sections 6 and 7, Rule 14 of the Rules of Court, which read:

> SEC. 6. *Service in person on defendant*. – Whenever practicable, the summons shall be served by handing a copy thereof to the defendant in person, or, if he refuses to receive and sign for it, by tendering it to him.
>
> SEC. 7. *Substituted service*. – If, for justifiable causes, the defendant cannot be served within a reasonable time as provided in the preceding section, service may be effected (a) by leaving copies of the summons at the defendant's residence with some person of suitable age and discretion then residing therein; or (b) by leaving the copies at defendant's office or regular place of business with some competent person in charge thereof.

It is well-established that summons upon a respondent or a defendant must be served by handing a copy thereof to him in person or, if he refuses to receive it, by tendering it to him. Personal service of summons most effectively ensures that the notice desired under the constitutional requirement of due process is accomplished.[29] The essence of personal service is the handing or tendering of a copy of the summons to the defendant himself,[30] wherever he may be found; that is, wherever he may be, provided he is in the Philippines.[31]

In the instant case, the Court finds that there was already a valid service of summons in the persons of respondent spouses Mogol. To recapitulate, the process server presented the summons

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[28] *Domagas v. Jensen*, G.R. No. 158407, 17 January 2005, 448 SCRA 663, 673-674.

[29] *Sandoval II v. House of Representatives Electoral Tribunal*, 433 Phil. 290, 300 (2002).

[30] *Paluwagan Ng Bayan Savings Bank v. King*, 254 Phil. 56, 58 (1989).

[31] See *Cohen & Cohen v. Benguet Commercial Co., Ltd.*, 34 Phil. 526, 535 (1916), cited in Francisco, *The Revised Rules of Court* (2001 Ed.), p. 458.

and the copy of the complaint to respondent spouses at the courtroom of the MeTC of Manila, Branch 24. The latter immediately referred the matter to their counsel, who was present with them in the aforesaid courtroom. At the express direction of his clients, the counsel took the summons and the copy of the complaint, read the same, and thereby informed himself of the contents of the said documents. Ineluctably, at that point, the act of the counsel of respondent spouses Mogol of receiving the summons and the copy of the complaint already constituted receipt on the part of his clients, for the same was done with the latter's behest and consent. Already accomplished was the operative act of "handing" a copy of the summons to respondent spouses in person. Thus, jurisdiction over the persons of the respondent spouses Mogol was already acquired by the MeTC of Manila, Branch 25. That being said, the subsequent act of the counsel of respondent spouses of returning the summons and the copy of the complaint to the process server was no longer material.

Furthermore, the instruction of the counsel for respondent spouses not to obtain a copy of the summons and the copy of the complaint, under the lame excuse that the same must be served only in the address stated therein, was a gross mistake. Section 6, Rule 14 of the Rules of Court does not require that the service of summons on the defendant in person must be effected only at the latter's residence as stated in the summons. On the contrary, said provision is crystal clear that, whenever practicable, summons shall be served by handing a copy thereof to the defendant; or if he refuses to receive and sign for it, by tendering it to him. Nothing more is required. As correctly held by the RTC of Manila, Branch 50, the service of the copy of the summons and the complaint inside the courtroom of the MeTC of Manila, Branch 24 was the most practicable act under the circumstances, and the process server need not wait for respondent spouses Mogol to reach their given address, *i.e.*, at 1218 Daisy St., Employee Village, Lucena City, before he could serve on the latter the summons and the copy of the complaint. Due to the distance of the said address, service therein would have been more costly and would have entailed a longer delay

on the part of the process server in effecting the service of the summons.

Much more important than considerations of practicality, however, is the fact that respondent spouses Mogol based their case on a wrong appreciation of the above-stated provisions of the Rules of Court. Respondent spouses Mogol principally argue that Section 6 of Rule 14 cannot be singled out without construing the same with Section 7. They posit that, in a civil case, summons must be served upon the defendants personally at the designated place alleged in the complaint. If the defendants refuse to receive and sign the summons, then the process server must tender the same to them by leaving a copy at the residence of the defendants. If the summons cannot be served in person because of the absence of the defendants at the address stated, then the same can be served by (1) leaving copies of the summons at the defendants' residence with some person of suitable age and discretion residing therein, or (2) leaving the copies at defendants' office or regular place of business with some competent person in charge thereof.

Said arguments must fail, for they have no leg to stand on.

Axiomatically, Sections 6 and 7 of Rule 14 of the Rules of Court cannot be construed to apply simultaneously. Said provisions do not provide for alternative modes of service of summons, which can either be resorted to on the mere basis of convenience to the parties. Under our procedural rules, service of summons in the persons of the defendants is generally preferred over substituted service.[32] Substituted service derogates the regular method of personal service. It is an extraordinary method, since it seeks to bind the respondent or the defendant to the consequences of a suit, even though notice of such action is served not upon him but upon another whom the law could only presume would notify him of the pending proceedings.[33]

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[32] See *Robinson v. Miralles*, G.R. No. 163584, 12 December 2006, 510 SCRA 678, 683.

[33] *Sandoval II v. House of Representatives Electoral Tribunal*, *supra* note 29.

For substituted service to be justified, the following circumstances must be clearly established: (a) personal service of summons within a reasonable time was impossible; (b) efforts were exerted to locate the party; and (c) the summons was served upon a person of sufficient age and discretion residing at the party's residence or upon a competent person in charge of the party's office or place of business.[34]

Relevantly, in *Lazaro v. Rural Bank of Francisco Balagtas (Bulacan), Inc.*,[35] very categorical was our statement that the service of summons to be done personally does not mean that service is possible only at the defendant's actual residence. It is enough that the defendant is handed a copy of the summons in person by anyone authorized by law. This is distinct from substituted service under Section 7, Rule 14 of the Rules of Court. As already discussed above, there was already a valid service of summons in the persons of respondent spouses Mogol in the courtroom of the MeTC of Manila, Branch 24, when their counsel, upon their explicit instructions, received and read the same on their behalf. Contrary to the ruling of the Court of Appeals, the fact that the summons was returned to the process server and respondent spouses Mogul subsequently declined to sign for them did not mean that the service of summons in the persons of respondent spouses was a failure, such that a further effort was required to serve the summons anew. A tender of summons, much less, a substituted service of summons, need no longer be resorted to in this case.

Indeed, a contrary ruling by this Court would inevitably give every future defendant to a case the unwarranted means to easily thwart the cardinal procedures for the service of summons at the simple expedient of returning the summons and the copy of the complaint to the process server and refusing to sign for the same even after being already informed of their contents. This the Court will never allow.

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[34] *Robinson v. Miralles*, *supra* note 32.

[35] 456 Phil. 414, 424 (2003).

As to the reliance of the Court of Appeals on the second paragraph of the Return on Service of Summons stating that the original and duplicate copies of the Summons were returned "UNSERVED," the Court finds the same utterly misplaced. A simple reading of the first paragraph of the Return on Service of Summons, which contains the circumstances surrounding the service of the summons on the persons of the respondent spouses Mogol, manifestly reveals that the summons and the copy of the complaint were already validly served on the said respondents. They merely refused to receive or obtain a copy of the same. The certificate of service of the process server is *prima facie* evidence of the facts as set out therein. This is fortified by the presumption of the regularity of performance of official duty. To overcome the presumption of regularity of official functions in favor of such sheriff's return, the evidence against it must be clear and convincing. Sans the requisite quantum of proof to the contrary, the presumption stands deserving of faith and credit.[36] In the instant case, it is worthwhile to note that the facts stated in the first paragraph of the Return on Service of Summons were not at all disputed by the respondent spouses Mogol.

Although We find lamentable the apparently erroneous statement made by the process server in the aforesaid second paragraph – an error that undoubtedly added to the confusion of the parties to this case – the same was, nonetheless, a mere conclusion of law, which does not bind the independent judgment of the courts. Indeed, it cannot be said that because of such a statement, respondent spouses Mogol had the right to rely on said return informing them that the summons had been unserved, thus justifying their non-filing of any responsive pleading. To reiterate, respondent spouses Mogol were validly served summons and a copy of the complaint against them. At their explicit instructions, their counsel read the same and thereby learned of the nature of the claim against them. After being made aware

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[36] *Guanzon v. Arradaza*, G.R. No. 155392, 6 December 2006, 510 SCRA 309, 318.

of the complaint filed against them, they chose not to obtain a copy thereof and pretended that it did not exist. They, thus, took a gamble in not filing any responsive pleading thereto. Suffice it to say, they lost. The constitutional requirement of due process exacts that the service be such as may be reasonably expected to give the notice desired. Once the service provided by the rules reasonably accomplishes that end, the requirement of justice is answered; the traditional notions of fair play are satisfied and due process is served.[37]

In fine, we rule that jurisdiction over the persons of the respondent spouses Mogol was validly acquired by the MeTC, Branch 25 in this case. For their failure to file any responsive pleading to the Complaint filed against them, in violation of the order of the said court as stated in the summons, respondent spouses Mogol were correctly declared in default.

WHEREFORE, premises considered, the Petition for Review on *Certiorari* under Rule 45 is *GRANTED*. The Decision dated 21 November 2006 and the Resolution dated 12 March 2007 of the Court of Appeals in CA-G.R. SP No. 70029 are hereby *REVERSED AND SET ASIDE*. The Order dated 18 January 2002 of the Regional Trial Court of Manila, Branch 33, in Civil Case No. 01-101267 is hereby *AFFIRMED*. No costs.

SO ORDERED.

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

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[37] *Montalban v. Maximo,* 131 Phil. 154, 162 (1968), cited in *Boticano v. Chu, Jr.,* G.R. No. 58036, 16 March 1987, 148 SCRA 541, 551.

THIRD DIVISION

[G.R. No. 177430. July 14, 2009]

RENE M. FRANCISCO,[1] *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

[G.R. No. 178935. July 14, 2009]

OSCAR A. OJEDA, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; INFORMATION; CONSPIRACY AS A CRIME OR AS A MODE OF COMMITTING A CRIME, HOW ALLEGED.— A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. In our jurisdiction, conspiracy can be alleged in the Information as a mode of committing a crime or it may be alleged as constitutive of the crime itself. When conspiracy is alleged as a crime in itself, the sufficiency of the allegations in the Information charging the offense is governed by Section 6, Rule 110 of the Revised Rules of Criminal Procedure. In other words, the act of conspiring and all the elements of said crime must be set forth in the complaint or information. The requirement of alleging the elements of a crime in the information is to inform the accused of the nature of the accusation against him so as to enable him to suitably prepare his defense. The requirements on sufficiency of allegations are different when conspiracy is not charged as a crime in itself but only as the mode of committing the crime. There is less necessity of reciting its particularities in the Information, because conspiracy is not the gravamen of the offense charged. Conspiracy is significant only because it changes the criminal liability of all the accused and makes them answerable as co-principals regardless of the degree of their participation in the crime. The liability of the conspirators

[1] Mentioned as Renato M. Francisco in the TSN.

is collective, and each participant will be equally responsible for the acts of others, for the act of one is the act of all.

2. ID.; ID.; ID.; ID.; CONSPIRACY AS A MODE OF COMMITTING A CRIME; MANNERS OF ALLEGATION.— [I]t is sufficient to allege conspiracy as a mode of the commission of an offense in either of the following manners: (1) by the use of the word "conspire," or its derivatives or synonyms, such as confederate, connive, collude, *etc*; or (2) by allegations of basic facts constituting the conspiracy in a manner that a person of common understanding would know what is intended, and with such precision as would enable the accused to competently enter a plea to a subsequent indictment based on the same facts.

3. ID.; ID.; ID.; ID.; ID.; SUFFICIENTLY ALLEGED IN THE INFORMATION IN CASE AT BAR.— It is settled that conspiracy must be alleged, not merely inferred, in the information. A look at the information readily shows that the words "conspiracy," "conspired" or "in conspiracy with" does not appear in the information. This, however, does not necessarily mean that the absence of these words would signify that conspiracy was not alleged in the information. After carefully reading the information, we find that conspiracy was properly alleged in the information. The accusatory portion reads in part: "all the above-named accused, with evident intent to defraud the government of legitimate taxes accruing to it from imported articles, did then and there, willfully, unlawfully and knowingly ***participate in and facilitate the transportation, concealment, and possession of dutiable electronic equipment and accessories*** with a domestic market value of ₱20,000,000.00 contained in container van no. TTNU9201241, but which were declared in Formal Entry and Revenue Declaration No. 118302 as assorted men's and ladies' accessories x x x." We find the phrase "participate in and facilitate" to be a clear and definite allegation of conspiracy sufficient for those being accused to competently enter a plea and to make a proper defense.

4. CRIMINAL LAW; CONSPIRACY; AS A BASIS FOR CONVICTION, CONSPIRACY MUST BE PROVED BEYOND REASONABLE DOUBT; CASE AT BAR.— Conspiracy as a basis for conviction must rest on nothing less than a moral certainty. While conspiracy need not be established by direct evidence, it is, nonetheless, required that to be proved

by clear and convincing evidence by showing a series of acts done by each of the accused in concert and in pursuance of a common unlawful purpose. There was no direct evidence showing that all the accused came together and planned the crime charged. However, it is clear that their acts were in pursuance of one common criminal objective. They wanted to evade the payment of correct duties and taxes due the government. The failure of Francisco, Ojeda and Lintag to order a 100% examination of the subject importation, in spite of the glaring discrepancies and suspicious entries in the documents involved, without any doubt, facilitated the release of the importation involved by making it appear that said importation was legally done. Allowing the subject cargo to pass through Customs without a hitch clearly points to a conspiracy between and among all the accused. Their individual participation has been duly established. Since conspiracy has been proved beyond reasonable doubt, all the conspirators, regardless of their degree of participation, are criminally liable for the crime charged and proved – the act of one is the act of all.

5. ID.; SMUGGLING; HOW COMMITTED.— Smuggling is committed by any person who (1) fraudulently imports or brings into the Philippines any article contrary to law; (2) assists in so doing any article contrary to law; or (3) receives, conceals, buys, sells or in any manner facilitates the transportation, concealment or sale of such goods after importation, knowing the same to have been imported contrary to law. x x x There is no doubt that smuggling was committed in this case. The collective evidence on record shows that the Francisco, Ojeda and Lintag assisted in the unlawful importation of dutiable articles by facilitating their release from the Bureau of Customs without payment of proper duties and taxes. Having the power to order the physical examination of the subject importation, they intentionally did not do so despite the glaring irregularities found on the face of the documents (Formal Entry and Internal Revenue Declaration No. 118302, Invoice No. LPI/99-500 and Bill of Lading). They helped conceal the true nature of the cargo. Thereafter, the cargo, which had the appearance of having been legally imported through their help, was removed from customs premises and was being transported to an undisclosed location.

6. ID.; ID.; PENALTY; CASE AT BAR.— Under Number 4 of Article 3601 of the TCCP, if the appraised value, including the duties

and taxes, of the article illegally imported exceeds one hundred fifty thousand pesos, the person liable shall be punished with a fine of not less than eight thousand pesos nor more than ten thousand pesos and imprisonment of not less than eight (8) years and one (1) day nor more than twelve (12) years. In the instant case, the domestic value of the subject importation is ₱20,000,000.00. Under the Indeterminate Sentence Law, if the offense is punished by a special law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by law and the minimum shall not be less than the minimum term prescribed by the same. Applying said provision of law, the trial court failed to impose the correct penalty of imprisonment. It imposed a penalty of imprisonment the minimum of which was below that prescribed by the law. To correct this error, we therefore increase the same to eight (8) years and one (1) day, as minimum, to twelve (12) years, as maximum. This applies only to petitioners Francisco and Ojeda. As to accused Tolentino and PO3 Nadora, we can no longer modify the penalty imposed on them because the decision of the trial court is already final.

APPEARANCES OF COUNSEL

Gonzales Batiller David and Associates for Rene Francisco.
Delos Angeles Aguirre Olaguer Salomon & Fabro for Oscar A. Ojeda.
The Solicitor General for respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

Assailed before Us is the Decision[2] of the Court of Appeals dated 13 April 2007 in CA-G.R. CR No. 28025 which affirmed *in toto* the Decision[3] dated 16 July 2003 of the Regional Trial Court (RTC) of Manila, Branch 21, in Criminal Case No. 00-

[2] Penned by Associate Justice Myrna Dimaranan Vidal with Associate Justices Jose L. Sabio, Jr. and Jose C. Reyes, Jr., concurring. CA *rollo*, pp. 325-344.

[3] Records, Vol. 2, pp. 138-140.

186411, and its Resolution[4] dated 6 July 2007 denying petitioner Oscar A. Ojeda's Motion for Reconsideration.

In an Information dated 12 September 2000, Ruel "Jayar" Tolentino, Oscar A. Ojeda, Rene M. Francisco, Danilo J. Lintag, Antonio Caamic, Michael Umagat, Amado Gonzales and Police Officer 3 (PO3) Roberto Nadora were charged before the RTC of Manila with violation of Section 3601 of the Tariff and Customs Code of the Philippines. The case was docketed as Criminal Case No. 00-186411 and was raffled to Branch 21. The Information reads:

> That on or about November 18, 1999, in the City of Manila and within the jurisdiction of this Honorable Court, all the above-named accused, with evident intent to defraud the government of legitimate taxes accruing to it from imported articles, did then and there, willfully, unlawfully and knowingly participate in and facilitate the transportation, concealment, and possession of dutiable electronic equipment and accessories with a domestic market value of ₱20,000,000.00 contained in container van no. TTNU9201241, but which were declared in Formal Entry and Revenue Declaration No. 118302 as assorted men's and ladies' accessories, all of said accused knowing the same to have been imported contrary to law, to the damage and prejudice of the Philippine Government.[5]

On 16 October 2000, orders for the arrest of the accused were issued by the trial court.[6] Tolentino, Francisco, Lintag, PO3 Nadora and Ojeda were granted provisional liberty after filing their respective personal bail bonds.

On 6 December 2000, when arraigned, Tolentino, Francisco, Lintag and PO3 Nadora, assisted by their respective counsels *de parte*, pleaded not guilty to the crime charged.[7] Assisted by

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[4] CA *rollo*, pp. 417-418.

[5] Records, Vol. 1, p. 2.

[6] *Id.* at 131-138.

[7] *Id.* at 246.

counsel, Ojeda pleaded not guilty when arraigned on 28 February 2001.[8] Accused Caamic, Umagat and Gonzales remained at large.

The pre-trial conference was conducted and terminated on 17 April 2001.[9] Thereafter, trial on the merits ensued.

The prosecution presented the following witnesses: (1) Lt. Julius Agdeppa,[10] member of Presidential Anti-Smuggling Task Force (PASTF) Aduana; (2) Atty. Eden Dandal,[11] Special Assistant to the Director of Customs Intelligence and Investigation Service (CIIS); and (3) Zenaida Lanaria,[12] Acting Chief, Liquidation and Billing Division, Bureau of Customs (BOC).

The evidence for the prosecution shows:

On 18 November 1999, the PASTF Aduana received intelligence information that a container van with No. TTNU 9201241 containing electronic appliances on board a trailer truck with Plate No. GDW 833 would be released from the Manila International Container Port (MICP) without payment of the required customs duties and taxes. At around 3:45 p.m. of the same date, the PASTF Aduana led by Lt. Julius Agdeppa, together with five of its members (Sgt. Marvida, Sgt. Narag, Sgt. Azarcon, Sgt. Segismundo and Sgt. Alcid), spotted the said truck with container van leaving the MICP compound. The team tailed the truck and upon reaching the South Superhighway, Lt. Agdeppa's vehicle overtook the truck and ordered the driver to pull over. When the driver pulled over, Lt. Agdeppa and Sgt. Marvida approached it and asked the truck driver (Amado Gonzales) to show the documents of the cargo. Gonzales presented only photocopies of the Formal Entry, Internal Revenue Declaration No. 118302[13] and Invoice No. LPI/99-500.[14] Meanwhile, Michael

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[8] *Id.* at 319.

[9] *Id.* at 330.

[10] TSN, 4 June 2001.

[11] TSN, 17 July 2001 and 10 September 2001.

[12] TSN, 30 July 2001.

[13] Exh. A.

[14] Exh. B.

Umagat, the driver of a white Honda Civic following the truck, approached them and asked what the problem was. Umagat said, "*Pare, ano problema nyan? May problema ba yan?*" After Lt. Agdeppa identified himself, he asked Umagat who the owner of the cargo was. Umagat said, "*Pare kay Ruel Tolentino, okey na yan kay Danilo Lintag*."[15] When Lt. Agdeppa inquired about the destination of the cargo, Umagat pointed to PO3 Nadora who was on board a stainless-type jeep and said, "*Siya ang escort, siya ang nakakaalam kung saan pupunta yan, sir*."[16] PO3 Nadora told them he did not know the destination of the cargo. Suspecting there was something illegal about the cargo considering that the items mentioned in the entry (men's and ladies' accessories) were different from those enumerated in the invoice (VHS, Betamax, *etc.*), and that the taxes paid were not commensurate with the size of the container van, Lt. Agdeppa told Gonzales, Umagat and PO3 Nadora to follow them to Warehouse No. 16, Camp Aguinaldo, Quezon City where the cargo would be subjected to examination. The photocopies of the entry declaration and the invoice were taken by Lt. Agdeppa as part of evidence and as basis for the inventory.

On 20 November 1999, the opening of the container van was witnessed by, among other persons, Atty. Eden Dandal, CIIS MICP Chief, Rene Francisco, Gen. Calimlim, Head of PASTF Aduana, and the media.[17] The container van contained dutiable assorted electronic equipment and appliances as mentioned in Invoice No. LPI/99-500, contrary to the 450 cartons of assorted men's and ladies' accessories declared in the Formal Entry and Internal Revenue Declaration No. 118302.[18] Invoice No. LPI/99-500[19] enumerates the following items:

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[15] TSN, 4 June 2001, p. 16.

[16] *Id.* at 18.

[17] *Id.* at 5-23.

[18] Exh. A; Records, Vol. 1, pp. 35-36; Vol. 2, p. 458.

[19] Records, Vol. 1, p. 37.

QUANTITY	DESCRIPTION	UNIT PRICE	AMOUNT
51 grs.	Shirt	@US$0.20/grs.	US$ 10.20
50 grs.	Blouse	0.20/grs.	10.00
100 sets	Television	0.30/set	30.00
29 grs.	Dress	0.40/grs.	11.60
30 grs.	Jacket	0.50/grs.	15.00
80 sets	Vcd	0.20/set	16.00
30 grs.	Jumper	0.50/grs.	15.00
150 sets	Vhs	0.238/set	35.70
30 grs.	Skirt	0.40/grs.	12.00
1000 grs.	blank tape	0.05/grs.	50.00
40 grs.	Sandals	0.20/grs.	8.00
20 grs.	Bags	0.50/grs.	10.00
30 sets	Components	0.40/grs.	12.00
40 grs.	Tights	0.30/grs.	12.00
100 sets	Fishing rods	2.50/set	250.00
			US$497.50[20]

The Formal Entry and Internal Revenue Declaration contained, among other things, the following entries: Exporter: PAWA Brothers Trading PTE, Ltd.; Importer: Loxon Phils., Inc. #33 Taguig St., Makati City, Philippines; Broker/Attorney-in-Fact: A&N Brokerage Services; Number and Kind of Packages: 450 Cartons: Assorted Men's and Ladies' Accessories, *etc.*; Container Van No. TTNU 9201241: the weight, which was voluntarily upgraded to 1,350%; Customs' value: US$3,588.75; Dutiable value: ₱158,768.57; Total assessment: ₱81,939.00.[21] The itemized contents of the container van were enumerated in the inventory sheet[22] prepared by PO1 Nestor Marvida, to which Atty. Eden Dandal and Lt. Agdeppa agreed.

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[20] *Id.*

[21] Exh. A; Records, Vol. 1, p. 35.

[22] Exhs. D-D-3; Records, Vol. 2, pp. 513-516.

Per certification issued by Stanley N. Villavicencio of the Valuation and Classification Division of the Bureau of Customs, the domestic market value of the assorted electronic equipment contained in the container van consigned to Loxon Phil., Inc. is ₱20,000,000.00.[23] Formal Entry and Internal Revenue Declaration No. 118302 was assigned by Customs Operations Officer 5 (COO5) Oscar Ojeda to Customs Operations Officer 3 (COO3) Rene Francisco for examination. Francisco recommended its continuous processing without actual examination of the cargo, which Oscar Ojeda concurred in. The entry with the attached clearance from the CIIS monitoring team headed by Danilo Lintag was forwarded to the cash division for payment. For allegedly facilitating the release of said cargo, the three customs personnel were charged with violation of Section 3601 of the Tariff and Customs Code of the Philippines.

Atty. Dandal testified that he knew Oscar Ojeda, Danilo J. Lintag and Rene M. Francisco, they being his co-workers at the Bureau of Customs. He did not know PO3 Roberto Nadora. He disclosed that he received a call from Gen. Calimlim of the PASTF Aduana requesting him to witness the 100% examination of apprehended goods covered by Formal Entry and Internal Revenue Declaration No. 118302 and consigned to Loxon Phils., Inc. He revealed that cargoes described as general merchandise, those with alert orders and those coming from China, Hongkong, Thailand and Singapore were usually subjected to 100% examination. He said the persons authorized to issue alert orders and orders for 100% examination were the Director of CIIS, the Director of Enforcement and Security Service, and the District Collector. With respect to the cargo involved in this case which came from Singapore, there was no request from the foregoing persons to subject the same to 100% examination.

Atty. Dandal explained that the Bureau of Customs adopted a selectivity system called the ASYCUDA (Automated System for Customs Data) Program to determine if the cargo was to be subjected to 100% examination. In said program, entries are classified into three lanes: (1) the green color lane, where the

[23] Records, Vol. 1, p. 5.

entry is forwarded to the cash division for payment and immediate release of cargo; (2) the yellow color lane, where only verification of documents is done by the examiner; and (3) the red color lane, where the goods are subjected to 100% examination. He said that the cargo involved was categorized as yellow, which means that document-only verification is required. It is the Assessment Section that reviews documents falling on the yellow lane. He explained that there are instances when entries classified as yellow are subjected to 100% examination, such as (1) when there is an Alert Order; or (2) when the value of the particular shipment is "hit," which means that the valuation is under question, and when the declarations on the entry and the supporting documents themselves contradict each other.[24] In these instances, the appraiser may either increase the valuation or conduct a re-computation of the duties and taxes to be paid or secure sample for valuation purposes. He added that it is impossible for a fraudulent entry to pass the bureau without passing the intelligence detachment assigned to each district, unless there is some sort of conspiracy. He revealed that Oscar Ojeda belonged to the Assessment Office where importation documents mandatorily passed.

Atty. Dandal said he found "striking" and "peculiar" the entries made in the documents regarding the subject cargo. The Formal Entry and Internal Revenue Declaration No. 118302 merely described the cargo as 450 cartons of assorted men's and ladies' accessories. It did not state the weight as is normally indicated in the Bill of Lading, invoice and packing list. He said that the weight of the shipment mentioned in the Bill of Lading (3,500 kg or 3.5 tons) was excessive for 450 cartons of men's and ladies' accessories. He likewise said that the quantity and valuation in the import declaration was very peculiar. He explained that there was no way to determine the number of pieces of each men's and ladies' accessories and the unit price of each. He found it almost impossible also that the value of the containerized importation was only US$500.00. With all the electronic equipment and appliances (30 sets of components worth only US$12.00,

[24] TSN, 17 July 2001, p. 36.

150 sets of VHS worth only US$35.00, and 100 sets of TV worth only US$30.00) declared in the invoice, the importation should not only be subjected to 100% examination, but should be alerted and the processing stopped by the examiners. The persons who acted on the particular entry were COO3 R.M. Francisco, COO5 A. Ojeda, and Felicitacion de Luz, Acting District Collector.

Atty. Dandal explained that Oscar Ojeda, as COO5, received the findings of the examiner/appraiser. The COO5 or the principal examiner may also request a 100% examination of the cargo. In the cargo subject of this case, the assessment was based merely on the documents, because when the entry was transmitted to the Entry Encoding Center, yellow appeared as the color code. Thus, Ojeda merely reviewed the supporting documents. He added that the principal examiner could have upgraded the valuation if the value was very low, and determined if the documents were properly classified. In the subject importation, there was voluntary upgrading (of the value of the importation) to 1,350%. Ojeda made an adjustment from ₱39,000.00 to ₱159,000.00. He said Danilo Lintag, who was assigned with the Office of the Deputy Commissioner, had no authority to conduct 100% examination. The goods, subject matter of the case, were, according to him, absolutely misdeclared and claimed to be men's and ladies' accessories.

Zenaida Lanaria testified that in November 1999, she was the Assistant Chief of the Liquidation and Billing Division of the BOC. She explained that the Liquidation and Billing Division was part of the processing of importations. She said that importation documents should pass her office. As regards Formal Entry and Internal Revenue Declaration No. 118302, she said that this document only passed the Collection Division and never reached her division. She did not know why this happened. It was only when she was subpoenaed by the court that she learned of it.

For the defense, the following took the stand: (1) PO3 Roberto Nadora,[25] assigned at Jose Abad Santos Avenue Police Station 7, Western Police District; (2) Danilo J. Lintag, Customs Agent,

[25] TSN, 14 May 2002 and 20 May 2002.

BOC;[26] (3) Oscar Ojeda, Customs Examiner, BOC;[27] (4) Ruel Tolentino, businessman and resident of Taguig, Metro Manila;[28] (5) Atty. Domingo Leguiab, Assistant Chief, Appellate Division, Legal Service, Office of the Commissioner, BOC;[29] (6) Manuel Oktubre, businessman and resident of Malabon, Metro Manila;[30] and (7) Renato M. Francisco, Acting Customs Operations Officer 3 (COO3), Special Warehousing Assessment Unit, BOC.[31]

PO3 Nadora denied the charge against him. He testified that on 18 November 1999, he was assigned at the Mobile Patrol Support Unit. On said day, he reported for work at 7:00 a.m. and went home at 4:00 p.m. On his way home, he saw Michael Umagat and Amado Gonzales, who asked for his assistance. They told him that their container van was missing so he helped them look for it. They located the container van inside Camp Aguinaldo in the warehouse of Task Force Aduana. He inquired from the person in authority why the container van was there. Instead of being given a reply, he was accused of escorting the container van.

Mr. Lintag denied participating in the crime charged. He testified that as a Customs Agent, it was his duty to supervise and review all port entries made by agents, to submit a report with proper recommendation, and to analyze reports of agents regarding violations of the Tariff and Customs Code and the rules and regulations pertaining thereto. It was also his duty to conduct and witness a 100% examination of shipments consigned to or handled by certain individuals regardless of whether they were classified as green, yellow or red under the ASYCUDA Program.[32]

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[26] TSN, 20 May 2002.

[27] TSN, 12 August 2002, 26 August 2002.

[28] TSN, 9 September 2002, 23 September 2002.

[29] TSN, 23 September 2002.

[30] TSN, 30 September 2002.

[31] TSN, 14 October 2002.

[32] Memorandum dated 23 August 1999 issued by Bureau of Customs Commissioner Nelson A. Tan; Records, Vol. 1, pp. 33-34.

At around 3:45 p.m. of 18 November 1999, he was in his office. He did not order a 100% examination of Container Van No. TTNU9201241 covered by Formal Entry and Internal Revenue Declaration No. 118302[33] and Invoice No. LPI/99-500, because there was no notice from the agents. He had no knowledge about Formal Entry and Internal Revenue Declaration No. 118302, because not a single document related to it passed his office. He also did not sign any document regarding the same. He denied that the signature appearing on Exhibit M was his. He likewise denied that shipments passed through the CIIS Monitoring Teams created by former BOC Commissioner Nelson Tan.[34]

Oscar Ojeda, denying the charge against him, testified that on 18 November 1999, he was Acting Principal Examiner at the MICP, BOC. As such, it was his duty to review the importation documents (Consumption Entry) and the findings of his examiner. He recalled having reviewed the documents of the shipment consigned to Loxon Phils., Inc. covered by Formal Entry and Internal Revenue Declaration No. 118302. The documents for said shipment were forwarded to his division by the Entry Processing Division (Marine Division). Upon receipt thereof, the same was given to the principal examiner for assignment to the examiner. For this cargo, he said he assigned the documents to Rene Francisco. It is standard operating procedure for the examiner to enter the documents in the computer for registration and to enter the necessary findings on the contents of the documents. When the documents were returned to him by Francisco, he found them to be in order. All the supporting documents were attached. Ojeda said he did not find any discrepancy. He did not conduct (physical) examination of this particular cargo, but only reviewed the documents. Having been categorized as yellow, the cargo would be examined by the examiner based on documents and not by actual physical examination. He did not receive any order from his superior to examine physically the cargo, subject matter of this case. He

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[33] Exh. A.

[34] See Exh. N, pars. 5 and 7.

said that he did not see the name of Rene Francisco in any document passed to him, and that he was not aware of the ownership of the importation.

As a former examiner/appraiser for thirteen years prior to his appointment as principal appraiser, Ojeda said he was very familiar with the duties of an examiner. It is part of an examiner's job to examine documents covering importations and the actual objects imported. Even without the superior's permission, an examiner can conduct actual or physical examination. It is the initiative of the examiner to perform actual examination if he finds it necessary in the face of the document, even if there is no alert order. Ojeda claimed that the principal examiner could not perform an actual examination unlike the examiner. He further explained that once the principal examiner affixed his signature approving all the documents that had been recommended by the examiner, the responsibility for the documents would be assumed by the principal examiner.

Ojeda said he found the contents and their values, as well as the total worth of the importation, to be unusual. Despite all these, he did not conduct 100% examination because there was a voluntary upgrading by the importer. The value of the invoice was upgraded by 1,350%.

When confronted with his counter-affidavit, he admitted that the following was stated therein: "In fact, Mr. Danilo Lintag even affixed his signature on his report and attached the same to the other pertinent documents as a sign of clearance on his part." He said that when the clearance reached his table, the signatures of his examiner and of Lintag were already there.

Mr. Ruel Tolentino denied any participation in the alleged smuggling and said that he had no intention to defraud the government. He testified that he was a licensed cargo forwarder (Jara Cargo Forwarders). As such, he hauled cargo from any place in Metro Manila to any point in Luzon. He said he was not the "Jayar" mentioned in the information and had never used said name. He claimed he had no participation in the importation, subject of this case. He did not participate in the processing or release of the cargo involved. He admitted, however,

that he sent a letter dated 7 December 1999 to the Collector of the BOC offering to redeem the merchandise, there being already a Warrant of Seizure and Detention over the goods. Not being the importer or broker of the cargo, he made the offer to redeem, because a certain Paolo Gonzales, the holder of the original Bill of Lading of the seized goods, approached him and asked for his help in formally making the offer of redemption of the forfeited goods. Paolo Gonzales gave him a Special Power of Attorney, and he wrote the letter making a formal offer to redeem the seized articles. The offer was approved by the Chief of the Law Division and indorsed to the Collector of Customs. He claimed that he was included in the complaint because of his letter making the offer to redeem.

Mr. Tolentino explained that his only evidence that Loxon Phils., Inc. was existing was what Paolo Gonzales told him. He added that if the cargo would be released, Paolo Gonzales would give him 2% of the redemption value.

Atty. Domingo Leguiab testified on the events that happened involving the supposed shipment of Loxon Phils., Inc. He said the shipment was placed under Warrant of Seizure and Detention on 23 November 1999 because it was misdeclared pursuant to Republic Act No. 7651 without subjecting the shipment for hearing. The shipment was forfeited in favor of the government also on 23 November 1999. Under Section 2307 of the Tariff and Customs Code, the importer has the right to redeem under certain conditions. The offer of redemption can be made by the importer or by an Attorney-in-Fact by virtue of a Special Power of Attorney (SPA). In this case, the offer to redeem was made on 27 December 1999 by Ruel Tolentino pursuant to a Special Power of Attorney, and was duly received by the Law Division.

Atty. Leguiab said that on record Loxon Phils., Inc. was the importer/consignee. The Law Division did not go to the extent of determining whether said corporation was a registered importer or not. He had no knowledge that the President of Loxon Phils., Inc. had brought a disclaimer that it was the importer of the forfeited goods. He recalled that the goods were auctioned off and the redemption did not push through.

Manuel Oktubre testified that he knew Ruel Tolentino. He often saw the latter at the MICP, which was a cargo forwarder. He said he saw Tolentino on 26 September 2002 at the Marine Division of the MICP, where he was requested by the latter to testify that he saw someone entrust the SPA to Tolentino. Tolentino signed the SPA in his presence. After signing the SPA, Tolentino introduced him to Paolo Gonzales, the person who gave the SPA to the former. He knew Paolo Gonzales to be the General Manager of Loxon Phils., Inc. because he read the contents of the SPA. He disclosed that he was a former examiner of the BOC and had known Tolentino since 1995. As to Paolo Gonzales, he first saw him when the former gave the SPA to Tolentino.

Renato M. Francisco testified that as COO3, the equivalent of customs examiner or appraiser, he was tasked to examine, classify and appraise importations assigned to him at the Formal Entry Division, BOC. On 18 November 1999, he was in his office at the Formal Entry Division. His immediate superiors were Andres Areza and Oscar Ojeda. He explained that there were several instances wherein physical examination has to be done on imported goods. These are when the surveyor sees that the container van is broken into or tampered, and when there is an alert or a hold order issued by competent authorities. On said day, Oscar Ojeda assigned to him Entry No. 118(302) consigned to Loxon Phils., Inc.

The usual procedure, he claimed, when an entry was assigned to him, began with the consignee/owner of the importation paying the bank the duties and taxes on the importation based on the invoice. Thereafter, what followed was the filing of the entry at the encoding center (ASYCUDA), which was manned by non-customs employees. When he received the entry, he examined the entry and all its supporting documents (Bill of Lading, Invoice and Packing List). He evaluated the entry to check whether there were discrepancies or unnecessary documents attached. In the subject importation, he found that the invoice was voluntarily upgraded to 1,350%, presumably by the consignee that was approved by the bank. He found the entry and the documents in order. He did not find the name of Ruel Tolentino on the face of the entry. The description of the entry was 450

cartons of assorted men's and ladies' accessories. Upon document examination, he went to the computer to "trigger" the entry. From the computer, he found out that the entry under the ASYCUDA was categorized as "yellow." He explained that there were three classifications under the ASYCUDA – green, yellow and red. Green meant that the entry went direct to the cash division for payment; yellow meant document—only examination was required; red meant that 100% physical examination of the entry was required. One hundred (100%) percent examination meant that the contents of the importation must be opened. This entry consigned to Loxon Phils., Inc. was classified as "yellow." After consulting the computer, he made his findings at the back of the entry.

He said it was the first time he encountered a voluntary upgrading of 1,350% and found the same irregular. However, since the bank approved the entry and was accepted by the Entry Encoding System, he considered it regular. He based his action on the approval of the bank. He merely made a documentary examination of the entry because there was no alert order or hold order on the entry. He added that the entry fell on the yellow lane, and there was no derogatory information regarding the same. He claimed that it was not required of him to conduct physical examination, because the entry was classified as yellow. He recommended the continuous processing of the entry and the release of the shipment. Under the entry, the customs duties and taxes paid amounted to ₱7,213.75. His findings with respect to the duties and taxes amounted to ₱81,781.00. After writing his findings at the back of the entry, he forwarded or gave it to his superior, Oscar Ojeda. The former's responsibility ended there. Ojeda consulted the computer and triggered the entry. The latter then stamped the word "yellow" at the back of the entry and signed it together with the final assessment notice. The entry was forwarded to the Cash Division.

Francisco said he had no knowledge of or participation in the crime charged. His only participation as regards the entry was performing the usual procedures in the processing of documents. It was only in court that he came to know of Ruel Tolentino and PO3 Nadora.

He admitted that his recommendation for the continuous processing of the entry was contained in an Officer on Case Report dated 18 November 1999.[35] Under the heading "findings" of said report, it stated that "found as declared right." In said report, his signature, together with the signatures of Francisco and Lintag, appears thereon. He further admitted that the bank merely accepted payment and did not examine, classify or appraise an entry. He said he did not verify why the entry was upgraded to 1,350%. He added that he did not comply with the Customs Memorandum Order requiring 100% examination and getting samples for purposes of evaluation, because the entry fell on the yellow lane.

On 27 August 2003, the trial court, agreeing with the version of the prosecution, promulgated its decision finding Tolentino, Ojeda, Francisco, Lintag and PO3 Nadora guilty of the crime charged. The dispositive portion of the decision reads:

> WHEREFORE, premises considered, the Court finds accused RUEL "JAYAR" TOLENTINO, OSCAR OJEDA, RENE M. FRANCISCO, DANILO LINTAG and PO3 ROBERTO NADORA GUILTY beyond reasonable doubt of the crime charged and are hereby sentenced to suffer the penalty of FOUR (4) YEARS and ONE (1) DAY as minimum to SIX (6) YEARS of *prision correccional* as maximum and to pay fine of ₱8,000.00 each without subsidiary imprisonment in case of insolvency and to pay the costs.
>
> Accordingly, the bonds posted for the provisional liberty of the accused are hereby CANCELLED.
>
> It appearing that accused ANTONIO CAAMIC, MICHAEL UMAGAT and AMADO GONZALES have not been apprehended to date, let warrant be issued for their arrest and let the case against them be ARCHIVED to be reinstated upon their apprehension.[36]

The trial court gave credence to the testimonies of the prosecution witnesses, especially the testimony of Lt. Julius Agdeppa, *vis-à-vis* the denials of all the accused. No improper

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[35] Exh. M; Records, p. 32.

[36] CA *rollo,* p. 64.

motive to testify falsely against the accused was found on the part of the prosecution witnesses.

The trial court convicted Ruel Toletino for being the owner of the cargo subject of this case. As to PO3 Roberto Nadora, he was found guilty of escorting the shipment while in transit to the supposed consignee. His defense that his assistance was merely sought by Umagat and Gonzales to look for the container van was not given weight because of the declaration of Lt. Agdeppa that Francisco was pointed to as the escort of the cargo truck and was present when the same was apprehended in Manila.

Renato Francisco, Oscar Ojeda and Danilo Lintag were held responsible for omitting certain procedural steps in the processing of importation subject of this case. According to Zenaida Lanaria, Acting Chief, Liquidation and Billing Division, BOC, importation documents should pass through her office. In this case, Formal Entry and Internal Revenue Declaration No. 118302 only passed the Collection Division and never reached her division. Francisco's and Ojeda's claims that they merely followed procedure when they subjected the cargo involved to documentary examination and not to 100% actual physical examination were not accepted by the trial court in view of the presence of discrepancies and irregularities on the face of the documents relative to Formal Entry and Internal Revenue Declaration No. 118302. Lintag's contention that the documents involved did not pass through his office was not believed by the trial court. This contention, the trial court said, was belied by the Memorandum for the District Collector of Customs dated 18 November 1999,[37] which was signed by him and contained the findings "Found as Declared." As to Lintag's claim that the signature therein was not his, the trial court ruled that he, having the burden to prove the same, failed to show that there was indeed a forgery.

The trial court expounded:

This court need not be a computer expert as to clearly detect whether or not a kind of manipulation must have intervened into the

[37] Exh. M; Records, pp. 32 and 77.

procedure. It may not be mere suspicion but simple curiosity that would drive anyone to ask and find out whether the invoice is credible or not. To the plain understanding of the Court, it is basic in any computer system, which is Asy[c]uda program being adopted by the Bureau of Customs as mentioned in their testimonies pertaining to certain documents covering importations. Common sense also would dictate that the computer can not think and act like the operator. It is still the user who could possibly make it operate in the manner said user would like to produce the desired result. If you feed it garbage facts or data it will in turn emit the same input/output following the "garbage in, garbage out" principle in computerization. If the user wants the document to fall under a certain color code like yellow, red or green, it is possible because the user knows to come about it.

If the entry and invoice stated items at random (mostly men's and ladies' accessories) inserting some electronics appliances and devices such as TV, blank tape, components VCD and VHS among them, the user can command the color code desired for it in the computer as mere yellow (code indicating the items in the document which does not require 100% examination) without even regard for the pricing, quantifying, *etc*. The examiners stressed in all the procedures corresponding to each and every phase of their duties and responsibilities that, they have no hand in deviation or omission that would occur in the course of the performance of each task or work assigned to persons involved in this case. Any error or defect along this line of function can easily be attributed by them to the computer, to the program or system adopted. What they wish to actually show to this Court is that the Bureau of Customs procedure have been computerized so it is following a system that could facilitate matters without much meticulous and rigid inspection or physical examination as it used to be when the system was not yet computerized.

Mere browsing of the documents in question if common sense is employed vice the computer, the listed items considered men's and ladies' accessories therein could have aroused the BOC officials and personnel thinking why there were insertions of items other then men's and ladies' accessories and the quantities and pricing of which could also raise their eyebrows over the pieces of declared items for being not commensurate to more realistic unit price? How about the real men's and ladies' accessories? Are they relief goods or items for charity or donation that the pricing thereof are so low or cheap? Is the importer intending to re-s[ell] these goods?

Now what about the computer if they really rely on it in the Bureau of Customs? Does it totally replace layman's visual determination of assessing such goods or items? Would not accused be but tempted to make even a mere glance of them to find out what the cartons or packages contain as to even accidentally discovering that contrary to what had been declared in the invoice. They are not mere men's and ladies' accessories but appliances and electronic items. Had the accused been more prudent and attentive enough in the course of their assigned task no other work force or imported goods, being transported for delivery to the consignee without being assessed of the corresponding duties and taxes.

The irregular transaction could not have been possible without any form of collusion among the accused who handled the processing of the documents. x x x. Had they efficiently checked/verified the entry and invoice, the shipment could not have been released without payment of correct duties and taxes.[38]

The trial court found that the accused participated directly and constructively in the act charged for which they were held criminally liable.

On 28 August 2003, Tolentino applied for probation.[39] PO3 Nadora, Ojeda, Francisco and Lintag filed their respective notices of appeal. Subsequently, PO3 Nadora withdrew his notice of appeal and filed his application for probation. The notices of appeal having been filed on time, the trial court directed the transmission of the records of the case to the Court of Appeals. The applications for probation of PO3 Nadora and Tolentino were granted and a probation period for two years was imposed on each.[40]

During the pendency of the appeal with the Court of Appeals, Lintag died.[41]

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[38] CA *rollo,* pp. 60-61.

[39] Records, Vol. 2, pp. 754-755.

[40] *Id.* at 917-920.

[41] Certificate of Death; CA *rollo*, p. 322.

On 13 April 2007, the Court of Appeals promulgated its decision denying the appeal and affirming *in toto* the decision of the trial court. The Motion for Reconsideration[42] of Ojeda was denied by the appellate court in its resolution dated 6 July 2007.

Petitioners Francisco and Ojeda are now before us *via* petitions for review respectively docketed as G.R. No. 177430 and No. 178935. Per resolution of the Court, the cases were ordered consolidated.[43]

Petitioner Francisco cites the following grounds:

I

WHETHER OR NOT CONSPIRACY IS ALLEGED IN THE INFORMATION OR PROVED DURING TRIAL.

II

WHETHER OR NOT THE GUILT OF ACCUSED-APELLANT RENE M. FRANCISCO WAS PROVED BEYOND REASONABLE DOUBT.

III

THE DECISION OF BOTH THE COURT OF APPEALS AND THE REGIONAL TRIAL COURT VIOLATED SECTION 14, ARTICLE VIII OF THE 1987 CONSTITUTION.

Petitioner Ojeda raises the following issues:

WHETHER OR NOT THE COURT OF APPEALS ERRED IN FINDING PETITIONER OJEDA AND HIS CO-ACCUSED LIABLE FOR CONSPIRACY IN THE COMMISSION OF THE OFFENSE CHARGED DESPITE THE ABSENCE OF ANY ALLEGATION OF CONSPIRACY IN THE INFORMATION;

WHETHER OR NOT, IN THE ABSENCE OF CONSPIRACY AND/OR ANY ALLEGATION OF CONSPIRACY IN THE INFORMATION, THE COURT OF APPEALS ERRED IN FINDING PETITIONER GUILTY BEYOND REASONABLE DOUBT OF THE OFFENSE CHARGED; and

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[42] CA *rollo*, pp. 378-393.

[43] *Rollo* (G.R. No. 177430), p. 114.

WHETHER OR NOT THE COURT OF APPEALS ERRED IN FINDING CONSPIRACY IN THE COMMISSION OF THE OFFENSE CHARGED.

The issues raised by petitioners can be limited to:

(1) Was conspiracy properly alleged in the information?

(2) If properly alleged, was conspiracy proven beyond reasonable doubt?

(3) Was the guilt of petitioners proven beyond reasonable doubt?

A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[44] In our jurisdiction, conspiracy can be alleged in the Information as a mode of committing a crime or it may be alleged as constitutive of the crime itself.[45]

When conspiracy is alleged as a crime in itself,[46] the sufficiency of the allegations in the Information charging the offense is governed by Section 6,[47] Rule 110 of the Revised Rules of Criminal Procedure. In other words, the act of conspiring and all the elements of said crime must be set forth in the complaint or information.[48] The requirement of alleging the elements of a crime in the information is to inform the accused of the nature

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[44] Article 8, Revised Penal Code.

[45] *Estrada v. Sandiganbayan*, 427 Phil. 820, 854 (2002).

[46] Examples of conspiracies constituting the crime itself under the Revised Penal Code are: conspiracy to commit treason (Art. 115), *coup d'etat*, rebellion or insurrection (Art. 136) and sedition (Article 141).

[47] Sec. 6. *Sufficiency of complaint or information*. – A complaint or information is sufficient if it states the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed.

[48] *Estrada v. Sandiganbayan, supra* note 45.

of the accusation against him so as to enable him to suitably prepare his defense.[49]

The requirements on sufficiency of allegations are different when conspiracy is not charged as a crime in itself but only as the mode of committing the crime. There is less necessity of reciting its particularities in the Information, because conspiracy is not the gravamen of the offense charged. Conspiracy is significant only because it changes the criminal liability of all the accused and makes them answerable as co-principals regardless of the degree of their participation in the crime. The liability of the conspirators is collective, and each participant will be equally responsible for the acts of others, for the act of one is the act of all.[50]

The Court in *Estrada v. Sandiganbayan*,[51] citing *People v. Quitlong*,[52] described how conspiracy as the mode of committing the offense should be alleged in the information, *viz*:

> In embodying the essential elements of the crime charged, the information must set forth the facts and circumstances that have a bearing on the culpability and liability of the accused so that the accused can properly prepare for and undertake his defense. One such fact or circumstance in a complaint against two or more accused persons is that of conspiracy. Quite unlike the omission of an ordinary recital of fact which, if not excepted from or objected to during trial, may be corrected or supplied by competent proof, an allegation, however, of conspiracy, or one that would impute criminal liability to an accused for the act of another or others, is indispensable in order to hold such person, regardless of the nature and extent of his own participation, equally guilty with the other or others in the commission of the crime. Where conspiracy exists and can rightly be appreciated, the individual acts done to perpetrate the felony becomes of secondary importance, the act of one being imputable

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[49] *People v. Dimaano*, G.R. No. 168168, 14 September 2005, 469 SCRA 647, 667.

[50] *Estrada v. Sandiganbayan, supra* note 45.

[51] *Id.*

[52] 354 Phil. 372, 388-390 (1998).

to all the others [*People v. Ilano*, 313 SCRA 442]. Verily, an accused must know from the information whether he faces a criminal responsibility not only for his acts but also for the acts of his co-accused as well.

A conspiracy indictment need not, of course, aver all the components of conspiracy or allege all the details thereof, like the part that each of the parties therein have performed, the evidence proving the common design or the facts connecting all the accused with one another in the web of the conspiracy. Neither is it necessary to describe conspiracy with the same degree of particularity required in describing a substantive offense. It is enough that the indictment contains a statement of the facts relied upon to be constitutive of the offense in ordinary and concise language, with as much certainty as the nature of the case will admit, in a manner that can enable a person of common understanding to know what is intended, and with such precision that the accused may plead his acquittal or conviction to a subsequent indictment based on the same facts. It is said, generally, that an indictment may be held sufficient "if it follows the words of the statute and reasonably informs the accused of the character of the offense he is charged with conspiring to commit, or, following the language of the statute, contains a sufficient statement of an overt act to effect the object of the conspiracy, or alleges both the conspiracy and the contemplated crime in the language of the respective statutes defining them [15A C.J.S. 842-844].

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x x x Conspiracy arises when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Conspiracy comes to life at the very instant the plotters agree, expressly or impliedly, to commit the felony and forthwith to actually pursue it. Verily, the information must state that the accused have confederated to commit the crime or that there has been a community of design, a unity of purpose or an agreement to commit the felony among the accused. Such an allegation, in the absence of the usual usage of the words "conspired" or "confederated" or the phrase "acting in conspiracy," must aptly appear in the information in the form of definitive acts constituting conspiracy. In fine, **the agreement to commit the crime, the unity of purpose or the community of design among the accused must be conveyed such as either by the use of the term "conspire" or its derivatives**

and synonyms or by allegations of basic facts constituting the conspiracy. Conspiracy must be alleged, not just inferred, in the information on which basis an accused can aptly enter his plea, a matter that is not to be confused with or likened to the adequacy of evidence that may be required to prove it. In establishing conspiracy when properly alleged, the evidence to support it need not necessarily be shown by direct proof but may be inferred from shown acts and conduct of the accused. (Emphases supplied.)

From the foregoing discussion, it is sufficient to allege conspiracy as a mode of the commission of an offense in either of the following manners: (1) by the use of the word "conspire," or its derivatives or synonyms, such as confederate, connive, collude, *etc.*; or (2) by allegations of basic facts constituting the conspiracy in a manner that a person of common understanding would know what is intended, and with such precision as would enable the accused to competently enter a plea to a subsequent indictment based on the same facts.[53]

In the case before us, petitioners contend that the information did not contain any allegation of conspiracy, either by the use of the words conspire or its derivatives and synonyms, or by allegations of basic facts constituting conspiracy that will make them liable for the acts of their co-accused.

We find this contention untenable.

It is settled that conspiracy must be alleged, not merely inferred, in the information.[54] A look at the information readily shows that the words "conspiracy," "conspired" or "in conspiracy with" does not appear in the information. This, however, does not necessarily mean that the absence of these words would signify that conspiracy was not alleged in the information. After carefully reading the information, we find that conspiracy was properly alleged in the information. The accusatory portion reads in part: "all the above-named accused, with evident intent to defraud the government of legitimate taxes accruing to it from imported articles, did then and there, willfully, unlawfully and knowingly

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[53] *Id.*

[54] *Garcia v. Court of Appeals*, 420 Phil. 25, 35 (2001).

participate in and facilitate the transportation, concealment, and possession of dutiable electronic equipment and accessories with a domestic market value of ₱20,000,000.00 contained in container van no. TTNU9201241, but which were declared in Formal Entry and Revenue Declaration No. 118302 as assorted men's and ladies' accessories x x x." We find the phrase "participate in and facilitate" to be a clear and definite allegation of conspiracy sufficient for those being accused to competently enter a plea and to make a proper defense.

Both Rene Francisco and Oscar Ojeda were charged because they assisted in and facilitated the release of the subject cargo without the payment of the proper duties and taxes due the government by omitting certain acts in light of glaring discrepancies and suspicious entries present in the documents involved in the subject importation (Formal Entry and Internal Revenue Declaration No. 118302, invoice, bill of lading and packing list).

Francisco stresses that his guilt has not been proved beyond reasonable. He contends that he faithfully, carefully and regularly exercised his official duties as customs examiner in accordance with the applicable processes and procedure of his office. He further contends that the prosecution's principal witness, Lt. Agdeppa, absolved him of any involvement in the crime charged by saying that the former was not present when the cargo was apprehended, and that he did not know how Francisco's name was written in Formal Entry and Internal Revenue Declaration No. 118302. He adds that the decisions of both lower courts violated Section 14, Article VIII[55] of the 1987 Constitution, when they failed to name or identify who among the accused allegedly manipulated the computer system.

We are not persuaded that Francisco faithfully and regularly performed his duties as examiner as regards Formal Entry and Internal Revenue Declaration No. 118302. His total reliance on the ASYCUDA (Automated System for Customs Data) Program employed at the BOC to determine if a cargo is to be subjected

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[55] Section 14. No decision shall be rendered by any court without expressing therein clearly the facts and the law on which it is based.

to 100% physical examination will not exonerate him. The fact that the subject importation was classified as "yellow" (examination of documents only) did not mean he could not and should not conduct 100% physical examination of the cargo in view of the glaring discrepancies and suspicious entries in the documents involved. The glaring discrepancies and suspicious entries include:

1. the Bill of Lading shows that the weight of the shipment is 3,500 kg. or 3.5 tons while the declared quantity of the importation was 450 cartons of assorted men's and ladies' accessories. According to Atty. Dandal, 3.5 tons is too heavy for 450 cartons of men's and ladies' accessories;

2. the declaration of the quantity in the invoice – the unit of measurement is gross but the invoice does not specify the number of items per gross;

3. the declaration of the prices in the invoice has no basis, *e.g.*, the declaration of 20 centavos per gross has no basis for the valuation, it does not say how many pieces of t-shirts or blouses are worth 20 centavos;

4. the amount of the importation which was merely $500 is unusually low for a containerized importation;

5. the voluntary upgrading by 1350% is unusually high.[56]

By merely looking at Formal Entry and Internal Revenue Declaration No. 118302 and the invoice, one can readily see the discrepancy between what are declared in the former and in the latter. In Formal Entry and Internal Revenue Declaration No. 118302, what were mentioned were men's and ladies' accessories. However, in the invoice, electronic equipment and appliances such as VHS, Betamax, television and the like were stated. Despite all these questionable entries, Francisco recommended the continuous processing of the importation documents, conducting merely a document examination and not a 100% actual physical examination of the cargo. How can he turn a blind eye to all these obvious discrepancies? His failure to perform a 100% physical examination of the cargo, under

[56] CA *rollo*, p. 335.

the circumstances, is inexcusable and illicit, amounting to non-performance of his duty.

Francisco's contention that Lt. Agdeppa cleared him by saying that the former was not present when the cargo was apprehended, and that the latter did not know how Francisco's name was written in Formal Entry and Internal Revenue Declaration No. 118302 deserves scant consideration. Francisco was included in the charge, not because he was present when the container van was apprehended, but because he recommended the continuous processing of the subject importation without subjecting the same to 100% actual physical examination despite the clear disagreement of the entries in the importation documents. The lack of knowledge on the part of Lt. Agdeppa as to how Francisco's name was written in Formal Entry and Internal Revenue Declaration No. 118302 is so trivial and does not mean that the latter did not participate in the anomalous processing of the subject importation. From the testimonies of Atty. Dandal, Ojeda and from Francisco's own testimony, it was shown that the latter took part in the processing of the subject importation and that his name appeared on the dorsal portion of Formal Entry and Internal Revenue Declaration No. 118302.

We did not find any violation of Section 14, Article VIII of the 1987 Constitution. Crucial here were the actions of the accused Customs employees when they did not perform a 100% physical examination of the cargo despite the glaring discrepancies and suspicious entries in the documents involved. In fact, they issued a Memorandum for the District Collector of Customs dated 18 November 1999, wherein it was stated "Found as Declared." Such statement is a brazen lie, because the entries in the documents were not in harmony with one another. The entry described the cargo as men's and ladies' accessories, but the invoice clearly contained items (electronic equipment and appliances) not classified as men's and ladies' accessories. Moreover, the weight, prices and the quantity thereof were so vague and should have called the attention of the persons who processed the subject importation to order its 100% physical examination.

Ojeda argues that he cannot be held responsible for affixing his signature to the documents involved and for not ordering the 100% physical examination of the cargo because he relied on the recommendation of his subordinate. In support thereof, he alleges (1) that Francisco failed to report the alleged glaring irregularities on the documents, hence, he did not examine the documents and relied on the recommendation of Francisco; (2) that he performed his duties in good faith; (3) that the suspicion of irregularity was obliterated by the voluntary upgrading of the value of the importation to 1,350%; and (4) that a clearance was issued by Lintag for the release of the cargo.

His arguments fail to convince us.

We find it surprising why he raises as his defense the alleged failure of Francisco to report the glaring irregularities on the documents. The very same documents checked by Francisco are in Ojeda's hands. Why is there a need to report any discrepancy if the latter himself can easily see the glaring discrepancies? From the entry and the invoice alone, one can definitely see something strange and irregular. His claim of good faith will not stand. As principal examiner and the superior of Francisco, his duty was to carefully review the evaluation made by his subordinate. This, he miserably failed to do. On the face of the documents, there were admittedly glaring discrepancies and suspicious entries that should have alerted him. But despite all these, he claims he merely approved what was recommended by Francisco – only document verification without 100% actual physical examination.

His contention that the suspicion of irregularity was obliterated by the voluntary upgrading of the price (of the importation) by 1350% is tenuous. The upgrading by 1350% did not obliterate but heightened plenty-fold the suspicion of irregularity. As an examiner for thirteen years before becoming a principal examiner, it is not believable for a person having so much experience not to know that there was something wrong with the importation. We agree with the Court of Appeals when it says:

> Regardless of the alleged voluntary upgrading, the verity alone that the prices of the declared items were grossly low indicated by

itself, an irregularity. Verily, the high voluntary upgrading should have put the Appellants on inquiry. Even Appellant RENE M. FRANCISCO (hereinafter Appellant FRANCISCO) admitted in his testimony that it was his first time to come across such a high voluntary upgrading and that it was unusual and irregular. Appellant FRANCISCO conceded that the bank merely accepts payment. In view of this admission, the fact that the voluntary upgrading was approved by the bank is irrelevant and immaterial to the question of the regularity or lack of it of the valuation of the cargo.

Moreover, it was not just the prices which rendered the invoice as suspect and incredible on its face. The presence of electronic items in the list of what was supposed to be just 450 cartons of men's and ladies' accessories, *inter alia*, should have alerted the examiner of the existence of an irregularity.[57]

The approval/signature of Lintag (in the Memorandum for the District Collector of Customs dated 18 November 1999 also signed by Francisco and Ojeda) will not absolve Francisco or Ojeda from liability. As found by both lower courts, Lintag, who was authorized to order 100% examination, gave his approval for the release of the cargo without ordering any physical examination despite the glaring discrepancies in the documents involved. Further, as found by both lower courts to which this Court agrees, Lintag was part of the conspiracy whereby he, Ojeda and Francisco facilitated the release of the subject importation. Thus, Ojeda's argument, that because a person occupying a position higher than his approved the release will free him from responsibility, cannot be sustained because this approving authority is part of the conspiracy.

Ojeda cites *Macadangdang v. Sandiganbayan*,[58] *Arias v. Sandiganbayan*,[59] *De la Peña v. Sandiganbayan*[60] and *Magsuci v. Sandiganbayan*[61] to justify his reliance on the recommendation

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[57] *Id.* at 339.

[58] G.R. Nos. 75440-43, 14 February 1989, 170 SCRA 308.

[59] G.R. No. 81563, 19 December 1989, 180 SCRA 309.

[60] 374 Phil. 368 (1999).

[61] 310 Phil. 14 (1995).

of his subordinate and on the "yellow" classification of the ASYCUDA (Automated System for Customs Data) Program.

The cited cases do not apply to the instant case. The circumstances obtaining therein are different from the facts of the present case. In *Macadangdang*, the petitioner had no authority or duty to go beyond what appeared on the face of the documents. In the case before us, Ojeda has the authority to go beyond the documents if on the face thereof appear irregularities. Ojeda cannot also invoke *Arias* because his participation in the instant case is not limited to affixing his signature to a transaction. In *Arias*, the participation of the petitioner therein was limited to his signing on the document. In the instant case, Ojeda consulted the computer and he himself stamped the word "yellow" at the dorsal portion of Formal Entry and Internal Revenue Declaration No. 118302. *De la Pena and Magsuci* cannot apply because in said cases, this Court found the accused therein negligent of their duties. In the case before us, we find that the action or inaction of Francisco, Ojeda and Lintag was not the result of negligence, but was intentionally or deliberately done.

Conspiracy as a basis for conviction must rest on nothing less than a moral certainty.[62] While conspiracy need not be established by direct evidence, it is, nonetheless, required that to be proved by clear and convincing evidence by showing a series of acts done by each of the accused in concert and in pursuance of a common unlawful purpose.[63]

There was no direct evidence showing that all the accused came together and planned the crime charged. However, it is clear that their acts were in pursuance of one common criminal objective. They wanted to evade the payment of correct duties and taxes due the government. The failure of Francisco, Ojeda and Lintag to order a 100% examination of the subject importation, in spite of the glaring discrepancies and suspicious entries in the documents involved, without any doubt, facilitated the release

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[62] *People v. Mapalo*, G.R. No. 172608, 6 February 2007, 514 SCRA 689, 710.

[63] *People v. Barcenal*, G.R. No. 175925, 17 August 2007, 530 SCRA 706, 726.

of the importation involved by making it appear that said importation was legally done. Allowing the subject cargo to pass through Customs without a hitch clearly points to a conspiracy between and among all the accused. Their individual participation has been duly established. Since conspiracy has been proved beyond reasonable doubt, all the conspirators, regardless of their degree of participation, are criminally liable for the crime charged and proved – the act of one is the act of all.[64]

Was the crime of smuggling committed in this case?

Smuggling is committed by any person who (1) fraudulently imports or brings into the Philippines any article contrary to law; (2) assists in so doing any article contrary to law; or (3) receives, conceals, buys, sells or in any manner facilitates the transportation, concealment or sale of such goods after importation, knowing the same to have been imported contrary to law.[65]

Article 3601 of the Tariff and Customs Code of the Philippines, which contains the penalties for smuggling, reads:

SECTION 3601. *Unlawful Importation*. — Any person who shall fraudulently import or bring into the Philippines, or assist in so doing, any article, contrary to law, or shall receive, conceal, buy, sell, or in any manner facilitate the transportation, concealment, or sale of such article after importation, knowing the same to have been imported contrary to law, shall be guilty of smuggling and shall be punished with:

1. A fine of not less than fifty pesos nor more than two hundred pesos and imprisonment of not less than five days nor more than twenty days, if the appraised value, to be determined in the manner prescribed under this Code, including duties and taxes, of the article unlawfully imported does not exceed twenty-five pesos;

2. A fine of not less than eight hundred pesos nor more than five thousand pesos and imprisonment of not less than six months and one day nor more than four years, if the appraised value, to be

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[64] *People v. Bulan*, G.R. No. 143404, 8 June 2005, 459 SCRA 550, 575.

[65] *Jardeleza v. People*, G.R. No. 165265, 6 February 2006, 481 SCRA 638, 661.

determined in the manner prescribed under this Code, including duties and taxes, of the article unlawfully imported exceeds twenty-five pesos but does not exceed fifty thousand pesos;

3. A fine of not less than six thousand pesos nor more than eight thousand pesos and imprisonment of not less than five years and one day nor more than eight years, if the appraised value, to be determined in the manner prescribed under this Code, including duties and taxes, of the article unlawfully imported is more than fifty thousand pesos but does not exceed one hundred fifty thousand pesos;

4. **A fine of not less than eight thousand pesos nor more than ten thousand pesos and imprisonment of not less than eight years and one day nor more than twelve years, if the appraised value, to be determined in the manner prescribed under this Code, including duties and taxes, of the article unlawfully imported exceeds one hundred fifty thousand pesos**;

5. The penalty of prison may or shall be imposed when the crime of serious physical injuries shall have been committed and the penalty of *reclusion perpetua* to death shall be imposed when the crime of homicide shall have been committed by reason or on the occasion of the unlawful importation.

In applying the above scale of penalties, if the offender is an alien and the prescribed penalty is not death, he shall be deported after serving the sentence without further proceedings for deportation; if the offender is a government official or employee, the penalty shall be the maximum as hereinabove prescribed and the offender shall suffer an additional penalty of perpetual disqualification from public office, to vote and to participate in any public election.

When, upon trial for violation of this section, the defendant is shown to have had possession of the article in question, possession shall be deemed sufficient evidence to authorize conviction unless the defendant shall explain the possession to the satisfaction of the court: Provided, however, That payment of the tax due after apprehension shall not constitute a valid defense in any prosecution under this section.

There is no doubt that smuggling was committed in this case. The collective evidence on record shows that the Francisco, Ojeda and Lintag assisted in the unlawful importation of dutiable articles by facilitating their release from the Bureau of Customs

without payment of proper duties and taxes. Having the power to order the physical examination of the subject importation, they intentionally did not do so despite the glaring irregularities found on the face of the documents (Formal Entry and Internal Revenue Declaration No. 118302, Invoice No. LPI/99-500 and Bill of Lading). They helped conceal the true nature of the cargo. Thereafter, the cargo, which had the appearance of having been legally imported through their help, was removed from customs premises and was being transported to an undisclosed location. Unfortunately for all the accused, said cargo, which was being guarded and escorted by PO3 Nadora, was intercepted by Presidential Anti-Smuggling Task Force (PASTF) Aduana.

We agree with the Court of Appeals when it says:

> In the instant case, the web of conspiracy covered the acts of the Appellants who facilitated the release of the subject importation without subjecting it to 100% physical examination, thus, preventing the discovery of the illegal importation. The other accused *i.e.* PO3 ROBERTO NADORA, ROEL TOLENTINO as well as ANTONIO CAAMIC, MICHAEL UMAGAT and AMADO GONZALES participated in the transportation of the subject importation and helped secure the same.[66]

The Court notes that accused Danilo J. Lintag died during the pendency of his appeal before the Court of Appeals. Thus, pursuant to *People v. Bayotas*,[67] wherein we ruled that the death of the accused pending appeal of his conviction extinguishes his criminal liability as well as the civil liability based solely thereon, the appeal of the late Danilo J. Lintag before the Court of Appeals is dismissed.

We now go to the penalties imposed on Francisco and Ojeda. The trial court, as affirmed by the Court of Appeals, imposed on each of them a fine of ₱8,000.00 and an imprisonment of four (4) years and one (1) day, as minimum to six (6) years as maximum.

Under Number 4 of Article 3601 of the TCCP, if the appraised value, including the duties and taxes, of the article illegally imported

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[66] CA *rollo*, p. 343.

[67] G.R. No. 102007, 2 September 1994, 236 SCRA 239.

exceeds one hundred fifty thousand pesos, the person liable shall be punished with a fine of not less than eight thousand pesos nor more than ten thousand pesos and imprisonment of not less than eight (8) years and one (1) day nor more than twelve (12) years. In the instant case, the domestic value of the subject importation is ₱20,000,000.00.[68]

Under the Indeterminate Sentence Law, if the offense is punished by a special law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by law and the minimum shall not be less than the minimum term prescribed by the same.[69] Applying said provision of law, the trial court failed to impose the correct penalty of imprisonment. It imposed a penalty of imprisonment the minimum of which was below that prescribed by the law. To correct this error, we therefore increase the same to eight (8) years and one (1) day, as minimum, to twelve (12) years, as maximum. This applies only to petitioners Francisco and Ojeda. As to accused Tolentino and PO3 Nadora, we can no longer modify the penalty imposed on them because the decision of the trial court is already final.

WHEREFORE, premises considered, the decision of the Court of Appeals dated 13 April 2007 in CA-G.R. CR No. 28025 is hereby *AFFIRMED* with the *MODIFICATION* that Rene M. Francisco and Oscar A. Ojeda are each sentenced to suffer the indeterminate penalty of eight (8) years and one (1) day, as minimum, to twelve (12) years, as maximum.

As to accused Danilo J. Lintag, his criminal liability and the civil liability based solely on the act complained of, are extinguished. His appeal before the Court of Appeals is dismissed.

SO ORDERED.

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

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[68] Certification issued by Stanley N. Villanueva, Valuation and Classification Division, Bureau of Customs. Records, Vol. 1, p. 5.

[69] Section 1, Act No. 4103, as amended.

SECOND DIVISION

[G.R. No. 179187. July 14, 2009]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **RENATO TALUSAN *y* PANGANIBAN,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; ARRAIGNMENT AND PLEA; PLEA OF GUILTY TO A CAPITAL OFFENSE; SEARCHING INQUIRY; GUIDELINES.— In *Pastor*, the Court, holding that "there is no definite and concrete rule as to how a trial judge must conduct a 'searching inquiry,'" nevertheless came up with the following guidelines: "1. Ascertain from the accused himself (a) how he was brought into the custody of the law; (b) whether he had the assistance of a competent counsel during the custodial and preliminary investigations; and (c) under what conditions he was detained and interrogated during the investigations. This is intended to rule out the possibility that the accused has been coerced or placed under a state of duress either by actual threats of physical harm coming from malevolent quarters or simply because of the judge's intimidating robes. 2. Ask the defense counsel a series of questions as to whether he had conferred with, and completely explained to, the accused the meaning and consequences of a plea of guilty. 3. Elicit information about the personality profile of the accused, such as his age, socio-economic status, and educational background, which may serve as a trustworthy index of his capacity to give a free and informed plea of guilty. 4. Inform the accused the exact length of imprisonment or nature of the penalty under the law and the certainty that he will serve such sentence. For not infrequently, an accused pleads guilty in the hope of a lenient treatment or upon bad advice or because of promises of the authorities or parties of a lighter penalty should he admit guilt or express remorse. It is the duty of the judge to ensure that the accused does not labor under these mistaken impressions because a plea of guilty carries with it not only the admission of authorship of the crime proper but also of the aggravating circumstances attending it, that increase punishment. 5. Inquire if the accused knows the crime with

which he is charged and fully explain to him the elements of the crime which is the basis of his indictment. Failure of the court to do so would constitute a violation of his fundamental right to be informed of the precise nature of the accusation against him and a denial of his right to due process. 6. All questions posed to the accused should be in a language known and understood by the latter. 7. The trial judge must satisfy himself that the accused, in pleading guilty, is truly guilty. The accused must be required to narrate the tragedy or reenact the crime or furnish its missing details." There is thus no hard and fast rule as to how a judge may conduct a "searching inquiry." As long as the voluntary intent of the accused and his full comprehension of the consequences of his plea are ascertained, as was done in the present case, the accused's plea of guilt is sustained.

2. ID.; ID.; ID.; ID.; CONVICTION IS PROPER DESPITE ACCUSED'S IMPROVIDENT PLEA OF GUILT IF EVIDENCE IS PRESENTED SUPPORTING HIS GUILT BEYOND REASONABLE DOUBT.— But even assuming *arguendo* that appellant entered an improvident plea of guilt when arraigned, there is no compulsion to remand the case to the trial court for further reception of evidence. While the Court has set aside convictions based on improvident pleas of guilt in capital offenses, which pleas had been the sole basis of the judgment, where the trial court receives evidence to determine precisely whether the accused erred in admitting his guilt, the manner in which the plea is made loses legal significance for the simple reason that the conviction is, independently of the plea, based on evidence proving the commission by the accused of the offense charged. In the present case, even without the plea of guilt of appellant, the evidence presented by the prosecution supports his guilt beyond reasonable doubt of the special complex crime of kidnapping with rape under Article 267 of the Revised Penal Code, as amended by Republic Act No. 7659.

3. CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; MINORITY; DULY ESTABLISHED IN CASE AT BAR.— The qualifying circumstance of minority was alleged and established with the presentation of AAA's certificate of live birth, hence, the death penalty imposed by the trial court is in order. In view, however, of the enactment in the interim of Republic Act 9346,

"An Act Prohibiting the Imposition of Death Penalty in the Philippines," the appellate court correctly modified the sentence to *reclusion perpetua*, without eligibility for parole.

4. CIVIL LAW; DAMAGES; CIVIL INDEMNITY AND MORAL DAMAGES; AWARDED IN CASE AT BAR.— In accordance with prevailing jurisprudence, the award of civil indemnity, which is mandatory upon a finding of the fact of rape, and the award of moral damages even without need of proof as it is presumed that the victim suffered moral injuries, are both increased from ₱50,000 to ₱75,000.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for appellant.

D E C I S I O N

CARPIO MORALES, *J.*:

By Decision of May 25, 2007, the Court of Appeals[1] affirmed the conviction by the Regional Trial Court (RTC), Branch 199 of Las Piñas City of Renato Talusan *y* Panganiban (appellant) of kidnapping with rape of AAA,[2] a minor of six years.

The Information filed against appellant, together with one "Eljoy Salonga," reads:

That during the period from January 15, 2004 up to January 23, 2004, in the City of Las Pinas, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together with one ELJOY SALONGA, whose true identity and present whereabout is still unknown, without legal

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[1] Penned by Associate Justice Marlene Gonzales-Sison with the concurrence of Associate Justices Juan Q. Enriquez, Jr. and Vicente S.E. Veloso.

[2] The Court shall withhold the real name of the victim and shall use fictitious initials instead to represent her. Likewise, the personal circumstances of the victim or any other information tending to establish or compromise her identities, as well as those of their immediate family or household members, shall not be disclosed. (*People v. Cabalquinto*, G.R. No. 167693, September 19, 2006)

authority or justifiable motive, did then and there willfully, unlawfully and feloniously kidnap, carry away, detain and deprive AAA, a SIX (6) year old, minor, of her liberty, against her will and consent, and the said detention lasted for eight (8) days, and while accused RENATO TALUSAN *y* PANGANIBAN @ Nato, @ Roxell B. Verga, Jr., was in custody of AAA and armed with a gun, by means of force, threat, or intimidation, did then and there, willfully, unlawfully, and feloniously inserted his finger into the vagina of AAA for several instances against her will and consent thereby subjecting her to sexual abuse, which is prejudicial to her physical and psychological development.

CONTRARY TO LAW.[3]

Salonga's "true identity and . . . whereabout[s]" were, as stated in the Information, unknown.

From the evidence for the prosecution, the following version is gathered:

In the early morning of January 14, 2004, as AAA was on her way to school, appellant, who was sitting by a tree in Las Piñas, pulled her aside and cajoled her into joining him by telling her that they would go to *Jollibee*. AAA obliged as she knew appellant to be a fellow attendee of Sunday Bible classes. Appellant brought AAA, however, to a house in Imus, Cavite occupied by one El Joy Salonga and two unidentified individuals to whom he introduced her as his daughter.

AAA was thereafter under appellant's control and custody for eight days during which he abused her by inserting his finger inside her vagina on a daily basis before breakfast, despite her resistance.

AAA having failed to return home by noon of January 14, 2004, her stepfather BBB went to her school to inquire. As nobody knew her whereabouts, BBB decided to report the matter to the Las Piñas City Police Station. A neighbor then informed him that he saw appellant sitting by a tree at the same time that AAA was on her way to school.

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[3] Records, pp. 1-2.

BBB thereupon went around the community to elicit information about appellant. A former co-worker of appellant gave BBB an address in Imus, Cavite, prompting BBB to report on January 22, 2004 to the Imus Police Station the disappearance of AAA.

At dawn of the following day, January 23, 2004, appellant, who was with AAA, was apprehended.

For inquest purposes, Dr. Pierre Paul Carpio, medico-legal officer of the Philippine National Police (PNP) Crime Laboratory, conducted an initial medico-legal examination which revealed the following

Findings:

- Hymen: **Deep fresh** 3' & 9'o'clock position
- Vestibule congested

Conclusion:

- **Subject compatible with recent loss of virginity**
- There are no ext. signs of application of any form of trauma[4] (Emphasis supplied)

Hence, the filing of the Information for kidnapping with rape.

Upon arraignment, appellant, with the assistance of his counsel *de oficio*, entered a plea of guilty. The lower court thereupon conducted a searching inquiry into the voluntariness of appellant's plea, and despite repeated questions and just as repeated answers showing that appellant understood his plea and its consequences, the trial court still ordered the prosecution to, as it did, present evidence.

Finding for the prosecution, the trial court, noting that AAA's "detailed account of her ordeal is a manifestation of her honesty and forthrightness,"[5] convicted appellant, disposing in its Decision of June 7, 2004 as follows:

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[4] *Id.* at 5.

[5] *Id.* RTC Decision, pp. 91-103, 99.

WHEREFORE, in view of all the foregoing discussions and finding the guilt of the accused beyond reasonable doubt by his voluntary and spontaneous plea of guilty, while the undersigned Presiding Judge does not believe in the imposition of death penalty as a form of punishment, nevertheless, in obedience to the law which is his duty to uphold, this Court finds the accused, **RENATO TALUSAN *y* PANGANIBAN, GUILTY**, beyond reasonable doubt for the special complex crime of **KIDNAPPING with RAPE** and hereby sentences him to suffer the supreme penalty of **DEATH**.

The Court did not consider the mitigating circumstance of voluntary plea of guilty because the penalty imposable is single and indivisible and this is regardless of its presence. x x x

Accused is hereby ordered to pay the victim AAA, the amount of ₱50,000.00 by way of civil indemnity and an additional amount of ₱50,000.00 by way of moral damages which by case law is automatically awarded to rape victims without need of proof. x x x

SO ORDERED.[6] (Emphasis in the original; underscoring supplied)

The case was forwarded to this Court on automatic review due to the death penalty imposed. Per *People v. Mateo*,[7] however, the Court referred the case to the Court of Appeals by Resolution of November 22, 2005 for intermediate disposition.

By Decision of May 25, 2007, the Court of Appeals, upholding with modification appellant's conviction, disposed as follows:

WHEREFORE, the decision dated 07 June 2004 of the Regional Trial Court, Branch 199, Las Pinas City is hereby **AFFIRMED** with **MODIFICATION**. Appellant Renato Talusan *y* Panganiban @ Natol @ Roxell B. Vergara, Jr. is sentenced to *reclusion perpetua*, conformably with *R.A. No. 9346*, without eligibility for parole and

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[6] *Id.* at 91-103, 103.

[7] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640. The case modified the pertinent provisions of the Revised Rules on Criminal Procedure, more particularly Section 3 and Section 10 of Rule 122, Section 13 of Rule 124, Section 3 of Rule 125 insofar as they provide for direct appeals from the Regional Trial Courts to the Supreme Court in cases where the penalty imposed is death, *reclusion perpetua* or life imprisonment and allowed intermediate review by the Court of Appeals before such cases are elevated to the Supreme Court.

is ordered to indemnify the AAA the following: (a) ₱50,000.00 as civil indemnity; and (b) ₱50,000.00 as moral damages.

Costs *de oficio*. (Underscoring supplied)

SO ORDERED.[8]

By Resolution of December 3, 2007, the Court required the parties to simultaneously file their respective Supplemental Briefs if they so desired within thirty (30) days from notice.[9] In compliance, the parties submitted their respective Manifestations that the Appeal Briefs they had earlier filed would suffice.

In his lone assignment of error, appellant faults the trial court for convicting him on the basis of an improvident plea of guilt as it failed, so he claims, to judiciously follow the guidelines set forth in *People v. Pastor*.[10]

The appeal is bereft of merit.

In *Pastor*, the Court, holding that "there is no definite and concrete rule as to how a trial judge must conduct a 'searching inquiry,'" nevertheless came up with the following guidelines:

1. Ascertain from the accused himself (a) how he was brought into the custody of the law; (b) whether he had the assistance of a competent counsel during the custodial and preliminary investigations; and (c) under what conditions he was detained and interrogated during the investigations. This is intended to rule out the possibility that the accused has been coerced or placed under a state of duress either by actual threats of physical harm coming from malevolent quarters or simply because of the judge's intimidating robes.

2. Ask the defense counsel a series of questions as to whether he had conferred with, and completely explained to, the accused the meaning and consequences of a plea of guilty.

3. Elicit information about the personality profile of the accused, such as his age, socio-economic status, and educational background,

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[8] *Rollo*, pp. 3-22, 21.

[9] *Id.* at 26.

[10] G.R. No. 140208, March 12, 2002, 379 SCRA 181.

which may serve as a trustworthy index of his capacity to give a free and informed plea of guilty.

4. Inform the accused the exact length of imprisonment or nature of the penalty under the law and the certainty that he will serve such sentence. For not infrequently, an accused pleads guilty in the hope of a lenient treatment or upon bad advice or because of promises of the authorities or parties of a lighter penalty should he admit guilt or express remorse. It is the duty of the judge to ensure that the accused does not labor under these mistaken impressions because a plea of guilty carries with it not only the admission of authorship of the crime proper but also of the aggravating circumstances attending it, that increase punishment.

5. Inquire if the accused knows the crime with which he is charged and fully explain to him the elements of the crime which is the basis of his indictment. Failure of the court to do so would constitute a violation of his fundamental right to be informed of the precise nature of the accusation against him and a denial of his right to due process.

6. All questions posed to the accused should be in a language known and understood by the latter.

7. The trial judge must satisfy himself that the accused, in pleading guilty, is truly guilty. The accused must be required to narrate the tragedy or reenact the crime or furnish its missing details.[11]

There is thus no hard and fast rule as to how a judge may conduct a "searching inquiry." As long as the voluntary intent of the accused and his full comprehension of the consequences of his plea are ascertained, as was done in the present case, the accused's plea of guilt is sustained. Consider the following transcript of stenographic notes of the proceedings taken during appellant's arraignment:

ATTY. CABARDO

Accused is ready for arraignment, Your Honor.

COURT

Arraign the accused in Tagalog.

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[11] *Id.* at 189-190.

(Accused is arraigned and he pleads Guilty to the Criminal Information)

COURT

What is his plea? He's pleading guilty?

COURT INTERPRETER

Yes, Your Honor.

COURT

This Court will conduct a searching inquiry into the voluntariness of his plea.

Q Mr. Renato Talusan, what is your educational attainment?

ACCUSED

A I reached 2nd year High School, Your Honor.

Q Do you know how to read and write?

A Yes, Your Honor.

Q What is your occupation?

A I'm a driver, Your Honor.

Q When you were arraigned today, you pleaded Guilty as charged in the Criminal Information. Did you plead Guilty voluntarily, freely without anyone forcing or intimidating you?

A Yes, Your Honor.

Q Did Atty. Cabardo, your counsel explained [*sic*] to you the effects and consequences if you will plead Guilty to the Criminal Information as charged?

A Yes, Your Honor.

Q Is it the understanding of the Court that Atty. Cabardo explained to you fully your rights under the Constitution before you plead Guilty to the Criminal Information?

A Yes, Your Honor.

Q Do you know Mr. Talusan that, if you will plead Guilty to the Criminal Information, this Court will immediately sentence you and confine you at the National Penitentiary?

A Yes, Your Honor.

Q Did Atty. Cabardo exert pressure on you or influence you so that you will plead Guilty to the Criminal Information?

A No, Your Honor.

Q Are you saying, Mr. Talusan that you are doing this voluntarily, freely and of your own volition?

A Yes, Your Honor.

Q Did Fiscal assigned in this Court, State Prosecutor Napoleon A. Monsod intimidate you or exert pressure on you so that you will plead Guilty to the Criminal Information?

A No, Your Honor.

COURT

Please speak louder.

ACCUSED

A No, Your Honor.

COURT

Q Did anyone outside or inside of this courtroom threaten you, exert pressure on you so that you will plead Guilty as charged to the Criminal Information?

A None, Your Honor.

Q So, it is therefore true that on January 15, 2004 up to January 23, 2004, you kidnapped, detained one AAA, a six (6) year old minor against her will and consent?

A Yes, Your Honor.

Q And that while in your custody, by means of force intimidation, you inserted your finger inside the vagina of the said minor for several instances against her will?

A Yes, Your Honor.

Q **For the last time, Mr. Renato Talusan, despite the admonition given to you by this Court, do you still insist and reiterate your pleading Guilty to the Criminal Information as charged for Kidnapping with Multiple Rape**?

A Yes, Your Honor.

COURT

The Court is convinced. I admire you Mr. Talusan for taking the responsibilities and I hope that you will be completely reformed.

ACCUSED

Yes, Your Honor.

COURT

Fiscal, inspite of [*sic*] the fact that the accused has pleaded Guilty as charged in the Criminal Information, I am directing the Prosecution to present evidence to determine the culpability of the accused.[12] (Emphasis and underscoring supplied)

But even assuming *arguendo* that appellant entered an improvident plea of guilt when arraigned, there is no compulsion to remand the case to the trial court for further reception of evidence. While the Court has set aside convictions based on improvident pleas of guilt in capital offenses, which pleas had been the sole basis of the judgment, where the trial court receives evidence to determine precisely whether the accused erred in admitting his guilt, the manner in which the plea is made loses legal significance for the simple reason that the conviction is, independently of the plea, based on evidence proving the commission by the accused of the offense charged.

In the present case, even without the plea of guilt of appellant, the evidence presented by the prosecution supports his guilt beyond reasonable doubt[13] of the special complex crime of kidnapping with rape under Article 267 of the Revised Penal

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[12] TSN, February 20, 2004, pp. 3-8.

[13] *People v. Gumimba*, G.R. No. 174056, February 27, 2007 [Formerly G.R. No. 138257].

Code, as amended by Republic Act No. 7659.[14] Thus in *People v. Larrañaga*[15] the Court held:

> Where the law provides a single penalty for two or more component offenses, the resulting crime is called a special complex crime. Some of the special complex crimes under the Revised Penal Code are (1) robbery with homicide, (2) robbery with rape, (3) kidnapping with serious physical injuries, (4) kidnapping with murder or homicide, and (5) rape with homicide. *In a special complex crime, the prosecution must necessarily prove each of the component offenses with the same precision that would be necessary if they were made the subject of separate complaints.* As earlier mentioned, R.A. No. 7659 amended Article 267 of the Revised Penal Code by adding thereto this provision: *"When the victim is killed or dies as a consequence of the detention, or is raped, or is subjected to torture or dehumanizing acts, the maximum penalty shall be imposed*; and that this provision gives rise to a special complex crime. (Italics in the original; underscoring supplied)

A review of the evidence for the prosecution shows that the actual confinement, restraint and rape of AAA were proven.

Thus, AAA, a minor whose testimony is given full faith and credit, youth and immaturity being generally badges of truth and sincerity,[16] declared:

> Q: Did you go voluntarily with the accused?
>
> A: He forced me, Your Honor.
>
> Q: Why did you say that the accused forced you to go with him, what did the accused do to you?
>
> A: He told me that we are going to Jollibee but it turned out that it was not true.

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[14] *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.*

[15] G.R. Nos. 138874-75, February 3, 2004, 421 SCRA 530, 580.

[16] *People v. Operario*, G.R. No. 146590, July 17, 2003, 406 SCRA 564.

Q: When you went with the accused and boarded a tricycle, you really wanted to go to Jollibee, is that the understanding of the Court?

A: I did not want to, Your Honor.

Q: What did you do when you say that you do not want to go with the accused?

A: Nothing, Your Honor.

Q: Did you cry?

A: Yes, Your Honor.

Q: How did you cry?

A: I was just crying, Your Honor.[17]

x x x x x x x x x

Q: Can you remember how many nights and days you have not seen your mother and father?

A: Yes, sir.

Q: How many nights?

A: Eight (8) nights, sir.

Q: After you were brought to the wake, where there is a dead person and at the club, where else were you taken by Kuya Renato?

A: At coastal mall, sir.

Q: A while ago, AAA, you said that Kuya Renato abused you and Kuya Renato inserted his penis in your vagina, do you recall that?

A: Yes, sir.

Q: Which was inserted, his penis or his finger?

A: His finger, sir.

x x x x x x x x x

Q: When it was inserted inside, did you cry?

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[17] TSN, March 15, 2004, pp.11-12.

A: Yes, sir.

Q: What did you say to Kuya Renato?

A: I told him that it was painful.[18]

AAA's stepfather BBB testified on her disappearance for eight days and the measures he took in order to recover her. And the initial medico-legal report conducted for inquest purposes shows that AAA suffered deep fresh lacerations in her hymen which are "compatible with recent loss of virginity."

The qualifying circumstance of minority was alleged and established with the presentation of AAA's certificate of live birth, hence, the death penalty imposed by the trial court is in order. In view, however, of the enactment in the interim of Republic Act 9346, *"An Act Prohibiting the Imposition of Death Penalty in the Philippines,"* the appellate court correctly modified the sentence to *reclusion perpetua,* without eligibility for parole.

A word on the award of civil indemnity and moral damages. In accordance with prevailing jurisprudence, the award of civil indemnity, which is mandatory upon a finding of the fact of rape, and the award of moral damages even without need of proof as it is presumed that the victim suffered moral injuries,[19] are both increased from ₱50,000 to ₱75,000.

WHEREFORE, the Decision of May 25, 2007 of the Court of Appeals is *AFFIRMED* with *MODIFICATION* in that the separate awards of civil indemnity and moral damages are increased from ₱50,000 to ₱75,000. In all other respects, the Decision is *AFFIRMED.*

SO ORDERED.

Quisumbing (Chairperson), Chico-Nazario,[*] *Leonardo-de Castro,*[**] and *Brion, JJ.*, concur.

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[18] *Id.* at 15-16.

[19] *People v. Guillermo,* G.R. No. 173787, April 23, 2007, 521 SCRA 597.

[*] Additional member per Special Order No. 658.

[**] Additional member per Special Order No. 635.

THIRD DIVISION

[G.R. No. 180043. July 14, 2009]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **PHILIPPINE AIRLINES, INC.,** *respondent.*

SYLLABUS

1. TAXATION; TAX EXEMPTIONS; GRANT OF TAX EXEMPTION OF RESPONDENT UNDER PRESIDENTIAL DECREE NO. 1590 IS ALL-INCLUSIVE.— The language used in Section 13 of Presidential Decree No. 1590, granting respondent tax exemption, is clearly all-inclusive. The basic corporate income tax or franchise tax paid by respondent 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** x x x," except only real property tax. Even a meticulous examination of Presidential Decree No. 1590 will not reveal any provision therein limiting the tax exemption of respondent to final withholding tax on interest income or excluding from said exemption the OCT.

2. ID.; TAX ON INCOME; TAX ON CORPORATIONS; FINAL TAX ON INTEREST INCOME; NOT PART OF THE BASIC CORPORATE INCOME TAX; CASE AT BAR.— "[B]asic 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) imposed on taxable income by Section 27(A) of the NIRC. Although the definition of "gross income" is broad enough to include all passive incomes, the passive incomes already subjected to different rates of final tax to be withheld at source shall no longer be included in the computation of gross income, which shall be used in the determination of taxable income. The interest income of respondent is already subject to final withholding tax of 20%, and no longer to the basic corporate income tax of 35%. Having established that final tax on interest income is not part of the basic corporate income tax, then the former is considered as among "all other taxes" from which respondent is exempted under Section 13 of Presidential Decree No. 1590.

3. ID.; PERCENTAGE TAXES; OVERSEAS COMMUNICATIONS TAX; NATURE.— OCT is not even an income tax. It is a business tax, which the government imposes on the gross annual sales of operators of communication equipment sending overseas dispatches, messages or conversations from the Philippines. According to Section 120 of the NIRC, the person paying for the services rendered (respondent, in this case) shall pay the OCT to the person rendering the service (PLDT); the latter, in turn, shall remit the amount to the BIR. If this Court deems that final tax on interest income – which is also an income tax, but distinct from basic corporate income tax – is included among "all other taxes" from which respondent is exempt, then with all the more reason should the Court consider OCT, which is altogether a different type of tax, as also covered by the said exemption.

4. ID.; TAX EXEMPTIONS; ACTUAL PAYMENT OF A CERTAIN AMOUNT AS BASIC CORPORATE INCOME TAX OR FRANCHISE TAX, NOT REQUIRED FOR RESPONDENT TO ENJOY TAX EXEMPTION; CASE AT BAR.— In insisting that respondent needs to actually pay a certain amount as basic corporate income tax or franchise tax, before it can enjoy the tax exemption granted to it, petitioner places too much reliance on the use of the word "pay" in the first line of Section 13 of Presidential Decree No. 1590. It must do well for petitioner to remember that a statute's clauses and phrases should not be taken as detached and isolated expressions, but the whole and every part thereof must be considered in fixing the meaning of any of its parts. A strict interpretation of the word "pay" in Section 13 of Presidential Decree No. 1590 would effectively render nugatory the other rights categorically conferred upon the respondent by its franchise. Section 13 of Presidential Decree No. 1590 clearly gives respondent the option to "pay" either basic corporate income tax on its net taxable income or franchise tax on its gross revenues, whichever would result in lower tax. The rationale for giving respondent such an option is explained in the PAL case, to wit: 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 the respondent operates at a loss (as in the instant case), no taxes are due; in this [sic] instances, it has a lower tax liability than that provided by

Subsection (b). In the event that respondent incurs a net loss, it shall have zero liability for basic corporate income tax, the lowest possible tax liability. There being no qualification to the exercise of its options under Section 13 of Presidential Decree No. 1590, then respondent is free to choose basic corporate income tax, even if it would have zero liability for the same in light of its net loss position for the taxable year. Additionally, a ruling by this Court compelling respondent to pay a franchise tax when it incurs a net loss and is, thus, not liable for any basic corporate income tax would be contrary to the evident intent of the law to give respondent options and to make the latter liable for the least amount of tax.

5. ID.; TAX ON INCOME; ALLOWABLE DEDUCTIONS; NET LOSS CARRY-OVER; MAY ONLY BE USED IN THE COMPUTATION OF BASIC CORPORATE INCOME TAX.— In allowing respondent to carry over its net loss for five consecutive years following the year said loss was incurred, Presidential Decree No. 1590 takes into account the possibility that respondent shall be in a net loss position for six years straight, during which it shall have zero basic corporate income tax liability. The Court also notes that net loss carry-over may only be used in the computation of basic corporate income tax. Hence, if respondent is required to pay a franchise tax every time it has zero basic corporate income tax liability due to net loss, then it shall never have the opportunity to avail itself of the benefit of net loss carry-over.

6. ID.; TAX REFUND; MAY BE GRANTED WHEN THE CLAIM FOR REFUND HAS CLEAR LEGAL BASIS AND SUFFICIENTLY SUPPORTED BY EVIDENCE.— [P]etitioner contends that according to well-established doctrine, a tax refund, which is in the nature of a tax exemption, should be construed *strictissimi juris* against the taxpayer. However, when the claim for refund has clear legal basis and is sufficiently supported by evidence, as in the present case, then the Court shall not hesitate to grant the same.

7. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF THE COURT OF TAX APPEALS ARE GENERALLY NOT DISTURBED ON APPEAL WHEN SUPPORTED BY SUBSTANTIAL EVIDENCE; CASE AT BAR.— [T]he Court has already established that by merely exercising its option to pay for basic corporate income tax – even if it had zero liability

for the same due to its net loss position in 2001 – respondent was already exempted from all other taxes, including the OCT. Therefore, respondent is entitled to recover the amount of OCT erroneously collected from it in 2001. Also, the CTA, both in Division and *en banc*, found that respondent submitted ample evidence to prove its payment of OCT to PLDT during the second, third, and fourth quarters of 2001, in the total amount of ₱126,243.80, which, in turn, was paid by PLDT to the BIR. Said finding by the CTA, being factual in nature, is already conclusively binding upon this Court. Under our tax system, the CTA acts as a highly specialized body specifically created for the purpose of reviewing tax cases. Accordingly, its findings of fact are generally regarded as final, binding, and conclusive on this Court, and will not ordinarily be reviewed or disturbed on appeal when supported by substantial evidence, in the absence of gross error or abuse on its part.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Oscar C. Ventanilla, Jr. for respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

In this Petition for Review on *Certiorari*, under Rule 45 of the Revised Rules of Court, petitioner Commissioner of Internal Revenue assails the Decision[1] of the Court of Tax Appeals (CTA) *En Banc* dated 9 August 2007 in CTA EB No. 221, affirming the Decision[2] dated 14 June 2006 of the CTA First Division in CTA Case No. 6735, which granted the claim of respondent Philippine Airlines, Inc. (PAL) for the refund of its Overseas Communications Tax (OCT) for the period April to December 2001.

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[1] Penned by Associate Justice Erlinda P. Uy with Presiding Justice Ernesto D. Acosta and Associate Justices Juanito Castañeda, Jr., Lovell R. Bautista, Caesar A. Casanova and Olga Palanca-Enriquez, concurring; *rollo*, pp. 39-50.

[2] Penned by Associate Justice Caesar A. Casanova; records, pp. 201-210.

Petitioner, as the Commissioner of the Bureau of Internal Revenue (BIR), is responsible for the assessment and collection of all national internal revenue taxes, fees, and charges, including the 10% Overseas Communications Tax (OCT), imposed by Section 120 of the National Internal Revenue Code (NIRC) of 1997, which reads:

SEC. 120. *Tax on Overseas Dispatch, Message or Conversation Originating from the Philippines.—*

(A) *Persons Liable*— There shall be collected upon every overseas dispatch, message or conversation transmitted from the Philippines by telephone, telegraph, telewriter exchange, wireless and other communication equipment service, a tax of ten percent (10%) on the amount paid of [the transaction involving overseas dispatch, message or conversation] such services. The tax imposed in this Section shall be payable by the person paying for the services rendered and shall be paid to the person rendering the services who is required to collect and pay the tax within twenty (20) days after the end of each quarter.

On the other hand, respondent 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[3] 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.[4]

For the period January to December 2001, the Philippine Long Distance Telephone Company (PLDT) collected from respondent the 10% OCT on the amount paid by the latter for overseas telephone calls it had made through the former. In all, PLDT collected from respondent the amount of ₱202,471.18 as OCT for 2001, summarized as follows:[5]

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[3] An Act Granting a New Franchise to Philippine Airlines, Inc. to Establish, Operate, and Maintain Air-Transport Services in the Philippines and Other Countries.

[4] Section 1 of Presidential Decree No. 1590.

[5] Records, p. 202.

PERIOD	AMOUNT
January to March 2001	₱ 75,332.26
April to June 2001	50,271.43
July to September 2001	43,313.96
October to December 2001	33,553.53
Total	**₱ 202,471.18**

On 8 April 2003, respondent filed with the BIR an administrative claim for refund of the ₱202,471.18 OCT it alleged to have erroneously paid in 2001. In a letter[6] dated 4 April 2003, addressed to petitioner, Ma. Stella L. Diaz (Diaz), the Assistant Vice-President for Financial Planning & Analysis of respondent, explained that the claim for refund of respondent was based on its franchise, Section 13 of Presidential Decree No. 1590, which granted it (1) the option to pay either the basic corporate income tax on its annual net taxable income or the two percent franchise tax on its gross revenues, whichever was lower; and (2) the exemption from all other taxes, duties, royalties, registration, license and other fees and charges imposed by any municipal, city, provincial or national authority or government agency, now or in the future, except only real property tax. Also invoking BIR Ruling No. 97-94[7] dated 13 April 1994, Diaz maintained that, other than being liable for basic corporate income tax or the franchise tax, whichever was lower, respondent was clearly exempted from all other taxes, including OCT, by virtue of the "in lieu of all taxes" clause in Section 13 of Presidential Decree No. 1590.

Petitioner failed to act on the request for refund of respondent, which prompted respondent to file on 4 June 2003, with the CTA in Division, a Petition for Review, docketed as CTA Case No. 6735. Respondent sought the refund of the amount ₱127,138.92, representing OCT, which PLDT erroneously collected from respondent for the second, third and fourth

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[6] *Id.* at 27.

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

quarters of 2001.[8] The claim of respondent for the refund of the OCT for the first quarter of 2001, amounting to ₱75,323.26, had already prescribed after the passing of more than two years since said amount was paid.

Respondent alleged in its Petition that per its computation, reflected in its annual income tax return, it incurred a net loss in 2001 resulting in zero basic corporate income tax liability, which was necessarily lower than the franchise tax due on its gross revenues. Respondent argued that in opting for the basic corporate income tax, regardless of whether or not it actually paid any amount as tax, it was already entitled to the exemption from all other taxes granted to it by Section 13 of Presidential Decree No. 1590.[9]

After a hearing on the merits, the CTA First Division rendered a Decision[10] dated 14 June 2006, the dispositive part of which reads:

> WHEREFORE, the Petition for Review is hereby **GRANTED**. Respondent is **ORDERED** to refund to the petitioner the substantiated amount of ₱126,243.80 representing the erroneously collected 10% Overseas Communications Tax for the period April to December 2001.

The CTA First Division reasoned that under Section 13 of Presidential Decree No. 1590, respondent had the option to choose between two alternatives: the basic corporate income tax and the franchise tax, whichever would result in a lower amount of tax, and this would be in lieu of all other taxes, with the exception only of tax on real property. In the event that respondent incurred a net loss for the taxable year resulting in

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[8] In BIR Ruling No. 97-94, then CIR Liwayway Vinzons-Chato ruled that the "in lieu of all taxes" clause in Section 13 of Presidential Decree No. 1590 exempted PAL from all taxes, including documentary stamp tax. In accordance with Section 173 of the NIRC, the Philippine National Bank, the Landbank and other banks in whose favor the promissory notes and other documents are executed by PAL, shall be liable for the payment of the documentary stamp tax. (Records, p. 26.)

[9] Records. p. 205.

[10] *Id.* at 201-210.

zero basic corporate income tax liability, respondent could not be required to pay the franchise tax before it could avail itself of the exemption from all other taxes under Section 13 of Presidential Decree No. 1590. The possibility that respondent would incur a net loss for a given taxable period and, thus, have zero liability for basic corporate income tax, was already anticipated by Section 13 of Presidential Decree No. 1590, the very same section granting respondent tax exemption, since it authorized respondent to carry over its excess net loss as a deduction for the next five taxable years.

However, the CTA First Division held that out of the total amount of ₱127,138.92 respondent sought to refund, only the amount of ₱126,243.80 was supported by either original or photocopied PLDT billing statements, original office receipts, and original copies of check vouchers of respondent. Respondent was also able to prove, through testimonial evidence, that the OCT collected by PLDT from it was included in the quarterly percentage tax returns of PLDT for the second, third, and fourth quarters of 2001, which were submitted to and received by an authorized agent bank of the BIR.[11]

Not satisfied with the foregoing Decision dated 14 June 2006, petitioner filed a Motion for Reconsideration, which was denied by the CTA First Division in a Resolution dated 17 October 2006.[12]

Petitioner filed an appeal with the CTA *en banc*, docketed as CTA EB No. 221. The latter promulgated its Decision[13] on 9 August 2007 denying petitioner's appeal. The CTA *En Banc* found that Presidential Decree No. 1590 does not provide that only the actual payment of basic corporate income tax or franchise tax by respondent would entitle it to the tax exemption provided under Section 13 of the latter's franchise. Like the CTA First Division, the CTA *en banc* ruled that by providing for net loss carry-over, Presidential Decree No. 1590 recognized the possibility

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[11] *Id.* at 208-210.

[12] *Rollo*, p. 53.

[13] *Id.* at 42-50.

that respondent would end up with a net loss in the computation of its taxable income, which would mean zero liability for basic corporate income tax. The CTA *En Banc* further cited *Commissioner of Internal Revenue v. Philippine Airlines, Inc.*[14] (PAL case) to support its conclusions. In the said case, this Court declared that despite the fact that respondent did not pay any basic corporate income tax, given its net loss position for the taxable years concerned, it was still exempted from paying all other taxes, including final withholding tax on interest income, pursuant to Section 13 of Presidential Decree No. 1590. Lastly, the CTA *en banc* sustained the finding of the CTA First Division that respondent was only able to establish its claim for OCT refund in the amount of ₱126,243.80.

The CTA *En Banc* denied petitioner's Motion for Reconsideration in a Resolution dated 11 October 2007.[15]

Hence, the present Petition for Review where the petitioner raises the following issues:

I

THE COURT OF TAX APPEALS *EN BANC* ERRED IN HOLDING THAT THE PHRASE "IN LIEU OF ALL OTHER TAXES" IN SECTIONS 13 AND 14 OF PRESIDENTIAL DECREE NO. 1590 DOES NOT CONTEMPLATE THE FULFILLMENT OF A CONDITION BEFORE THE EXEMPTION FROM ALL OTHER TAXES MAY BE APPLIED; AND

II

TAX REFUNDS ARE IN THE NATURE OF TAX EXEMPTIONS. AS SUCH, THEY SHOULD BE CONSTRUED *STRICTISSIMI JURIS* AGAINST THE PERSON OR ENTITY CLAIMING THE EXEMPTION.[16]

The present Petition is without merit.

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[14] G.R. No. 160528, 9 October 2006, 504 SCRA 90.

[15] *Id.* at 51.

[16] *Rollo*, pp. 28-29.

Petitioner argues that the PAL case is not applicable to the case at bar, since the former involves final withholding tax on interest income, while the latter concerns another type of tax, the OCT.[17]

Petitioner's argument is untenable.

Pertinent portions of Section 13 of Presidential Decree No. 1590 are quoted hereunder:

> 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 non-transport 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 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 x x x
>
> x x x x x x x x x
>
> The grantee, shall, however, pay the tax on its real property in conformity with existing law.

The language used in Section 13 of Presidential Decree No. 1590, granting respondent tax exemption, is clearly all-inclusive. The basic corporate income tax or franchise tax paid by respondent shall be "**in lieu of all other taxes, duties,**

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[17] *Id.* at 8.

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 x x x," except only real property tax. Even a meticulous examination of Presidential Decree No. 1590 will not reveal any provision therein limiting the tax exemption of respondent to final withholding tax on interest income or excluding from said exemption the OCT.

Moreover, although the PAL case may involve a different type of tax, certain pronouncements made by the Court therein are still significant in the instant case.

In the PAL case, petitioner likewise opposed the claim for refund of respondent based on the argument that the latter was not exempted from final withholding tax on interest income, because said tax should be deemed part of the basic corporate income tax, which respondent had opted to pay. This Court was unconvinced by petitioner's argument, ratiocinating that "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) imposed on taxable income by Section 27(A) of the NIRC. Although the definition of "gross income" is broad enough to include all passive incomes, the passive incomes already subjected to different rates of final tax to be withheld at source shall no longer be included in the computation of gross income, which shall be used in the determination of taxable income. The interest income of respondent is already subject to final withholding tax of 20%, and no longer to the basic corporate income tax of 35%. Having established that final tax on interest income is not part of the basic corporate income tax, then the former is considered as among "all other taxes" from which respondent is exempted under Section 13 of Presidential Decree No. 1590.

It is true that the discussion in the PAL case on "gross income" is immaterial to the case at bar. OCT is not even an income tax. It is a business tax, which the government imposes on the gross annual sales of operators of communication equipment

sending overseas dispatches, messages or conversations from the Philippines. According to Section 120 of the NIRC, the person paying for the services rendered (respondent, in this case) shall pay the OCT to the person rendering the service (PLDT); the latter, in turn, shall remit the amount to the BIR. If this Court deems that final tax on interest income – which is also an income tax, but distinct from basic corporate income tax – is included among "all other taxes" from which respondent is exempt, then with all the more reason should the Court consider OCT, which is altogether a different type of tax, as also covered by the said exemption.

Petitioner further avers that respondent cannot avail itself of the benefit of the "in lieu of all other taxes" *proviso* in Section 13 of Presidential Decree No. 1590 when it made no actual payment of either the basic corporate income tax or the franchise tax.

Petitioner made the same averment in the PAL case, which the Court rejected for the following reasons:

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 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.

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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.[18] (Emphases ours.)

In insisting that respondent needs to actually pay a certain amount as basic corporate income tax or franchise tax, before it can enjoy the tax exemption granted to it, petitioner places too much reliance on the use of the word "pay" in the first line of Section 13 of Presidential Decree No. 1590.

It must do well for petitioner to remember that a statute's clauses and phrases should not be taken as detached and isolated expressions, but the whole and every part thereof must be considered in fixing the meaning of any of its parts.[19] A strict interpretation of the word "pay" in Section 13 of Presidential Decree No. 1590 would effectively render nugatory the other rights categorically conferred upon the respondent by its franchise.

Section 13 of Presidential Decree No. 1590 clearly gives respondent the option to "pay" either basic corporate income tax on its net taxable income or franchise tax on its gross revenues, whichever would result in lower tax. The rationale for giving respondent such an option is explained in the PAL case, to wit:

> 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 the respondent operates at a loss (as in the instant case), no taxes are due; in this [sic] instances, it has a lower tax liability than that provided by Subsection (b).[20]

In the event that respondent incurs a net loss, it shall have zero liability for basic corporate income tax, the lowest possible tax liability. There being no qualification to the exercise of its options under Section 13 of Presidential Decree No. 1590, then respondent is free to choose basic corporate income tax, even if

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

[19] *Sanciangco v. Roño*, G.R. No. 68709, 19 July 1985, 137 SCRA 671, 676; *Commissioner of Customs v. Esso Standard Eastern, Inc.*, 160 Phil. 805, 812 (1975).

[20] *Supra* note 14 at 101.

it would have zero liability for the same in light of its net loss position for the taxable year. Additionally, a ruling by this Court compelling respondent to pay a franchise tax when it incurs a net loss and is, thus, not liable for any basic corporate income tax would be contrary to the evident intent of the law to give respondent options and to make the latter liable for the least amount of tax.

Moreover, then President Ferdinand E. Marcos, the author of Presidential Decree No. 1590, was mindful of the possibility that respondent would incur a net loss for a taxable year, resulting in zero tax liability for basic corporate income tax, when he included in the franchise of respondent the following provisions:

> For the purposes of computing the basic corporate income tax as provided herein, the grantee is authorized:
>
> x x x x x x x x x
>
> (2) 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.

In allowing respondent to carry over its net loss for five consecutive years following the year said loss was incurred, Presidential Decree No. 1590 takes into account the possibility that respondent shall be in a net loss position for six years straight, during which it shall have zero basic corporate income tax liability. The Court also notes that net loss carry-over may only be used in the computation of basic corporate income tax. Hence, if respondent is required to pay a franchise tax every time it has zero basic corporate income tax liability due to net loss, then it shall never have the opportunity to avail itself of the benefit of net loss carry-over.

Finally, petitioner contends that according to well-established doctrine, a tax refund, which is in the nature of a tax exemption, should be construed *strictissimi juris* against the taxpayer.[21] However, when the claim for refund has clear legal basis and

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[21] *Far East Bank & Trust Company v. Commissioner of Internal Revenue*, G.R. No. 149589, 15 September 2006, 502 SCRA 87, 91; *Insular Lumber Co. v. Court of Tax Appeals*, 192 Phil. 221, 231 (1981); *Commissioner of Internal Revenue v. Rio Tuba Nickel Mining Corp.*, G.R. Nos. 83583-84, 25 March 1992, 207 SCRA 549, 552-553.

is sufficiently supported by evidence, as in the present case, then the Court shall not hesitate to grant the same.

In its previous discussion, the Court has already established that by merely exercising its option to pay for basic corporate income tax – even if it had zero liability for the same due to its net loss position in 2001 – respondent was already exempted from all other taxes, including the OCT. Therefore, respondent is entitled to recover the amount of OCT erroneously collected from it in 2001. Also, the CTA, both in Division and *en banc*, found that respondent submitted ample evidence to prove its payment of OCT to PLDT during the second, third, and fourth quarters of 2001, in the total amount of ₱126,243.80, which, in turn, was paid by PLDT to the BIR. Said finding by the CTA, being factual in nature, is already conclusively binding upon this Court. Under our tax system, the CTA acts as a highly specialized body specifically created for the purpose of reviewing tax cases. Accordingly, its findings of fact are generally regarded as final, binding, and conclusive on this Court, and will not ordinarily be reviewed or disturbed on appeal when supported by substantial evidence, in the absence of gross error or abuse on its part.[22]

WHEREFORE, the instant Petition for Review is *DENIED*. The Decision of the Court of Tax Appeals *En Banc* dated 9 August 2007 in CTA EB No. 221, affirming the Decision dated 14 June 2006 of the CTA First Division in CTA Case No. 6735, which granted the claim of Philippine Airlines, Inc. for a refund of Overseas Communications Tax erroneously collected from it for the period April to December 2001, in the amount of ₱126,243.80, is *AFFIRMED*. No costs.

SO ORDERED.

Ynares-Santiago (Chairperson), Carpio,[*] *Velasco, Jr.,* and *Peralta, JJ.,* concur.

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[22] *Benguet Corporation v. Commissioner of Internal Revenue*, G.R. No. 141212, 22 June 2006, 492 SCRA 133, 142.

[*] Associate Justice Antonio T. Carpio was designated to sit as additional member, replacing Associate Justice Antonio Eduardo B. Nachura per raffle dated 22 June 2009.

SPECIAL SECOND DIVISION

[A.M. No. MTJ-06-1651. July 15, 2009]

PROVINCIAL PROSECUTOR ROBERT M. VISBAL, *petitioner, vs.* **JUDGE WENCESLAO B. VANILLA,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE PROCEEDINGS; RULE ON EXHAUSTION OF ADMINISTRATIVE REMEDIES; SHOULD HAVE BEEN RAISED BEFORE, OR EVEN DURING, THE INVESTIGATION BY THE OFFICE OF THE COURT ADMINISTRATOR IN CASE AT BAR.— We considered the points raised and we see no compelling reason to modify our finding. The rule on exhaustion of administrative remedies "against errors or irregularities committed in the exercise of jurisdiction of a trial judge" as the Court noted in *Mina* could have been raised by Judge Vanilla before, or even during, the investigation by the Office of the Court Administrator (*OCA*). Although *Mina* was decided in September 2007, the ruling on exhaustion of judicial remedies is a mere reiteration of our earlier ruling in another case. As it was, Judge Vanilla responded to the complaint and participated in the investigation conducted by the OCA. He submitted a Comment to the OCA on July 30, 2004 asking for a dismissal of the complaint for "lack of factual and legal basis, and for lack of merit." He also filed a Manifestation on May 31, 2007, likewise praying for a dismissal of the complaint.

2. ID.; ID.; ID.; ID.; NOT A MANDATORY *SINE QUA NON* CONDITION FOR THE FILING OF AN ADMINISTRATIVE CASE.— The rule on exhaustion of judicial remedies does not erase the gross ignorance of the law that he exhibited. It is not a mandatory *sine qua non* condition for the filing of an administrative case in the way that it is required in the filing of a petition for *certiorari* under Rule 65 and other similar rules in the Rules of Court. The filing of an administrative case is not an extraordinary remedy that demands that the lower court or tribunal be given every opportunity to review its finding.

In fact, it is not a remedy at all required in the underlying case that was attended by gross ignorance to challenge or reverse the ruling in that case. It is a totally separate matter whose objective is to seek disciplinary action against the erring judge.

R E S O L U T I O N

BRION, *J.*:

On April 7, 2009, the Court rendered a Decision in the present administrative matter imposing on Judge Wenceslao B. Vanilla of the Metropolitan Trial Court in Cities (*MTCC*), Branch 2, Tacloban City, a fine of ₱10,000.00 for ignorance of the law after it was established that he had archived a case (Criminal Case No. 2000-08-01) pending in his sala immediately after the warrant of arrest was issued against the accused.

On May 11, 2009, Judge Vanilla moved for reconsideration of the Court's Decision on grounds that the complainant, Prosecutor Robert M. Visbal (*Prosecutor Visbal*, now deceased), "has not shown that he has exhausted the available judicial remedies x x x before resorting to this administrative complaint." Judge Vanilla invoked the Court's ruling in *Benjamin M. Mina, Jr. v. Judge B. Corales, etc.*[1] in regard to the rule on exhaustion of judicial remedies in administrative cases.

Additionally, Judge Vanilla invites the Court's attention to Prosecutor Visbal's penchant for filing administrative cases against other judges and court personnel in Leyte. To prove his point, Judge Vanilla attached to his motion a copy of a decision of the Court (First Division) penned by Associate Justice Consuelo Ynares-Santiago in another administrative matter where Prosecutor Visbal was also the complainant, and the respondent was another MTCC Judge in Tacloban City.[2]

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[1] A.M. No. RTJ-07-2083, September 27, 2007, 534 SCRA 200, citing *Flores v. Abesamis*, 279 SCRA 303 (1997).

[2] Annex "1" of the Motion for Reconsideration; *Provincial Prosecutor Robert M. Visbal v. Judge Marino S. Buban, MTCC, Branch 1, Tacloban City*, A.M. No. MTJ-02-1432, September 3, 2004, 437 SCRA 520.

The decision listed down a number of cases filed by Prosecutor Visbal against judges and court personnel in Leyte.

We considered the points raised and we see no compelling reason to modify our finding. The rule on exhaustion of administrative remedies "against errors or irregularities committed in the exercise of jurisdiction of a trial judge" as the Court noted in *Mina* could have been raised by Judge Vanilla before, or even during, the investigation by the Office of the Court Administrator (*OCA*). Although *Mina* was decided in September 2007, the ruling on exhaustion of judicial remedies is a mere reiteration of our earlier ruling in another case.[3] As it was, Judge Vanilla responded to the complaint and participated in the investigation conducted by the OCA. He submitted a Comment[4] to the OCA on July 30, 2004 asking for a dismissal of the complaint for "lack of factual and legal basis, and for lack of merit." He also filed a Manifestation on May 31, 2007, likewise praying for a dismissal of the complaint.

The rule on exhaustion of judicial remedies does not erase the gross ignorance of the law that he exhibited. It is not a mandatory *sine qua non* condition for the filing of an administrative case in the way that it is required in the filing of a petition for *certiorari* under Rule 65 and other similar rules in the Rules of Court. The filing of an administrative case is not an extraordinary remedy that demands that the lower court or tribunal be given every opportunity to review its finding. In fact, it is not a remedy at all required in the underlying case that was attended by gross ignorance to challenge or reverse the ruling in that case. It is a totally separate matter whose objective is to seek disciplinary action against the erring judge. As matters now stand, we have in fact reduced the recommended fine from ₱21,000.00 to the minimum fine of ₱10,000.00 for the offense. Thus, we cannot but maintain our finding and the penalty we imposed in our ruling of April 7, 2009.

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[3] *Flores v. Abesamis,* A.M. No. SC-96-1, July 10, 1997, 275 SCRA 302.

[4] *Rollo,* pp. 25-27.

WHEREFORE, the Motion for Reconsideration is hereby *DENIED with FINALITY.*

SO ORDERED.

Quisumbing (Chairperson), Carpio Morales, Corona, and *Velasco, Jr., JJ.,* concur.

EN BANC

[A.M. Nos. P-03-1677 & P-07-2317. July 15, 2009]

LIBERTY M. TOLEDO, *complainant, vs.* **LIZA E. PEREZ, Court Stenographer III, Office of the Clerk of Court, Regional Trial Court, Manila,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE; COMMITTED IN CASE AT BAR; PENALTY.— The Court finds Perez liable for conduct prejudicial to the best interest of the service. Section 52(A)(20), Rule IV of the Revised Uniform Rules on Administrative Cases in the Civil Service classifies conduct prejudicial to the best interest of the service as a grave offense. It is punishable by suspension of six months and one day to one year for the first offense and by dismissal for the second offense. The Rules do not provide a definition or enumerate acts that constitute conduct prejudicial to the best interest of the service. In *Ito v. De Vera*, the Court held that conduct prejudicial to the best interest of the service refers to acts or omissions that violate the norm of public accountability and diminish – or tend to diminish – the people's faith in the Judiciary. Perez's act of depositing 38 checks payable to the City Treasurer, City of Manila, amounting to ₱1,980,784.78 reflected adversely on the integrity of the Judiciary.

2. ID.; ID.; ID.; COURT PERSONNEL; MUST EXHIBIT A HIGH SENSE OF INTEGRITY NOT ONLY IN THE PERFORMANCE OF THEIR OFFICIAL DUTIES BUT ALSO IN THEIR PERSONAL AFFAIRS.— In *San Jose, Jr. v. Camurongan*, the Court held that "The strictest standards have always been valued in judicial service. Verily, everyone involved in the dispensation of justice, from the presiding judge to the lowliest clerk, is expected to live up to the strictest norm of competence, honesty and integrity in the public service." x x x The image of the Judiciary is mirrored in the conduct of its personel whether inside **or outside** the court. Thus, court personnel must exhibit a high sense of integrity not only in the performance of their official duties but also in their personal affairs. In *San Jose, Jr.*, the Court held that: Public servants must exhibit the highest sense of honesty and integrity in their performance of official duties **and in their personal affairs,** so as to preserve the Court's good name and standing. The administration of justice is a sacred task. This Court cannot countenance, on the part of court personnel, any act or omission that would violate the norm of public accountability; and would diminish, or even just tend to diminish, the faith of the people in the judiciary. Time and time again, we have emphasized that more than just a cardinal virtue, integrity in the judicial service is a necessity. The image of the judiciary is mirrored in the conduct, **official or otherwise,** of its personnel. Thus, this Court will not allow the good name and standing of the judicial system to be tainted by the dishonesty of the very people who have sworn to uphold its honor. While there is nothing wrong in engaging in private business, caution should be taken to prevent the occurrence of dubious circumstances that may impair the image of the Judiciary. Every act of impropriety ultimately affects the dignity of the Judiciary, and the people's faith in it.

APPEARANCES OF COUNSEL

Joseph C. Aquino for complainant.
Joven Siazon Lorenzo for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

Before the Court are two complaints for conduct prejudicial to the best interest of the service filed by Liberty M. Toledo (Toledo), City Treasurer of Manila, against Liza E. Perez (Perez). Perez used to work in the Office of the Clerk of Court, Regional Trial Court (RTC), Manila, as Court Stenographer III.

The Facts

On 10 April 2000, Celso Ramirez (Ramirez), messenger of NYK Fil-Japan Shipping Corporation (NYK), went to the Office of the City Treasurer of Manila, to pay NYK's business tax for the second quarter of 2000. Ramirez gave Local Treasury Operations Officer I Rogelio Reyes (Reyes) PCI Bank Manager's Check No. 0000061101[1] dated 10 April 2000. The check amounted to ₱339,881.35 and was payable to the "City Treasurer Manila." Reyes issued Ramirez a fake receipt.[2]

Abner L. Aniceto (Aniceto), employee of Total Distribution & Logistics Systems Incorporated (Total), also went to the Office of the City Treasurer to pay Total's business tax, mayor's permit, municipal license, and other regulatory fees for the second, third and fourth quarters of 1999 and for the first, second, third and fourth quarters of 2000. Aniceto alleged that he gave Revenue Collection Clerk I German G. Tamayo (Tamayo) of the License Division Equitable PCI Bank Manager's Check No. 0000023175[3] dated 11 April 2000. The check amounted to ₱61,845.92 and was payable to the "Office of the Treasurer Manila." Tamayo issued Aniceto fake receipts.[4]

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[1] *Rollo* (OCA I.P.I. No. 00-943-P), p. 7.

[2] *Id.* at 6.

[3] *Rollo* (A.M. No. P-03-1677), p. 31.

[4] *Id.* at 29.

The two checks ended up in the hands of a certain Rogelio Clemente (Clemente) who was a fixer. Clemente gave the checks to Jesus Agustin, Jr. (Agustin, Jr.) who was a friend of Perez. Agustin, Jr. approached Perez and asked her to rediscount the checks. Perez agreed on the condition that the checks will be accepted and cleared by the bank. Perez deposited the checks in her personal savings account with Land Bank and the bank accepted and cleared the checks.

Toledo discovered the fake receipt of NYK and, on 18 July 2000, she called the corporation to inform them about it. NYK's chief accountant, comptroller, and Ramirez immediately went to the Office of the City Treasurer to settle the issue. They brought a copy of PCI Bank Manager's Check No. 0000061101 as evidence of payment of their business tax.

After investigating the matter, Toledo discovered that PCI Bank Manager's Check No. 0000061101 was deposited in the personal savings account of Perez. Thus, in a complaint[5] dated 27 July 2000 and addressed to the Office of the Court Administrator (OCA), Toledo charged Perez with conduct prejudicial to the best interest of the service.

In its 1st Indorsement[6] dated 10 August 2000, the OCA directed Perez to comment on the complaint. In her affidavit[7] dated 30 August 2000, Perez stated that her transaction with Agustin, Jr. had no relation to her position as court stenographer and that she acted in good faith.

Meanwhile, Toledo discovered the fake receipts of Total and, on 2 April 2001, Total's manager and Aniceto went to the Office of the City Treasurer to settle the issue. After investigating the matter, Toledo discovered that Equitable PCI Bank Manager's Check No. 0000023175 was deposited in the personal savings account of Perez. Toledo filed a complaint[8] dated 4 April 2001

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[5] *Rollo* (OCA I.P.I. No. 00-943-P), pp. 4-5.

[6] *Id.* at 24.

[7] *Id.* at 30-32.

[8] *Rollo* (A.M. No. P-03-1677), pp. 27-28.

with the Office of the Ombudsman charging Perez with conduct prejudicial to the best interest of the service and violation of the Anti-Graft and Corrupt Practices Act.

In its Decision[9] dated 27 March 2002, the Office of the Ombudsman referred the complaint against Perez to the OCA since Perez was employed in the Judiciary. In its 1st Indorsement[10] dated 23 August 2002, the OCA directed Perez to comment on the complaint. In her comment[11] dated 11 September 2002, Perez adopted her 30 August 2000 affidavit as her comment. In her Rejoinder[12] dated 9 October 2002, Perez stated that:

> Respondent here is an INNOCENT VICTIM. Respondent deposited and/or presented the check for payment at Land Bank and the same was not dishonored nor did the bank questioned [sic] the 1st check. Thus, respondent presumed in good faith that there is no irregularity on the subject check(s) as she (respondent) is not familiar with the banking rules and no less than the bank is in a better position to ascertain the irregularity on the checks.[13]

In her Sur-Reply[14] dated 10 November 2002, Perez stated that:

> Complainant has no right to malign herein respondent by tagging herein respondent as a "cohort" or "co-conspirator" as herein respondent has no knowledge how the said checks reached the hand of Mr. Jesus Agustin, Jr. In fact, herein respondent has filed the necessary legal action against Mr. Jesus Agustin, Jr.
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> x x x x x x x x x
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> Respondent repleads that she (respondent) is an innocent victim of this unfortunate incident. In no case can it be gleaned that respondent employed scheme, design or deceit in having the checks encashed and]or deposited in her account.

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[9] *Id.* at 2-22.

[10] *Id.* at 216.

[11] *Id.* at 217-218.

[12] *Id.* at 246-247.

[13] *Id.* at 246.

[14] *Id.* at 252-253.

In its Report[15] dated 6 May 2002, the OCA recommended that the case be referred to Acting Executive Judge Enrico A. Lanzanas (Judge Lanzanas), RTC, Manila, for investigation, report, and recommendation. In a Resolution[16] dated 3 July 2002, the Court referred the case to Judge Lanzanas.

In its Report[17] dated 9 December 2002, the OCA recommended that the 4 April 2001 complaint be re-docketed as a regular administrative matter and that the case be referred to Judge Lanzanas for investigation, report and recommendation. In Resolutions[18] dated 29 January 2003, the Court referred the case to Judge Lanzanas and re-docketed the complaint as a regular administrative matter.

In a letter[19] dated 27 March 2003, Perez formally tendered her resignation effective 1 April 2003.

In its Report[20] dated 16 July 2003, the OCA recommended that (1) Judge Lanzanas jointly assess the two complaints Toledo filed against Perez and make his recommendation; and (2) Perez's benefits be withheld. In a Resolution[21] dated 13 August 2003, the Court directed Judge Lanzanas to jointly assess the two complaints and make his recommendation, and withheld Perez's benefits. In its Report[22] dated 7 October 2003, the OCA recommended that the two administrative cases against Perez be consolidated. In a Resolution[23] dated 19 May 2004, the Court consolidated the two cases.

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[15] *Rollo* (OCA I.P.I. No. 00-943-P), pp. 44-47.

[16] *Id.* at 48.

[17] *Rollo* (A.M. No. P-03-1677), pp. 254-257.

[18] *Id.* at 258-260.

[19] *Id.* at 269.

[20] *Rollo* (OCA I.P.I. No. 00-943-P), pp. 287-289.

[21] *Id.* at 290.

[22] *Rollo* (A.M. No. P-03-1677), p. 272.

[23] *Id.* at 279.

Judge Lanzanas was appointed Associate Justice of the Court of Appeals. The Administrative cases were assigned to Judge Antonio M. Eugenio, Jr. (Judge Eugenio, Jr.), RTC, Manila, Branch 24, for joint assessment and recommendation.

Investigating Judge's Report and Recommendation

In his Report[24] dated 7 September 2006, Judge Eugenio, Jr. found that (1) 38 checks — all payable to the City Treasurer, City of Manila — were deposited in the personal savings account of Perez; (2) the total amount of the 38 checks was ₱1,980,784.78; and (3) Land Bank accepted and cleared the 38 checks. Judge Eugenio, Jr. recommended that the cases against Perez be dismissed for insufficiency of evidence. He stated that:

> The aggregate amount of the checks were rediscounted by Liza E. Perez who had substantial deposits with the Land Bank, Taft Avenue branch; she made it clear with Jesus Agustin, Jr., a close friend and the source of the checks, that if the Land Bank would not accept them for deposit, she will return the same; there is no indication whatsoever that she exerted any pressure on the bank to accept the checks for deposit; upon the discovery of the fraud, she not only sued Agustin but also the bank; there is likewise no proof that she knew German G. Tamayo who allegedly was entrusted with the check of TOTAL, and Rogelio Clemente, the alleged fixer who approached Agustin for the rediscounting of the checks.[25]

OCA's Report and Recommendation

In its Report[26] dated 1 March 2007, the OCA found that Perez failed to live up to the high standards of honesty and integrity. The OCA stated that, "While Perez swears to the high heavens that her 'check rediscounting' activities were done in a private manner, it cannot be denied that such activities dragged the Court into the fake receipts scam at the City Treasurer's Office." The OCA recommended that Perez be found

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[24] *Id.* at 375-384.

[25] *Id.* at 384.

[26] *Rollo* (OCA I.P.I. No. 00-943-P), pp. 345-348.

guilty of conduct prejudicial to the best interest of the service and that the monetary equivalent of six months suspension be deducted from her benefits.

The Court's Ruling

The Court finds Perez liable for conduct prejudicial to the best interest of the service.

Section 52(A)(20), Rule IV of the Revised Uniform Rules on Administrative Cases in the Civil Service[27] classifies conduct prejudicial to the best interest of the service as a grave offense. It is punishable by suspension of six months and one day to one year for the first offense and by dismissal for the second offense.

The Rules do not provide a definition or enumerate acts that constitute conduct prejudicial to the best interest of the service. In *Ito v. De Vera*,[28] the Court held that conduct prejudicial to the best interest of the service refers to acts or omissions that violate the norm of public accountability and diminish — or tend to diminish — the people's faith in the Judiciary. Perez's act of depositing 38 checks payable to the City Treasurer, City of Manila, amounting to ₱1,980,784.78 reflected adversely on the integrity of the Judiciary.

Perez should have been alarmed by the facts that (1) all 38 checks, amounting to ₱1,980,784.78, were **payable to the City Treasurer, City of Manila**; and (2) her friend, Agustin, Jr., procured the checks **from Clemente who was known to be a fixer**. As a court employee, Perez was expected to comply with the strict standards required of all public officers and employees — her actions must have been beyond suspicion.[29] In *San Jose, Jr. v. Camurongan*,[30] the Court held that "The

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

[28] A.M. No. P-01-1478, 13 December 2006, 511 SCRA 1, 11-12.

[29] *OCA v. Judge Fuentes*, 317 Phil. 604, 616-617 (1995).

[30] A.M. No. P-06-2158, 25 April 2006, 488 SCRA 102, 105.

strictest standards have always been valued in judicial service. Verily, everyone involved in the dispensation of justice, from the presiding judge to the lowliest clerk, is expected to live up to the strictest norm of competence, honesty and integrity in the public service."

Perez claimed that her transactions with Agustin, Jr. had no relation to her position as court stenographer and that they were private in nature. The Court is not impressed. The image of the Judiciary is mirrored in the conduct of its personnel whether inside **or outside** the court. Thus, court personnel must exhibit a high sense of integrity not only in the performance of their official duties but also in their personal affairs. In *San Jose, Jr.*,[31] the Court held that:

> Public servants must exhibit the highest sense of honesty and integrity in their performance of official duties **and in their personal affairs**, so as to preserve the Court's good name and standing. The administration of justice is a sacred task. This Court cannot countenance, on the part of court personnel, any act or omission that would violate the norm of public accountability; and would diminish, or even just tend to diminish, the faith of the people in the judiciary.
>
> Time and time again, we have emphasized that more than just a cardinal virtue, integrity in the judicial service is a necessity. The image of the judiciary is mirrored in the conduct, **official or otherwise**, of its personnel. Thus, this Court will not allow the good name and standing of the judicial system to be tainted by the dishonesty of the very people who have sworn to uphold its honor. (Emphasis supplied)

While there is nothing wrong in engaging in private business, caution should be taken to prevent the occurrence of dubious circumstances that may impair the image of the Judiciary. Every act of impropriety ultimately affects the dignity of the Judiciary, and the people's faith in it.[32] As the OCA correctly stated, Perez's "activities dragged the Court into the fake receipts scam at the City Treasurer's Office." Perez must be held accountable.

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[31] *Id.* at 106-107.

[32] *Re: Willful Failure to Pay Just Debts Against Mr. Melquiades A. Briones*, A.M. No. 2007-11-SC, 10 August 2007, 529 SCRA 689, 696.

WHEREFORE, the Court finds retired Court Stenographer III Liza E. Perez, Office of the Clerk of Court, Regional Trial Court, Manila, *GUILTY* of *CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE*. Since she has already resigned from the service, the Court *FINES* her ₱40,000.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 156946. July 15, 2009]

SECRETARY OF FINANCE, *petitioner, vs.* **ORO MAURA SHIPPING LINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; LIMITED TO REVIEW OF QUESTIONS OF LAW; EXCEPTION; PRESENT IN CASE AT BAR.— Factual findings of the lower courts, when affirmed by the CA, are generally conclusive on the Court. For this reason, the Rules of Court provide that only questions of law may be raised in a petition for review on *certiorari.* We delve into factual issues and act on the lower courts' factual findings only in exceptional circumstances, such as when these findings contain palpable errors or are attended by arbitrariness. After a review of the records of the present case, we find that the CTA and the CA overlooked and misinterpreted factual circumstances that, had they been brought to light and properly considered, would have changed the outcome of this case. **In particular, a closer scrutiny of the surrounding circumstances of the case and the respondent's actions**

reveal the existence of fraud that deprived the State of the customs duties properly due to it.

2. TAXATION; TARIFF AND CUSTOMS CODE OF THE PHILIPPINES; UNDERVALUATION OF ENTRY; AN UNCONSCIONABLE DISPARITY OF VALUATION IS A *PRIMA FACIE* EVIDENCE OF FRAUD; CASE AT BAR.— The drop alone from the undisputed original entry valuation of ₱6,171,092.00 to the respondent's new valuation of ₱1,100,000.00 (or a decrease of 80% from the original valuation) is already a *prima facie* evidence of fraud that the rulings below did not properly appreciate simply because they disregarded the records of the original entry of the vessel through the Port of Mactan. Section 2503 of the TCCP provides in this regard that x x x **an undervaluation,** misdeclaration in weight, measurement or quantity **of more than thirty percent (30%) between the value, weight, measurement, or quantity declared in the entry, and the actual value, weight, quantity, or measurement shall constitute a *prima facie* evidence of fraud penalized under Section 2530 of this Code.** x x x The 80% drop in valuation existing in this case renders the consideration and application of Section 2503 unavoidable. Significantly, the respondent never explained the considerable disparity between the dutiable value declared by Glory Shipping Lines and the dutiable value it declared – difference of ₱5,000,000.00 – so as to overturn or contradict this *prima facie* finding of fraud. We note that the exercise of due diligence alone would have alerted it to Glory Shipping Lines' acquisition cost and the vessel's declared value at its first entry. The respondent, being in the shipping business, should have known the standard prices of vessels and that the value it proposed to MARINA, as described in the second phase above, is extraordinarily low compared to the vessel's originally declared valuation. All these strengthen, rather than weaken, the *prima facie* evidence of fraud that the law dictates when an unconscionable disparity of valuations exists.

3. ID.; ID.; BASIS OF DUTIABLE VALUE; DEPRECIATED VALUE OF IMPORTED ITEM, NOT A FACTOR IN DETERMINING DUTIABLE VALUE.— [N]owhere in the TCCP does it state that the depreciated value of an imported item can be used as the basis to determine an imported item's dutiable value. Section 201 of P.D. No. 1464 (the

Tariff and Customs Code of 1978) in this regard provides: Sec. 201. — *Basis of Dutiable Value.* — The dutiable value of an imported article subject to an ad valorem rate of duty shall be based on the **cost (fair market value) of same, like or similar articles, as bought and sold or offered for sale freely in the usual wholesale quantities in the ordinary course of trade** in the principal markets of the exporting country on the date of exportation to the Philippines (excluding internal excise taxes to be remitted or rebated) or where there is none on such date, then on the **cost (fair market value) nearest to the date of exportation,** including the value of all container, covering and/or packings of any kind and all other expenses, costs and charges incident to placing the article in a condition ready for shipment to the Philippines, and freight as well as insurance premium covering the transportation of such articles to the port of entry in the Philippines. Where the fair market value or price of the article cannot be ascertained thereat or where there exists a reasonable doubt as to the fairness of such value or price, then the **fair market value or price in the principal market in the country of manufacture or origin,** if it is not the country of exportation, or in a third country with the same stage of economic development as the country of exportation shall be used. When the dutiable value of the article cannot be ascertained in accordance with the preceding paragraphs or where there exists a reasonable doubt as to the cost (fair market value) of the imported article declared in the entry, **the correct dutiable value of the article shall be ascertained by the Commissioner Of Customs from the reports of the Revenue or Commercial Attache (Foreign Trade Promotion Attache),** pursuant to Republic Act Numbered Fifty-four Hundred and Sixty-six or other Philippine diplomatic officers or Customs Attaches and from such other information that may be available to the Bureau of Customs. Such values shall be published by the Commissioner of Customs from time to time. When the dutiable value cannot be ascertained as provided in the preceding paragraphs, or where there exists a reasonable doubt as to the dutiable value of the imported article declared in the entry, it shall be **domestic wholesale selling price of such or similar article in Manila or other principal markets in the Philippines** or on the date the duty become payable on the article under appraisement, on the usual wholesale quantities and in the ordinary course of trade, minus:

(a) not more than twenty-five (25) per cent thereof for expenses and profits; and (b) duties and taxes paid thereon. *(as amended by E.O. 156)*

4. ID.; COLLECTION OF TAXES; PRINCIPLE OF ESTOPPEL FINDS NO APPLICATION AGAINST THE STATE WHEN IT ACTS TO RECTIFY MISTAKES OF ITS OFFICIALS AND AGENTS IN THE COLLECTION OF TAXES.— Assuming further that MARINA merely committed a mistake in approving the vessel's proposed acquisition cost at ₱1,100,000.00, and that the Collector of the Port of Manila similarly erred, we reiterate the legal principle that estoppel generally finds no application against the State when it acts to rectify mistakes, errors, irregularities, or illegal acts, of its officials and agents, irrespective of rank. This ensures efficient conduct of the affairs of the State without any hindrance on the part of the government from implementing laws and regulations, despite prior mistakes or even illegal acts of its agents shackling government operations and allowing others, some by malice, to profit from official error or misbehavior. **The rule holds true even if the rectification prejudices parties who had meanwhile received benefits**. This principle is particularly true when it comes to the collection of taxes. As we stated in *Intra-Strata Assurance Corporation v. Republic of the Philippines:* It has long been a settled rule that the government is not bound by the errors committed by its agents. Estoppel does not also lie against the government or any of its agencies arising from unauthorized or illegal acts of public officers. **This is particularly true in the collection of legitimate taxes due where the collection has to be made whether or not there is error, complicity, or plain neglect on the part of the collecting agents.** In *CIR v. CTA*, we pointedly said: It is axiomatic that the government cannot and must not be estopped particularly in matters involving taxes. Taxes are the lifeblood of the nation through which the government agencies continue to operate and with which the State effects its functions for the welfare of its constituents. **Thus, it should be collected without unnecessary hindrance or delay.**

5. ID.; TARIFF AND CUSTOMS CODE OF THE PHILIPPINES; IMPORTATION; DEEMED TERMINATED UPON THE FULL PAYMENT OF THE DUTIES, FEES AND CHARGES OF THE ITEM BROUGHT INTO THE COUNTRY.— With

the knowledge that the vessel was released under a re-export bond, the respondent should have known that this original entry was subject to specific conditions, among them, the obligation to guarantee the re-export of the vessel within a given period, or otherwise to pay the customs duties on the vessel. It should have known, too, of the conditions of the vessel's release under the re-export bond and of the state of Glory Shipping Lines' status of compliance. There was an original but incomplete importation by Glory Shipping Lines that the respondent could not have simply disregarded proceeds from knowledge of the vessel's history and the application of the relevant law. In this respect, Section 1202 of the TCCP provides: Importation begins when the carrying vessel or aircraft enters the jurisdiction of the Philippines with intention to unlade therein. **Importation is deemed terminated upon payment of the duties, taxes and other charges due upon the articles,** or secured to be paid, at a port of entry **and the legal permit for withdrawal shall have been granted,** or in case said articles are free of duties, taxes and other charges, until they have legally left the jurisdiction of the customs. In order for an importation to be deemed terminated, the payment of the duties, taxes, fees and other charges of the item brought into the country must be in full. For as long as the importation has not been completed, the imported item remains under the jurisdiction of the BOC. From the perspective of process, the importation that originally started with Glory Shipping Lines was therefore never completed and terminated, so that the respondent's present importation is merely a continuation of that original process.

6. ID.; ID.; FINALITY OF LIQUIDATION; A FINDING OF FRAUD PREVENTS AN ASSESSMENT FROM BECOMING FINAL AND CONCLUSIVE.— Our finding of fraud leads us to conclude that the assessment of the Collector of the Port of Manila cannot become final and conclusive pursuant to Section 1603 of the TCCP, which states: Section 1603. *Finality of Liquidation*. – When articles have been entered and passed free of duty or final adjustments of duties made, with subsequent delivery, such entry and passage free of duty or settlements of duties will, after the expiration of one (1) year, from the date of the final payment of duties, **in the absence of fraud** or protest or compliance audit pursuant to the provisions of this Code, be final and conclusive upon all parties, unless the liquidation of the import entry was merely tentative.

7. ID.; ID.; LIABILITY OF IMPORTER FOR DUTIES; NOT EXTINGUISHED BY SUBSEQUENT TRANSFER OF OWNERSHIP OF IMPORTED ITEM; CASE AT BAR.— Section 1204 of the TCCP in this regard states: Section 1204. *Liability of Importer for Duties*. – Unless relieved by laws or regulations, **the liability for duties, taxes, fees and other charges attaching on importation** constitutes a personal debt due **from the importer to the government** which can be discharged only by payment in full of all duties, taxes, fees and other charges legally accruing. It also **constitutes a lien upon the articles imported** which may be enforced while such articles are in custody or subject to the control of the government. As defined by Black's Law Dictionary, a lien is a claim or charge on property for payment of some debt, obligation or duty. In this particular instance, the obligation is a tax lien that attaches to imported goods, regardless of ownership. Consequently, **when the respondent bought the vessel from Glory Shipping Lines on December 2, 1994, the obligation to pay the BOC P1,296,710.00 as customs duties had already attached to the vessel and the non-renewal of the re-export bond made this liability due and demandable. The subsequent transfer of ownership of the vessel from Glory Shipping Lines to the respondent did not extinguish this liability.** Therefore, while it is true that the respondent had already paid the customs duties assessed by the Collector of the Port of Manila, this payment did not have the effect of extinguishing the lien given the tax lien that had attached to the vessel and the fact that what had been paid was different from what was owed. From the point of amount alone, the customs duties paid to the Collector at the Port of Manila only amounted to ₱149,989.00, while the lien which had attached to the vessel based on the unpaid assessment by the Collector of the Port of Mactan amounted to ₱1,296,710.00.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Gregorio B. Chavez for respondent.

D E C I S I O N

BRION, *J.*:

We resolve the petition[1] filed by the Secretary of Finance (*petitioner*), assailing the Decision dated August 26, 2002,[2] and Resolution dated January 20, 2003[3] of the Court of Appeals (*CA*) in CA-G.R. SP No. 64644. The CA affirmed the decision[4] dated March 29, 2001 of the Court of Tax Appeals (*CTA*) holding that the assessment made by the Customs Collector of the Port of Manila on respondent Oro Maura Shipping Lines' (*respondent*) vessel M/V "HARUNA" had become final and conclusive upon all parties, and could no longer be subject to re-assessment.

FACTUAL ANTECEDENTS

On November 24, 1992, the Maritime Industry Authority (*MARINA*) authorized the importation of one (1) unit vessel M/V "HARUNA"; ex: Shin Shu Maru No. 8, under a Bareboat Charter, for a period of five (5) years from its actual delivery to the charterer. The original parties to the bareboat charter agreement were Haruna Maritime S.A., represented by Mr. Yoji Morinaga of Panama, and Mr. Guerrero G. Dajao, proprietor and manager of Glory Shipping Lines, the charterer.

On December 29, 1992, the Department of Finance (*DOF*), in its 1st Indorsement, allowed the temporary registration of the M/V "HARUNA" and its **tax and duty-free release** to Glory Shipping Lines, subject to the conditions imposed by MARINA. The Bureau of Customs (*BOC*) also required Glory Shipping Lines to post a bond in the amount equal to 150% of the duties, taxes and other charges due on the importation, conditioned on

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[1] For Review on *Certiorari* under Rule 45; *rollo*, pp. 10-24.

[2] Penned by Associate Justice Renato C. Dacudao, and concurred in by Associate Justice Ruben Reyes (retired member of this Court) and Associate Justice Amelita Tolentino; *id*. pp. 26-34.

[3] *Id*. p. 35.

[4] Penned by Associate Judge Amancio Q. Saga, and concurred in by Presiding Judge Ernesto D. Acosta; *id*. pp. 58-70.

the re-exportation of the vessel upon termination of the charter period, but in no case to extend beyond the year 1999.

On March 16, 1993, **Glory Shipping Lines posted Ordinary Re-Export Bond No. C(9) 121818 for ₱1,952,000.00,** conditioned on the re-export of the vessel within a period of one (1) year from March 22, 1993, or, in case of default, to pay customs duty, tax and other charges on the importation of the vessel in the amount of ₱1,296,710.00.

On March 22, 1993, the M/V "HARUNA" arrived at the Port of Mactan. Its Import Entry No. 120-93 indicated the vessel's dutiable value to be ₱6,171,092.00 and its estimated customs duty to be ₱1,296,710.00.

On March 22, 1994, **Glory Shipping Lines' re-export bond expired**. Almost two (2) months after, or on May 10, 1994, **Glory Shipping Lines sent a Letter of Guarantee** to the Collector guaranteeing to renew the Re-Export Bond on vessel M/V "HARUNA" on or before May 20, 1994; otherwise, it would pay the duties and taxes on said vessel. **Glory Shipping Lines never complied with its Letter of Guarantee; neither did it pay the duties and taxes and other charges due on the vessel despite repeated demands made by the Collector of the Port of Mactan.**

Since the re-export bond was not renewed, the Collector of the Port of Mactan assessed it customs duties and other charges amounting to ₱1,952,000.00; thereafter, it sent Glory Shipping Lines several demand letters dated April 22, 1996, June 21, 1996, and March 10, 1997, respectively. **Glory Shipping Lines failed to pay the assessed duties despite receipt of these demand letters.**

Unknown to the Collector of the Port of Mactan, Glory Shipping Lines had already offered to sell the vessel M/V "HARUNA" to the respondent in October 1994. In fact, the respondent already applied for an Authority to Import the vessel with MARINA on October 21, 1994, pegging the proposed acquisition cost of the vessel at ₱1,100,000.00. MARINA granted this request through a letter dated December 5, 1994, after finding that the proposed

acquisition cost of the vessel reasonable, taking into consideration the vessel's depreciation due to wear and tear.

On December 2, 1994, Haruna Maritime S.A. and Glory Shipping Lines sold the M/V "HARUNA" to the respondent without informing or notifying the Collector of the Port of Mactan.

On December 13, 1994, Kariton and Company (*Kariton*), representing the respondent, inquired with the DOF if it could pay the duties and taxes due on the vessel, with the information that the vessel was acquired by Glory Shipping Lines through a bareboat charter and was previously authorized by the DOF to be released under a re-export bond. The DOF referred Kariton's letter to the Commissioner of Customs for appropriate action, per a 1st Indorsement dated December 13, 1994. In turn, the Commissioner of Customs, in a 2nd Indorsement dated December 14, 1994, referred the DOF's 1st Indorsement to the Collector of Customs of the Port of Manila.

On the basis of these indorsements and the MARINA appraisal, Kariton filed Import Entry No. 179260 at the Port of Manila on behalf of the respondent. The Collector of the Port of Manila accepted the declared value of the vessel at ₱1,100,000.00 and assessed duties and taxes amounting to ₱149,989.00, which the respondent duly paid on January 4, 1995, as evidenced by Bureau of Customs Official Receipt No. 50245666.

On November 5, 1997, after discovering that the vessel M/V "HARUNA" had been sold to the respondent, the Collector of the Port of Mactan sent the respondent a demand letter for the unpaid customs duties and charges of Glory Shipping Lines. When the respondent failed to pay, the Collector of the Port of Mactan instituted seizure proceedings against the vessel M/V "HARUNA" for violation of Section 2530, par. 1, subpar. (1) to (5) of the Tariff and Customs Code of the Philippines (*TCCP*).

In his September 1998 Decision,[5] the Collector of the Port of Mactan ordered the forfeiture of the vessel in favor of the

[5] *Id.,* pp. 71-82.

Government, after finding that both Glory Shipping Lines and the respondent acted fraudulently in the transaction.

The Cebu District Collector, acting on the respondent's appeal, reversed the decision of the Collector of the Port of Mactan in his December 1, 1998 decision, concluding that while there appeared to be fraud in the sale of the vessel M/V "HARUNA" by Haruna Maritime S.A. and Glory Shipping Lines to the respondent, there was no proof that the respondent was a party to the fraud.[6] Moreover, the Cebu District Collector gave weight to MARINA's appraisal of the dutiable value of the vessel. The decision also held that in light of this appraisal that the Collector of Custom of the Port of Manila used as basis for his assessment, the customs duty the Collector of the Port of Manila imposed was unquestionably proper.

On December 14, 1998, the Commissioner of Customs, in a 3rd Indorsement,[7] affirmed the decision of the Cebu District Collector and recommended his approval to the petitioner.

In a 4th Indorsement dated January 8, 1999,[8] the petitioner affirmed the Commissioner's recommendation, but ordered a re-assessment of the vessel based on the entered value, without allowance for depreciation. The respondent filed a motion for reconsideration, which the petitioner denied.

On May 15, 2000, the respondent filed a Petition for Review with the CTA,[9] assailing the petitioner's January 8, 1999 decision. In a decision dated March 29, 2001, the CTA granted the respondent's petition and set aside the petitioner's 4th Indorsement, thus affirming the previous decision of the Commissioner of Customs.[10]

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[6] *Id.*, pp. 83-95.

[7] *Id.*, p. 96.

[8] *Id.*, p. 97.

[9] *Id.*, pp. 99-109.

[10] *Supra* note 4.

Dissatisfied with this outcome, the petitioner sought its review through a petition filed with the CA; he claimed that the CTA erred when it held that the petitioner no longer had authority to order the re-assessment of the vessel.[11]

The CA affirmed the findings of the CTA in its decision dated August 26, 2002.[12] The appellate court concluded that the assessment made by the Collector of the Port of Manila had already become final and conclusive on all parties, pursuant to Sections 1407 and 1603 of the TCCP; the respondent paid the assessed duties on January 4, 1995, while the Collector of the Port of Mactan demanded payment of additional duties and taxes only on November 5, 1997, or more than one year from the time the respondent paid. The CA also upheld the findings of the Cebu District Collector, of the Commissioner of Customs, and of the CTA that the fraud in this case could not be imputed to the respondent since it was not shown that the respondent knew about Glory Shipping Lines' infractions.

The CA subsequently denied petitioner's Motion for Reconsideration in its resolution of January 20, 2003.[13] Hence, this petition.

THE PETITION

The petitioner submits three issues for our resolution:

I

WHETHER THE COURT OF APPEALS ERRED IN HOLDING THAT THE ASSESSMENT MADE BY THE MANILA CUSTOMS COLLECTOR ON THE SUBJECT VESSEL HAD BECOME FINAL AND CONCLUSIVE UPON ALL PARTIES.

II

WHETHER THE COURT OF APPEALS ERRED IN HOLDING THAT RESPONDENT WAS AN "INNOCENT PURCHASER."

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[11] *Rollo*, pp. 36-55.

[12] *Supra* note 1.

[13] *Supra* note 2.

III

WHETHER THE COURT OF APPEALS ERRED IN NOT HOLDING THAT A LIEN IN FAVOR OF THE GOVERNMENT AND AGAINST THE VESSEL EXISTS.

The petitioner mainly argues that the CA committed a reversible error when it held that the assessment of the Customs Collector of the Port of Manila had become final and conclusive on all parties pursuant to Sections 1407 and 1603 of the TCCP. According to the petitioner, these provisions cannot limit the authority of the Secretary of Finance or the Commissioner of Customs to assess or collect deficiency duties; in the exercise of their supervisory powers, the Commissioner and the Secretary may at any time direct the re-assessment of dutiable articles and order the collection of deficiency duties. Even assuming that Sections 1407 and 1603 of the TCCP apply to the present case, the petitioner posits that the one-year limitation[14] set forth in these provisions presupposes that the return and all entries, as passed upon and approved by the Collector, reflect the accurate description and value of the imported article. Where the article was misdeclared or undervalued, the statute of limitations does not begin to run until a deficiency assessment has been issued and settled in full. Lastly, the petitioner claims that the respondent, being a direct and actual party to the importation, should have ensured that the imported article was properly declared and assessed the correct duties.

The respondent, on the other hand, claims that the appraisal of the Collector can only be altered or modified within a year from payment of duties, per Sections 1407 and 1603 of the TCCP; it is only when there is fraud or protest or when the import entry was merely tentative that settlement of duties will not attain finality. The petitioner's allegation that there was misdeclaration or undervaluation of the vessel is not supported

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[14] Per Republic Act No. 9135, Section 1603 has been amended such that the liquidation becomes final after the expiration of three (3) years from the date of the final payment of duties. However, this amendment does not apply to the present case since it took effect only in 2001.

by the evidence and is contrary to the findings of the District Collector of the Port of Cebu, which the petitioner himself affirmed in his 4th Indorsement dated January 8, 1999. Moreover, the records show that the value of the vessel was properly declared by the respondent at ₱1,100,000.00, pursuant to the appraisal of the MARINA.

The core legal issue for our resolution is whether the Secretary of Finance can order a re-assessment of the vessel M/V "HARUNA."

THE COURT'S RULING

We find the petition meritorious and rule that the petitioner can order the re-assessment of the vessel M/V "HARUNA."

Procedural Issue

The Collector of the Port of Mactan found that the respondent defrauded the BOC of the proper customs duty, but the District Collector of Cebu held otherwise on appeal and absolved the respondent from any participation in the fraud committed by Glory Shipping Lines. These factual findings and conclusion were affirmed by the Commissioner of Customs, by the CTA and, ultimately, by the CA. Although in agreement with the conclusion, the petitioner, however, ordered a reassessment of the dutiable value of the vessel based on the original entered value, without allowance for depreciation.

Factual findings of the lower courts, when affirmed by the CA, are generally conclusive on the Court.[15] For this reason, the Rules of Court provide that only questions of law may be raised in a petition for review on *certiorari.* We delve into factual issues and act on the lower courts' factual findings only in exceptional circumstances, such as when these findings contain palpable errors or are attended by arbitrariness.[16]

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[15] *Philippine Airlines, Inc. v. Court of Appeals*, G.R. No. 120262, July 17, 1997, 275 SCRA 621.

[16] This Court may review the factual findings of the lower courts where (1) the conclusion is a finding grounded entirely on speculation, surmise and

After a review of the records of the present case, we find that the CTA and the CA overlooked and misinterpreted factual circumstances that, had they been brought to light and properly considered, would have changed the outcome of this case. **In particular, a closer scrutiny of the surrounding circumstances of the case and the respondent's actions reveal the existence of fraud that deprived the State of the customs duties properly due to it.**

A Critical Look at the Facts

Our examination of the facts tells us that there are four significant phases that should be considered in appreciating the present case.

The **first phase** is the original tax and duty-free entry of the MV Haruna when Glory Shipping Lines filed Import Entry No. 120-93 with the Collector of the Port of Mactan on March 22, 1993. The vessel then had a **declared dutiable value of ₱6,171,092.00 and the estimated customs duty was ₱1,296,710.00.** It was allowed conditional entry on the basis of a one-year re-export bond that lapsed and was not renewed. Despite a letter of guarantee subsequently issued by Glory Shipping Lines and repeated demand letters, no customs duties and charges were paid. The vessel remained in the Philippines.

The **second significant phase** occurred when Glory Shipping Lines offered to sell the vessel to the respondent in October 1994. At that point, the respondent applied for an Authority to

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conjecture; (2) the inference made is manifestly mistaken; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) the Court of Appeals went beyond the issues of the case and its findings are contrary to the admissions of both appellant and appellees; (7) the findings of fact of the Court of Appeals are contrary to those of the trial court; (8) said findings of fact are conclusions without citation of specific evidence on which they are based; (9) the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record; *Sarmiento v. Court of Appeals*, G.R. No. 110871, July 2, 1998, 291 SCRA 656.

Import the vessel, based on the proposed acquisition cost of ₱1,100,000.00. MARINA granted the request based on the proposed acquisition cost, taking depreciation into account.

From the first to the second phase, **bad faith already intervened** as Glory Shipping Lines, instead of paying in accordance with its commitment, simply turned around, disregarded the demand letters of the Collector of the Port of Mactan, and offered the vessel for sale to the respondent.

The respondent, for its part, already knew of the status of the vessel (as it in fact subsequently manifested before the DOF); in fact, what it asked for was an authority to import, although the vessel was already in the Philippines. The respondent likewise was the party which secured an appraisal from MARINA knowing fully well of the vessel's value based on its previous history. It also joined Glory Shipping Lines in the latter's attempt to evade the payment of the customs duties and charges demanded by the Collector of the Port of Mactan by pushing through with the purchase of the vessel **without any notification to the Collector of the Port of Mactan** — the Port that first administratively enforced the rules on the vessel's importation resulting in its tax-free entry and conditional release.

The **third phase** came when the respondent's representative asked the DOF if it could pay the duties and taxes due on the vessel, knowing fully well the vessel's history of entry into the country. The respondent's declared value in the request was ₱1.1 Million based on the lower appraisal that it secured from MARINA. The DOF referred the matter to the Commissioner of Customs who in turn made his own referral to the Collector of Customs of the Port of Manila. It was the Collector of the Port of Manila who accepted the declared value of ₱1.1 Million and assessed duties and taxes amounting to ₱149,989.00. The respondent thus paid the customs duties as approved by the Collector of the Port of Manila. **As in the second phase, no notice was given in this third phase to the Port of Mactan as the Port that allowed the entry of the vessel into the country and which had existing demand letters for the customs duties and charges due on the vessel.**

The **fourth phase** started on November 5, 1997 when the Collector of the Port of Mactan acted after learning of the sale of the vessel to the respondent. The Collector eventually instituted seizure proceedings that led to the petition currently with us.

Evidence of Fraud

The tie-up between Glory Shipping Lines and the respondent in the four phases identified above can better be appreciated if the surrounding facts are considered.

An undisputed given in the narration of the four phases is the valuation of ₱6,171,092.00 that Glory Shipping Lines gave when the vessel first entered the country under Import Permit No. 120-93 on March 22, 1993. When the respondent made its request with the MARINA for authorization to import the same vessel after *a span of only 19 months*, the respondent proposed an acquisition cost of only ₱1,100,000.00. Consistent with this proposal, the respondent, through Kariton, gave the vessel the same declared value in its own Import Entry No. 179260 filed with the Collector of the Port of Manila. **Thus, in a little over a year and a half, the declared value of the vessel decreased by ₱5,000,000.00, or an astonishing 80% of its original price.** We find this drop in value within a short period of 19 months to be too fantastic to be accepted without question, even allowing for depreciation. Equally fantastic is the change in the customs duties, taxes and other charges due which fell **from ₱1,296,710.00 in March 1993 to ₱149,989.00 in January 1995**, all because of the sale, the new application by the vendee, and the change in the Port where the assessment and collection were made.

The drop alone from the undisputed original entry valuation of ₱6,171,092.00 to the respondent's new valuation of ₱1,100,000.00 (or a decrease of 80% from the original valuation) is already a *prima facie* evidence of fraud that the rulings below did not properly appreciate simply because they disregarded the records of the original entry of the vessel through the Port of Mactan. Section 2503 of the TCCP provides in this regard that:

Section 2503. *Undervaluation, Misclassification and Misdeclaration of Entry*. – When the dutiable value of the imported articles shall be so declared and entered that the duties, based on the declaration of the importer on the face of the entry, would be less by ten percent (10%) than should be legally collected, or when the imported articles shall be so described and entered that the duties based on the importer's description on the face of the entry would be less by ten percent (10%) than should be legally collected based on the tariff classification, or when the dutiable weight, measurement or quantity of imported articles is found upon examination to exceed by ten percent (10%) or more than the entered weight, measurement or quantity, a surcharge shall be collected from the importer in an amount of not less than the difference between the full duty and the estimated duty based upon the declaration of the importer, nor more than twice of such difference: *Provided*, That **an undervaluation,** misdeclaration in weight, measurement or quantity **of more than thirty percent (30%) between the value, weight, measurement, or quantity declared in the entry, and the actual value, weight, quantity, or measurement shall constitute a *prima facie* evidence of fraud penalized under Section 2530 of this Code:** *Provided, further,* That any misdeclared or underdeclared imported articles/items found upon examination shall *ipso facto* be forfeited in favor of the Government to be disposed of pursuant to the provision of this Code.

When the undervaluation, misdescription, misclassification or misdeclaration in the import entry is intentional, the importer shall be subject to the penal provision under Section 3602 of this Code. [Emphasis supplied.]

The 80% drop in valuation existing in this case renders the consideration and application of Section 2503 unavoidable.

Significantly, the respondent never explained the considerable disparity between the dutiable value declared by Glory Shipping Lines and the dutiable value it declared – difference of ₱5,000,000.00 – so as to overturn or contradict this *prima facie* finding of fraud. We note that the exercise of due diligence alone would have alerted it to Glory Shipping Lines' acquisition cost and the vessel's declared value at its first entry. The respondent, being in the shipping business, should have known the standard prices of vessels and that the value it proposed to MARINA, as described in the second phase above, is extraordinarily low

compared to the vessel's originally declared valuation. All these strengthen, rather than weaken, the *prima facie* evidence of fraud that the law dictates when an unconscionable disparity of valuations exists.

Depreciation not factor in determining dutiable value

Neither can the respondent hide behind the excuse that the vessel's dutiable value at ₱1,100,000.00 was approved by MARINA *via* the Authority to Import, taking into consideration the vessel's depreciation brought about by its ordinary wear and tear. In the first place, we observe that **nowhere in the TCCP does it state that the depreciated value of an imported item can be used as the basis to determine an imported item's dutiable value.** Section 201 of P.D. No. 1464 (the Tariff and Customs Code of 1978)[17] in this regard provides:

> Sec. 201. — *Basis of Dutiable Value.* — The dutiable value of an imported article subject to an ad valorem rate of duty shall be based on the **cost (fair market value) of same, like or similar articles**, **as bought and sold or offered for sale freely in the usual wholesale quantities in the ordinary course of trade** in the principal markets of the exporting country on the date of exportation to the Philippines (excluding internal excise taxes to be remitted or rebated) or where there is none on such date, then on the **cost (fair market value) nearest to the date of exportation,** including the value of all container, covering and/or packings of any kind and all other expenses, costs and charges incident to placing the article in a condition ready for shipment to the Philippines, and freight as well as insurance premium covering the transportation of such articles to the port of entry in the Philippines.
>
> Where the fair market value or price of the article cannot be ascertained thereat or where there exists a reasonable doubt as to the fairness of such value or price, then the **fair market value or price in the principal market in the country of manufacture or origin**, if it is not the country of exportation, or in a third country with the same stage of economic development as the country of exportation shall be used.

[17] The law applicable at the time the dutiable value of the vessel was assessed in 1994.

When the dutiable value of the article cannot be ascertained in accordance with the preceding paragraphs or where there exists a reasonable doubt as to the cost (fair market value) of the imported article declared in the entry, **the correct dutiable value of the article shall be ascertained by the Commissioner Of Customs from the reports of the Revenue or Commercial Attache (Foreign Trade Promotion Attache),** pursuant to Republic Act Numbered Fifty-four Hundred and Sixty-six or other Philippine diplomatic officers or Customs Attaches and from such other information that may be available to the Bureau of Customs. Such values shall be published by the Commissioner of Customs from time to time.

When the dutiable value cannot be ascertained as provided in the preceding paragraphs, or where there exists a reasonable doubt as to the dutiable value of the imported article declared in the entry, it shall be **domestic wholesale selling price of such or similar article in Manila or other principal markets in the Philippines** or on the date the duty become payable on the article under appraisement, on the usual wholesale quantities and in the ordinary course of trade, minus:

(a) not more than twenty-five (25) per cent thereof for expenses and profits; and

(b) duties and taxes paid thereon. *(as amended by E.O. 156)* [Emphasis supplied.]

Even assuming that the depreciated value of the vessel can be considered in determining the vessel's dutiable value, still, we find that the decrease of 80% from the original price after the passage of only 19 months cannot be believed and thus should not be accepted.

Assuming further that MARINA merely committed a mistake in approving the vessel's proposed acquisition cost at ₱1,100,000.00, and that the Collector of the Port of Manila similarly erred, we reiterate the legal principle that estoppel generally finds no application against the State when it acts to rectify mistakes, errors,[18] irregularities, or illegal acts,[19] of its officials and agents,

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[18] *Republic v. Intermediate Appellate Court*, G.R. No. 69138, May 19, 1992, 209 SCRA 90.

[19] *Sharp International Marketing v. Court of Appeals*, G.R. No. 93661, September 4, 1991, 201 SCRA 299.

irrespective of rank. This ensures efficient conduct of the affairs of the State without any hindrance on the part of the government from implementing laws and regulations, despite prior mistakes or even illegal acts of its agents shackling government operations and allowing others, some by malice, to profit from official error or misbehavior. **The rule holds true even if the rectification prejudices parties who had meanwhile received benefits.**[20]

This principle is particularly true when it comes to the collection of taxes. As we stated in *Intra-Strata Assurance Corporation v. Republic of the Philippines:*[21]

> It has long been a settled rule that the government is not bound by the errors committed by its agents. Estoppel does not also lie against the government or any of its agencies arising from unauthorized or illegal acts of public officers.[22] **This is particularly true in the collection of legitimate taxes due where the collection has to be made whether or not there is error, complicity, or plain neglect on the part of the collecting agents**.[23] In *CIR v. CTA,* we pointedly said:
>
> > It is axiomatic that the government cannot and must not be estopped particularly in matters involving taxes. Taxes are the lifeblood of the nation through which the government agencies continue to operate and with which the State effects its functions for the welfare of its constituents. **Thus, it should be collected without unnecessary hindrance or delay.** [Emphasis supplied.]

The Respondent's Complicity

That the respondent fully participated in moves to defraud the BOC, as shown by the recital of the four phases above, is further supported by another factual circumstance – the

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[20] *Kapisanan ng Manggagawa sa Government Service Insurance System v. COA*, G.R. No. 150769, August 31, 2004, 437 SCRA 371; *Baybay Water District v. COA*, G.R. Nos. 147248-49, January 23, 2002, 374 SCRA 482.

[21] G.R. No. 156571, July 9, 2008.

[22] *Republic of the Philippines v. Heirs of Felix Caballero,* G.R. No. L-27473, September 30, 1977, 79 SCRA 177.

[23] *Caltex Philippines v. COA*, G.R. No. 92585, May 8, 1992, 208 SCRA 726.

respondent's acknowledgment to the DOF that the vessel M/V "HARUNA" conditionally entered the country under a re-export bond filed with the BOC. This is plain from the 1st Indorsement of the DOF dated December 13, 1994, which states:

> 1st Indorsement
> December 13, 1994
>
> Respectfully forwarded to the Commissioner of Customs, Manila, for appropriate action, the herein letter of even date of Kariton & Company, requesting in behalf of their client, ORO MAURA SHIPPING LINE to pay the corresponding duties and taxes due on the vessel MV "HARUNA" (ex. Shinsu Maru No. 8) which was acquired by Glory Shipping Lines thru bareboat charter under P.D. No. 760, as amended and previously **authorized by this Department to be released under a re-export bond** pursuant to Section 1 of P.D. No. 1711 amending P.D. No. 760 under our 1st Indorsement dated December 29, 1992, copy attached, subject to pertinent import laws, rules and regulations.

With the knowledge that the vessel was released under a re-export bond, the respondent should have known that this original entry was subject to specific conditions, among them, the obligation to guarantee the re-export of the vessel within a given period, or otherwise to pay the customs duties on the vessel. It should have known, too, of the conditions of the vessel's release under the re-export bond and of the state of Glory Shipping Lines' status of compliance.

There was an original but incomplete importation by Glory Shipping Lines that the respondent could not have simply disregarded proceeds from knowledge of the vessel's history and the application of the relevant law. In this respect, Section 1202 of the TCCP provides:

> Importation begins when the carrying vessel or aircraft enters the jurisdiction of the Philippines with intention to unlade therein. **Importation is deemed terminated upon payment of the duties, taxes and other charges due upon the articles**, or secured to be paid, at a port of entry **and the legal permit for withdrawal shall have been granted**, or in case said articles are free of duties, taxes and other charges, until they have legally left the jurisdiction of the customs.

In order for an importation to be deemed terminated, the payment of the duties, taxes, fees and other charges of the item brought into the country must be in full. For as long as the importation has not been completed, the imported item remains under the jurisdiction of the BOC.[24] From the perspective of process, the importation that originally started with Glory Shipping Lines was therefore never completed and terminated, so that the respondent's present importation is merely a continuation of that original process.

Saddled with knowledge of the underlying facts that preceded its purchase, the conclusion that the respondent fully cooperated with Glory Shipping Lines in avoiding the original charges and duties due is unavoidable; the respondent provided the medium (1) to disregard the original duties due on the vessel's first entry; and (2) to avoid the Port of Mactan where demands for payment of overdue custom duties already existed. In the process, it of course acted for its own interest by securing for itself lower dutiable values and lesser duties due. The fact that the respondent did all these confirms that it participated in the moves to defraud the BOC of the legitimate taxes due as originally assessed.

Finality of the Port of Manila Assessment

Our finding of fraud leads us to conclude that the assessment of the Collector of the Port of Manila cannot become final and conclusive pursuant to Section 1603 of the TCCP, which states:

> Section 1603. *Finality of Liquidation*. – When articles have been entered and passed free of duty or final adjustments of duties made, with subsequent delivery, such entry and passage free of duty or settlements of duties will, after the expiration of one (1) year, from the date of the final payment of duties, **in the absence of fraud** or protest or compliance audit pursuant to the provisions of this Code, be final and conclusive upon all parties, unless the liquidation of the import entry was merely tentative.

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[24] See: *Papa v. Mago*, G.R. No. L-27360, February 28, 1968, 22 SCRA 865; *Viduya v. Berdiago*, G.R. No. L-29218, October 29, 1976, 73 SCRA 553.

Nature of a tax lien

An important factual circumstance that the CTA and the CA appear to have completely overlooked is that the vessel first entered the Philippines through the Port of Mactan and it was the Collector of the Port of Mactan who first acquired jurisdiction over the vessel when he approved the vessel's temporary release from the custody of the BOC, after Glory Shipping Lines filed Ordinary Re-Export Bond No. C(9) 121818.

When this re-export bond expired on March 22, 1994, Glory Shipping Lines filed a letter dated May 10, 1994 guaranteeing the renewal of the re-export bond on or before May 20, 1994, otherwise the duties, taxes and other charges on the vessel would be paid. Therefore, when May 20, 1994 came and went without the renewal of the vessel's re-export bond, the obligation to pay customs duties, taxes and other charges on the importation in the amount of ₱1,296,710.00 arose and attached to the vessel. Undoubtedly, this lien was never paid by Glory Shipping Lines, thus it continued to exist even after the vessel was sold to the respondent. Section 1204 of the TCCP in this regard states:

> Section 1204. *Liability of Importer for Duties*. – Unless relieved by laws or regulations, **the liability for duties, taxes, fees and other charges attaching on importation** constitutes a personal debt due **from the importer to the government** which can be discharged only by payment in full of all duties, taxes, fees and other charges legally accruing**.** It also **constitutes a lien upon the articles imported** which may be enforced while such articles are in custody or subject to the control of the government.

As defined by Black's Law Dictionary, a lien is a claim or charge on property for payment of some debt, obligation or duty.[25] In this particular instance, the obligation is a tax lien that attaches to imported goods, regardless of ownership.[26]

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[25] 5th ed., 1979, p. 832.

[26] See: 51 Am. Jur. 857.

Consequently, **when the respondent bought the vessel from Glory Shipping Lines on December 2, 1994, the obligation to pay the BOC ₱1,296,710.00 as customs duties had already attached to the vessel and the non-renewal of the re-export bond made this liability due and demandable. The subsequent transfer of ownership of the vessel from Glory Shipping Lines to the respondent did not extinguish this liability.**

Therefore, while it is true that the respondent had already paid the customs duties assessed by the Collector of the Port of Manila, this payment did not have the effect of extinguishing the lien given the tax lien that had attached to the vessel and the fact that what had been paid was different from what was owed. From the point of amount alone, the customs duties paid to the Collector at the Port of Manila only amounted to ₱149,989.00, while the lien which had attached to the vessel based on the unpaid assessment by the Collector of the Port of Mactan amounted to ₱1,296,710.00.

Finally, we deem it necessary to reiterate our pronouncement in ***Chevron Philippines v. Commissioner of the Bureau of Customs,***[27] where we discussed the importance of tariff and customs duties in the following manner:

Taxes are the lifeblood of the nation. **Tariff and customs duties are taxes constituting a significant portion of the public revenue which enables the government to carry out the functions it has been ordained to perform for the welfare of its constituents.**[28]

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[27] G.R. No. 178759, August 11, 2008.

[28] *Commissioner of Internal Revenue v. Court of Tax Appeals*, G.R. No. 106611, July 21, 1994, 234 SCRA 348; *Commissioner of Customs v. Makasiar*, G.R. No. 79307, August 29, 1989, 177 SCRA 27. According to then Senator Gloria Macapagal-Arroyo (now President of the Republic of the Philippines):

"The [BOC] is one of the premier revenue collecting arms of the Government, who together with the Bureau of the Internal Revenue accounts for the collection of more than eighty percent (80%) of government revenue." (March 29, 1993, Explanatory Note of Senate Bill No. 451, p. 14)

Hence, their prompt and certain availability is an imperative need[29] and **they must be collected without unnecessary hindrance**.[30] [Emphasis supplied.]

In keeping with this and other cited rulings, we find in favor of the petitioner and uphold his order for the re-assessment of the value of the vessel based on the entered value, which in this case should follow the unpaid assessment made by the Collector of Customs of the Port of Mactan.

WHEREFORE, we *REVERSE* the decision of the Court of Appeals dated August 26, 2002 in CA-G.R. SP No. 64644, and *REINSTATE WITH MODIFICATION* the ruling under former Finance Secretary Edgardo Espiritu's 4th Indorsement dated January 8, 1999. The re-assessment shall be based on the unpaid assessment by the Collector of Customs of the Port of Mactan against respondent Oro Maura Shipping Lines dated November 5, 1997, made on the basis of M/V HARUNA's entered value, without allowance for depreciation, but including other taxes and charges due. Seizure proceedings shall proceed in due course unless the unpaid customs duties, other taxes and charges are duly paid. Costs against the petitioner.

SO ORDERED.

Quisumbing (Chairperson), Carpio Morales, Chico-Nazario,[*] and *Leonardo-de Castro,*[**] *JJ.,* concur.

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[29] *Commissioner of Internal Revenue v. Goodrich International Rubber Co.*, G.R. No. L-22265, March 27, 1968, 22 SCRA 1256; *Commissioner of Internal Revenue v. Pineda*, G.R. No. L-22734, September 15, 1967, 21 SCRA 105.

[30] *Philex Mining Corporation v. Commissioner of Internal Revenue*, G.R. No. 125704, August 28, 1998, 294 SCRA 687.

[*] 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. 159358. July 15, 2009]

EUREKA PERSONNEL & MANAGEMENT SERVICES, INC., *petitioner, vs.* **EDUARDO VALENCIA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; CONTENTS OF PETITION; NON COMPLIANCE WITH THE RULE ON INCLUSION OF MATERIAL PORTIONS OF THE RECORD LEADS TO THE DISMISSAL OF THE PETITION; CASE AT BAR.— The rule is that the reviewing court should be able to determine the merits of the petition solely on the basis of the submissions by the parties without the use of the records of the court *a quo*. Otherwise, delay can result as the elevation of the records of lower tribunals to us takes time. For this reason, compliance with the rule on the inclusion of material portions of the record is a critical requirement whose violation leads to the dismissal of the petition. In Eureka's case, the success of its petition largely depends on the Postmaster's certification; thus, its failure to attach this material document to its petition or even to its memorandum is fatal to its cause. Without the certification, this Court is left to infer the question of the certification's authenticity, worth and validity solely from Eureka's allegations of its contents. Through the certification, Eureka attempts to prove a positive assertion – *i.e.*, that it received a copy of the Labor Arbiter's decision on November 22, 1999, and not on November 21, 1999 as stated in the registry return card on record. The basic evidentiary rule is that he who asserts a fact or the affirmative of an issue has the burden of proving it. Since the Postmaster's certification is Eureka's only evidence to prove its claim, its absence leaves the Court with nothing to consider in weighing Eureka's assertion.

2. ID.; ID.; ID.; ID.; LIMITED TO REVIEW OF ERRORS OF LAW.—Eureka's petition essentially asks the Court to resolve whether its appeal with the NLRC was filed within the prescribed period. This issue is not a novel one as we have had occasion

to rule on this same issue in *Mangahas v. Court of Appeals* where we held that **timeliness of an appeal is a factual issue that requires a review of the evidence presented on when the appeal was actually filed.** In a petition for review on *certiorari*, this Court is limited to the review of errors of law; we do not pass upon findings of facts under this mode of review unless the lower tribunal's decision is shown to be attended by grave abuse of discretion, as when they are shown to have been made arbitrarily or in disregard of the evidence on record. This rule applies with great force in labor cases where the ruling tribunal – the NLRC – exercises specialized jurisdiction and has acknowledged expertise on labor matters; we generally accord the NLRC's findings not only respect but even finality, unless the exceptions mentioned above exist, or when a review of the findings of facts is rendered necessary and appropriate because the factual findings and conclusions of the labor arbiter, the NLRC and the CA (as the court essentially tasked with factual review) are in conflict with one another.

3. ID.; EVIDENCE; PRESUMPTIONS; PRESUMPTION OF REGULARITY OF OFFICIAL DUTIES; CANNOT BE OVERCOME BY POSTMASTER'S CERTIFICATION IN CASE AT BAR.— Even if the postmaster's certification were to merit serious consideration by this Court, we cannot avoid the legal reality that the registry return card is considered as the official NLRC record evidencing service by mail. This card carries the presumption that it was prepared in the course of official duties that have been regularly performed; in this sense, it is presumed to be accurate, unless proven otherwise, and should be distinguished from a mere written record or note secured by a party to prove a self-serving point. This latter record or note, not being a regular record in the usual course of business, is open to easy fabrication and cannot be accepted and trusted at face value; as Valencia correctly noted, it was not even under oath nor under seal, aside from the fact that it does not mention the name of the Postmaster of the Malate Post Office. Thus, it does not carry the same level of evidentiary integrity that an official record enjoys, particularly when it seeks to impugn what the official record establishes. x x x In this case and in like manner, while a postmaster's certification is usually sufficient proof of mailing, its evidentiary value must be differentiated from the situation presently before us where the postmaster's certification *is intended to prove that the post*

office had committed a mistake in placing the date of receipt on the registry return card. In other words, the Postmaster's certification is offered to overcome the presumption that the Malate Post Office regularly performed its official duties when the registry return card was filled up by the recipient of the labor arbiter's decision with November 21, 1999 as the date of receipt. We find it significant that both the petitioner and the postmaster's certification failed to show that the Malate Post Office committed an inadvertence in handling the registry return card so that a corrective certification from the Postmaster was necessary. In the absence of such justification for the certification, we are compelled to deny it of any evidentiary value for the purpose it was submitted.

APPEARANCES OF COUNSEL

Counsellors Circle Law Firm for respondent.

D E C I S I O N

BRION, *J.*:

We resolve the Rule 45 petition filed by Eureka Personnel and Management Services, Inc. (*Eureka*) to challenge the Court of Appeals (*CA*) decision[1] and resolution[2] in CA-G.R. SP No. 61553. The appellate court upheld the National Labor Relations Commission (*NLRC*)'s decision dismissing Eureka's appeal for having been filed out of time.[3]

FACTUAL ANTECEDENTS

Eureka, a local recruitment agency, hired respondent Eduardo Valencia (*Valencia*) as an electrical engineer for its principal, Haif Trading and Contracting Establishment of Saudi Arabia (*principal* or the *company*), under a one-year employment

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[1] Penned by Associate Justice Juan Q. Enriquez, Jr. and concurred in by Associate Justice Rodrigo V. Cosico (retired) and Associate Justice Edgardo F. Sundiam (deceased), dated March 28, 2003; *rollo*, pp. 26-31.

[2] Dated August 7, 2003; *id.*, pp. 32-34.

[3] Dated January 31, 2000.

contract. According to Eureka, Valencia had to undergo a three-month probationary period under the contract.

On October 17, 1998, Eureka deployed Valencia to Saudi Arabia where he was given an orientation at the principal's head office and assigned to the Design Department. Eureka contends that Valencia's superiors and fellow electrical engineers found him to be incapable of doing shop drawings. As a result, the company transferred Valencia to the Technical Department. Since Valencia's performance remained unsatisfactory, the company terminated his employment for his failure to meet the required probationary standards.

On the other hand, Valencia claims that he passed the rigid interview Eureka conducted prior to his deployment. Valencia attributes the sudden termination of his employment to his December 30, 1998 complaint to the Administrative Manager that he was not being paid his monthly salary and food allowance. Valencia was allegedly told to wait as he was being transferred to another branch; instead, the company terminated his services and repatriated him on January 6, 1999.

When Valencia arrived in the Philippines, he filed a complaint against Eureka with the Overseas Workers Welfare Administration where Eureka failed to explain the cause of Valencia's early repatriation.

Subsequently, Valencia filed a complaint against Eureka with the NLRC. After hearing, the labor arbiter rendered a decision whose dispositive portion states:[4]

> IN LIGHT OF THE [SIC] ALL THE FOREGOING, the respondents are ordered to pay the complainant: 1) 3 months salary for the unexpired portions of the contract for the sum of US$2,340.00; 2) unpaid salary and food allowance for December 1998 in the sum of US$780.00 and SR$200.00 respectively; and 3) salary from 1-7 January 1999 in the amount of US$210.00.
>
> SO ORDERED.

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[4] Dated October 17, 1999.

Eureka claims that it received the labor arbiter's decision on November 22, 1999 and timely filed its notice of appeal on December 2, 1999. The NLRC, however, found that the labor arbiter's decision was served on Eureka on November 21, 1999 as shown by the registry return card, and, consequently, dismissed the appeal for having been filed out of time.

On February 18, 2000, Eureka moved for a reconsideration of the NLRC's decision, alleging that the Postmaster of the Malate Post Office would certify to the fact that the decision was actually delivered to Eureka on November 22, 1999, and not on November 21, 1999. Eureka attached a copy of the postmaster's certification to its supplemental motion for reconsideration filed on May 12, 2000. The certification reads:

> This is to certify that according to the record of this office Registered Letter No. 0559 sent by the National Labor Relations Commission – Quezon City processed on November 19, 1999 addressed to Eureka Personnel and Management Service, Inc. at 1913 L. Guinto St. Malate Manila was duly delivered on November 22, 1999.

The NLRC denied Eureka's motion for reconsideration on August 31, 2000.

Eureka brought the NLRC decision to the CA through a petition for *certiorari*[5] on the allegation that the NLRC committed grave abuse of discretion when it dismissed its appeal despite the postmaster's certification that Eureka presented.

The CA, in its March 28, 2003 decision, held that the NLRC did not abuse its discretion when it denied Eureka's appeal for having been filed out of time.[6] The CA found that the registry receipt [registry return card] is sufficient proof of the date of receipt of any notice served by the NLRC; thus, the NLRC was not obliged to accept the postmaster's certification that Eureka offered to prove that it received the labor arbiter's decision on November 22, 1999, and not on November 21, 1999. The

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[5] Under Rule 65 of the Rules of Court.

[6] *Supra* note 1.

CA also cited the Implementing Rules of the NLRC which specifically disallow any motion to extend the period to perfect the appeal; thus, "it is only right not to consider petitioner's supplemental motion for reconsideration." Lastly, the CA held that the case presented no exceptional reason for the CA to relax its procedural rules in Eureka's favor, nor even to change the findings of the labor arbiter. The CA also denied Eureka's Motion for Reconsideration in its August 7, 2003 Resolution.[7]

THE PETITION

Eureka now comes to this Court through this petition for review on *certiorari*[8] on the claim that the CA rulings in its March 28, 2003 decision and its August 7, 2003 resolution were legally incorrect.

Eureka contends that it filed a timely appeal with the NLRC on December 2, 1999, since it received the labor arbiter's decision on November 22, 1999, not on November 21, 1999, as found by the NLRC. Eureka relies on the certification issued by the Postmaster of Malate; unfortunately, the certification could not be issued in time to be attached to Eureka's motion for reconsideration of the NLRC's dismissal of its appeal; Eureka filed its motion on February 18, 2000, and could only present the Postmaster's certification on May 12, 2000, *via* a supplemental motion, because it took some time before the postal service could trace the mail matter.

Eureka further argues that the most competent authority to state when the labor arbiter's decision was served is the Malate Post Office – the office that processed the mail and served it on Eureka. Thus, the postmaster's certification should have been considered in determining the timeliness of Eureka's appeal. Eureka also asserts that the registry return card the NLRC relied upon is not even in the records of the NLRC. As between an

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[7] *Supra* note 2.

[8] Under Rule 45 of the Rules of Court, dated September 10, 2003; *rollo*, pp. 12-23.

inexistent registry return card and Eureka's postmaster's certification, Eureka posits that the NLRC and the CA should have given more credence to the latter.

Valencia, on the other hand, insists that Eureka's appeal was filed out of time, since it received the Labor Arbiter's decision on November 21, 1999 (evidenced by the registry return card found on page 60 of the NLRC records), but filed its appeal only on December 2, 1999 – *i.e.*, after the lapse of the period to appeal. Valencia points out that the postmaster's certification submitted by Eureka appears to be of dubious origin, as it was neither under oath nor properly sealed. Even if the postmaster's certification was genuine, it could still not affect the case, as it was submitted after the period to file a motion for reconsideration had lapsed.

Valencia also underscores the fact that Eureka did not file the correct amount of the bond to perfect its appeal with the NLRC; it filed a supersedeas bond in the amount of only ₱35,000.00, when the total amount of the monetary award granted to Valencia is US$3,330.00, or the equivalent of ₱134,232.30,[9] plus SR$200.00.

THE COURT'S RULING

We deny the petition for lack of merit.

Preliminary Procedural Consideration: The Petition is Fatally Incomplete

From the beginning, Eureka wholly relied on the certification allegedly issued by the Postmaster of the Malate Post Office.

We observe that despite the imputed importance of the Postmaster's certification to Eureka's claim, *Eureka did not even bother to attach it to the pleadings filed before this Court*, thereby preventing us from examining this document. We note,

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[9] The currency exchange rate in October 1999 was at $=₱40.31, Banko Sentral ng Pilipinas <http://www.bsp.gov.ph/Statistics/spei/tabl2.htm>, last visited on March 18, 2009.

too, that although Eureka cited the contents of the Postmaster's certification in its Memorandum, *it failed to name the Postmaster of the Malate Post Office* who issued the certification. All these omissions render Eureka's petition dismissible, pursuant to Sections 4 and 5, Rule 45 of the Rules of Court. These sections provide:

> Sec. 4. Contents of petition.
>
> The petition shall be filed in eighteen (18) copies, with the original copy intended for the court being indicated as such by the petitioner, and shall (a) state the full name of the appealing party as the petitioner and the adverse party as respondent, without impleading the lower courts or judges thereof either as petitioners or respondents; (b) indicate the material dates showing when notice of the judgment or final order or resolution subject thereof was received, when a motion for new trial or reconsideration, if any, was filed and when notice of the denial thereof was received; (c) set forth concisely a statement of the matters involved, and the reasons or arguments relied on for the allowance of the petition; (d) **be accompanied by** a clearly legible duplicate original, or a certified true copy of the judgment or final order or resolution certified by the clerk of court of the court *a quo* and the requisite number of plain copies thereof, and **such material portions of the record as would support the petition**; and (e) contain a sworn certification against forum shopping as provided in the last paragraph of section 2, Rule 42.
>
> Sec. 5. Dismissal or denial of petition.
>
> **The failure of the petitioner to comply with any of the foregoing requirements regarding** the payment of the docket and other lawful fees, deposit for costs, proof of service of the petition, and the contents of and **the documents which should accompany the petition shall be sufficient ground for the dismissal thereof.** [Emphasis supplied.]

The rule is that the reviewing court should be able to determine the merits of the petition solely on the basis of the submissions by the parties without the use of the records of the court *a quo*. Otherwise, delay can result as the elevation of the records of lower tribunals to us takes time.[10] For this reason, compliance

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

with the rule on the inclusion of material portions of the record is a critical requirement whose violation leads to the dismissal of the petition. In Eureka's case, the success of its petition largely depends on the Postmaster's certification; thus, its failure to attach this material document to its petition or even to its memorandum is fatal to its cause. Without the certification, this Court is left to infer the question of the certification's authenticity, worth and validity solely from Eureka's allegations of its contents.

Through the certification, Eureka attempts to prove a positive assertion – *i.e.*, that it received a copy of the Labor Arbiter's decision on November 22, 1999, and not on November 21, 1999 as stated in the registry return card on record. The basic evidentiary rule is that he who asserts a fact or the affirmative of an issue has the burden of proving it.[11] Since the Postmaster's certification is Eureka's only evidence to prove its claim, its absence leaves the Court with nothing to consider in weighing Eureka's assertion.

Timeliness of Appeal — a Question of Fact not Covered by a Rule 45 Review.

Eureka's petition essentially asks the Court to resolve whether its appeal with the NLRC was filed within the prescribed period. This issue is not a novel one as we have had occasion to rule on this same issue in *Mangahas v. Court of Appeals*[12] where we held that **timeliness of an appeal is a factual issue that requires a review of the evidence presented on when the appeal was actually filed.**

In a petition for review on *certiorari*, this Court is limited to the review of errors of law; we do not pass upon findings of facts under this mode of review unless the lower tribunal's decision is shown to be attended by grave abuse of discretion,

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[11] *Republic v. Obrecido III*, G.R. No. 154380, October 5, 2005, 427 SCRA 114; *Noceda v. Court of Appeals*, 372 Phil. 383 (1999); *Luxuria Homes Inc. v. Court of Appeals*, 361 Phil. 989 (1999).

[12] G.R. No. 173375, September 25, 2008.

as when they are shown to have been made arbitrarily or in disregard of the evidence on record.[13] This rule applies with great force in labor cases where the ruling tribunal – the NLRC – exercises specialized jurisdiction and has acknowledged expertise on labor matters; we generally accord the NLRC's findings not only respect but even finality, unless the exceptions mentioned above exist, or when a review of the findings of facts is rendered necessary and appropriate because the factual findings and conclusions of the labor arbiter, the NLRC and the CA (as the court essentially tasked with factual review) are in conflict with one another.[14]

In the present case, no conflict in the factual rulings exists; the CA affirmed the NLRC's conclusion that Eureka's appeal was filed out of time based on the registry return card, found in the NLRC records, that shows on its face the date November 21, 1999 as the date of receipt. We find no reason to disturb this factual finding as the registry return receipt is a document that speaks for itself as evidence of when the registered mail reached the recipient-addressee. As our discussion below will show, its evidentiary worth is more than a subsequent certification that counters what the registry return card plainly states.

Certification cannot overcome presumption of regularity

Even if the postmaster's certification were to merit serious consideration by this Court, we cannot avoid the legal reality that the registry return card is considered as the official NLRC record evidencing service by mail.[15] This card carries the

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[13] *Maya Farms Employees Organization v. National Labor Relations Commission*, G.R. No. 106256, December 28, 1994, 239 SCRA 508; *Bernaldez v. Francia*, G.R. No. 143929, February 28, 2003, 398 SCRA 488.

[14] *Gonzales v. National Labor Relations Commission*, G.R. No. 131653, March 26, 2001, 355 SCRA 195.

[15] *Nyk-Fil Ship Management Inc. v. Talavera*, G.R. No. 175894, November 14, 2008, citing *Dela Cruz v. Ramiscal*, 450 SCRA 449 (2005).

presumption that it was prepared in the course of official duties that have been regularly performed; in this sense, it is presumed to be accurate, unless proven otherwise,[16] and should be distinguished from a mere written record or note secured by a party to prove a self-serving point. This latter record or note, not being a regular record in the usual course of business, is open to easy fabrication and cannot be accepted and trusted at face value; as Valencia correctly noted, it was not even under oath nor under seal, aside from the fact that it does not mention the name of the Postmaster of the Malate Post Office. Thus, it does not carry the same level of evidentiary integrity that an official record enjoys, particularly when it seeks to impugn what the official record establishes.[17] As we stated in *Mangahas v. Court of Appeals*:[18]

> There is a presumption that official duties have been regularly performed. On this basis, we have ruled in previous cases that the Postmaster's certification is sufficient evidence of the fact of mailing. This presumption, however, is disputable. **In this case, the Affidavit/Certification of the alleged Assistant Postmaster cannot give rise to such a presumption, for not only does it attest to an irregularity in the performance of official duties** (*i.e.*, mistake in stamping the date on the registered mail), it is essentially hearsay evidence.

In this case and in like manner, while a postmaster's certification is usually sufficient proof of mailing, its evidentiary value must be differentiated from the situation presently before us where the postmaster's certification *is intended to prove that the post office had committed a mistake in placing the date of receipt on the registry return card*. In other words, the Postmaster's certification is offered to overcome the presumption that the Malate Post Office regularly performed its official duties when the registry return card was filled up by the recipient of

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[16] Section 3(m), Rule 131 of the Rules of Court.

[17] *Supra* note 15.

[18] G.R. No. 173375, September 25, 2008.

the labor arbiter's decision with November 21, 1999 as the date of receipt. We find it significant that both the petitioner and the postmaster's certification failed to show that the Malate Post Office committed an inadvertence in handling the registry return card so that a corrective certification from the Postmaster was necessary. In the absence of such justification for the certification, we are compelled to deny it of any evidentiary value for the purpose it was submitted.

In light of this conclusion, we find it unnecessary to discuss the validity of Eureka's appeal bond.

WHEREFORE, premises considered, we hereby *DENY* the petition and *AFFIRM* the Court of Appeals' Decision dated March 28, 2003, and Resolution of August 7, 2003, in CA-G.R. SP No. 61553. Costs against the petitioner.

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.

SECOND DIVISION

[G.R. No. 171586. July 15, 2009]

NATIONAL POWER CORPORATION, *petitioner, vs.* **PROVINCE OF QUEZON and MUNICIPALITY OF PAGBILAO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PRINCIPLE OF ESTOPPEL; APPLIED IN CASE AT BAR.— We agree that the NPC can no longer divest the CBAA of the power to decide the appeal after invoking and submitting itself to the board's jurisdiction. We note that even the NPC itself found nothing objectionable in the LBAA's *sin perjuicio* decision when it filed its appeal before the CBAA; the NPC did not cite this ground as basis for its appeal. What it cited were grounds that went into the merits of its case. In fact, its appeal contained no prayer for the remand of the case to the LBAA. A basic jurisdictional rule, essentially based on fairness, is that a party cannot invoke a court's jurisdiction to secure affirmative relief and, after failing to obtain the requested relief, repudiate or question that same jurisdiction. Moreover, a remand would be unnecessary, as we find the CBAA's and the CTA *en banc's* denial of NPC's claims entirely in accord with the law and with jurisprudence.

2. TAXATION; LOCAL TAXATION; REAL PROPERTY TAXATION; ASSESSMENT OF PROPERTY; ASSESSMENT OF LOCAL ASSESSOR BECOMES FINAL, EXECUTORY AND DEMANDABLE WHEN THE TAXPAYER FAILS TO QUESTION THE ASSESSMENT BEFORE THE LOCAL BOARD OF ASSESSMENT APPEALS.— A taxpayer's failure to question the assessment before the LBAA renders the assessment of the local assessor final, executory, and demandable, thus precluding the taxpayer from questioning the correctness of the assessment, or from invoking any defense that would reopen the question of its liability on the merits.

3. ID.; ID.; ID.; ID.; MAY BE CONTESTED BY THE OWNER AND THE PERSON WITH LEGAL INTEREST IN THE PROPERTY; ELUCIDATED.— Section 226 of the LGC lists down the two entities vested with the personality to contest an assessment: the owner and the person with legal interest in the property. A person legally burdened with the obligation to pay for the tax imposed on a property has legal interest in the property and the personality to protest a tax assessment on the property. This is the logical and legal conclusion when Section 226, on the rules governing an assessment protest, is placed side by side with Section 250 on the payment of real property tax; both provisions refer to the same parties who may protest and pay the tax: SECTION 226. *Local Board of Assessment Appeals.* – **Any owner or person having legal interest in the property** who is not satisfied with the action of the provincial, city or municipal assessor in the assessment of his property may, within sixty (60) days from the date of receipt of the written notice of assessment, appeal to the Board of Assessment Appeals of the province or city x x x. SECTION 250. *Payment of Real Property Taxes in Installments.*— **The owner of the real property or the person having legal interest therein** may pay the basic real property tax x x x due thereon without interest in four (4) equal instalments x x x. The liability for taxes generally rests on the owner of the real property at the time the tax accrues. This is a necessary consequence that proceeds from the fact of ownership. However, personal liability for realty taxes may also expressly rest on the entity with the beneficial use of the real property, such as the tax on property owned by the government but leased to private persons or entities, or when the tax assessment is made on the basis of the actual use of the property. **In either case, the unpaid realty tax attaches to the property but is directly chargeable against the taxable person who has *actual and beneficial use and possession* of the property regardless of whether or not that person is the owner.**

4. ID.; ID.; ID.; ID.; ID.; LEGAL INTEREST SHOULD BE AN INTEREST THAT IS ACTUAL AND MATERIAL, DIRECT AND IMMEDIATE, NOT SIMPLY CONTINGENT OR EXPECTANT; CASE AT BAR.— In *Cariño v. Ofilado,* we declared that **legal interest should be an interest that is actual and material, direct and immediate, not simply**

contingent or expectant. The concept of the directness and immediacy involved is no different from that required in motions for intervention under Rule 19 of the Rules of Court that allow one who is not a party to the case to participate because of his or her direct and immediate interest, characterized by either gain or loss from the judgment that the court may render. In the present case, the NPC's ownership of the plant will happen only *after* the lapse of the 25-year period; until such time arrives, the NPC's claim of ownership is merely contingent, *i.e.*, dependent on whether the plant and its machineries exist at that time. Prior to this event, the NPC's real interest is only in the continued operation of the plant for the generation of electricity. This interest has not been shown to be adversely affected by the realty taxes imposed and is an interest that NPC can protect, not by claiming an exemption that is not due to Mirant, but by paying the taxes it (NPC) has assumed for Mirant under the ECA. x x x In the present case, the NPC is neither the owner, nor the possessor or user of the property taxed. No interest on its part thus justifies any tax liability on its part other than its voluntary contractual undertaking. Under this legal situation, only Mirant as the contractual obligor, not the local government unit, can enforce the tax liability that the NPC contractually assumed; the NPC does not have the "legal interest" that the law and jurisprudence require to give it personality to protest the tax imposed by law on Mirant.

5. CIVIL LAW; OBLIGATIONS AND CONTRACTS; PRINCIPLE OF RELATIVITY OF CONTRACTS; APPLIED IN CASE AT BAR.— [W]e do not x x x pass upon the validity of the contractual stipulation between the NPC and Mirant on the assumption of liability that the NPC undertook. All we declare is that the stipulation is entirely between the NPC and Mirant, and does not bind third persons who are not privy to the contract between these parties. We say this pursuant to the principle of relativity of contracts under Article 1311 of the Civil Code which postulates that contracts take effect only between the parties, their assigns and heirs. Quite obviously, there is no privity between the respondent local government units and the NPC, even though both are public corporations. The tax due will not come from one pocket and go to another pocket of the same governmental entity. An LGU is independent and autonomous in its taxing powers and this is clearly reflected

in Section 130 of the LGC which states: SECTION 130. *Fundamental Principles*. — The following fundamental principles shall govern the exercise of the taxing and other revenue-raising powers of local government units: x x x (d) The **revenue collected pursuant to the provisions of this Code shall inure solely to the benefit of, and be subject to disposition by, the local government unit** levying the tax, fee, charge or other imposition unless otherwise specifically provided herein; xxx An exception to the rule on relativity of contracts is provided under the same Article 1311 as follows: If the contract should contain some stipulation in favor of a third person, he may demand its fulfilment provided he communicated his acceptance to the obligor before its revocation. A mere incidental benefit or interest of a person is not sufficient. **The contracting parties must have clearly and deliberately conferred a favor upon a third person.** The NPC's assumption of tax liability under Article 11.1 of the ECA does not appear, however, to be in any way for the benefit of the Municipality of Pagbilao and the Province of Quezon. In fact, if the NPC theory of the case were to be followed, the NPC's assumption of tax liability will work against the interests of these LGUs. Besides, based on the objectives of the BOT Law that underlie the parties' BOT agreement, the assumption of taxes clause is an incentive for private corporations to take part and invest in Philippine industries. Thus, the principle of relativity of contracts applies with full force in the relationship between Mirant and NPC, on the one hand, and the respondent LGUs, on the other.

6. TAXATION; LOCAL TAXATION; REAL PROPERTY TAXATION; EXEMPTIONS FROM REAL PROPERTY TAX; EXEMPTION UNDER SECTION 234(C) OF THE LOCAL GOVERNMENT CODE; ELEMENTS; EXPLAINED.— To successfully claim exemption under Section 234(c) of the LGC, the claimant must prove two elements: a. the machineries and equipment are **actually, directly, and exclusively used by** local water districts and **government-owned or controlled corporations**; and b. the local water districts and government-owned and controlled corporations claiming exemption must be engaged in the supply and distribution of water and/or the generation and transmission of electric power. As applied to the present case, the government-owned or controlled corporation

claiming exemption must be the entity actually, directly, and exclusively using the real properties, and the use must be devoted to the generation and transmission of electric power. Neither the NPC nor Mirant satisfies both requirements. Although the plant's machineries are devoted to the generation of electric power, by the NPC's own admission and as previously pointed out, Mirant – a private corporation – uses and operates them. That Mirant operates the machineries solely in compliance with the will of the NPC only underscores the fact that NPC does not *actually, directly, and exclusively use* them. The machineries must be actually, directly, and exclusively used by the government-owned or controlled corporation for the exemption under Section 234(c) to apply. x x x Based on the clear wording of the law, it is the machineries that are exempted from the payment of real property tax, not the water or electricity that these machineries generate and distribute. x x x The test of exemption is the use, not the ownership of the machineries devoted to generation and transmission of electric power. The nature of the NPC's ownership of these machineries only finds materiality in resolving the NPC's claim of legal interest in protesting the tax assessment on Mirant.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Office of the Provincial Attorney (Quezon) for respondents.

D E C I S I O N

BRION, *J.*:

We resolve in this petition for review on *certiorari* the question of whether the National Power Corporation (*NPC*), as a government-owned and controlled corporation, can claim tax exemption under Section 234 of the Local Government Code (*LGC*) for the taxes due from the Mirant Pagbilao Corporation (*Mirant*)[1] whose tax liabilities the NPC has contractually assumed.

[1] Previously known as Southern Energy Quezon, Inc., and before that, Hopewell Energy International Limited.

BACKGROUND FACTS

The NPC is a government-owned and controlled corporation mandated by law to undertake, among others, the production of electricity from nuclear, geothermal, and other sources, and the transmission of electric power on a nationwide basis.[2] To pursue this mandate, the NPC entered into an Energy Conversion Agreement (*ECA*) with Mirant on November 9, 1991. The ECA provided for a build-operate-transfer (*BOT*) arrangement between Mirant and the NPC. Mirant will build and finance a coal-fired thermal power plant on the lots owned by the NPC in Pagbilao, Quezon for the purpose of converting fuel into electricity, and thereafter, operate and maintain the power plant for a period of 25 years. The NPC, in turn, will supply the necessary fuel to be converted by Mirant into electric power, take the power generated, and use it to supply the electric power needs of the country. At the end of the 25-year term, Mirant will transfer the power plant to the NPC without compensation. According to the NPC, the power plant is currently operational and is one of the largest sources of electric power in the country.[3]

Among the obligations undertaken by the NPC under the ECA was the payment of all taxes that the government may impose on Mirant; Article 11.1 of the ECA[4] specifically provides:

> 11.1 RESPONSIBILITY. **[NPC] shall be responsible for the payment of** (a) all taxes, import duties, fees, charges and other levies imposed by the National Government of the Republic of the Philippines or any agency or instrumentality thereof to which [Mirant] may at any time be or become subject in or in relation to the performance of their obligations under this Agreement (other than (i) taxes imposed or calculated on the basis of the net income [of Mirant] and (ii) construction permit fees, environmental permit fees and other similar fees and charges), and **(b) all real estate taxes and assessments, rates and other charges in respect of the Site, the buildings and improvements thereon and the Power Station.** [Emphasis supplied.]

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[2] Republic Act No. 6395.

[3] *Rollo*, p. 5.

[4] *Id*., p. 81.

In a letter dated March 2, 2000, the **Municipality of Pagbilao assessed Mirant's real property taxes** on the power plant and its machineries in the total amount of ₱1,538,076,000.00 for the period of 1997 to 2000. The Municipality of Pagbilao furnished the NPC a copy of the assessment letter.

To protect its interests, the NPC filed a petition before the Local Board of Assessment Appeals (*LBAA*) entitled *"In Re: Petition to Declare Exempt from Payment of Property Tax on Machineries and Equipment Used for Generation and Transmission of Power, under Section 234(c) of RA 7160 [LGC], located at Pagbilao, Quezon xxx"*[5] on April 14, 2000. **The NPC objected to the assessment against Mirant** on the claim that it (the NPC) is entitled to the tax exemptions provided in Section 234, paragraphs (c) and (e) of the LGC. These provisions state:

> Section 234. *Exemptions from Real Property Tax.* – The following are exempted from payment for the real property tax:
>
> x x x x x x x x x
>
> **(c) All machineries and equipment that are actually, directly, and exclusively used by local water districts and government-owned or –controlled corporations engaged in the supply and distribution of water and/or generation and transmission of electric power;**
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> x x x x x x x x x
>
> **(e) Machinery and equipment used for pollution control and environmental protection.**
>
> Except as provided herein, any exemption from payment of real property tax previously granted to, or presently enjoyed by, all persons, whether natural or juridical, including government-owned or –controlled corporations are hereby withdrawn upon the effectivity of the Code.

Assuming that it cannot claim the exemptions stated in these provisions, the NPC alternatively asserted that it is entitled to:

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[5] Docketed as LBAA Case No. 2-2000.

a. the lower assessment level of 10% under Section 218(d) of the LGC for government-owned and controlled corporations engaged in the generation and transmission of electric power, instead of the 80% assessment level for commercial properties as imposed in the assessment letter; and

b. an allowance for depreciation of the subject machineries under Section 225 of the LGC.

The LBAA dismissed the NPC's petition on the Municipality of Pagbilao's motion, through a one-page Order dated November 13, 2000.[6]

The NPC appealed the denial of its petition with the Central Board of Assessment Appeals (*CBAA*). Although it noted the incompleteness of the LBAA decision for failing to state the factual basis of its ruling, the CBAA nevertheless affirmed, in its decision of August 18, 2003, the denial of the NPC's claim for exemption. The CBAA likewise denied the NPC's subsequent motion for reconsideration, prompting the NPC to institute an appeal before the Court of Tax Appeals (*CTA*).

Before the CTA, the NPC claimed it was procedurally erroneous for the CBAA to exercise jurisdiction over its appeal because the LBAA issued a *sin perjuicio*[7] decision, that is, the LBAA pronounced a judgment without any finding of fact. It argued that the CBAA should have remanded the case to the LBAA. On substantive issues, the NPC asserted the same grounds it relied upon to support its claimed tax exemptions.

The CTA *en banc* resolved to dismiss the NPC's petition on February 21, 2006. From this ruling, the NPC filed the present petition seeking the reversal of the CTA *en banc's* decision.

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[6] *Rollo*, p. 166.

[7] A *sin perjuicio* decision is a judgment without statement of facts in support of its conclusion (*Director of Lands v. Sanz*, 45 Phil. 119 [1923]).

THE PETITION

The NPC contends that the CTA *en banc* erred in ruling that the NPC is estopped from questioning the LBAA's *sin perjuicio* judgment; the LBAA decision, it posits, cannot serve as an appealable decision that would vest the CBAA with appellate jurisdiction; a *sin perjuicio* decision, by its nature, is null and void.

The NPC likewise assails the CTA *en banc* ruling that the NPC was not the proper party to protest the real property tax assessment, as it did not have the requisite "legal interest." The NPC claims that it has legal interest because of its beneficial ownership of the power plant and its machineries; what Mirant holds is merely a naked title. Under the terms of the ECA, the NPC also claims that it possesses all the attributes of ownership, namely, the rights to enjoy, to dispose of, and to recover against the holder and possessor of the thing owned. That it will acquire and fully own the power plant after the lapse of 25 years further underscores its "legal interest" in protesting the assessment.

The NPC's assertion of beneficial ownership of the power plant also supports its claim for tax exemptions under Section 234(c) of the LGC. The NPC alleges that it has the right to control and supervise the entire output and operation of the power plant. This arrangement, to the NPC, proves that it is the entity actually, directly, and exclusively using the subject machineries. Mirant's possession of the power plant is irrelevant since all of Mirant activities relating to power generation are undertaken *for and in behalf of the NPC*. Additionally, all the electricity Mirant generates is utilized by the NPC in supplying the power needs of the country; Mirant therefore operates the power plant for the exclusive and direct benefit of the NPC. Lastly, the NPC posits that the machineries taxed by the local government include anti-pollution devices which should have been excluded from the assessment under Section 234(e) of the LGC.

Assuming that the NPC is liable to pay the assessed real property tax, it asserts that a reassessment is necessary as it is

entitled to depreciation allowance on the machineries and to the lower 10% assessment level under Sections 225 and 218(d) of the LGC, respectively. This position is complemented by its prayer to have the case remanded to the LBAA for the proper determination of its tax liabilities.

THE COURT'S RULING

This case is not one of first impression. We have previously ruled against the NPC's claimed exemptions under the LGC in the cases of *FELS Energy, Inc. v. Province of Batangas*[8] and *NPC v. CBAA*.[9] Based on the principles we declared in those cases, as well as the defects we found in the NPC's tax assessment protest, **we conclude that the petition lacks merit.**

The NPC is estopped from questioning the CBAA's jurisdiction

The assailed CTA *en banc* decision brushed aside the NPC's *sin perjuicio* arguments by declaring that:

> The court finds merit in [NPC's] claim that the Order of the LBAA of the Province of Quezon is a *sin perjuicio* decision. **A perusal thereof shows that the assailed Order does not contain findings of facts in support of the dismissal of the case.** It merely stated a finding of merit in the contention of the Municipality of Pagbilao x x x.
>
> **However, on appeal before the CBAA, [NPC] assigned several errors, both in fact and in law, pertaining to the LBAA's decision. Thus, petitioner is bound by the appellate jurisdiction of the CBAA under the principle of equitable estoppel. In this regard, [NPC] is in no position to question the appellate jurisdiction of the CBAA as it is the same party which sought its jurisdiction and participated in the proceedings therein.**[10] [Emphasis supplied.]

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[8] G.R. No. 168557, February 16, 2007, 516 SCRA 186.

[9] G.R. No. 171470, January 30, 2009.

[10] *Rollo*, pp. 48-49.

We agree that the NPC can no longer divest the CBAA of the power to decide the appeal after invoking and submitting itself to the board's jurisdiction. We note that even the NPC itself found nothing objectionable in the LBAA's *sin perjuicio* decision when it filed its appeal before the CBAA; the NPC did not cite this ground as basis for its appeal. What it cited were grounds that went into the merits of its case. In fact, its appeal contained no prayer for the remand of the case to the LBAA.

A basic jurisdictional rule, essentially based on fairness, is that a party cannot invoke a court's jurisdiction to secure affirmative relief and, after failing to obtain the requested relief, repudiate or question that same jurisdiction.[11] Moreover, a remand would be unnecessary, as we find the CBAA's and the CTA *en banc's* denial of NPC's claims entirely in accord with the law and with jurisprudence.

The entity liable for tax has the right to protest the assessment

Before we resolve the question of the NPC's entitlement to tax exemption, we find it necessary to determine first whether the NPC initiated a ***valid*** protest against the assessment. A taxpayer's failure to question the assessment before the LBAA renders the assessment of the local assessor final, executory, and demandable, thus precluding the taxpayer from questioning the correctness of the assessment, or from invoking any defense that would reopen the question of its liability on the merits.[12]

Section 226 of the LGC lists down the two entities vested with the personality to contest an assessment: the owner and the person with legal interest in the property.

A person legally burdened with the obligation to pay for the tax imposed on a property has legal interest in the property and the personality to protest a tax assessment on the property.

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[11] *De Leon v. Court of Appeals*, G.R. No. 96107, June 19, 1995, 245 SCRA 106.

[12] *Supra* note 8.

This is the logical and legal conclusion when Section 226, on the rules governing an assessment protest, is placed side by side with Section 250 on the payment of real property tax; both provisions refer to the same parties who may protest and pay the tax:

SECTION 226. *Local Board of Assessment Appeals*. — **Any owner or person having legal interest in the property** who is not satisfied with the action of the provincial, city or municipal assessor in the assessment of his property may, within sixty (60) days from the date of receipt of the written notice of assessment, appeal to the Board of Assessment Appeals of the province or city xxx.

SECTION 250. *Payment of Real Property Taxes in Instalments.* — **The owner of the real property or the person having legal interest therein** may pay the basic real property tax xxx due thereon without interest in four (4) equal instalments xxx.

The liability for taxes generally rests on the owner of the real property at the time the tax accrues. This is a necessary consequence that proceeds from the fact of ownership.[13] However, personal liability for realty taxes may also expressly rest on the entity with the beneficial use of the real property, such as the tax on property owned by the government but leased to private persons or entities, or when the tax assessment is made on the basis of the actual use of the property.[14] **In either case, the unpaid realty tax attaches to the property**[15] **but is directly chargeable against the taxable person who has *actual and***

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[13] See *Baguio v. Busuego*, G.R. No. L-29772, September 18, 1980, 100 SCRA 116; and *MERALCO v. Barlis*, G.R. No. 114231, June 29, 2004, 433 SCRA 11.

[14] *Republic v. Kidapawan*, G.R. No. 166651, December 9, 2005, 477 SCRA 324, citing Vitug and Acosta, *Tax Law and Jurisprudence* (2000 ed.), p. 490.

[15] LGC, Section 257 which states:

SECTION 257. *Local Government Lien*. – The basic real property tax and any other tax levied under this Title [Title II – Real Property Taxation]

beneficial use and possession **of the property regardless of whether or not that person is the owner.**[16]

In the present case, the NPC, contrary to its claims, is neither the owner nor the possessor/user of the subject machineries.

The ECA's terms regarding the power plant's machineries clearly vest their ownership with Mirant. Article 2.12 of the ECA[17] states:

> 2.12 OWNERSHIP OF POWER STATION. From the Effective Date until the Transfer Date [that is, the day following the last day of the 25-year period], **[Mirant] shall, directly or indirectly, own the Power Station and all the fixtures, fittings, machinery and equipment on the Site** or used in connection with the Power Station which have been supplied by it or at its cost. [Mirant] shall operate, manage, and maintain the Power Station for the purpose of converting fuel of [NPC] into electricity. [Emphasis supplied.]

The NPC contends that it should nevertheless be regarded as the beneficial owner of the plant, since it will acquire ownership thereof at the end of 25 years. The NPC also asserts, by quoting portions of the ECA, that it has the right to control and supervise the construction and operation of the plant, and that Mirant has retained only naked title to it. These contentions, unfortunately, are not sufficient to vest the NPC the personality to protest the assessment.

In *Cariño v. Ofilado*,[18] we declared that **legal interest should be an interest that is actual and material, direct and immediate, not simply contingent or expectant**. The concept of the directness and immediacy involved is no different from

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constitute a lien on the property subject to tax, superior to all liens, charges, or encumbrances in favor of any person irrespective of the owner or possessor thereof, enforceable by administrative or judicial action, and may only be extinguished upon payment of the tax and the related interests and expenses.

[16] See *Testate of Concordia Lim v. Manila*, G.R. No. 90639, February 21, 1990, 182 SCRA 482.

[17] *Rollo*, p. 65.

[18] G.R. No. 102836, January 18, 1993, 217 SCRA 206.

that required in motions for intervention under Rule 19 of the Rules of Court that allow one who is not a party to the case to participate because of his or her direct and immediate interest, characterized by either gain or loss from the judgment that the court may render.[19] In the present case, the NPC's ownership of the plant will happen only *after* the lapse of the 25-year period; until such time arrives, the NPC's claim of ownership is merely contingent, *i.e.*, dependent on whether the plant and its machineries exist at that time. Prior to this event, the NPC's real interest is only in the continued operation of the plant for the generation of electricity. This interest has not been shown to be adversely affected by the realty taxes imposed and is an interest that NPC can protect, not by claiming an exemption that is not due to Mirant, but by paying the taxes it (NPC) has assumed for Mirant under the ECA.

To show that Mirant only retains a naked title, the NPC has selectively cited provisions of the ECA to make it appear that it has the sole authority over the power plant and its operations. Contrary to these assertions, however, a complete reading of the ECA shows that Mirant has more substantial powers in the control and supervision of the power plant's construction and operations.

Under Articles 2.1 and 3.1 of the ECA, Mirant is responsible for the design, construction, equipping, testing, and commissioning of the power plant. Article 5.1 on the operation of the power plant states that Mirant shall be responsible for the power plant's management, operation, maintenance, and repair until the Transfer Date. This is reiterated in Article 5.3 where Mirant undertakes to operate the power plant to convert fuel into electricity.

While the NPC asserts that it has the power to authorize the closure of the power plant without any veto on the part of Mirant, the full text of Article 8.5 of the ECA shows that Mirant is possessed with similar powers to terminate the agreement:

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[19] See RULES OF COURT, Rule 19, Section 1; and *Alfelor v. Halasan*, G.R. No. 165987, March 31, 2006, 486 SCRA 451, 461, citing *Nordic Asia Ltd. v. Court of Appeals*, 451 Phil. 482, 492-493 (2003).

8.5 BUYOUT. If the circumstances set out in Article 7.18, Article 9.4, Article 14.4 or Article 28.4 arise or if, not earlier than 20 years after the Completion Date, [the NPC] gives not less than 90 days notice to [Mirant] that it wishes to close the power station, or **if [the NPC] has failed to ensure the due payment of any sum due hereunder within three months of its due date then, upon [Mirant] giving to [the NPC] not less than 90 days notice requiring [the NPC] to buy out [Mirant]** or, as the case may be, [the NPC] giving not less than 90 days notice requiring [Mirant] to sell out to [NPC], [NPC] shall purchase all [Mirant's] right, title, and interest in and to the Power Station and thereupon all [Mirant's] obligations hereunder shall cease. [Emphasis supplied.]

On liability for taxes, the NPC indeed assume responsibility for the taxes due on the power plant and its machineries,[20] specifically, "all real estate taxes and assessments, rates and other charges in respect of the site, the buildings and improvements thereon and the [power plant]." At first blush, this contractual provision would appear to make the NPC liable and give it standing to protest the assessment. ***The tax liability we refer to above, however, is the liability arising from law that the local government unit can rightfully and successfully enforce, not the contractual liability that is enforceable between the parties to a contract as discussed below.*** By law, the tax liability rests on Mirant based on its ownership, use, and possession of the plant and its machineries.

In *Testate of Concordia Lim v. City of Manila*,[21] we had occasion to rule that:

> In [*Baguio v. Busuego*],[22] the assumption by the vendee of the liability for real estate taxes prospectively due was in harmony with the tax policy that **the user of the property bears the tax**. In [the present case], **the interpretation that the [vendee] assumed a liability for overdue real estate taxes for the periods prior to the contract of sale is incongruent with the said policy because there was *no immediate transfer of possession of the properties* previous to full payment of the repurchase price.**

[20] Under Article 11.1 of the ECA.

[21] *Supra* note 16.

[22] *Supra* note 13.

x x x x x x x x x

To impose the real property tax on the estate which was neither the owner nor the beneficial user of the property during the designated periods would not only be contrary to law but also unjust.

For a fuller appreciation of this ruling, the *Baguio* case referred to a contract of sale wherein the vendee not only assumed liability for the taxes on the property, but also acquired its use and possession, even though title remained with the vendor pending full payment of the purchase price. Under this situation, we found the vendee who had assumed liability for the realty taxes and who had been given use and possession to be liable. Compared with *Baguio*, the *Lim* case supposedly involved the same contractual assumption of tax liabilities,[23] but possession and enjoyment of the property remained with other persons. Effectively, *Lim* held that the contractual assumption of the obligation to pay real property tax, by itself, is not sufficient to make one legally compellable by the government to pay for the taxes due; the person liable must also have use and possession of the property.

Using the *Baguio* and *Lim* situations as guides, and after considering the comparable legal situations of the parties assuming liability in these cases, we conclude that the NPC's contractual liability alone cannot be the basis for the enforcement of tax liabilities against it by the local government unit. In *Baguio* and *Lim*, the vendors still retained ownership, and the effectiveness of the tax liabilities assumed by the vendees turned on the possession and use of the property subject to tax. In other words, the contractual assumption of liability was supplemented by an interest that the party assuming liability had on the property taxed; on this basis, the vendee in *Baguio* was found liable,

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[23] The lower court, in the *Lim* case, found the contractual obligation to include assumption of liability for all taxes. The Court, however, declared that what was actually assumed by the vendee was the liability for taxes and other expenses "relative to the execution and/or implementation" of the Deed of Absolute Sale "including among others, documentation, documentary and science stamps, expenses for registration and transfer of titles x x x," which did not necessarily include real property tax.

while the vendee in *Lim* was not. In the present case, the NPC is neither the owner, nor the possessor or user of the property taxed. No interest on its part thus justifies any tax liability on its part other than its voluntary contractual undertaking. Under this legal situation, only Mirant as the contractual obligor, not the local government unit, can enforce the tax liability that the NPC contractually assumed; the NPC does not have the "legal interest" that the law and jurisprudence require to give it personality to protest the tax imposed by law on Mirant.

By our above conclusion, we do not thereby pass upon the validity of the contractual stipulation between the NPC and Mirant on the assumption of liability that the NPC undertook. All we declare is that the stipulation is entirely between the NPC and Mirant, and does not bind third persons who are not privy to the contract between these parties. We say this pursuant to the principle of relativity of contracts under Article 1311 of the Civil Code which postulates that contracts take effect only between the parties, their assigns and heirs. Quite obviously, there is no privity between the respondent local government units and the NPC, even though both are public corporations. The tax due will not come from one pocket and go to another pocket of the same governmental entity. An LGU is independent and autonomous in its taxing powers and this is clearly reflected in Section 130 of the LGC which states:

> SECTION 130. *Fundamental Principles*. — The following fundamental principles shall govern the exercise of the taxing and other revenue-raising powers of local government units:
>
> x x x x x x x x x
>
> (d) The **revenue collected pursuant to the provisions of this Code shall inure solely to the benefit of, and be subject to disposition by, the local government unit** levying the tax, fee, charge or other imposition unless otherwise specifically provided herein; xxx. [Emphasis supplied.]

An exception to the rule on relativity of contracts is provided under the same Article 1311 as follows:

If the contract should contain some stipulation in favor of a third person, he may demand its fulfilment provided he communicated his acceptance to the obligor before its revocation. A mere incidental benefit or interest of a person is not sufficient. **The contracting parties must have clearly and deliberately conferred a favor upon a third person.** [Emphasis supplied.]

The NPC's assumption of tax liability under Article 11.1 of the ECA does not appear, however, to be in any way for the benefit of the Municipality of Pagbilao and the Province of Quezon. In fact, if the NPC theory of the case were to be followed, the NPC's assumption of tax liability will work against the interests of these LGUs. Besides, based on the objectives of the BOT Law[24] that underlie the parties' BOT agreement,[25] the assumption of taxes clause is an incentive for private corporations to take part and invest in Philippine industries. Thus, the principle of relativity of contracts applies with full force in the relationship between Mirant and NPC, on the one hand, and the respondent LGUs, on the other.

To reiterate, only the parties to the ECA agreement can exact and demand the enforcement of the rights and obligations it established – only Mirant can demand compliance from the NPC for the payment of the real property tax the NPC assumed to pay. The local government units (the Municipality of Pagbilao and the Province of Quezon), as third parties to the ECA, cannot demand payment from the NPC on the basis of Article 11.1 of the ECA alone. *Corollarily, the local government units can neither be compelled to recognize the protest of a tax assessment from the NPC, an entity against whom it cannot enforce the tax liability.*

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[24] Republic Act No. 7718, as amended.

[25] SEC. 1. *Declaration of Policy*. — It is the declared policy of the State to recognize the indispensable role of the private sector as the main engine for national growth and development and **provide the most appropriate incentives to mobilize private resources for the purpose of financing the construction, operation and maintenance of infrastructure and development projects** normally financed and undertaken by the Government. Such incentives, aside from financial incentives as provided by law, shall include providing a climate of minimum government regulations and procedures and specific government undertakings in support of the private sector. [Emphasis supplied.]

The test of exemption is the nature of the use, not ownership, of the subject machineries

At any rate, the NPC's claim of tax exemptions is completely without merit. To successfully claim exemption under Section 234(c) of the LGC, the claimant must prove two elements:

a. the machineries and equipment are ***actually, directly, and exclusively used by*** local water districts and ***government-owned or controlled corporations***; and

b. the local water districts and government-owned and controlled corporations claiming exemption must be engaged in the supply and distribution of water and/or the generation and transmission of electric power.

As applied to the present case, the government-owned or controlled corporation claiming exemption must be the entity actually, directly, and exclusively using the real properties, and the use must be devoted to the generation and transmission of electric power. Neither the NPC nor Mirant satisfies both requirements. Although the plant's machineries are devoted to the generation of electric power, by the NPC's own admission and as previously pointed out, Mirant – a private corporation – uses and operates them. That Mirant operates the machineries solely in compliance with the will of the NPC only underscores the fact that NPC does not *actually, directly, and exclusively use* them. The machineries must be actually, directly, and exclusively used by the government-owned or controlled corporation for the exemption under Section 234(c) to apply.[26]

Nor will NPC find solace in its claim that it utilizes all the power plant's generated electricity in supplying the power needs of its customers. Based on the clear wording of the law, it is the machineries that are exempted from the payment of real property tax, not the water or electricity that these machineries generate and distribute.[27]

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[26] *Supra* note 8.

[27] See *Department of Agrarian Reform v. Department of Education, Culture and Sports*, G.R. No. 158228, March 23, 2004, 426 SCRA 217.

Even the NPC's claim of beneficial ownership is unavailing. The test of exemption is the use, not the ownership of the machineries devoted to generation and transmission of electric power.[28] The nature of the NPC's ownership of these machineries only finds materiality in resolving the NPC's claim of legal interest in protesting the tax assessment on Mirant. As we discussed above, this claim is inexistent for tax protest purposes.

Lastly, from the points of view of essential fairness and the integrity of our tax system, we find it essentially wrong to allow the NPC to assume in its BOT contracts the liability of the other contracting party for taxes that the government can impose on that other party, and at the same time allow NPC to turn around and say that no taxes should be collected because the NPC is tax-exempt as a government-owned and controlled corporation. We cannot be a party to this kind of arrangement; for us to allow it without congressional authority is to intrude into the realm of policy and to debase the tax system that the Legislature established. We will then also be grossly unfair to the people of the Province of Quezon and the Municipality of Pagbilao who, by law, stand to benefit from the tax provisions of the LGC.

WHEREFORE, we *DENY* the National Power Corporation's petition for review on *certiorari*, and *AFFIRM* the decision of the Court of Tax Appeals *en banc* dated February 21, 2006. Costs against the petitioner.

SO ORDERED.

Quisumbing (Chairperson), Carpio Morales, Chico-Nazario,[*] and *Leonardo-de Castro,*[**] *JJ.,* concur.

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[28] See *Mactan-Cebu International Airport Authority v. Marcos,* G.R. No. 120082, September 11, 1996, 261 SCRA 667.

[*] 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

[G.R. No. 175352. July 15, 2009]

DANTE V. LIBAN, REYNALDO M. BERNARDO, and SALVADOR M. VIARI, *petitioners, vs.* **RICHARD J. GORDON,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *QUO WARRANTO*; COMMENCEMENT OF ACTION BY AN INDIVIDUAL; THE PERSON INSTITUTING *QUO WARRANTO* IN HIS OWN BEHALF MUST CLAIM AND BE ABLE TO SHOW THAT HE IS ENTITLED TO THE OFFICE IN DISPUTE.— *Quo warranto* is generally commenced by the Government as the proper party plaintiff. However, under Section 5, Rule 66 of the Rules of Court, an individual may commence such an action if he claims to be entitled to the public office allegedly usurped by another, in which case he can bring the action in his own name. The person instituting *quo warranto* proceedings in his own behalf must claim and be able to show that he is entitled to the office in dispute, otherwise the action may be dismissed at any stage. In the present case, petitioners do not claim to be entitled to the Senate office of respondent. Clearly, petitioners have no standing to file the present petition.

2. POLITICAL LAW; CONSTITUTIONAL LAW; CONSTITUTION; EXECUTIVE DEPARTMENT; OFFICIALS AND EMPLOYEES THEREIN; THE PHILIPPINE NATIONAL RED CROSS CHAIRMAN IS NOT AN OFFICIAL OR EMPLOYEE OF THE EXECUTIVE BRANCH.— Under Section 16, Article VII of the Constitution, the President appoints all officials and employees in the Executive branch whose appointments are vested in the President by the Constitution or by law. The President also appoints those whose appointments are not otherwise provided by law. Under this Section 16, the law may also authorize the "heads of departments, agencies, commissions, or boards" to appoint officers lower in rank than such heads of departments, agencies, commissions or boards. x x x The President does not appoint the Chairman

of the PNRC. Neither does the head of any department, agency, commission or board appoint the PNRC Chairman. Thus, the PNRC Chairman is not an official or employee of the Executive branch since his appointment does not fall under Section 16, Article VII of the Constitution. Certainly, the PNRC Chairman is not an official or employee of the Judiciary or Legislature. This leads us to the obvious conclusion that the PNRC Chairman is not an official or employee of the Philippine Government. **Not being a government official or employee, the PNRC Chairman, as such, does not hold a government office or employment.**

3. ID.; ID.; ID.; ID.; THE PRESIDENT; THE POWER OF CONTROL; CANNOT BE EXERCISED OVER THE PHILIPPINE NATIONAL RED CROSS.— Under Section 17, Article VII of the Constitution, the President exercises control over **all** government offices in the Executive branch. **If an office is legally not under the control of the President, then such office is not part of the Executive branch.** x x x An overwhelming four-fifths majority of the PNRC Board are private sector individuals elected to the PNRC Board by the private sector members of the PNRC. The PNRC Board exercises all corporate powers of the PNRC. The PNRC is controlled by private sector individuals. Decisions or actions of the PNRC Board are not reviewable by the President. **The President cannot reverse or modify the decisions or actions of the PNRC Board. Neither can the President reverse or modify the decisions or actions of the PNRC Chairman.** It is the PNRC Board that can review, reverse or modify the decisions or actions of the PNRC Chairman. This proves again that the office of the PNRC Chairman is a private office, not a government office.

4. ID.; ADMINISTRATIVE LAW; ADMINISTRATIVE AGENCIES; GOVERNMENT-OWNED OR CONTROLLED CORPORATIONS; THE PHILIPPINE NATIONAL RED CROSS IS A PRIVATELY OWNED, PRIVATELY FUNDED AND PRIVATELY RUN CHARITABLE ORGANIZATION, NOT A GOVERNMENT-OWNED OR CONTROLLED CORPORATION.— The PNRC is not government-owned but privately owned. **The vast majority of the thousands of PNRC members are private individuals, including students.** Under the PNRC Charter, those who contribute to the annual fund campaign of the PNRC are entitled to membership in the PNRC for one year. Thus, any one between 6 and 65 years of age can

be a PNRC member for one year upon contributing ₱35, ₱100, ₱300, ₱500 or ₱1,000 for the year. Even foreigners, whether residents or not, can be members of the PNRC. Section 5 of the PNRC Charter, as amended by Presidential Decree No. 1264, reads: SEC. 5. Membership in the Philippine National Red Cross shall be open to the entire population in the Philippines regardless of citizenship. Any contribution to the Philippine National Red Cross Annual Fund Campaign shall entitle the contributor to membership for one year and said contribution shall be deductible in full for taxation purposes. Thus, the PNRC is a privately owned, privately funded, and privately run charitable organization. The PNRC is not a government-owned or controlled corporation.

5. ID.; ID.; ID.; ID.; NATURE.— A government-owned or controlled corporation must be **owned** by the government, and in the case of a stock corporation, at least a majority of its capital stock must be owned by the government. In the case of a non-stock corporation, by analogy at least a majority of the members must be government officials holding such membership by appointment or designation by the government. Under this criterion, x x x the government does not own or control PNRC.

6. ID.; CONSTITUTIONAL LAW; CONSTITUTION; NATIONAL ECONOMY AND PATRIMONY; CONSTITUTIONAL PROHIBITION AGAINST THE CREATION OF PRIVATE CORPORATIONS BY SPECIAL CHARTERS; VIOLATED BY THE PHILIPPINE NATIONAL RED CROSS CHARTER; EFFECT; EXPLAINED.— [A]lthough the PNRC is created by a special charter, it cannot be considered a government-owned or controlled corporation in the absence of the essential elements of ownership and control by the government. In creating the PNRC as a corporate entity, Congress was in fact creating a private corporation. However, the constitutional prohibition against the creation of private corporations by special charters provides no exception even for non-profit or charitable corporations. Consequently, the PNRC Charter, insofar as it creates the PNRC as a private corporation and grants it corporate powers, is void for being unconstitutional. Thus, Sections 1, 2, 3, 4(a), 5, 6, 7, 8, 9, 10, 11, 12, and 13 of the PNRC Charter, as amended, are void. The other provisions of the PNRC Charter remain valid as they can be considered as a recognition by the State that the unincorporated PNRC is

the local National Society of the International Red Cross and Red Crescent Movement, and thus entitled to the benefits, exemptions and privileges set forth in the PNRC Charter. The other provisions of the PNRC Charter implement the Philippine Government's treaty obligations under Article 4(5) of the Statutes of the International Red Cross and Red Crescent Movement, which provides that to be recognized as a National Society, the Society must be "duly recognized by the legal government of its country on the basis of the Geneva Conventions and of the national legislation as a voluntary aid society, auxiliary to the public authorities in the humanitarian field."

NACHURA*, J., dissenting opinion:*

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; PROHIBITION; PETITION IN CASE AT BAR SHOULD BE TREATED AS ONE FOR PROHIBITION.— I submit that the present petition should be treated as one for **prohibition** rather than for ***quo warranto***. In the main, *the petitioners seek from this Court the declaration that Senator Gordon has forfeited his seat in the Senate, and the consequent proscription from further acting or representing himself as a Senator and from receiving the salaries, emoluments, compensations, privileges and benefits thereof.* Hence, **the remedy sought is preventive and restrictive—an injunction against an alleged continuing violation of the fundamental law. Furthermore, the petitioners raise a constitutional issue,** *without claiming any entitlement to either the Senate seat or the chairmanship of PNRC*. Considering that the issue involved is of fundamental constitutional significance and of paramount importance, *i.e.*, whether the Senator continues to commit an infringement of the Constitution by holding two positions claimed to be incompatible, **the Court has full authority, nay the bounden duty, to treat the vaguely worded petition as one for prohibition and assume jurisdiction.**

2. POLITICAL LAW; CONSTITUTIONAL LAW; CONSTITUTION; JUDICIAL DEPARTMENT; JUDICIAL REVIEW; *LOCUS STANDI*; PETITIONERS, AS CITIZENS OF THE REPUBLIC AND BY BEING TAXPAYERS, HAVE *LOCUS STANDI* TO INSTITUTE THE INSTANT CASE.— Petitioners, as citizens of the Republic and by being taxpayers, have *locus standi* to institute the instant case. *Garcillano v. the House of*

Representatives Committees on Public Information, Public Order and Safety, National Defense and Security, Information and Communications Technology, and Suffrage and Electoral Reforms echoes the current policy of the Court, as laid down in *Chavez v. Gonzales*, to disallow procedural barriers to serve as impediments to addressing and resolving serious legal questions that greatly impact on public interest. This is in keeping with the Court's responsibility under the Constitution to determine whether or not other branches of government have kept themselves within the limits of the Constitution and the laws, and that they have not abused the discretion given them. Finally, x x x petitioners advance a constitutional issue which deserves the attention of this Court in view of its seriousness, novelty and weight as precedent. Considering that Senator Gordon is charged with continuously violating the Constitution by holding incompatible offices, the institution of the instant action by the petitioners is proper.

3. ID.; ID.; ID.; NATIONAL ECONOMY AND PATRIMONY; CLASSES OF CORPORATIONS; DISTINCTIONS.— Delineating the nature of a GOCC, compared to a private corporation, Justice Carpio explains this inviolable rule in *Feliciano v. Commission on Audit* in this wise: We begin by explaining the general framework under the fundamental law. The Constitution recognizes two classes of corporations. The first refers to private corporations created under a general law. The second refers to government-owned or controlled corporations created by special charters. Section 16, Article XII of the Constitution provides: Section 16. The Congress shall not, except by general law, provide for the formation, organization, or regulation of private corporations. Government-owned or controlled corporations may be created or established by special charters in the interest of the common good and subject to the test of economic viability. The Constitution emphatically prohibits the creation of private corporations except by a general law applicable to citizens. The purpose of this constitutional provision is to ban private corporations created by special charters, which historically gave certain individuals, families or groups special privileges denied to other citizens. **In short, Congress cannot enact a law creating a private corporation with a special charter. Such legislation would be unconstitutional.** Private corporations may exist only under a general law. If the corporation is private, it must

necessarily exist under a general law. **Stated differently, only corporations created under a general law can qualify as private corporations.** Under existing laws, that general law is the Corporation Code, except that the Cooperative Code governs the incorporation of cooperatives. The Constitution authorizes Congress to create government-owned or controlled corporations through special charters. **Since private corporations cannot have special charters, it follows that Congress can create corporations with special charters only if such corporations are government-owned or controlled.** Reason dictates that since no private corporation can have a special charter, it follows that Congress can create corporations with special charters only if such corporations are government-owned or controlled. To hold otherwise would run directly against our fundamental law or, worse, authorize implied amendment to it, which this Court cannot allow.

4. ID.; ADMINISTRATIVE LAW; ADMINISTRATIVE AGENCIES; GOVERNMENT-OWNED OR CONTROLLED CORPORATIONS; THE PHILIPPINE NATIONAL RED CROSS, BEING INCORPORATED UNDER A SPECIAL LAW, IS A GOVERNMENT-OWNED OR CONTROLLED CORPORATION.— The PNRC was incorporated under R.A. No. 95, a special law. Following the logic in *Feliciano,* it cannot be anything but a GOCC. R.A. No. 95 has undergone amendment through the years. Did the amendment of the PNRC Charter have the effect of transforming it into a private corporation? In *Camporedondo v. National Labor Relations Commission,* we answered this in the negative. The Court's ruling in that case, reiterated in *Baluyot v. Holganza,* is direct, definite and clear, *viz:* Resolving the issue set out in the opening paragraph of this opinion, we rule that the Philippine National Red Cross (PNRC) is a government owned and controlled corporation, with an original charter under Republic Act No. 95, as amended. The test to determine whether a corporation is government owned or controlled, or private in nature is simple. Is it created by its own charter for the exercise of a public function, or by incorporation under the general corporation law? Those with special charters are government corporations subject to its provisions, and its employees are under the jurisdiction of the Civil Service Commission, and are compulsory members of the Government Service Insurance System. The PNRC was not "impliedly converted into a private corporation" simply because

its charter was amended to vest in it the authority to secure loans, be exempted from payment of all duties, taxes, fees and other charges of all kinds on all importations and purchases for its exclusive use, on donations for its disaster relief work and other services and in its benefits and fund raising drives and be allotted one lottery draw a year by the Philippine Charity Sweepstakes Office for the support of its disaster relief operation in addition to its existing lottery draws for blood programs.

5. ID.; ID.; ID.; ID.; DEFINED.— In an effort to avoid the inescapable command of *Camporedondo*, the *ponencia* asserts that the decision has failed to consider the definition of a GOCC under Section 2 (13) of the Introductory Provisions of Executive Order No. 292 (Administrative Code of 1987), which provides: SEC. 2. *General Terms Defined*. – x x x (13) *Government-owned or controlled corporation* refers to any agency organized as a stock or non-stock corporation, vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the Government directly or through its instrumentalities either wholly, or, where applicable as in the case of stock corporations, to the extent of at least fifty-one (51) per cent of its capital stock: *Provided*, That **government-owned or controlled corporations may be further categorized** by the Department of the Budget, the Civil Service Commission, and the Commission on Audit for purposes of the exercise and discharge of their respective powers, functions and responsibilities with respect to such corporations. The *ponencia* then argues that, based on the criterion in the cited provision, PNRC is not owned or controlled by the government and, thus, is not a GOCC. I respectfully differ. The quoted Administrative Code provision does not pronounce a definition of a GOCC that strays from Section 16, Article XII of the Constitution. As explained in *Philippine National Construction Corporation v. Pabion, et al.*, it merely declares that a GOCC may either be a stock or non-stock corporation, or that it "may be further categorized," suggesting that the definition provided in the Administrative Code is broad enough to admit of other distinctions as to the kinds of GOCCs. Rather, crucial in this definition is the reference to the corporation being **"vested with functions relating to public needs whether governmental or proprietary."** When we relate this to the PNRC Charter, as amended, we note that Section 1 of

the charter starts with the phrase, **"(T)here is hereby created in the Republic of the Philippines a body corporate and politic to be the voluntary organization officially designated to assist the Republic of the Philippines in discharging the obligations set forth in the Geneva Conventions** x x x." It is beyond cavil that **the obligations of the Republic of the Philippines set forth in the Geneva Conventions are *public or governmental* in character.** If the PNRC is "officially designated to assist the Republic," then the PNRC is, perforce, engaged in the performance of the government's public functions.

6. ID.; ID.; ID.; GOVERNMENT INSTRUMENTALITIES; THE PHILIPPINE NATIONAL RED CROSS IS, AT THE VERY LEAST, AN INSTRUMENTALITY OF THE GOVERNMENT.— Further, applying the definition of terms used in the Administrative Code of 1987, as Justice Carpio urges this Court to do, will lead to the inescapable conclusion that PNRC is an instrumentality of the government. Section 2(10) of the said code defines a government instrumentality as: (10) *Instrumentality* refers to any agency of the National Government not integrated within the department framework, **vested with special functions or jurisdiction by law, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy, usually through a charter.** This term includes regulatory agencies, chartered institutions and government-owned or controlled corporations. The PNRC is vested with the special function of assisting the Republic of the Philippines in discharging its obligations under the Geneva Conventions. It is endowed with corporate powers. It administers special funds—the contributions of its members, the aid given by the government, the support extended to it by the Philippine Charity Sweepstakes Office (PCSO) in terms of allotment of lottery draws. It enjoys operational autonomy, as emphasized by Justice Carpio himself. And all these attributes exist by virtue of its charter.

7. ID.; ID.; ID.; ID.; THE FACT THAT THE PHILIPPINE NATIONAL RED CROSS IS A GOVERNMENT INSTRUMENTALITY DOES NOT AFFECT ITS AUTONOMY AND OPERATIONS.— Significantly, in the United States, the ANRC, the precursor of the PNRC and likewise a member of the International Federation of Red Cross and Red Crescent Societies, is considered as a **federal**

instrumentality. x x x Interestingly, while the United States considers the ANRC as its arm and the US courts uphold its status as a federal instrumentality, ANRC remains an independent, volunteer-led organization that works closely with the ICRC on matters of international conflict and social, political, and military unrest. There is, therefore, no sufficient basis for Justice Carpio to assume that if this Court will consider PNRC as a GOCC, then "*it cannot merit the trust of all and cannot effectively carry out its mission as a National Red Cross Society*." Let it be stressed that, in much the same way as the ANRC, the PNRC has been chartered and incorporated by the Philippine Government to aid it in the fulfillment of its obligations under the Geneva Convention. The President of the Republic appoints six of the 36 PNRC governors. Though it depends primarily on voluntary contributions for its funding, PNRC receives financial assistance not only from the National Government and the PCSO but also through the local government units. PNRC further submits to the President an annual report containing its activities and showing its financial condition, as well as the receipts and disbursements. PNRC has further been recognized by the Philippine Government to be an essential component in its international and domestic operation. There is no doubt therefore that PNRC is a GOCC or, if not, at least a government instrumentality. The fact that the Philippine or the American National Red Cross is a governmental instrumentality does not affect its autonomy and operation in conformity with the Fundamental Principles of the International Red Cross. The PNRC, like the ANRC, remains autonomous, neutral and independent from the Government, and vice versa, consonant with the principles laid down in the Geneva Convention.

8. ID.; CONSTITUTIONAL LAW; CONSTITUTION; NATIONAL ECONOMY AND PATRIMONY; CONSTITUTIONAL PROSCRIPTION AGAINST THE CREATION OF PRIVATE CORPORATIONS BY SPECIAL LAW; NOT VIOLATED BY THE PHILIPPINE NATIONAL RED CROSS CHARTER; EXPLAINED.— Considering that the PNRC is not a private corporation, but a GOCC or a government instrumentality, then its charter does not violate the constitutional provision that Congress cannot, except by a general law, provide for the formation, organization or regulation of private corporations, unless such corporations are owned or controlled by the Government. We have already settled this issue in *Camporedondo*

and in *Baluyot*. Let it be emphasized that, in those cases, this Court has found nothing wrong with the PNRC Charter. We have simply applied the Constitution, and in *Feliciano*, this Court has explained the meaning of the constitutional provision. I respectfully submit that we are not prepared to reverse the ruling of this Court in the said cases. To rule otherwise will create an unsettling ripple effect in numerous decisions of this Court, including those dealing with the jurisdiction of the Civil Service Commission (CSC) and the authority of the Commission on Audit (COA), among others. Furthermore, to subscribe to the proposition that Section 1 of the PNRC Charter, which deals with the creation and incorporation of the organization, is invalid for being violative of the aforesaid constitutional proscription, but the rest of the provisions in the PNRC Charter remains valid, is to reach an absurd situation in which obligations are imposed on and a framework for its operation is laid down for a legally non-existing entity. x x x Sections 2 to 17 of R.A. No. 95, as amended, are not separable from Section 1, the provision creating and incorporating the PNRC, and cannot, by themselves, stand independently as law. The PNRC Charter obviously does not contain a separability clause.

9. ID.; ID.; CONSTITUTIONALITY OF STATUTES; ALL REASONABLE DOUBTS SHOULD BE RESOLVED IN FAVOR OF THE CONSTITUTIONALITY OF A STATUTE.— Settled is the doctrine that all reasonable doubts should be resolved in favor of the constitutionality of a statute. The presumption is that the legislature intended to enact a valid, sensible and just law and one which operates no further than may be necessary to effectuate the specific purpose thereof. Justice Carpio, in *Kapisanan ng mga Kawani ng Energy Regulatory Board v. Barin*, even echoes the principle that "to justify the nullification of a law, there must be a clear and unequivocal breach of the Constitution." Here, as in *Camporedondo* and *Baluyot*, there is no clear showing that the PNRC Charter runs counter to the Constitution. And, again in the same tone as in *Montesclaros v. Commission on Elections*, "[the parties] are not even assailing the constitutionality of [the PNRC Charter]." A becoming courtesy to a co-equal branch should thus impel this Court to refrain from unceremoniously invalidating a legislative act.

10. ID.; ID.; CONSTITUTION; LEGISLATIVE DEPARTMENT; CONSTITUTIONAL PROSCRIPTION ON THE HOLDING OF MULTIPLE OFFICES; EXCEPTION.— Section 13, Article VI of the Constitution explicitly provides that "no Senator or Member of the House of Representatives may hold any other office or employment in the government, or any subdivision, agency or instrumentality thereof, including [GOCCs] or their subsidiaries, during his term without forfeiting his seat." x x x There is no doubt that the language in Section 13, Article VI is unambiguous; it requires no in-depth construction. However, as the constitutional provision is worded at present, the then recognized exception adverted to in *Adaza*, *i.e.*, offices of prime minister and cabinet member, no longer holds true given the reversion to the presidential system and a bicameral Congress in the 1987 Constitution. There remains, however, a single exception to the rule. *Civil Liberties Union v. Executive Secretary*, reiterated in the fairly recent *Public Interest Center, Inc. v. Elma*, recognizes that a position held in an *ex officio* capacity does not violate the constitutional proscription on the holding of multiple offices. Interpreting the equivalent section in Article VII on the Executive Department, the Court has decreed in *Civil Liberties* that— The prohibition against holding dual or multiple offices or employment under Section 13, Article VII of the Constitution must not, however, be construed as applying to posts occupied by the Executive officials specified therein without additional compensation in an *ex officio* capacity as provided by law and as *required* by the primary functions of said officials' office. **The reason is that these posts do not comprise "any other office" within the contemplation of the constitutional prohibition but are properly an imposition of additional duties and functions on said officials.** x x x **The term *ex officio* means "from office; by virtue of office." It refers to an "authority derived from official character merely, not expressly conferred upon the individual character, but rather annexed to the official position." *Ex officio* likewise denotes an "act done in an official character, or as a consequence of office, and without any other appointment or authority other than that conferred by the office." An *ex officio* member of a board is one who is a member by virtue of his title to a certain office, and without further warrant or appointment.** x x x **The *ex officio* position being actually**

and in legal contemplation part of the principal office, it follows that the official concerned has no right to receive additional compensation for his services in the said position. The reason is that these services are already paid for and covered by the compensation attached to his principal office. x x x

11. ID.; ID.; ID.; ID.; ID.; ID.; THE CHAIRMANSHIP OF THE PHILIPPINE NATIONAL RED CROSS BOARD IS NOT HELD IN AN *EX OFFICIO* CAPACITY BY A MEMBER OF CONGRESS; CASE AT BAR.— In the instant case, x x x we must decide whether the respondent holds the chairmanship of PNRC in an *ex officio* capacity. Presidential Decree (P.D.) No. 1264, amending R.A. No. 95, provides for the composition of the governing authority of the PNRC and the manner of their appointment or election x x x. Nowhere does it say in the law that a member of the Senate can sit in an *ex officio* capacity as chairman of the PNRC Board of Governors. Chairmanship of the PNRC Board is neither an extension of the legislative position nor is it in aid of legislative duties. Likewise, the position is neither derived from one being a member of the Senate nor is it annexed to the Senatorial position. Stated differently, the PNRC chairmanship does not flow from one's election as Senator of the Republic. Applying *Civil Liberties*, we can then conclude that the chairmanship of the PNRC Board is not held in an *ex officio* capacity by a member of Congress. The fact that the PNRC Chairman of the Board is not appointed by the President and the fact that the former does not receive any compensation do not at all give the said position an *ex officio* character such that the occupant thereof becomes exempt from the constitutional proscription on the holding of multiple offices. As held in *Public Interest Center*, the absence of additional compensation being received by virtue of the second post is not enough, what matters is that the second post is held by virtue of the functions of the first office and is exercised in an *ex officio* capacity. Hence, Senator Gordon, in assuming the chairmanship of the PNRC Board of Governors while being a member of the Senate, is clearly violating Section 13, Article VI of the Constitution. While we can only hypothesize on the extent of the incompatibility between the two offices—as stated in petitioners' memorandum, Senator Gordon's holding of both offices may result in a divided focus of his legislative functions,

and in a conflict of interest as when a possible amendment of the PNRC Charter is lobbied in Congress or when the PNRC and its officials become subjects of legislative inquiries. Let it be stressed that, as in *Adaza*, the incompatibility herein present is one created by no less than the Constitution itself.

APPEARANCES OF COUNSEL

Castro Castro & Associates for petitioners.
Agabin Verzola Hermoso & Layaoen Law Offices for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition to declare Senator Richard J. Gordon (respondent) as having forfeited his seat in the Senate.

The Facts

Petitioners Dante V. Liban, Reynaldo M. Bernardo, and Salvador M. Viari (petitioners) filed with this Court a *Petition to Declare Richard J. Gordon as Having Forfeited His Seat in the Senate*. Petitioners are officers of the Board of Directors of the Quezon City Red Cross Chapter while respondent is Chairman of the Philippine National Red Cross (PNRC) Board of Governors.

During respondent's incumbency as a member of the Senate of the Philippines,[1] he was elected Chairman of the PNRC during the 23 February 2006 meeting of the PNRC Board of Governors. Petitioners allege that by accepting the chairmanship of the PNRC Board of Governors, respondent has ceased to be a member of the Senate as provided in Section 13, Article VI of the Constitution, which reads:

SEC. 13. No Senator or Member of the House of Representatives may hold any other office or employment in the Government, or any

[1] Respondent was elected as a Senator during the May 2004 elections.

subdivision, agency, or instrumentality thereof, including government-owned or controlled corporations or their subsidiaries, during his term without forfeiting his seat. Neither shall he be appointed to any office which may have been created or the emoluments thereof increased during the term for which he was elected.

Petitioners cite *Camporedondo v. NLRC*,[2] which held that the PNRC is a government-owned or controlled corporation. Petitioners claim that in accepting and holding the position of Chairman of the PNRC Board of Governors, respondent has automatically forfeited his seat in the Senate, pursuant to *Flores v. Drilon*,[3] which held that incumbent national legislators lose their elective posts upon their appointment to another government office.

In his Comment, respondent asserts that petitioners have no standing to file this petition which appears to be an action for *quo warranto*, since the petition alleges that respondent committed an act which, by provision of law, constitutes a ground for forfeiture of his public office. Petitioners do not claim to be entitled to the Senate office of respondent. Under Section 5, Rule 66 of the Rules of Civil Procedure, only a person claiming to be entitled to a public office usurped or unlawfully held by another may bring an action for *quo warranto* in his own name. If the petition is one for *quo warranto*, it is already barred by prescription since under Section 11, Rule 66 of the Rules of Civil Procedure, the action should be commenced within one year after the cause of the public officer's forfeiture of office. In this case, respondent has been working as a Red Cross volunteer for the past 40 years. Respondent was already Chairman of the PNRC Board of Governors when he was elected Senator in May 2004, having been elected Chairman in 2003 and re-elected in 2005.

Respondent contends that even if the present petition is treated as a taxpayer's suit, petitioners cannot be allowed to raise a constitutional question in the absence of any claim that they

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[2] 370 Phil. 901 (1999).

[3] G.R. No. 104732, 22 June 1993, 223 SCRA 568.

suffered some actual damage or threatened injury as a result of the allegedly illegal act of respondent. Furthermore, taxpayers are allowed to sue only when there is a claim of illegal disbursement of public funds, or that public money is being diverted to any improper purpose, or where petitioners seek to restrain respondent from enforcing an invalid law that results in wastage of public funds.

Respondent also maintains that if the petition is treated as one for declaratory relief, this Court would have no jurisdiction since original jurisdiction for declaratory relief lies with the Regional Trial Court.

Respondent further insists that the PNRC is not a government-owned or controlled corporation and that the prohibition under Section 13, Article VI of the Constitution does not apply in the present case since volunteer service to the PNRC is neither an office nor an employment.

In their Reply, petitioners claim that their petition is neither an action for *quo warranto* nor an action for declaratory relief. Petitioners maintain that the present petition is a taxpayer's suit questioning the unlawful disbursement of funds, considering that respondent has been drawing his salaries and other compensation as a Senator even if he is no longer entitled to his office. Petitioners point out that this Court has jurisdiction over this petition since it involves a legal or constitutional issue which is of transcendental importance.

The Issues

Petitioners raise the following issues:

1. Whether the Philippine National Red Cross (PNRC) is a government-owned or controlled corporation;
2. Whether Section 13, Article VI of the Philippine Constitution applies to the case of respondent who is Chairman of the PNRC and at the same time a Member of the Senate;
3. Whether respondent should be automatically removed as a Senator pursuant to Section 13, Article VI of the Philippine Constitution; and

4. Whether petitioners may legally institute this petition against respondent.[4]

The substantial issue boils down to whether the office of the PNRC Chairman is a government office or an office in a government-owned or controlled corporation for purposes of the prohibition in Section 13, Article VI of the Constitution.

The Court's Ruling

We find the petition without merit.

Petitioners Have No Standing to File this Petition

A careful reading of the petition reveals that it is an action for *quo warranto*. Section 1, Rule 66 of the Rules of Court provides:

> Section 1. Action by Government against individuals. – **An action for the usurpation of a public office**, position or franchise **may be commenced by a verified petition brought in the name of the Republic of the Philippines against**:
>
> (a) A person who usurps, intrudes into, or unlawfully holds or exercises a public office, position or franchise;
>
> (b) **A public officer who does or suffers an act which by provision of law, constitutes a ground for the forfeiture of his office**; or
>
> (c) An association which acts as a corporation within the Philippines without being legally incorporated or without lawful authority so to act. (Emphasis supplied)

Petitioners allege in their petition that:

> 4. Respondent became the Chairman of the PNRC when he was elected as such during the First Regular Luncheon-Meeting of the Board of Governors of the PNRC held on February 23, 2006, the minutes of which is hereto attached and made integral part hereof as Annex "A".
>
> 5. Respondent was elected as Chairman of the PNRC Board of Governors, during his incumbency as a Member of the House of Senate of the Congress of the Philippines, having been elected as such during the national elections last May 2004.

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[4] *Rollo,* p. 181.

6. Since his election as Chairman of the PNRC Board of Governors, which position he duly accepted, respondent has been exercising the powers and discharging the functions and duties of said office, despite the fact that he is still a senator.

7. It is the respectful submission of the petitioner[s] that **by accepting the chairmanship of the Board of Governors of the PNRC, respondent has ceased to be a Member of the House of Senate as provided in Section 13, Article VI of the Philippine Constitution**, x x x

x x x x x x x x x

10. It is respectfully submitted that **in accepting the position of Chairman of the Board of Governors of the PNRC on February 23, 2006, respondent has automatically forfeited his seat in the House of Senate and, therefore, has long ceased to be a Senator**, pursuant to the ruling of this Honorable Court in the case of *FLORES, ET AL. VS. DRILON AND GORDON*, G.R. No. 104732, x x x

11. Despite the fact that he is no longer a senator, respondent continues to act as such and still performs the powers, functions and duties of a senator, contrary to the constitution, law and jurisprudence.

12. Unless restrained, therefore, respondent will continue to falsely act and represent himself as a senator or member of the House of Senate, collecting the salaries, emoluments and other compensations, benefits and privileges appertaining and due only to the legitimate senators, to the damage, great and irreparable injury of the Government and the Filipino people.[5] (Emphasis supplied)

Thus, petitioners are alleging that by accepting the position of Chairman of the PNRC Board of Governors, respondent has automatically forfeited his seat in the Senate. In short, petitioners filed an action for usurpation of public office against respondent, a public officer who allegedly committed an act which constitutes a ground for the forfeiture of his public office. Clearly, such an action is for *quo warranto*, specifically under Section 1(b), Rule 66 of the Rules of Court.

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[5] *Id.* at 3-5.

Quo warranto is generally commenced by the Government as the proper party plaintiff. However, under Section 5, Rule 66 of the Rules of Court, an individual may commence such an action if he claims to be entitled to the public office allegedly usurped by another, in which case he can bring the action in his own name. The person instituting *quo warranto* proceedings in his own behalf must claim and be able to show that he is entitled to the office in dispute, otherwise the action may be dismissed at any stage.[6] In the present case, petitioners do not claim to be entitled to the Senate office of respondent. Clearly, petitioners have no standing to file the present petition.

Even if the Court disregards the infirmities of the petition and treats it as a taxpayer's suit, the petition would still fail on the merits.

PNRC is a Private Organization Performing Public Functions

On 22 March 1947, President Manuel A. Roxas signed Republic Act No. 95,[7] otherwise known as the PNRC Charter. The PNRC is a non-profit, donor-funded, voluntary, humanitarian organization, whose mission is to bring timely, effective, and compassionate humanitarian assistance for the most vulnerable without consideration of nationality, race, religion, gender, social status, or political affiliation.[8] The PNRC provides six major services: Blood Services, Disaster Management, Safety Services, Community Health and Nursing, Social Services and Voluntary Service.[9]

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[6] *The Secretary of Justice Cuevas v. Atty. Bacal*, 400 Phil. 1115 (2000); *Garcia v. Perez*, 188 Phil. 43 (1980).

[7] An Act to Incorporate the Philippine National Red Cross, as amended by Presidential Decree No. 1264.

[8] PNRC Website, http://www.redcross.org.ph/Site/PNRC/StrategicDirections.aspx (visited 25 March 2009).

[9] PNRC Website, http://www.redcross.org.ph/Site/PNRC/About.aspx (visited 25 March 2009).

The Republic of the Philippines, adhering to the Geneva Conventions, established the PNRC as a voluntary organization for the purpose contemplated in the Geneva Convention of 27 July 1929.[10] The Whereas clauses of the PNRC Charter read:

WHEREAS, there was developed at Geneva, Switzerland, on August 22, 1864, a convention by which the nations of the world were invited to join together in diminishing, so far lies within their power, the evils inherent in war;

WHEREAS, more than sixty nations of the world have ratified or adhered to the subsequent revision of said convention, namely the "Convention of Geneva of July 29 [sic], 1929 for the Amelioration of the Condition of the Wounded and Sick of Armies in the Field" (referred to in this Charter as the Geneva Red Cross Convention);

WHEREAS, the Geneva Red Cross Convention envisages the establishment in each country of a voluntary organization to assist in caring for the wounded and sick of the armed forces and to furnish supplies for that purpose;

WHEREAS, the Republic of the Philippines became an independent nation on July 4, 1946 and proclaimed its adherence to the Geneva Red Cross Convention on February 14, 1947, and by that action indicated its desire to participate with the nations of the world in mitigating the suffering caused by war and to establish in the Philippines a voluntary organization for that purpose as contemplated by the Geneva Red Cross Convention;

WHEREAS, there existed in the Philippines since 1917 a Charter of the American National Red Cross which must be terminated in view of the independence of the Philippines; and

WHEREAS, the volunteer organizations established in the other countries which have ratified or adhered to the Geneva Red Cross Convention assist in promoting the health and welfare of their people in peace and in war, and through their mutual assistance and cooperation directly and through their international organizations promote better understanding and sympathy among the peoples of the world. (Emphasis supplied)

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[10] Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field.

The PNRC is a member National Society of the International Red Cross and Red Crescent Movement (Movement), which is composed of the International Committee of the Red Cross (ICRC), the International Federation of Red Cross and Red Crescent Societies (International Federation), and the National Red Cross and Red Crescent Societies (National Societies). The Movement is united and guided by its seven Fundamental Principles:

1. HUMANITY – The International Red Cross and Red Crescent Movement, born of a desire to bring assistance without discrimination to the wounded on the battlefield, endeavors, in its international and national capacity, to prevent and alleviate human suffering wherever it may be found. Its purpose is to protect life and health and to ensure respect for the human being. It promotes mutual understanding, friendship, cooperation and lasting peace amongst all peoples.

2. IMPARTIALITY – It makes no discrimination as to nationality, race, religious beliefs, class or political opinions. It endeavors to relieve the suffering of individuals, being guided solely by their needs, and to give priority to the most urgent cases of distress.

3. **NEUTRALITY – In order to continue to enjoy the confidence of all, the Movement may not take sides in hostilities or engage at any time in controversies of a political, racial, religious or ideological nature.**

4. **INDEPENDENCE – The Movement is independent. The National Societies, while auxiliaries in the humanitarian services of their governments and subject to the laws of their respective countries, must always maintain their autonomy so that they may be able at all times to act in accordance with the principles of the Movement.**

5. VOLUNTARY SERVICE – It is a voluntary relief movement not prompted in any manner by desire for gain.

6. UNITY – There can be only one Red Cross or one Red Crescent Society in any one country. It must be open to all. It must carry on its humanitarian work throughout its territory.

7. UNIVERSALITY – The International Red Cross and Red Crescent Movement, in which all Societies have equal status and share equal responsibilities and duties in helping each other, is worldwide. (Emphasis supplied)

The Fundamental Principles provide a universal standard of reference for all members of the Movement. The PNRC, as a member National Society of the Movement, has the duty to uphold the Fundamental Principles and ideals of the Movement. In order to be recognized as a National Society, the PNRC has to be **autonomous** and must operate in conformity with the Fundamental Principles of the Movement.[11]

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[11] Article 4 of the Statutes of the International Red Cross and Red Crescent Movement reads:

ARTICLE 4
Conditions for Recognition of National Societies

In order to be recognized in terms of Article 5, paragraph 2 b) as a National Society, the Society shall meet the following conditions:

1. Be constituted on the territory of an independent State where the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field is in force.

2. Be the only National Red Cross or Red Crescent Society of the said State and be directed by a central body which shall alone be competent to represent it in its dealings with other components of the Movement.

3. Be duly recognized by the legal government of its country on the basis of the Geneva Conventions and of the national legislation as a voluntary aid society, auxiliary to the public authorities in the humanitarian field.

4. **Have an autonomous status which allows it to operation in conformity with the Fundamental Principles of the Movement.**

5. Use a name and distinctive emblem in conformity with the Geneva Conventions and their Additional Protocols.

6. Be so organized as to be able to fulfill the tasks defined in its own statutes, including the preparation in peace time for its statutory tasks in case of armed conflicts.

7. Extend its activities to the entire territory of the State.

8. Recruit its voluntary members and its staff without consideration of race, sex, class, religion or political opinions.

9. Adhere to the present Statutes, share in the fellowship which unites the components of the Movement and cooperate with them.

10. **Respect the Fundamental Principles of the Movement and be guided in its work by the principles of international humanitarian law.** (Emphasis supplied)

The reason for this autonomy is fundamental. To be accepted by warring belligerents as neutral workers during international or internal armed conflicts, the PNRC volunteers must not be seen as belonging to any side of the armed conflict. In the Philippines where there is a communist insurgency and a Muslim separatist rebellion, the PNRC cannot be seen as government-owned or controlled, and neither can the PNRC volunteers be identified as government personnel or as instruments of government policy. Otherwise, the insurgents or separatists will treat PNRC volunteers as enemies when the volunteers tend to the wounded in the battlefield or the displaced civilians in conflict areas.

Thus, the PNRC must not only be, but must also be seen to be, autonomous, neutral and independent in order to conduct its activities in accordance with the Fundamental Principles. The PNRC must not appear to be an instrument or agency that implements government policy; otherwise, it cannot merit the trust of all and cannot effectively carry out its mission as a National Red Cross Society.[12] It is imperative that the PNRC must be autonomous, neutral, and independent in relation to the State.

To ensure and maintain its autonomy, neutrality, and independence, the PNRC cannot be owned or controlled by the government. Indeed, the Philippine government does not own the PNRC. The PNRC does not have government assets and does not receive any appropriation from the Philippine Congress.[13] The PNRC is financed primarily by contributions from private individuals and private entities obtained through solicitation campaigns organized by its Board of Governors, as provided under Section 11 of the PNRC Charter:

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[12] The Fundamental Principles of the Red Cross and Red Crescent, ICRC Publication, p. 17.

[13] Although under Section 4(c) of the PNRC Charter, as amended, the PNRC is allotted one lottery draw yearly by the Philippine Charity Sweepstakes for the support of its disaster relief operations, in addition to its existing lottery draws for the Blood Program, such allotments are donations given to most charitable organizations.

SECTION 11. As a national voluntary organization, **the Philippine National Red Cross shall be financed primarily by contributions obtained through solicitation campaigns throughout the year which shall be organized by the Board of Governors and conducted by the Chapters in their respective jurisdictions.** These fund raising campaigns shall be conducted independently of other fund drives by other organizations. (Emphasis supplied)

The government does not control the PNRC. Under the PNRC Charter, as amended, **only six of the thirty members of the PNRC Board of Governors are appointed by the President of the Philippines.** Thus, twenty-four members, or four-fifths (4/5), of the PNRC Board of Governors are not appointed by the President. Section 6 of the PNRC Charter, as amended, provides:

SECTION 6. The governing powers and authority shall be vested in a Board of Governors composed of thirty members, six of whom shall be appointed by the President of the Philippines, eighteen shall be elected by chapter delegates in biennial conventions and the remaining six shall be selected by the twenty-four members of the Board already chosen. x x x.

Thus, of the twenty-four members of the PNRC Board, eighteen are elected by the chapter delegates of the PNRC, and six are elected by the twenty-four members already chosen — a select group where the private sector members have three-fourths majority. **Clearly, an overwhelming majority of four-fifths of the PNRC Board are elected or chosen by the private sector members of the PNRC**.

The PNRC Board of Governors, which exercises all corporate powers of the PNRC, elects the PNRC Chairman and all other officers of the PNRC. The incumbent Chairman of PNRC, respondent Senator Gordon, was elected, as all PNRC Chairmen are elected, by a **private sector-controlled PNRC Board** four-fifths of whom are private sector members of the PNRC. The PNRC Chairman is not appointed by the President or by any subordinate government official.

Under Section 16, Article VII of the Constitution,[14] the President appoints all officials and employees in the Executive branch whose appointments are vested in the President by the Constitution or by law. The President also appoints those whose appointments are not otherwise provided by law. Under this Section 16, the law may also authorize the "heads of departments, agencies, commissions, or boards" to appoint officers lower in rank than such heads of departments, agencies, commissions or boards.[15] In *Rufino v. Endriga*,[16] the Court explained appointments under Section 16 in this wise:

> Under Section 16, Article VII of the 1987 Constitution, the President appoints three groups of officers. The first group refers to the heads of the Executive departments, ambassadors, other public ministers and consuls, officers of the armed forces from the rank of colonel or naval captain, and other officers whose appointments are vested in the President by the Constitution. The second group refers to those whom the President may be authorized by law to appoint. The third group refers to all other officers of the Government whose appointments are not otherwise provided by law.

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[14] Section 16, Article VII of the Constitution provides:

> The President shall nominate and, with the consent of the Commission on Appointments, appoint the heads of the executive departments, ambassadors, other public ministers and consuls, or officers of the armed forces from the rank of colonel or naval captain, and other officers whose appointments are vested in him in this Constitution. He shall also appoint all other officers of the Government whose appointments are not otherwise provided for by law, and those whom he may be authorized by law to appoint. The Congress may, by law, vest the appointment of other officers lower in rank in the President alone, in the courts, or in the heads of departments, agencies, commissions, or boards.
>
> The President shall have the power to make appointments during the recess of the Congress, whether voluntary or compulsory, but such appointments shall be effective only until after disapproval by the Commission on Appointments or until the next adjournment of the Congress.

[15] *Endriga v. Rufino*, G.R. Nos. 139554 & 139565, 21 July 2006, 496 SCRA 13.

[16] *Id.* at 50-57.

Under the same Section 16, there is a fourth group of lower-ranked officers whose appointments Congress may by law vest in the heads of departments, agencies, commissions, or boards. x x x

x x x x x x x x x

In a department in the Executive branch, the head is the Secretary. The law may not authorize the Undersecretary, acting as such Undersecretary, to appoint lower-ranked officers in the Executive department. In an agency, the power is vested in the head of the agency for it would be preposterous to vest it in the agency itself. In a commission, the head is the chairperson of the commission. In a board, the head is also the chairperson of the board. In the last three situations, the law may not also authorize officers other than the heads of the agency, commission, or board to appoint lower-ranked officers.

x x x x x x x x x

The Constitution authorizes Congress to vest the power to appoint lower-ranked officers specifically in the "heads" of the specified offices, and in no other person. The word "heads" refers to the chairpersons of the commissions or boards and not to their members, for several reasons.

The President does not appoint the Chairman of the PNRC. Neither does the head of any department, agency, commission or board appoint the PNRC Chairman. Thus, the PNRC Chairman is not an official or employee of the Executive branch since his appointment does not fall under Section 16, Article VII of the Constitution. Certainly, the PNRC Chairman is not an official or employee of the Judiciary or Legislature. This leads us to the obvious conclusion that the PNRC Chairman is not an official or employee of the Philippine Government. **Not being a government official or employee, the PNRC Chairman, as such, does not hold a government office or employment.**

Under Section 17, Article VII of the Constitution,[17] the President exercises control over **all** government offices in the Executive

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[17] Section 17, Article VII of the Constitution provides:

The President shall have control of all the executive departments, bureaus, and offices. He shall ensure that the laws be faithfully executed.

branch. **If an office is legally not under the control of the President, then such office is not part of the Executive branch**. In *Rufino v. Endriga*,[18] the Court explained the President's power of control over all government offices as follows:

> Every government office, entity, or agency must fall under the Executive, Legislative, or Judicial branches, or must belong to one of the independent constitutional bodies, or must be a quasi-judicial body or local government unit. Otherwise, such government office, entity, or agency has no legal and constitutional basis for its existence.
>
> The CCP does not fall under the Legislative or Judicial branches of government. The CCP is also not one of the independent constitutional bodies. Neither is the CCP a quasi-judicial body nor a local government unit. Thus, the CCP must fall under the Executive branch. Under the Revised Administrative Code of 1987, any agency "not placed by law or order creating them under any specific department" falls "under the Office of the President."
>
> Since the President exercises control over "all the executive departments, bureaus, and offices," the President necessarily exercises control over the CCP which is an office in the Executive branch. In mandating that the President "shall have control of all executive . . . offices," Section 17, Article VII of the 1987 Constitution does not exempt any executive office — one performing executive functions outside of the independent constitutional bodies — from the President's power of control. There is no dispute that the CCP performs executive, and not legislative, judicial, or quasi-judicial functions.
>
> **The President's power of control applies to the acts or decisions of all officers in the Executive branch. This is true whether such officers are appointed by the President or by heads of departments, agencies, commissions, or boards. The power of control means the power to revise or reverse the acts or decisions of a subordinate officer involving the exercise of discretion.**

In short, the President sits at the apex of the Executive branch, and exercises "control of all the executive departments, bureaus, and offices." There can be no instance under the Constitution where an officer of the Executive branch is outside the control of the President. The Executive branch is unitary since there is only one President vested with executive power exercising control over the entire Executive

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[18] *Supra* note 15 at 63-65.

branch. Any office in the Executive branch that is not under the control of the President is a lost command whose existence is without any legal or constitutional basis. (Emphasis supplied)

An overwhelming four-fifths majority of the PNRC Board are private sector individuals elected to the PNRC Board by the private sector members of the PNRC. The PNRC Board exercises all corporate powers of the PNRC. The PNRC is controlled by private sector individuals. Decisions or actions of the PNRC Board are not reviewable by the President. **The President cannot reverse or modify the decisions or actions of the PNRC Board. Neither can the President reverse or modify the decisions or actions of the PNRC Chairman**. It is the PNRC Board that can review, reverse or modify the decisions or actions of the PNRC Chairman. This proves again that the office of the PNRC Chairman is a private office, not a government office.

Although the State is often represented in the governing bodies of a National Society, this can be justified by the need for proper coordination with the public authorities, and the government representatives may take part in decision-making within a National Society. However, the freely-elected representatives of a National Society's active members must remain in a large majority in a National Society's governing bodies.[19]

The PNRC is not government-owned but privately owned. **The vast majority of the thousands of PNRC members are private individuals, including students**. Under the PNRC Charter, those who contribute to the annual fund campaign of the PNRC are entitled to membership in the PNRC for one year. Thus, any one between 6 and 65 years of age can be a PNRC member for one year upon contributing ₱35, ₱100, ₱300, ₱500 or ₱1,000 for the year.[20] Even foreigners, whether residents or not, can be members of the PNRC. Section 5 of the PNRC Charter, as amended by Presidential Decree No. 1264,[21] reads:

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[19] *See* note 12 at 20.

[20] PNRC Website, http://202.57.124.158/Site/PNRC/membershipInfo.aspx#5 (visited 15 June 2009).

[21] Issued on 15 December 1977.

SEC. 5. Membership in the Philippine National Red Cross shall be open to the entire population in the Philippines regardless of citizenship. Any contribution to the Philippine National Red Cross Annual Fund Campaign shall entitle the contributor to membership for one year and said contribution shall be deductible in full for taxation purposes.

Thus, the PNRC is a privately owned, privately funded, and privately run charitable organization. The PNRC is not a government-owned or controlled corporation.

Petitioners anchor their petition on the 1999 case of *Camporedondo v. NLRC*,[22] which ruled that the PNRC is a government-owned or controlled corporation. In ruling that the PNRC is a government-owned or controlled corporation, the simple test used was whether the corporation was created by its own special charter for the exercise of a public function or by incorporation under the general corporation law. Since the PNRC was created under a special charter, the Court then ruled that it is a government corporation. However, the *Camporedondo* ruling failed to consider the definition of a government-owned or controlled corporation as provided under Section 2(13) of the Introductory Provisions of the Administrative Code of 1987:

SEC. 2. *General Terms Defined*. – x x x

(13) *Government-owned or controlled corporation* refers to any agency organized as a stock or non-stock corporation, vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the Government directly or through its instrumentalities either wholly, or where applicable as in the case of stock corporations, to the extent of at least fifty-one (51) percent of its capital stock: *Provided*, That government-owned or controlled corporations may be further categorized by the Department of the Budget, the Civil Service Commission, and the Commission on Audit for purposes of the exercise and discharge of their respective powers, functions and responsibilities with respect to such corporations. (Boldfacing and underscoring supplied)

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[22] *Supra* note 2.

A government-owned or controlled corporation must be **owned** by the government, and in the case of a stock corporation, at least a majority of its capital stock must be owned by the government. In the case of a non-stock corporation, by analogy at least a majority of the members must be government officials holding such membership by appointment or designation by the government. Under this criterion, and as discussed earlier, the government does not own or control PNRC.

The PNRC Charter is Violative of the Constitutional Proscription against the Creation of Private Corporations by Special Law

The 1935 Constitution, as amended, was in force when the PNRC was created by special charter on 22 March 1947. Section 7, Article XIV of the 1935 Constitution, as amended, reads:

> SEC. 7. The Congress shall not, except by general law, provide for the formation, organization, or regulation of private corporations, unless such corporations are owned or controlled by the Government or any subdivision or instrumentality thereof.

The subsequent 1973 and 1987 Constitutions contain similar provisions prohibiting Congress from creating private corporations except by general law. Section 1 of the PNRC Charter, as amended, creates the PNRC as a "body corporate and politic," thus:

> SECTION 1. **There is hereby created in the Republic of the Philippines a body corporate and politic to be the voluntary organization officially designated to assist the Republic of the Philippines in discharging the obligations set forth in the Geneva Conventions and to perform such other duties as are inherent upon a National Red Cross Society.** The national headquarters of this Corporation shall be located in Metropolitan Manila. (Emphasis supplied)

In *Feliciano v. Commission on Audit*,[23] the Court explained the constitutional provision prohibiting Congress from creating private corporations in this wise:

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[23] 464 Phil. 439 (2004).

We begin by explaining the general framework under the fundamental law. The Constitution recognizes two classes of corporations. The first refers to private corporations created under a general law. The second refers to government-owned or controlled corporations created by special charters. Section 16, Article XII of the Constitution provides:

> Sec. 16. The Congress shall not, except by general law, provide for the formation, organization, or regulation of private corporations. Government-owned or controlled corporations may be created or established by special charters in the interest of the common good and subject to the test of economic viability.

The Constitution emphatically prohibits the creation of private corporations except by general law applicable to all citizens. The purpose of this constitutional provision is to ban private corporations created by special charters, which historically gave certain individuals, families or groups special privileges denied to other citizens.

In short, **Congress cannot enact a law creating a private corporation with a special charter. Such legislation would be unconstitutional. Private corporations may exist only under a general law. If the corporation is private, it must necessarily exist under a general law.** Stated differently, only corporations created under a general law can qualify as private corporations. Under existing laws, the general law is the Corporation Code, except that the Cooperative Code governs the incorporation of cooperatives.

The Constitution authorizes Congress to create government-owned or controlled corporations through special charters. Since private corporations cannot have special charters, it follows that Congress can create corporations with special charters only if such corporations are government-owned or controlled.[24] (Emphasis supplied)

In *Feliciano*, the Court held that the Local Water Districts are government-owned or controlled corporations since they exist by virtue of Presidential Decree No. 198, which constitutes their special charter. The seed capital assets of the Local Water Districts, such as waterworks and sewerage facilities, were public property which were managed, operated by or under the control of the city, municipality or province before the assets were

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[24] *Id.* at 454-455.

transferred to the Local Water Districts. The Local Water Districts also receive subsidies and loans from the Local Water Utilities Administration (LWUA). In fact, under the 2009 General Appropriations Act,[25] the LWUA has a budget amounting to ₱400,000,000 for its subsidy requirements.[26] **There is no private capital invested in the Local Water Districts**. The capital assets and operating funds of the Local Water Districts all come from the government, either through transfer of assets, loans, subsidies or the income from such assets or funds.

The government also controls the Local Water Districts because the municipal or city mayor, or the provincial governor, appoints all the board directors of the Local Water Districts. Furthermore, the board directors and other personnel of the Local Water Districts are government employees subject to civil service laws and anti-graft laws. Clearly, the Local Water Districts are considered government-owned or controlled corporations not only because of their creation by special charter but also because the government in fact owns and controls the Local Water Districts.

Just like the Local Water Districts, the PNRC was created through a special charter. **However, unlike the Local Water Districts, the elements of government ownership and control are clearly lacking in the PNRC**. Thus, although the PNRC is created by a special charter, it cannot be considered a government-owned or controlled corporation in the absence of the essential elements of ownership and control by the government. In creating the PNRC as a corporate entity, Congress was in fact creating a private corporation. However, the constitutional prohibition against the creation of private corporations by special charters provides no exception even for non-profit or charitable corporations. Consequently, the PNRC Charter, insofar as it creates the PNRC as a private corporation and grants it corporate

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[25] Republic Act No. 9524.

[26] DBM Website, "http://www.dbm.gov.ph/GAA09/bsgc/C1.pdf" (visited 25 June 2009).

powers,[27] is void for being unconstitutional. Thus, Sections 1,[28] 2,[29] 3,[30] 4(a),[31] 5,[32] 6,[33] 7,[34] 8,[35] 9,[36] 10,[37] 11,[38] 12,[39] and 13[40] of the PNRC Charter, as amended, are void.

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[27] Section 36 of the Corporation Code enumerates the general powers of a corporation:

SEC. 36. *Corporate powers and capacity.* – Every corporation incorporated under this Code has the power and capacity:

1. To sue and be sued in its corporate name;

2. Of succession by its corporate name for the period of time stated in the articles of incorporation and the certificate of incorporation;

3. To adopt and use a corporate seal;

4. To amend its articles of incorporation in accordance with the provisions of this Code;

5. To adopt by-laws, not contrary to law, morals or public policy, and to amend or repeal the same in accordance with this Code;

6. In case of stock corporations, to issue or sell stocks to subscribers and to sell treasury stocks in accordance with the provisions of this Code; and to admit members to the corporation if it be a non-stock corporation;

7. To purchase, receive, take or grant, hold, convey, sell, lease, pledge, mortgage and otherwise deal with such real and personal property, including securities and bonds of other corporations, as the transaction of the lawful business of the corporation may reasonably and necessarily require, subject to the limitations prescribed by law and the Constitution;

8. To adopt any plan of merger or consolidation as provided in this Code;

9. To make reasonable donations, including those for the public welfare or for hospital, charitable, cultural, scientific, civic, or similar purposes: Provided, That no corporation, domestic or foreign, shall give donations in aid of any political party or candidate or for purposes of partisan political activity;

10. To establish pension, retirement and other plans for the benefit of its directors, trustees, officers and employees; and

11. To exercise such other powers as may be essential or necessary to carry out its purpose or purposes as stated in its articles of incorporation.

[28] SECTION 1. There is hereby created in the Republic of the Philippines a body corporate and politic to be the voluntary organization officially designated to assist the Republic of the Philippines in discharging the obligations set forth in the Geneva Conventions and to perform such other duties as are inherent upon a national Red Cross Society. The national headquarters of this Corporation shall be located in Metro Manila.

[29] SEC. 2. The name of this corporation shall be "The Philippine National Red Cross" and by that name shall have perpetual succession with the power to sue and be sued; to own and hold such real and personal estate as shall be deemed advisable and to accept bequests, donations and contributions of property of all classes for the purpose of this Corporation hereinafter set forth; to adopt a seal and to alter and destroy the same at pleasure; and to have the right to adopt and to use, in carrying out its purposes hereinafter designated, as an emblem and badge, a red Greek cross on a white ground, the same as has been described in the Geneva Conventions, and adopted by the several nations ratifying or adhering thereto; to ordain and establish by-laws and regulations not inconsistent with the laws of the Republic of the Philippines, and generally to do all such acts and things as may be necessary to carry into effect the provisions of this Act and promote the purposes of said organization; and the corporation hereby created is designated as the organization which is authorized to act in matters of relief under said Convention. In accordance with the Geneva Conventions, the issuance of the distinctive Red Cross emblem to medical units and establishments, personnel and materials neutralized in time of war shall be left to the military authorities. The red Greek cross on a white ground, as has been described by the Geneva Conventions is not, and shall not be construed as a religious symbol, and shall have equal efficacy and applicability to persons of all faiths, creeds and beliefs. The operational jurisdiction of the Philippine National Red Cross shall be over the entire territory of the Philippines.

[30] SEC. 3. That the purposes of this Corporation shall be as follows:

a. To provide volunteer aid to the sick and wounded of the armed forces in time of war, in accordance with the spirit of and under the conditions prescribed by the Geneva Conventions to which the Republic of the Philippines proclaimed its adherence;

b. For the purposes mentioned in the preceding sub-section, to perform all duties devolving upon the Corporation as a result of the adherence of the Republic of the Philippines to the said Convention;

c. To act in matters of voluntary relief and in accordance with the authorities of the armed forces as a medium of communication between the people of the Republic of the Philippines and their Armed Forces, in time of peace and in time of war, and to act in such matters between similar national societies of other governments and the Government and people and the Armed Forces of the Republic of the Philippines;

d. To establish and maintain a system of national and international relief in time of peace and in time of war and apply the same in meeting the emergency needs caused by typhoons, flood, fires, earthquakes, and other natural disasters and to devise and carry on measures for minimizing the suffering caused by such disasters;

e. To devise and promote such other services in time of peace and in time of war as may be found desirable in improving the health, safety and welfare of the Filipino people;

f. To devise such means as to make every citizen and/or resident of the Philippines a member of the Red Cross.

[31] SEC. 4. In furtherance of the purposes mentioned in the preceding sub-paragraphs, the Philippine National Red Cross shall:

a. Be authorized to secure loans from any financial institution which shall not exceed its budget of the previous year.

[32] SEC. 5. Membership in the Philippine National Red Cross shall be open to the entire population in the Philippines regardless of citizenship. Any contribution to the Philippine National Red Cross Annual Fund Campaign shall entitle the contributor to membership for one year and said contribution shall be deductible in full for taxation purposes.

[33] SEC. 6. The governing powers and authority shall be vested in the Board of Governors composed of thirty members, six of whom shall be appointed by the President of the Philippines, eighteen shall be elected by chapter delegates in biennial conventions and the remaining six shall be selected by the twenty-four members of the Board already chosen. At least one but not more than three of the Presidential appointees shall be chosen from the Armed Forces of the Philippines.

a. The term of office of all members of the Board shall be four years, including those appointed by the President of the Philippines, renewable at the pleasure of the appointing power or elective bodies.

b. Vacancies in the Board of Governors caused by death or resignation shall be filled by election by the Board of Governors at its next meeting, except that vacancies among the Presidential appointees shall be filled by the President.

[34] SEC. 7. The President of the Philippines shall be the Honorary President of the Philippine National Red Cross. The officers shall consist of a Chairman, a Vice-Chairman, a Secretary, a Treasurer, a Counselor, an Assistant Secretary and an Assistant Treasurer, all of whom shall be elected by the Board of Governors from among its membership for a term of two years and may be re-elected. The election of officers shall take place within sixty days after all the members of the Board of Governors have been chosen and have qualified.

[35] SEC. 8. The Biennial meeting of chapter delegates shall be held on such date and such place as may be specified by the Board of Governors to elect members of the Board of Governors and advice the Board of Governors on the activities of the Philippine National Red Cross; Provided, however, that during periods of great emergency, the Board of Governors in its discretion may determine that the best interest of the corporation shall be served by postponing such biennial meeting.

The other provisions[41] of the PNRC Charter remain valid as they can be considered as a recognition by the State that the unincorporated PNRC is the local National Society of the International Red Cross and Red Crescent Movement, and thus entitled to the benefits, exemptions and privileges set forth in the PNRC Charter. The other provisions of the PNRC Charter implement the Philippine Government's treaty obligations under Article 4(5) of the Statutes of the International Red Cross and Red Crescent Movement, which provides that to be recognized as a National Society, the Society must be "duly recognized by the legal government of its country on the basis of the Geneva Conventions and of the national legislation as a voluntary aid society, auxiliary to the public authorities in the humanitarian field."

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[36] SEC. 9. The power to ordain, adopt and amend by-laws and regulations shall be vested in the Board of Governors.

[37] SEC. 10. The members of the Board of Governors, as well as the officers of the corporation, shall serve without compensation. The compensation of the paid staff of the corporation shall be determined by the Board of Governors upon the recommendation of the Secretary General.

[38] SEC. 11. As a national voluntary organization, the Philippine National Red Cross shall be financed primarily by contributions obtained through solicitation campaigns throughout the year which shall be organized by the Board of Governors and conducted by the Chapters in their respective jurisdictions. These fund raising campaigns shall be conducted independently of other fund drives by other organizations.

[39] SEC. 12. The Board of Governors shall promulgate rules and regulations for the organization of local units of the Philippine National Red Cross to be known as Chapters. Said rules and regulations shall fix the relationship of the Chapters to the Corporation, define their territorial jurisdictions, and determine the number of delegates for each chapter based on population, fund campaign potentials and service needs.

[40] SEC. 13. The Corporation shall, at the end of every calendar year submit to the President of the Philippines an annual report containing the activities of the Corporation showing its financial condition, the receipts and disbursements.

[41] The valid provisions are Sections 4(b) and (c), 14, 15, 16, and 17:

SEC. 4. In furtherance of the purposes mentioned in the preceding sub-paragraphs, the Philippine National Red Cross shall:

In sum, we hold that the office of the PNRC Chairman is not a government office or an office in a government-owned or controlled corporation for purposes of the prohibition in Section 13, Article VI of the 1987 Constitution. However, since the PNRC Charter is void insofar as it creates the PNRC as a private corporation, the PNRC should incorporate under the Corporation Code and register with the Securities and Exchange Commission if it wants to be a private corporation.

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b. Be exempt from payment of all duties, taxes, fees, and other charges of all kinds on all importations and purchases for its exclusive use, on donations for its disaster relief work and other Red Cross services, and in its benefits and fund raising drives all provisions of law to the contrary notwithstanding.

c. Be allotted by the Philippine Charity Sweepstakes Office one lottery draw yearly for the support of its disaster relief operations in addition to its existing lottery draws for the Blood Program.

SEC. 14. It shall be unlawful for any person to solicit, collect or receive money, materials, or property of any kind by falsely representing or pretending himself to be a member, agent or representative of the Philippine National Red Cross.

SEC. 15. The use of the name Red Cross is reserved exclusively to the Philippine National Red Cross and the use of the emblem of the red Greek cross on a white ground is reserved exclusively to the Philippine National Red Cross, medical services of the Armed Forces of the Philippines and such other medical facilities or other institutions as may be authorized by the Philippine National Red Cross as provided under Article 44 of the Geneva Conventions. It shall be unlawful for any other person or entity to use the words Red Cross or Geneva Cross or to use the emblem of the red Greek cross on a white ground or any designation, sign, or insignia constituting an imitation thereof for any purpose whatsoever.

SEC. 16. As used in this Decree, the term person shall include any legal person, group, or legal entity whatsoever nature, and any person violating any section of this Article shall, upon conviction therefore be liable to a fin[e] of not less than one thousand pesos or imprisonment for a term not exceeding one year, or both, at the discretion of the court, for each and every offense. In case the violation is committed by a corporation or association, the penalty shall devolve upon the president, director or any other officer responsible for such violation.

SEC. 17. All acts or parts of acts which are inconsistent with the provisions of this Decree are hereby repealed.

WHEREFORE, we declare that the office of the Chairman of the Philippine National Red Cross is not a government office or an office in a government-owned or controlled corporation for purposes of the prohibition in Section 13, Article VI of the 1987 Constitution. We also declare that Sections 1, 2, 3, 4(a), 5, 6, 7, 8, 9, 10, 11, 12, and 13 of the Charter of the Philippine National Red Cross, or Republic Act No. 95, as amended by Presidential Decree Nos. 1264 and 1643, are *VOID* because they create the PNRC as a private corporation or grant it corporate powers.

SO ORDERED.

Puno, C.J., Quisumbing, Carpio Morales, Chico-Nazario, Velasco, Jr., and *Leonardo-de Castro, JJ.,* concur.

Ynares-Santiago, Brion, Peralta, and *Bersamin, JJ.*, join the dissenting opinion of *J.* Nachura.

Nachura, J., see dissenting opinion.

Corona, J., no part.

DISSENTING OPINION

NACHURA, *J.*:

I am constrained to register my dissent because the *ponencia* does not only endorse an unmistakably flagrant transgression of the Constitution but also unwittingly espouses the destruction of the Philippine National Red Cross (PNRC) as an institution. With all due respect, I disagree with the principal arguments advanced in the *ponencia* to justify Senator Richard J. Gordon's unconstitutional holding of the chairmanship of the PNRC Board of Governors while concurrently sitting as a member of the Senate of the Philippines.

Procedurally, I maintain that the petition is one for prohibition and that petitioners have standing to file the same. On the merits, I remain earnestly convinced that PNRC is a government owned or controlled corporation (GOCC), if not a government

instrumentality; that its charter does not violate the constitutional proscription against the creation of private corporations by special law; and that Senator Gordon's continuous occupancy of two incompatible positions is a clear violation of the Constitution.

Allow me to elucidate.

I.

The petition should be treated as one for prohibition; and petitioners have locus standi

I submit that the present petition should be treated as one for **prohibition** rather than for ***quo warranto*.** In the main, *the petitioners seek from this Court the declaration that Senator Gordon has forfeited his seat in the Senate, and the consequent proscription from further acting or representing himself as a Senator and from receiving the salaries, emoluments, compensations, privileges and benefits thereof.*[1] Hence, **the remedy sought is preventive and restrictive—an injunction against an alleged continuing violation of the fundamental law**. Furthermore, the petitioners raise a **constitutional issue**, *without claiming any entitlement to either the Senate seat or the chairmanship of PNRC.*

Considering that the issue involved is of fundamental constitutional significance and of paramount importance, *i.e.*, whether the Senator continues to commit an infringement of the Constitution by holding two positions claimed to be incompatible, **the Court has full authority, nay the bounden duty, to treat the vaguely worded petition as one for prohibition and assume jurisdiction**.[2]

Petitioners, as citizens of the Republic and by being taxpayers, have *locus standi* to institute the instant case. *Garcillano v.*

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[1] *Rollo,* pp. 3-5.

[2] See *Del Rosario v. Montaña*, G.R. No. 134433, May 28, 2004, 430 SCRA 109, 116; *Del Mar v. Philippine Amusement and Gaming Corp.*, 400 Phil. 307, 326-327; *Sen. Defensor-Santiago v. Guingona, Jr.*, 359 Phil. 276, 295-296 (1998).

the House of Representatives Committees on Public Information, Public Order and Safety, National Defense and Security, Information and Communications Technology, and Suffrage and Electoral Reforms[3] echoes the current policy of the Court, as laid down in *Chavez v. Gonzales*,[4] to disallow procedural barriers to serve as impediments to addressing and resolving serious legal questions that greatly impact on public interest. This is in keeping with the Court's responsibility under the Constitution to determine whether or not other branches of government have kept themselves within the limits of the Constitution and the laws, and that they have not abused the discretion given them.[5]

Finally, as aforementioned, petitioners advance a constitutional issue which deserves the attention of this Court in view of its seriousness, novelty and weight as precedent.[6] Considering that Senator Gordon is charged with continuously violating the Constitution by holding incompatible offices, the institution of the instant action by the petitioners is proper.

II.

A brief history of the PNRC

A historical account of the PNRC's creation is imperative in order to comprehend the nature of the institution and to put things in their proper perspective.

Even before its incorporation in 1947, the Red Cross, as an organization, was already in existence in the Philippines. Apolinario Mabini played an important role in the approval by the Malolos Republic, on February 17, 1899, of the Constitution of the National Association of the Red Cross. Appointed to

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[3] G.R. No. 170338, December 23, 2008.

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

[5] *Id.*

[6] *Garcillano v. The House of Representatives Committees on Public Information, Public Order and Safety, National Defense and Security, Information and Communications Technology, and Suffrage and Electoral Reforms, supra* note 3.

serve as its president was Hilario del Rosario de Aguinaldo. On August 29, 1900, International Delegate of Diplomacy Felipe Agoncillo met with International Committee of the Red Cross (ICRC) President Gustave Moynier to lobby for the recognition of the Filipino Red Cross Society and the application of the 1864 Geneva Convention to the country during the Filipino-American war.[7] The Geneva Convention of August 22, 1864 dealt mainly on the relief to wounded soldiers without any distinction as to nationality, on the neutrality and inviolability of medical personnel and medical establishments and units; and on the adoption of the distinctive sign of the red cross on a white ground by hospitals, ambulances and evacuation parties and personnel.[8]

On August 30, 1905, a Philippine branch of the American National Red Cross (ANRC) was organized. This was later officially recognized as an ANRC chapter on December 4, 1917. In 1934, President Manuel L. Quezon initiated the establishment of an independent Philippine Red Cross, but this did not materialize because the Commonwealth Government at that time could not ratify the Geneva Convention. During the Japanese occupation, a Japanese-controlled Philippine Red Cross was created to take care of internment camps in the country. After the liberation of Manila in 1945, local Red Cross officials and the ANRC undertook to reconstitute the organization.[9] The Republic of the Philippines became an independent nation on July 4, 1946, and proclaimed its adherence to the Geneva Convention on February 14, 1947. On March 22 of that year, the PNRC was officially created when President Manuel A. Roxas signed Republic Act (R.A.) No. 95.[10]

PNRC is a GOCC

Section 16, Article XII, of the Philippine Constitution, provides the inflexible imperative for the formation or organization of private corporations, as follows:

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[7] <http://www.redcross.org.ph/Site/PNRC/History.aspx> (visited July 9, 2009).

[8] <http://www.icrc.org/ihl.nsf/INTRO/120?OpenDocument> (visited July 9, 2009).

[9] *Supra* note 7.

[10] Entitled "An Act To Incorporate the Philippine National Red Cross."

Sec. 16. The Congress shall not, except by general law, provide for the formation, organization or regulation of private corporations. Government-owned or controlled corporations may be created or established by special charters in the interest of the common good and subject to the test of economic viability.

Delineating the nature of a GOCC, compared to a private corporation, Justice Carpio explains this inviolable rule in *Feliciano v. Commission on Audit*[11] in this wise:

We begin by explaining the general framework under the fundamental law. The Constitution recognizes two classes of corporations. The first refers to private corporations created under a general law. The second refers to government-owned or controlled corporations created by special charters. Section 16, Article XII of the Constitution provides:

> Section 16. The Congress shall not, except by general law, provide for the formation, organization, or regulation of private corporations. Government-owned or controlled corporations may be created or established by special charters in the interest of the common good and subject to the test of economic viability.

The Constitution emphatically prohibits the creation of private corporations except by a general law applicable to citizens. The purpose of this constitutional provision is to ban private corporations created by special charters, which historically gave certain individuals, families or groups special privileges denied to other citizens.

In short, Congress cannot enact a law creating a private corporation with a special charter. Such legislation would be unconstitutional. Private corporations may exist only under a general law. If the corporation is private, it must necessarily exist under a general law. **Stated differently, only corporations created under a general law can qualify as private corporations.** Under existing laws, that general law is the Corporation Code, except that the Cooperative Code governs the incorporation of cooperatives.

The Constitution authorizes Congress to create government-owned or controlled corporations through special charters. **Since private corporations cannot have special charters, it follows that**

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[11] 464 Phil. 439 (2004).

Congress can create corporations with special charters only if such corporations are government-owned or controlled.[12]

Reason dictates that since no private corporation can have a special charter, it follows that Congress can create corporations with special charters only if such corporations are government-owned or controlled.[13] To hold otherwise would run directly against our fundamental law or, worse, authorize implied amendment to it, which this Court cannot allow.

The PNRC was incorporated under R.A. No 95, a special law. Following the logic in *Feliciano,* it cannot be anything but a GOCC.

R.A. No. 95 has undergone amendment through the years.[14] Did the amendment of the PNRC Charter have the effect of transforming it into a private corporation?

In *Camporedondo v. National Labor Relations Commission,*[15] we answered this in the negative. The Court's ruling in that case, reiterated in *Baluyot v. Holganza*,[16] is direct, definite and clear, *viz:*

> Resolving the issue set out in the opening paragraph of this opinion, we rule that the Philippine National Red Cross (PNRC) is a government owned and controlled corporation, with an original charter under Republic Act No. 95, as amended. The test to determine whether a corporation is government owned or controlled, or private in nature is simple. Is it created by its own charter for the exercise of a public function, or by incorporation under the general corporation law? Those with special charters are government corporations subject to its provisions, and its employees are under the jurisdiction of the Civil Service Commission, and are compulsory members of the

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[12] *Id.* at 454-455; citations omitted and emphasis supplied.

[13] *Id.* at 455.

[14] The amendatory laws are Republic Act No. 855 (January 11, 1953), Republic Act No. 6373 (August 16, 1971) and Presidential Decree No. 1264 (December 15, 1977).

[15] 370 Phil. 901, 906 (1999).

[16] 382 Phil. 131 (2000).

Government Service Insurance System. The PNRC was not "impliedly converted into a private corporation" simply because its charter was amended to vest in it the authority to secure loans, be exempted from payment of all duties, taxes, fees and other charges of all kinds on all importations and purchases for its exclusive use, on donations for its disaster relief work and other services and in its benefits and fund raising drives and be allotted one lottery draw a year by the Philippine Charity Sweepstakes Office for the support of its disaster relief operation in addition to its existing lottery draws for blood programs.[17]

In an effort to avoid the inescapable command of *Camporedondo,* the *ponencia* asserts that the decision has failed to consider the definition of a GOCC under Section 2 (13) of the Introductory Provisions of Executive Order No. 292 (Administrative Code of 1987), which provides:

SEC. 2. *General Terms Defined*. – x x x

(13) *Government-owned or controlled corporation* refers to any agency organized as a stock or non-stock corporation, vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the Government directly or through its instrumentalities either wholly, or, where applicable as in the case of stock corporations, to the extent of at least fifty-one (51) per cent of its capital stock: *Provided*, That **government-owned or controlled corporations may be further categorized** by the Department of the Budget, the Civil Service Commission, and the Commission on Audit for purposes of the exercise and discharge of their respective powers, functions and responsibilities with respect to such corporations.[18]

The *ponencia* then argues that, based on the criterion in the cited provision, PNRC is not owned or controlled by the government and, thus, is not a GOCC.

I respectfully differ. The quoted Administrative Code provision does not pronounce a definition of a GOCC that strays from Section 16, Article XII of the Constitution. As explained in

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[17] *Id.* at 136-137.

[18] Emphasis supplied.

Philippine National Construction Corporation v. Pabion, et al.,[19] it merely declares that a GOCC may either be a stock or non-stock corporation, or that it "may be further categorized,"[20] suggesting that the definition provided in the Administrative Code is broad enough to admit of other distinctions as to the kinds of GOCCs.[21]

Rather, crucial in this definition is the reference to the corporation being **"vested with functions relating to public needs whether governmental or proprietary."** When we relate this to the PNRC Charter, as amended, we note that Section 1 of the charter starts with the phrase, **"(T)here is hereby created in the Republic of the Philippines a body corporate and politic to be the voluntary organization officially designated to assist the Republic of the Philippines in discharging the obligations set forth in the Geneva Conventions x x x"**.[22] It is beyond cavil that **the obligations of the Republic of the Philippines set forth in the Geneva Conventions are *public or governmental* in character**. If the PNRC is "officially designated to assist the Republic," then the PNRC is, perforce, engaged in the performance of the government's public functions.

PNRC is, at the very least, a government instrumentality

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[19] 377 Phil. 1019 (1999).

[20] See for instance Proclamation No. 50, which categorized GOCCs into parent and subsidiary corporations, cited in *Philippine National Construction Corporation v. Pabion, et al., supra*.

[21] See also the definition of a GOCC in Section 2(a) of Administrative Order No. 59 (December 5, 1988), which provides:

"x x x x x x x x x

(a) Government-owned and/or controlled corporation, hereinafter referred to as GOCC or government corporation, is a corporation which is created by special law or organized under the Corporation Code in which the Government, directly or indirectly, has ownership of the majority of the capital or has voting control; Provided that an acquired asset corporation as defined in the next paragraph shall not be considered as GOCC or government corporation."

[22] Underscoring supplied.

Further, applying the definition of terms used in the Administrative Code of 1987, as Justice Carpio urges this Court to do, will lead to the inescapable conclusion that PNRC is an instrumentality of the government. Section 2(10) of the said code defines a government instrumentality as:

> (10) *Instrumentality* refers to any agency of the National Government not integrated within the department framework, **vested with special functions or jurisdiction by law, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy, usually through a charter**. This term includes regulatory agencies, chartered institutions and government-owned or controlled corporations.[23]

The PNRC is vested with the special function of assisting the Republic of the Philippines in discharging its obligations under the Geneva Conventions. It is endowed with corporate powers. It administers special funds—the contributions of its members, the aid given by the government, the support extended to it by the Philippine Charity Sweepstakes Office (PCSO) in terms of allotment of lottery draws.[24] It enjoys operational autonomy, as emphasized by Justice Carpio himself. And all these attributes exist by virtue of its charter.

Significantly, in the United States, the ANRC, the precursor of the PNRC and likewise a member of the International Federation of Red Cross and Red Crescent Societies,[25] is considered as a **federal instrumentality**. Addressing the issue of whether the ANRC was an entity exempt from paying unemployment compensation tax, the US Supreme Court, in *Department of Employment v. United States*,[26] characterized

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[23] Emphasis supplied.

[24] See Section 4(c) of R.A. No. 95, as amended.

[25] <http://www.redcross.org/portal/site/en/menuitem.86f46a12f382290517a8f210b80f78a0/?vgnextoid=271a2aebdaadb110VgnVCM10000089f0870aRCRD> (visited July 9, 2009).

[26] 385 U.S. 355, 358-360; 87 S.Ct. 464, 467 (1966).

the Red Cross as an instrumentality of the federal government not covered by the enforcement of the tax statute and entitled to a refund of taxes paid—

> On the merits, we hold that the Red Cross is an instrumentality of the United States for purposes of immunity from state taxation levied on its operations, and that this immunity has not been waived by congressional enactment. Although there is no simple test for ascertaining whether an institution is so closely related to governmental activity as to become a tax-immune instrumentality, the Red Cross is clearly such an instrumentality. See generally, Sturges, The Legal Status of the Red Cross, 56 Mich.L.Rev. 1 (1957). Congress chartered the present Red Cross in 1905, subjecting it to governmental supervision and to a regular financial audit by the Defense, then War, Department. 33 Stat. 599, as amended, 36 U.S.C. s 1 et seq. Its principal officer is appointed by the President, who also appoints seven (all government officers) of the remaining 49 Governors. 33 Stat. 601, as amended, 36 U.S.C. s 5. By statute and Executive Order there devolved upon the Red Cross the right and the obligation to meet this Nation's commitments under various Geneva Conventions, to perform a wide variety of functions indispensable to the workings of our Armed Forces around the globe, and to assist the Federal Government in providing disaster assistance to the States in time of need. Although its operations are financed primarily from voluntary private contributions, the Red Cross does receive substantial material assistance from the Federal Government. And time and time again, both the President and the Congress have recognized and acted in reliance upon the Red Cross' status virtually as an arm of the Government. In those respects in which the Red Cross differs from the usual government agency-*e.g.*, in that its employees are not employees of the United States, and that government officials do not direct its everyday affairs-the Red Cross is like other institutions-*e.g.*, national banks-whose status as tax-immune instrumentalities of the United States is beyond dispute.[27]

The same conclusion was reached in *R.A. Barton v. American Red Cross*.[28] In that case, a transfusion recipient and her family brought action against American Red Cross and its state medical

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[27] *Id.*

[28] 829 F.Supp. 1290, 1311 (1993).

director under Alabama Medical Liability Act as well as Alabama tort law for failing to properly test blood sample and failing to timely notify recipient that donor had tested positive for human immunodeficiency virus (HIV). The US District Court concluded that the Red Cross was a federal instrumentality and was so intertwined with and was essential to the operation of the federal government, both internationally and domestically;[29] thus, its personnel were exempt from tort liability if the conduct complained of were within the scope of official duties and were discretionary in nature.[30] The US Court of Appeals later affirmed the decision, and the US Supreme Court denied *certiorari* and rehearing on the case.[31]

Interestingly, while the United States considers the ANRC as its arm and the US courts uphold its status as a federal instrumentality, ANRC remains an independent, volunteer-led organization that works closely with the ICRC on matters of international conflict and social, political, and military unrest. There is, therefore, no sufficient basis for Justice Carpio to assume that if this Court will consider PNRC as a GOCC, then "*it cannot merit the trust of all and cannot effectively carry out its mission as a National Red Cross Society*."

Let it be stressed that, in much the same way as the ANRC, the PNRC has been chartered and incorporated by the Philippine Government to aid it in the fulfillment of its obligations under the Geneva Convention. The President of the Republic appoints six of the 36 PNRC governors. Though it depends primarily on voluntary contributions for its funding, PNRC receives financial assistance not only from the National Government and the PCSO but also through the local government units. PNRC further submits to the President an annual report containing its activities and showing its financial condition, as well as the receipts and

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[29] 826 F.Supp. 412, 413-414 (1993).

[30] *Supra* note 27.

[31] 43 F.3d 678 (1994); 516 U.S. 822 (1995); 516 U.S. 1002, 116 S.Ct. 550 (1995).

disbursements. PNRC has further been recognized by the Philippine Government to be an essential component in its international and domestic operation. There is no doubt therefore that PNRC is a GOCC or, if not, at least a government instrumentality.

The fact that the Philippine or the American National Red Cross is a governmental instrumentality does not affect its autonomy and operation in conformity with the Fundamental Principles of the International Red Cross. The PNRC, like the ANRC, remains autonomous, neutral and independent from the Government, and vice versa, consonant with the principles laid down in the Geneva Convention.

A similar standing obtains in the case of the Commission on Human Rights (CHR). While it is a governmental office, it is independent. Separatists and insurgents do not consider the CHR, or the PNRC in this case, as the enemy, but rather as the entity to turn to in the event of injury to their constitutional rights, for the CHR, or to their physical being, for the PNRC.

The PNRC Charter does not violate the constitutional proscription against the creation of private corporations by special law

Considering that the PNRC is not a private corporation, but a GOCC or a government instrumentality, then its charter does not violate the constitutional provision that Congress cannot, except by a general law, provide for the formation, organization or regulation of private corporations, unless such corporations are owned or controlled by the Government.[32] We have already settled this issue in *Camporedondo* and in *Baluyot.* Let it be emphasized that, in those cases, this Court has found nothing wrong with the PNRC Charter. We have simply applied the Constitution, and in *Feliciano,* this Court has explained the meaning of the constitutional provision.

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[32] Section 16, Article XII, Philippine Constitution.

I respectfully submit that we are not prepared to reverse the ruling of this Court in the said cases. To rule otherwise will create an unsettling ripple effect in numerous decisions of this Court, including those dealing with the jurisdiction of the Civil Service Commission (CSC) and the authority of the Commission on Audit (COA), among others.

Furthermore, to subscribe to the proposition that Section 1 of the PNRC Charter, which deals with the creation and incorporation of the organization, is invalid for being violative of the aforesaid constitutional proscription, but the rest of the provisions in the PNRC Charter remains valid, is to reach an absurd situation in which obligations are imposed on and a framework for its operation is laid down for a legally non-existing entity. If Section 1 of the PNRC Charter were impulsively invalidated, what will remain are the following provisions, which will have no specific frame of reference—

> SECTION 2. The name of this corporation shall be "The Philippine National Red Cross" and by that name shall have perpetual succession with the power to sue and be sued; to own and hold such real and personal estate as shall be deemed advisable and to accept bequests, donations and contributions of property of all classes for the purpose of this Corporation hereinafter set forth; to adopt a seal and to alter and destroy the same at pleasure; and to have the right to adopt and to use, in carrying out its purposes hereinafter designated, as an emblem and badge, a red Greek cross on a white ground, the same as has been described in the Geneva Conventions, and adopted by the several nations ratifying or adhering thereto; to ordain and establish by-laws and regulations not inconsistent with the laws of the Republic of the Philippines, and generally to do all such acts and things as may be necessary to carry into effect the provisions of this Act and promote the purposes of said organization; and the corporation hereby created is designated as the organization which is authorized to act in matters of relief under said Convention. In accordance with the Geneva Conventions, the issuance of the distinctive Red Cross emblem to medical units and establishments, personnel and materials neutralized in time of war shall be left to the military authorities. The red Greek cross on a white ground, as has been described by the Geneva Conventions is not, and shall not be construed as a religious symbol, and shall have equal efficacy and applicability to persons

of all faiths, creeds and beliefs. The operational jurisdiction of the Philippine National Red Cross shall be over the entire territory of the Philippines.

SECTION 3. That the purposes of this Corporation shall be as follows:

a. To provide volunteer aid to the sick and wounded of armed forces in time of war, in accordance with the spirit of and under the conditions prescribed by the Geneva Conventions to which the Republic of the Philippines proclaimed its adherence;

b. For the purposes mentioned in the preceding sub-section, to perform all duties devolving upon the Corporation as a result of the adherence of the Republic of the Philippines to the said Convention;

c. To act in matters of voluntary relief and in accordance with the authorities of the armed forces as a medium of communication between people of the Republic of the Philippines and their Armed Forces, in time of peace and in time of war, and to act in such matters between similar national societies of other governments and the Governments and people and the Armed Forces of the Republic of the Philippines;

d. To establish and maintain a system of national and international relief in time of peace and in time of war and apply the same in meeting and emergency needs caused by typhoons, flood, fires, earthquakes, and other natural disasters and to devise and carry on measures for minimizing the suffering caused by such disasters;

e. To devise and promote such other services in time of peace and in time of war as may be found desirable in improving the health, safety and welfare of the Filipino people;

f. To devise such means as to make every citizen and/or resident of the Philippines a member of the Red Cross.

SECTION 4. In furtherance of the purposes mentioned in the preceding sub-paragraphs, the Philippine National Red Cross shall:

a. Be authorized to secure loans from any financial institution which shall not exceed its budget of the previous year.

b. Be exempt from payment of all duties, taxes, fees, and other charges of all kinds on all importations and purchases for its exclusive use, on donations for its disaster relief work and other Red Cross services, and in its benefits and fund raising drives all provisions of law to the contrary notwithstanding.

c. Be allotted by the Philippine Charity Sweepstakes Office one lottery draw yearly for the support of its disaster relief operations in addition to its existing lottery draws for the Blood Program.

SECTION 5. Membership in the Philippine National Red Cross shall be open to entire population in the Philippines regardless of citizenship. Any contribution to the Philippine National Red Cross Annual Fund Campaign shall entitle the contributor to membership for one year and said contribution shall be deductible in full for taxation purposes.

SECTION 6. The governing powers and authority shall be vested in a Board of Governors composed of thirty members, six of whom shall be appointed by the President of the Philippines, eighteen shall be elected by chapter delegates in biennial conventions and the remaining six shall be elected by the twenty-four members of the Board already chosen. At least one but not more than three of the Presidential appointees shall be chosen from the Armed Forces of the Philippines.

a. The term of office of all members of the board of Governors shall be four years. Any member of the Board of Governor who has served two consecutive full terms of four years each shall be ineligible for membership on the Board for at least two years; any term served to cover unexpired terms of office of any governor will not be considered in this prohibition in serving two consecutive full terms, and provided, however, that terms served for more than two years shall be considered a full term.

b. Vacancies in the Board of Governors caused by death or resignation shall be filled by election by the Board of Governors at its next meeting, except that vacancies among the Presidential appointees shall be filled by the President.

SECTION 7. The President of the Philippines shall be the Honorary President of the Philippine National Red Cross. The officers shall consist of a Chairman, a Vice-Chairman, a Secretary, a Treasurer, a Counselor, an Assistant Secretary and an Assistant Treasurer, all of whom shall be elected by the Board of Governors from among its membership for a term of two years and may be re-elected. The election of officers shall take place within sixty days after all the members of the Board of Governors have been chosen and have qualified.

SECTION 8. The Biennial meeting of chapter delegates shall be held on such date and such place as may be specified by the Board

of Governors to elect members of the Board of Governors and advice the Board of Governors on the activities of the Philippine National Red Cross; Provided, however that during periods of great emergency, the Board of Governors in its discretion may determine that the best interest of the corporation shall be served by postponing such biennial meeting.

SECTION 9. The power to ordain, adopt and amend by-laws and regulations shall be vested in the Board of Governors.

SECTION 10. The members of the Board of Governors, as well as the officers of the corporation, shall serve without compensation. The compensation of the paid staff of the corporation shall be determined by the Board of Governors upon the recommendation of the Secretary General.

SECTION 11. As a national voluntary organization, the Philippine National Red Cross shall be financed primarily by contributions obtained through solicitation campaigns throughout the year which shall be organized by the Board of Governors and conducted by the Chapters in their respective jurisdictions. These fund raising campaigns shall be conducted independently of other fund drives and service needs.

SECTION 12. The Board of Governors shall promulgate rules and regulations for the organization of local units of the Philippine National Red Cross to be known as Chapters. Said rules and regulations shall fix the relationship of the Chapters to the Corporation, define their territorial jurisdictions, and determine the number of delegates for each chapter based on population, fund campaign potentials and service needs.

SECTION 13. The Corporation shall, at the end of every calendar year submit to the President of the Philippines an annual report containing the activities of the Corporation showing its financial condition, the receipts and disbursements.

SECTION 14. It shall be unlawful for any person to solicit, collect or receive money, materials, or property of any kind by falsely representing or pretending himself to be a member, agent or representative of the Philippine National Red Cross.

SECTION 15. The use of the name Red Cross is reserved exclusively to the Philippine National Red Cross and the use of the emblem of the red Greek cross on a white ground is reserved

exclusively to the Philippine National Red Cross, medical services of the Armed Forces of the Philippines and such other medical facilities or other institutions as may be authorized by the Philippine National Red Cross as provided under Article 44 of the Geneva Conventions. It shall be unlawful for any other person or entity to use the words Red Cross or Geneva Cross or to use the emblem of the red Greek cross on a white ground or any designation, sign, or insignia constituting an imitation thereof for any purpose whatsoever.

SECTION 16. As used in this Decree, the term person shall include any legal person, group, or legal entity whatsoever nature, and any person violating any section of this Article shall, upon conviction therefore be liable to a find of not less than one thousand pesos or imprisonment for a term not exceeding one year, or both, at the discretion of the court, for each and every offense. In case the violation is committed by a corporation or association, the penalty shall devolve upon the president, director or any other officer responsible for such violation.

SECTION 17. All acts or parts of acts which are inconsistent with the provisions of this Decree are hereby repealed.

Sections 2 to 17 of R.A. No. 95, as amended, are not separable from Section 1, the provision creating and incorporating the PNRC, and cannot, by themselves, stand independently as law. The PNRC Charter obviously does not contain a separability clause.

The constitutionality of a law is presumed

Two other important points militate against the declaration of Section 1 of the PNRC Charter as invalid and unconstitutional, namely: (1) **respondent does not question the constitutionality of the said provision**; and (2) **every law enjoys the presumption of constitutionality**.

Settled is the doctrine that all reasonable doubts should be resolved in favor of the constitutionality of a statute.[33] The presumption is that the legislature intended to enact a valid, sensible and just law and one which operates no further than

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[33] *Beltran v. Secretary of Health*, G.R. Nos. 133640, 133661 and 139147, November 25, 2005, 476 SCRA 168, 199.

may be necessary to effectuate the specific purpose thereof.[34] Justice Carpio, in *Kapisanan ng mga Kawani ng Energy Regulatory Board v. Barin*,[35] even echoes the principle that "to justify the nullification of a law, there must be a clear and unequivocal breach of the Constitution."

Here, as in *Camporedondo* and *Baluyot*, there is no clear showing that the PNRC Charter runs counter to the Constitution. And, again in the same tone as in *Montesclaros v. Commission on Elections*, "[the parties] are not even assailing the constitutionality of [the PNRC Charter]." A becoming courtesy to a co-equal branch should thus impel this Court to refrain from unceremoniously invalidating a legislative act.

Deleterious effects will result if PNRC is declared a private corporation, among which are its consequent destruction as an institution and the Republic's shirking its obligation under the Geneva Convention

The hypothesis that PNRC is a private corporation has far-reaching implications. As mentioned earlier, it will be a reversal of the doctrines laid down in *Camporedondo* and *Baluyot*, and it will have an unsettling ripple effect on other numerous decisions of the Court, including those dealing with the jurisdiction of the CSC and the authority of the COA.

Not only that. If PNRC is considered as a private corporation, then, this will lead to its ultimate demise as an institution. Its employees will no longer be covered by the Government Service Insurance System. It can no longer be extended tax exemptions and official immunity and it cannot anymore be given support, financial or otherwise, by the National Government, the local government units and the PCSO; because these will violate not only the equal protection clause in the Constitution, but also penal statutes.

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[34] *Perez v. People*, G.R. No. 164763, February 12, 2008, 544 SCRA 532, 565.

[35] G.R. No. 150974, June 29, 2007, 526 SCRA 1, 8.

And if PNRC is consequently obliterated, the Republic will be shirking its responsibilities and obligations under the Geneva Convention.

This Court then has to be very careful in the resolution of this case and in making a declaration that will have unintended yet deleterious consequences. The Court must not arbitrarily declare a law unconstitutional just to save a single individual from the unavoidable consequences of his transgression of the Constitution, even if it be unintentional and done in good faith.

The respondent holds two incompatible offices in violation of the Constitution

Section 13, Article VI of the Constitution explicitly provides that "no Senator or Member of the House of Representatives may hold any other office or employment in the government, or any subdivision, agency or instrumentality thereof, including [GOCCs] or their subsidiaries, during his term without forfeiting his seat."[36] In *Adaza v. Pacana, Jr.*,[37] the Court, construing a parallel provision in the 1973 Constitution, has ruled that—

The language used in the above-cited section is plain, certain and free from ambiguity. The only exceptions mentioned therein are the offices of prime minister and cabinet member. **The wisdom or expediency of the said provision is a matter which is not within the province of the Court to determine**.

A public office is a public trust. It is created for the interest and the benefit of the people. As such, a holder thereof "is subject to such regulations and conditions as the law may impose" and "he cannot complain of any restrictions which public policy

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[36] The full text of the provision reads:

"Section 13. No Senator or Member of the House of Representatives may hold any other office or employment in the government, or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations or their subsidiaries, during his term without forfeiting his seat. Neither shall he be appointed to any office which may have been created or the emoluments thereof increased during the term for which he was elected."

[37] No. 68159, March 18, 1985, 135 SCRA 431.

may dictate on his holding of more than one office." It is therefore of no avail to petitioner that the system of government in other states allows a local elective official to act as an elected member of the parliament at the same time. **The dictate of the people in whom legal sovereignty lies is explicit. It provides no exceptions save the two offices specifically cited in the above-quoted constitutional provision.** Thus, while it may be said that within the purely parliamentary system of government no incompatibility exists in the nature of the two offices under consideration, as incompatibility is understood in common law, **the incompatibility herein present is one created by no less than the constitution itself.** In the case at bar, there is no question that petitioner has taken his oath of office as an elected Mambabatas Pambansa and has been discharging his duties as such. In the light of the oft-mentioned constitutional provision, this fact operated to vacate his former post and he cannot now continue to occupy the same, nor attempt to discharge its functions.[38]

There is no doubt that the language in Section 13, Article VI is unambiguous; it requires no in-depth construction. However, as the constitutional provision is worded at present, the then recognized exception adverted to in *Adaza, i.e.*, offices of prime minister and cabinet member, no longer holds true given the reversion to the presidential system and a bicameral Congress in the 1987 Constitution. There remains, however, a single exception to the rule. *Civil Liberties Union v. Executive Secretary*,[39] reiterated in the fairly recent *Public Interest Center, Inc. v. Elma*,[40] recognizes that a position held in an *ex officio* capacity does not violate the constitutional proscription on the holding of multiple offices. Interpreting the equivalent section in Article VII on the Executive Department,[41] the Court has decreed in *Civil Liberties* that—

The prohibition against holding dual or multiple offices or employment under Section 13, Article VII of the Constitution must

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[38] *Id.* at 434-435; emphasis supplied.

[39] G.R. No. 83896, February 22, 1991, 194 SCRA 317.

[40] G.R. No. 138965, June 30, 2006, 494 SCRA 53, 63-64.

[41] Section 13, Article VII of the Constitution provides in full:

not, however, be construed as applying to posts occupied by the Executive officials specified therein without additional compensation in an *ex officio* capacity as provided by law and as *required* by the primary functions of said officials' office. **The reason is that these posts do not comprise "any other office" within the contemplation of the constitutional prohibition but are properly an imposition of additional duties and functions on said officials**. x x x

x x x x x x x x x

x x x **The term *ex officio* means "from office; by virtue of office." It refers to an "authority derived from official character merely, not expressly conferred upon the individual character, but rather annexed to the official position." *Ex officio* likewise denotes an "act done in an official character, or as a consequence of office, and without any other appointment or authority other than that conferred by the office." An *ex officio* member of a board is one who is a member by virtue of his title to a certain office, and without further warrant or appointment**. x x x

x x x x x x x x x

The *ex officio* position being actually and in legal contemplation part of the principal office, it follows that the official concerned has no right to receive additional compensation for his services in the said position. The reason is that these services are already paid for and covered by the compensation attached to his principal office. x x x[42]

"Section 13. The President, Vice-President, the Members of the Cabinet, and their deputies or assistants shall not, unless otherwise provided in this Constitution, hold any other office or employment during their tenure. They shall not, during said tenure, directly or indirectly, practice any other profession, participate in any business, or be financially interested in any contract with, or in any franchise, or special privilege granted by the Government or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations or their subsidiaries. They shall strictly avoid conflict of interest in the conduct of their office.

"The spouse and relatives by consanguinity or affinity within the fourth civil degree of the President shall not during his tenure be appointed as Members of the Constitutional Commissions, or the Office of the Ombudsman, or as Secretaries, Undersecretaries, chairmen or head of bureaus or offices, including government-owned or controlled corporations and their subsidiaries."

[42] *Civil Liberties Union v. Executive Secretary*, *supra* note 5, at 331-335; emphasis supplied.

In the instant case, therefore, we must decide whether the respondent holds the chairmanship of PNRC in an *ex officio* capacity. Presidential Decree (P.D.) No. 1264, amending R.A. No. 95, provides for the composition of the governing authority of the PNRC and the manner of their appointment or election, thus:

> Section 6. The governing powers and authority shall be vested in a Board of Governors composed of thirty members, six of whom shall be appointed by the President of the Philippines, eighteen shall be elected by chapter delegates in biennial conventions and the remaining six shall be elected by the twenty-four members of the Board already chosen. At least one but not more than three of the Presidential appointees shall be chosen from the Armed Forces of the Philippines.
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> a. The term of office of all members of the board of Governors shall be four years. Any member of the Board of Governor who has served two consecutive full terms of four years each shall be ineligible for membership on the Board for at least two years; any term served to cover unexpired terms of office of any governor will not be considered in this prohibition in serving two consecutive full terms, and provided, however, that terms served for more than two years shall be considered a full term.
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> b. Vacancies in the Board of Governors caused by death or resignation shall be filled by election by the Board of Governors at its next meeting, except that vacancies among the Presidential appointees shall be filled by the President.
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> Section 7. The President of the Philippines shall be the Honorary President of the Philippine National Red Cross. The officers shall consist of a Chairman, a Vice-Chairman, a Secretary, a Treasurer, a Counselor, an Assistant Secretary and an Assistant Treasurer, all of whom shall be elected by the Board of Governors from among its membership for a term of two years and may be re-elected. The election of officers shall take place within sixty days after all the members of the Board of Governors have been chosen and have qualified.

Nowhere does it say in the law that a member of the Senate can sit in an *ex officio* capacity as chairman of the PNRC Board of Governors. Chairmanship of the PNRC Board is neither an extension of the legislative position nor is it in aid of legislative duties.[43]

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[43] See *Cruz, Philippine Political Law*, 1998 ed., p. 129.

Likewise, the position is neither derived from one being a member of the Senate nor is it annexed to the Senatorial position. Stated differently, the PNRC chairmanship does not flow from one's election as Senator of the Republic. Applying *Civil Liberties*, we can then conclude that the chairmanship of the PNRC Board is not held in an *ex officio* capacity by a member of Congress.

The fact that the PNRC Chairman of the Board is not appointed by the President[44] and the fact that the former does not receive any compensation[45] do not at all give the said position an *ex officio* character such that the occupant thereof becomes exempt from the constitutional proscription on the holding of multiple offices. As held in *Public Interest Center*, the absence of additional compensation being received by virtue of the second post is not enough, what matters is that the second post is held by virtue of the functions of the first office and is exercised in an *ex officio* capacity.[46] Hence, Senator Gordon, in assuming the chairmanship of the PNRC Board of Governors while being a member of the Senate, is clearly violating Section 13, Article VI of the Constitution. While we can only hypothesize on the extent of the incompatibility between the two offices—as stated in petitioners' memorandum, Senator Gordon's holding of both offices may result in a divided focus of his legislative functions, and in a conflict of interest as when a possible amendment of the PNRC Charter is lobbied in Congress or when the PNRC and its officials become subjects of legislative inquiries.[47] Let it be stressed that, as in *Adaza*, the incompatibility herein present is one created by no less than the Constitution itself.[48]

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[44] See Section 7 of P.D. No. 1264.

[45] Section 10 of P.D. No. 1264 provides:

"Section 10. The members of the Board of Governors, as well as the officers of the corporation, shall serve without compensation. The compensation of the paid staff of the corporation shall be determined by the Board of Governors upon the recommendation of the Secretary General."

[46] *Public Interest Center v. Elma*, *supra* note 6, at 63.

[47] *Rollo*, p. 28.

[48] *Adaza v. Pacana, Jr.*, *supra* note 3.

I hasten to add that Senator Gordon's chairmanship of the PNRC Board cannot be likened to the membership of several legislators in the Legislative-Executive Development Advisory Council, in the Council of State, in the Board of Regents of state universities, and in the Judiciary, Executive and Legislative Advisory and Consultative Council, because, in these bodies, the membership of the legislators is held in an *ex officio* capacity or as an extension of their legislative functions.[49]

IN VIEW OF THE FOREGOING, I vote to **GRANT** the petition.

SECOND DIVISION

[G.R. No. 175406. July 15, 2009]

G.G. SPORTSWEAR MANUFACTURING CORP. and NARI K. GIDWANI, *petitioners, vs.* **THE HON. NATIONAL LABOR RELATIONS COMMISSION, THE HON. LABOR ARBITER FACUNDO LEDA, EMILY REFUGIO, PRISCILLA GADDI, APOLONIA EVANGELISTA, HEDELINA LAYLAY, LORELLIE MAGPILI, MYRNA MELCHOR, DOLORES HEPOLITO, VIRGINIA GARCIA, ANITA PREGUNTA, JOEBERT LADUBLAN, CRISTINA CABBAB, EDUARDO TEMPLE, LITA GARCIA, EMELYN BARNUEBO, IMELDA MILLENDEZ, CLEO TADIQUE, NERESSA MERCADO, BRENDA CONCHADA, ARNULFO AGTUCA, HONORATA CALPITO, NELLY BALUYOT and BRENDA GUARIN,** *respondents.*

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[49] See R.A. No. 7640, Executive Order (E.O.) No. 305, Series of 1987; R.A. No. 8292, R.A. No. 9500, and the JELAC Memorandum of Agreement.

SYLLABUS

1. REMEDIAL LAW; ACTIONS; MOOT AND ACADEMIC CASES; ISSUE IN CASE AT BAR, RENDERED MOOT AND ACADEMIC.— The pendency of the company's petition for suspension of payments with the SEC has been rendered moot by the ruling of this Court in another case involving the company on this same issue. The petitoners themselves admitted that – While it may be true that this ground utilized in the Court of Appeals by the petitioner may have been rendered moot and academic in view of the dismissal by this Honorable Court of the petition for declaration of suspension of payments of petitioners in another case, it is the respectful submission of the petitioners that at the time the public respondent issued his order dated January 21, 2002 and Writ of Execution dated February 28, 2002, there was still a pending petition for declaration of suspension of payments. As the appellate court correctly noted, the filing of the petition without further SEC action on the appointment of a receiver was not sufficient reason to prevent the NLRC from acting on a matter pending before it. As matters now stand, the company's petition for suspension of payments no longer exists, thus totally rendering the issue moot.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; APPEALS; EXECUTION OF DECISIONS; SERVICE AND RECEIPT OF LABOR ARBITER'S DECISION AT PETITIONERS' ADDRESS OF RECORD IN CASE AT BAR, CONSIDERED VALID.— The petitioners questioned the service of the labor arbiter's decision because their present address is at 773 J.P. Rizal St., Makati City. They admitted, however, that a copy of the decision was sent to the address in Mandaluyong City. Again, the petitioners cannot blame the labor arbiter for service at their Mandaluyong address because nowhere in the records of either the NLRC or the CA does it appear that they advised the labor arbiter that they no longer maintained an office in Mandaluyong City. This is significant considering that in the "complaint form" filed with the NLRC-NCR, complainant Gaddi entered as "place of work" 582 Magalona St., Mandaluyong City. This is the same situation for the other complainants; they also entered in the standard complaint the address of the petitioners in Mandaluyong City. Also, notices of hearing and summons were sent to the petitioners' Mandaluyong address; the petitioners' representative, Atty.

German Pascua, on two occasions, responded to these notices before the withdrawal of Atty. Vitales. We find it interesting that the labor arbiter sent a notice of the hearing on the motion for execution at the petitioners' Mandaluyong address, and this notice duly attracted the petitioners' attention because a new counsel, Atty. Marie Rosario Concepcion, appeared at the hearing of the motion. Under the circumstances, and specifically, without any notification from the petitioners that they had vacated the Mandaluyong workplace and are holding office solely at their Makati address, the petitioners cannot blame the labor arbiter for the service of his decision at the Mandaluyong address. What is important is that the decision was duly served and received at the petitioners' address of record pursuant to Article 224 of the Labor Code that the petitioners cite. In the absence of a counsel of record who had then withdrawn, service on the petitioners themselves was proper.

3. REMEDIAL LAW; EVIDENCE; FACTUAL CLAIMS SHOULD BE SUPPORTED BY HARD EVIDENCE; CASE AT BAR.— On deeper consideration of the developments in the case, we believe that the claim that they did not receive their copies of the labor arbiter's decision was a mere afterthought. *In the opposition dated May 18, 2001 that the petitioners filed to the ex-parte motion for the issuance of a writ of execution, the sole basis cited was the pending petition for suspension of payments before the SEC; nothing was said about any failure to receive a copy of the labor arbiter's decision.* On January 21, 2002, the labor arbiter granted the respondents' motion through an order duly served on the parties; a writ of execution dated February 28, 2002 soon followed. The record shows that the respondents' counsel received the January 21, 2002 order on February 28, 2002. It was only at this point that the petitioners, in an opposition filed on March 15, 2002, state *in passing* that they did not receive a copy of the labor arbiter's decision; to be exact, they made the bare and unsubstantiated claim that – [I]t bears stressing at this junction that while herein respondents received a copy of the Motion for Execution, they never received a copy of the decision of the Honorable Labor Arbiter. Apparently, the decision was served on respondents' former office which was already at the time in the possession of a third party. Whoever received a copy of the decision was not authorized to do so and definitely not the proper person to receive the same because respondents already had been evicted

in the said premises. Hence, strictly speaking, the decision in this case remains underserved up to now. Allegations such as these, being factual claims, stand as mere unsubstantiated allegations unless supported by hard evidence. x x x [W]e cannot but conclude that the claim of failure to receive the labor arbiter's decision is completely bereft of factual and legal merit because it is contrary to what the records of the case contain. The serious legal consequences of the petitioners' omissions at the labor arbitration level – particularly, their failure to submit any position paper; their inattention to their legal representation; their failure to inform the labor arbiter of their change of address; and their consequent failure to seasonably appeal the labor arbiter's decision – are not made any lighter at the CA level by their failure to raise the issue of their receipt of the labor arbiter's decision in their motion for reconsideration of the CA decision. All told, the petitioners simply did not pay enough attention to their cases at the arbitration level and deserve the fatal consequences of their inattention.

APPEARANCES OF COUNSEL

Demetria Demetria Magno-Concepcion Law Offices for petitioners.

Public Attorney's Office for Priscilla Gaddi.

Cezar F. Maravilla, Jr. for Emily Refugio, *et al.*

D E C I S I O N

BRION, *J.*:

We review G.G. Sportswear Manufacturing Corporation's (*GGSMC*) and Nari K. Gidwani's (*Gidwani*) challenge, under Rule 45 of the Rules of Court,[1] to the decision[2] and resolution[3] of the Court of Appeals (*CA*) rendered in CA-G.R. SP. No. 70297.

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[1] *Rollo*, pp. 11-25.

[2] *Id.*, pp. 28-34; promulgated on May 18, 2006 and penned by Associate Justice Godardo A. Jacinto and concurred in by Associate Justice Juan Enriquez, Jr. and Associate Justice Vicente Q. Roxas.

[3] *Id.*, pp. 36-37; promulgated on November 10, 2006.

The Factual Background

The case arose from several complaints for illegal dismissal, illegal rotation/constructive dismissal, illegal suspension, and various money claims filed by several workers (*complainants*) against petitioners GGSMC and Gidwani, as GGSMC President. The consolidated cases were filed by: Emily O. Refugio, *et al.* (NLRC-NCR Case No. 00-09-06811-97); Francia T. Lopez, *et al.* (Case No. 00-09-06840-97); Lorellie Magpili, *et al.* (Case No. 00-10-07435-97); Emily Refugio, *et al.* (Case No. 00-12-05551-97); and Priscilla S. Gaddi (Case No. 00-06-04732-98).

During the hearing on January 14, 1999, Atty. Cesar Vitales (*Atty. Vitales*) manifested that he was withdrawing as counsel for the petitioners and that he would file his Notice of Withdrawal soon. In the same hearing, the Labor Arbiter directed the parties to file their position papers.[4] The order to file position paper was reiterated in a formal order dated January 18, 1999. This order was sent to Atty. Vitales' address on record and to the petitioners' Mandaluyong address.[5]

In due time, the complainants complied with the directive; complainant Priscilla Gaddi (*Gaddi*), represented by counsel Atty. Leticia L. Nicolas, filed her position paper on February 12, 1999, while the rest of the complainants, represented by Cezar F. Maravilla, Jr., filed theirs on April 21, 1999.[6] The petitioners did not file their position paper and were deemed to have waived their right to be heard for their failure to file their position paper despite sufficient time and notice given.[7]

In a *Motion to Withdraw as Counsel of Record for the Respondents* dated February 8, 1999, Atty. Vitales stated that:

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[4] NLRC Records, p. 73.

[5] *Id.*, pp. 74-77.

[6] *Id.*, pp. 38-48.

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

1. At the time material to the filing of the pleading to include the motion for the consolidation of cases, undersigned have [*sic*] undertaken assistance and accommodation for the respondents in gratis;

2. Assurance was made that a counsel of choice for the respondents will soon enter his appearance to relieve the undersigned of this responsibility;

3. Time has elapsed and still the undersigned has not yet been changed by a counsel of choice by the respondents thereby impeding and practically affecting my other cases with my clients that need immediate and more than equal attention for that matter;

4. In order not to delay and obstruct speedy disposition of the cases, I am formally withdrawing my appearance as counsel of record for the respondents and tenders this same irrevocably as of this date.

In her position paper, Gaddi alleged that she used to work as an export staff of GGSMC from February 14, 1995 (with a monthly salary of ₱5,600.00) until she was required to go on leave on January 11, 1998 because of the company's alleged financial difficulties and temporary stoppage of operations. The company, however, did not stop its operations and has not done so up to the present time. Since she went on leave, she had never been asked to return to work and had not received her 13th month pay for 1997 and 1998, nor had her leave commutations and other benefits been given to her. She demanded payments of these benefits, but the company only responded with promises.

Complainants Emily Refugio, Apolonia Evangelista, Hedelina Laylay, Lorellie Magpili, Myrna Melchor, Dolores Hepolito, Virginia Garcia, Anita Pregunta, Joebert Ladublan, Cristina Cabbab, Eduardo Temple, Lita Garcia, Emelyn Barnuebo, Imelda Millendez, Cleo Tadique, Neressa Mercado, Brenda Conchada, Arnulfo Agtuca, Honorata Calpito, Nelly Baluyot, and Brenda Guarin claimed that when they filed a case for underpayment of wages, 13th month pay, and damages,[8] they were approached by representatives of the company who requested that they withdraw their claims. They refused; their refusal started the

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[8] *Angel Alcantara, et al. v. G.G. Sportswear Manufacturing Corporation,* NLRC – NCR Case No. 00-00-04117-97 before Labor Arbiter Jose.

harassment that saw them placed on work rotation that they protested. Thereafter, they were asked to explain alleged "*blocking*" activities.[9] They submitted their explanation, but, as if on cue, they were dismissed from their employment without any investigation or hearing.

The Ruling on Compulsory Arbitration

In a consolidated decision dated December 28, 1999,[10] Labor Arbiter Facundo Leda found that the complainants were illegally dismissed. He ordered GGSMC and Gidwani to reinstate the complainants and to pay them, jointly and severally, their backwages, attorney's fees and the 13th month pay of Gaddi for 1997 at ₱151,289.60, and ₱140,884.74 each for the others, for a total liability of ₱3,109,869.14. The Notice of Judgment/Decision was sent to GGSMC and to Gidwani at their Mandaluyong address under Registry Receipt Nos. 0449 and 0450, respectively, and both were duly received and signed for at that address.[11]

Gaddi filed a motion for the immediate issuance of a writ of execution of the labor arbiter's decision. The petitioners received notices of hearing of the motion at their Mandaluyong addresses[12] and, through their counsel, Atty. Marie Rosario Concepcion, opposed the motion on the ground that the company had earlier filed with the Securities and Exchange Commission (*SEC*) a petition for suspension of payments.[13] The petitioners reasoned out that while the SEC initially dismissed their petition through the September 17, 1999 Order, the petition was reinstated pursuant to a decision of the CA.[14]

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[9] Preventing allegedly the entry into company premises of complainants' co-workers on October 29, 1997; NLRC records, pp. 162, 163, 164, 165, 166, 167, 168, 169 & 170.

[10] *Supra* note 4.

[11] NLRC Records, pp. 219-220.

[12] Under Registry Receipt duly receipted at the Mandaluyong address; NLRC Records, p. 229.

[13] SEC Case No. 08-97-5752.

[14] Issued by the Special 5th Division in CA-G.R. SP No. 55270.

The labor arbiter granted the motion for the issuance of a writ of execution in an order dated January 21, 2002 on the ground that the SEC did not order the suspension of the execution of the labor arbiter's decision which had become "*final and executory for failure of the respondents to file an appeal within the reglementary period*."[15] The labor arbiter issued the writ of execution on February 28, 2002.[16] Subsequently (*i.e.*, on March 15, 2002), the petitioners filed an opposition claiming that they never received a copy of the decision of the labor arbiter, although they received a copy of the motion for the issuance of a writ of execution.

On April 24, 2002, the petitioners sought relief from the CA through a petition for *certiorari* under Rule 65 of the Rules of Court.[17] They charged the Labor Arbiter with grave abuse of discretion for issuing the writ of execution despite their pending petition for declaration of suspension of payments and their failure to properly receive their copies of the arbitral decision.

The CA Ruling

The CA dismissed the petition without prejudice to the company's right to secure relief from the SEC for suspension of payments.[18] The CA held that while the Securities Regulation Code of 2000 transferred to the appropriate Regional Trial Court jurisdiction over all cases enumerated under Section 5 of Presidential Decree (*PD*) No. 902-A,[19] the SEC retained "*jurisdiction over pending suspension of payments/rehabilitation cases filed as of June 30, 2000.*"[20] Thus, GGSMC's Amended Petition for Suspension of Payments and for approval of a Debt Repayment

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[15] *Rollo*, p. 49.

[16] *Id.*, pp. 53-56.

[17] *G.G. Sportswear Mfg. Corporation and Mr. Naro K. Gadwani v. The Hon. National Labor Relations Commissioner*, CA-G.R. SP No. 70297; *rollo*, p. 49.

[18] *Id.*, pp. 53-56.

[19] Republic Act (*RA*) No. 8799, approved on July 19, 2000.

[20] RA No. 8799, Sec. 5.2.

Schedule, already before the SEC when RA No. 8799 took effect, should continue with that tribunal until final disposition.

The CA explained that under Section 6 of PD No. 902-A, the mere filing of the petition for suspension of payment does not operate to suspend all actions for claims against the petitioning corporation; only the "*appointment of a management committee, the rehabilitation receiver, board or body ipso facto causes the suspension of all actions for claims against the petitioning corporation pending before any other court, tribunal, board or body.*" Without this SEC action, the CA concluded that the labor arbiter could act on the complainants' motion for execution and issue the necessary writ of execution. It therefore found no grave abuse of discretion on the part of the labor arbiter when he issued the order of January 21, 2002[21] and the writ of execution dated February 28, 2002.[22]

The petitioners moved for reconsideration of this ruling, but the CA denied the motion,[23] paving the way for the filing of the present petition for review on *certiorari.*[24]

The Petition

In assailing the appellate court's decision, the petitioners contended that:

1. They never actually received the decision of the labor arbiter dated December 28, 1999. Their former counsel, Atty. Vitales, withdrew his appearance as early as February 8, 1999. In fact, the Arbiter mentioned the counsel's manifestation to withdraw in the decision itself.

2. All pleadings filed by the other parties and the orders, resolutions, and decision of the labor arbiter should have been addressed to the petitioners' new counsel; in his absence, the decision should have been addressed to the petitioners themselves.

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[21] *Supra* note 15.

[22] *Supra* note 16.

[23] *Supra* note 3.

[24] *Supra* note 1.

3. The labor arbiter sent a copy of the decision to the petitioners' former address in Mandaluyong City, despite the fact that the company's present address at 773 J.P. Rizal Street, Makati City was already known and was already a part of the records of the case.

4. The labor arbiter issued the summons together with a copy of the complaint to their Makati address; Gaddi furnished the petitioners her position paper at their Makati address. The petitioners thus wondered why the labor arbiter sent his subsequent orders and the decision to the company's old address in Mandaluyong City.

5. The CA did not pass upon the matter except to note that it was one of the grounds raised by the petitioners in their petition for *certiorari*.

6. At the time the labor arbiter issued the order dated January 21, 2002 and the writ of execution dated February 28, 2002, their petition for declaration of suspension of payments was still pending, a situation which "*should have deterred the public respondent from proceeding with the labor cases filed by the private respondents*." The petitioners, however, refrained from discussing the matter further in view of "the dismissal of the SEC case in the Resolution of this Court in G.R. No. 146526 entitled *Hongkong and Shanghai Banking Corp., et al. v. G.G. Sportswear Mfg. Corp.*

The Respondents' Position

The respondents vigorously opposed the petitioners' arguments and argued that there was effective service of the labor arbiter's decision on the petitioners. They posited, among others, that the petitioners never notified the labor arbiter that the company office factory/plant in Mandaluyong City no longer existed and that only the office in Makati City remained operational. The decision served on the petitioners at their address in Mandaluyong City was a valid service of judgment because both offices operate under the same name and are considered as one entity. Even assuming that the petitioners did not receive their copy of the labor arbiter's decision of December 28, 1999, receipt by their

counsel of record, not the petitioners' receipt, determined the timelines of their appeal. The petitioners never denied the receipt of a copy of the decision by their former counsel, Atty. Vitales. The petitioners' failure to perfect an appeal within the reglementary period despite notice rendered the decision final and executory, especially when no appeal bond was posted as required by law.

On the petitioners' claim that a suspension of payments petition was still pending with the SEC, the respondents submitted that the appellate court correctly ruled that the mere filing of a petition for suspension of payments does not operate to suspend all actions against a petitioning corporation; only upon the appointment of a management committee, rehabilitation receiver, board or body shall all actions for claims against the corporation be suspended. In fact, the petitioners admitted that the petition for suspension of payments "*has been rendered moot and academic in view of the dismissal by the Honorable Court of the petition for declaration of suspension of payments of petitioners in another case* x x x."[25]

The petitioners replied to the respondents' arguments on May 29, 2007,[26] principally on the issue of the effective service of the labor abiter's decision at the Mandaluyong office; they argued that their former counsel's motion to withdraw as counsel was not set for hearing as required by Section 26, Rule 136 of the Rules of Court;[27] to avoid the predicament of a counsel being bound to render services even if he had already withdrawn and the client being at the mercy of said counsel, Article 224 of the Labor Code requires that the parties and their counsels of record shall be separately furnished with copies of the decision of the Labor Arbiter. With such mode of service, the client cannot claim ignorance of the decision rendered in the case. They argued, too, that while the labor arbiter knew of the withdrawal of appearance of Atty. Vitales, he did not act on the latter's motion

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[25] *Rollo,* p. 21.

[26] *Id.,* pp. 97-102.

[27] The 2005 Revised Rules of Procedure of the National Labor Relations Commission, Rule II, Section 8(f), provides: Any change or withdrawal of counsel or representative should be made in accordance with the Rules of Court.

to withdraw as counsel. There was no need for the petitioners to file any notice of change of address considering that their address at 773 J.P. Rizal St., Makati City was already part of the records of the case, thus:

a. the summons, together with a copy of the complaint, was served on the petitioners at 773 J.P. Rizal St., Makati City;

b. the respondents themselves indicated 773 J.P. Rizal St., Makati City as the address of the company;

c. Gaddi furnished the petitioners a copy of her position paper at 773 J.P. Rizal St., Makati City.

The petitioners only became aware of the labor arbiter's decision when they received a copy of the motion for execution through their new counsel.

The Court's Ruling

We rule that the CA did not commit any reversible error in dismissing the petition when it upheld: (1) the labor arbiter's order dated January 21, 2002[28] granting the respondents' motion for the issuance of a writ of execution; and (2) the issuance of the writ of execution on February 28, 2002.[29]

First. The pendency of the company's petition for suspension of payments with the SEC has been rendered moot by the ruling of this Court in another case involving the company on this same issue. The petitoners themselves admitted that —

> While it may be true that this ground utilized in the Court of Appeals by the petitioner may have been rendered moot and academic in view of the dismissal by this Honorable Court of the petition for declaration of suspension of payments of petitioners in another case, it is the respectful submission of the petitioners that at the time the public respondent issued his order dated January 21, 2002 and Writ of Execution dated February 28, 2002, there was still a pending petition for declaration of suspension of payments.[30]

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[28] *Supra* note 15.

[29] *Supra* note 16.

[30] *Rollo*, p. 21.

As the appellate court correctly noted, the filing of the petition without further SEC action on the appointment of a receiver was not sufficient reason to prevent the NLRC from acting on a matter pending before it. As matters now stand, the company's petition for suspension of payments no longer exists, thus totally rendering the issue moot.

Second. The company cannot blame the labor arbiter for the directions the labor cases have taken. The records do not indicate what actually transpired between Atty. Vitales and the company on the matter of representation, but we find it significant that the company never questioned that Atty. Vitales did in fact withdraw. For his part, Atty. Vitales did not simply disappear; he duly manifested his intention to withdraw during the January 14, 1999 hearing,[31] and in fact did not formally withdraw until he filed his motion of withdrawal on February 8, 1999.[32] We quoted Atty. Vitales' motion to withdraw as it speaks volumes about how the petitioners viewed the labor complaints against them; they did not even bother to engage the services of a new counsel despite their counsel's withdrawal. Implied in all these is the petitioners' admission that they knew of and accepted the withdrawal but failed to protect their interests by engaging a new counsel; they only took notice when they were jolted by Gaddi's motion for the issuance of a writ of execution.

Third. The petitioners questioned the service of the labor arbiter's decision because their present address is at 773 J.P. Rizal St., Makati City. They admitted, however, that a copy of the decision was sent to the address in Mandaluyong City.[33] Again, the petitioners cannot blame the labor arbiter for service at their Mandaluyong address because nowhere in the records of either the NLRC or the CA does it appear that they advised the labor arbiter that they no longer maintained an office in Mandaluyong City. This is significant considering that in the

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[31] *Id.*, p. 40.

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

[33] *Id.*, pp. 18-19.

"complaint form"[34] filed with the NLRC-NCR, complainant Gaddi entered as "place of work" 582 Magalona St., Mandaluyong City. This is the same situation for the other complainants; they also entered in the standard complaint the address of the petitioners in Mandaluyong City.[35] Also, notices of hearing and summons were sent to the petitioners' Mandaluyong address;[36] the petitioners' representative, Atty. German Pascua, on two occasions, responded to these notices before the withdrawal of Atty. Vitales.[37] We find it interesting that the labor arbiter sent a notice of the hearing on the motion for execution at the petitioners' Mandaluyong address,[38] and this notice duly attracted the petitioners' attention because a new counsel, Atty. Marie Rosario Concepcion, appeared at the hearing of the motion.[39] Under the circumstances, and specifically, without any notification from the petitioners that they had vacated the Mandaluyong workplace and are holding office solely at their Makati address, the petitioners cannot blame the labor arbiter for the service of his decision at the Mandaluyong address. What is important is that the decision was duly served and received at the petitioners' address of record pursuant to Article 224 of the Labor Code that the petitioners cite. In the absence of a counsel of record who had then withdrawn, service on the petitioners themselves was proper.

Fourth. We find it strange that despite the withdrawal of their counsel – a fact not unknown to the company – the petitioners did not engage a new counsel to pursue the case in their behalf. In fact, Atty. Vitales – then still counsel of record – was informed at the hearing of January 14, 1999 that a position paper had to be filed; both the company and Atty. Vitales were likewise formally notified by the formal order of January 18, 1999 that

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[34] *Id.*, p. 58.

[35] NLRC records, pp. 2, 10, 24, 44, and 67.

[36] *Id.*, pp. 17, 20, 22, 34, 37, 38, 39, & 40.

[37] *Id.*, pp. 19, 28, and 41.

[38] *Id.*, pp. 226-227.

[39] *Id.*, p. 230.

a position paper had to be filed. Both the company and Gidwani never responded. Copies of the decision were thus sent to the company and Gidwani and were duly received at their Mandaluyong address, yet again, they failed to respond. Only after a notice of hearing on the respondents' *ex parte* motion for execution, again sent to the petitioners' Mandaluyong address, that the petitioners bothered to respond and oppose the motion.

On deeper consideration of the developments in the case, we believe that the claim that they did not receive their copies of the labor arbiter's decision was a mere afterthought. *In the opposition dated May 18, 2001 that the petitioners filed to the ex-parte motion for the issuance of a writ of execution, the sole basis cited was the pending petition for suspension of payments before the SEC;*[40] *nothing was said about any failure to receive a copy of the labor arbiter's decision*. On January 21, 2002, the labor arbiter granted the respondents' motion through an order duly served on the parties;[41] a writ of execution dated February 28, 2002 soon followed. The record shows that the respondents' counsel received the January 21, 2002 order on February 28, 2002.[42] It was only at this point that the petitioners, in an opposition filed on March 15, 2002, state *in passing* that they did not receive a copy of the labor arbiter's decision; to be exact, they made the bare and unsubstantiated claim that —

> [I]t bears stressing at this junction that while herein respondents received a copy of the Motion for Execution, they never received a copy of the decision of the Honorable Labor Arbiter. Apparently, the decision was served on respondents' former office which was already at the time in the possession of a third party. Whoever received a copy of the decision was not authorized to do so and definitely not the proper person to receive the same because respondents already had been evicted in the said premises. Hence, strictly speaking, the decision in this case remains underserved up to now.

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[40] *Rollo*, pp. 50-58.

[41] NLRC records, p. 259.

[42] *Id.*, unpaginated page following p. 259.

Allegations such as these, being factual claims, stand as mere unsubstantiated allegations unless supported by hard evidence. Additionally, under the circumstances we outlined above, we cannot but conclude that the claim of failure to receive the labor arbiter's decision is completely bereft of factual and legal merit because it is contrary to what the records of the case contain. The serious legal consequences of the petitioners' omissions at the labor arbitration level – particularly, their failure to submit any position paper; their inattention to their legal representation; their failure to inform the labor arbiter of their change of address; and their consequent failure to seasonably appeal the labor arbiter's decision – are not made any lighter at the CA level by their failure to raise the issue of their receipt of the labor arbiter's decision in their motion for reconsideration of the CA decision.[43] All told, the petitioners simply did not pay enough attention to their cases at the arbitration level and deserve the fatal consequences of their inattention.

WHEREFORE, premises considered, the petition for review on *certiorari* filed by petitioners G.G. Sportswear Manufacturing Corporation and Nari K. Gidwani is hereby *DENIED* for lack of merit. The decision and resolution of the Court of Appeals in CA-G.R. SP. No. 70297 promulgated on May 18, 2006 and November 10, 2006, respectively, are hereby *AFFIRMED.*

SO ORDERED.

Quisumbing (Chairperson), Carpio Morales, Chico-Nazario,[*] and *Leonardo-de Castro,*[**] *JJ.,* concur.

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[43] *CA Rollo,* p. 106.

[*] 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

[G.R. No. 181478. July 15, 2009]

EDDIE T. PANLILIO, *petitioner, vs.* **COMMISSION ON ELECTIONS and LILIA G. PINEDA,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; CONSTITUTION; CONSTITUTIONAL COMMISSIONS; COMMISSION ON ELECTIONS; 1993 COMMISSION ON ELECTIONS RULES OF PROCEDURE; MOTIONS ON INTERLOCUTORY ORDERS OF A DIVISION MAY NOT BE RESOLVED BY THE COMMISSION ON ELECTIONS *EN BANC*.— [I]n *Repol v. COMELEC,* x x x the Court has declared that the remedy to assail an interlocutory order of the COMELEC in Division, which allegedly was issued with grave abuse of discretion or without or in excess of jurisdiction, is provided in Section 5(c), Rule 3 of the 1993 COMELEC Rules of Procedure, which pertinently reads: Section 5. Quorum; Votes Required. – (a) x x x. (b) x x x. (c) Any motion to reconsider a decision, resolution, order or ruling of a Division shall be resolved by the Commission *en banc* except motions on interlocutory orders of the Division, which shall be resolved by the Division which issued the order. In *Repol*, the Court held that since the COMELEC's Division issued the interlocutory Order, the same COMELEC Division should resolve the motion for reconsideration of the Order. The remedy of the aggrieved party is neither to file a motion for reconsideration for certification to the COMELEC *En Banc* nor to elevate the issue to this Court *via* a petition for *certiorari* under Rule 65 of the Rules of Civil Procedure. x x x [T]he COMELEC *En Banc* shall decide motions for reconsideration only of "decisions" of a Division, meaning those acts having a final character. Here, the assailed Second Division order did not completely dispose of the case, as there was something more to be done, which was to decide the election protest. Being interlocutory, the assailed Second Division orders may not be resolved by the COMELEC *En Banc*.

2. ID.; ID.; ID.; ID.; ID.; ID.; INSTANCES IN WHICH THE COMMISSION ON ELECTIONS MAY SIT *EN BANC*.— Section 2, Rule 3 of the 1993 COMELEC Rules of Procedure provides: SEC. 2. The Commission *En Banc*. – The Commission shall sit *en banc* in cases hereinafter specifically provided, or in pre-proclamation cases upon a vote of a majority of the members of the Commission, or in all other cases where a division is not authorized to act, or where, upon a unanimous vote of all the Members of a Division, an interlocutory matter or issue relative to an action or proceeding before it is decided to be referred to the Commission *en banc*. This case is not among those specifically provided under the COMELEC Rules of Procedure in which the COMELEC may sit *en banc*. Neither is it one where a Division is not authorized to act nor one where the members of the Second Division have unanimously voted to refer the issue to the COMELEC *En Banc*. Thus, the COMELEC *En Banc* is not the proper forum where petitioner may bring the assailed interlocutory Orders for resolution.

3. ID.; ID.; ID.; ID.; ID.; ID.; SHOULD BE LIBERALLY CONSTRUED; RATIONALE.— This Court has emphasized that in this species of controversy involving the determination of the true will of the electorate, time is indeed of paramount importance – second to none, perhaps, except the genuine will of the majority. To be sure, an election controversy, which by its very nature touches upon the ascertainment of the people's choice as gleaned from the medium of the ballot, should be resolved with utmost dispatch, precedence and regard to due process. The considerations that dictate early on the expeditious disposition of election protests hold true today. The term of an elective office is short. There is the contestant's personal stake which generates feuds and discords. Above all is the public interest. A title to public elective office must not be left long under a cloud. The efficiency of public administration should not be impaired. It is thus understandable why pitfalls that may retard the determination of election contests should be avoided. Courts should heed the imperative need for dispatch. Obstacles and technicalities that fetter the people's will should not stand in the way of a prompt termination of election contests. For the same reason, COMELEC's rules of procedure for the verification of protests and certifications of non-forum shopping should be liberally construed, and

COMELEC's interpretation of such rules in accordance with its constitutional mandate should carry great weight.

4. ID.; ID.; ID.; ID.; ID.; ID.; PRESIDING COMMISSIONER; POWERS AND DUTIES.— We also see no irregularity in the fact that the Order dated August 1, 2007 was signed only by the Presiding Commissioner of the Second Division. He acted within the authority vested in him by Section 6, Rule 2 of the COMELEC Rules of Procedure, which provides: SECTION 6. Powers and Duties of the Presiding Commissioner. – The powers and duties of the Presiding Commissioner of a Division when discharging its functions in cases pending before the Division shall be as follows: (a) To issue calls for the sessions of the Division; (b) To preside over the sessions of the Divisions; (c) To preserve order and decorum during the sessions of the Division; (d) To sign interlocutory resolutions, orders or ruling and temporary restraining orders in cases already assigned to the Division; (e) To decide all questions or order, subject to appeal to the full Division; and (f) To take such other measures as he may deem proper upon consultation with the other members of the Division.

5. ID.; ELECTION LAWS; ELECTION PROTESTS; ALLEGATIONS OF FRAUD AND IRREGULARITIES ARE SUFFICIENT GROUNDS FOR OPENING THE BALLOT BOXES AND EXAMINING THE QUESTIONED BALLOTS.— In *Miguel v. COMELEC*, the Court belittled the petitioner's argument that the protestant had no cause of action, as the allegations of fraud and irregularities, which were couched in general terms, were not sufficient to order the opening of ballot boxes and counting of ballots. The Court states the rules in election protests cognizable by the COMELEC and courts of general jurisdiction, as follows: The rule in this jurisdiction is clear and jurisprudence is even clearer. In a string of categorical pronouncements, we have consistently ruled that when there is an allegation in an election protest that would require the perusal, examination or counting of ballots as evidence, it is the ministerial duty of the trial court to order the opening of the ballot boxes and the examination and counting of ballots deposited therein. In a kindred case, *Homer Saquilayan v. COMELEC*, the Court considered the allegations in an election protest, similar to those in this case, as sufficient in form and substance. Again,

in *Dayo v. COMELEC*, the Court declared that allegations of fraud and irregularities are sufficient grounds for opening the ballot boxes and examining the questioned ballots. The pronouncement is in accordance with Section 255 of the Omnibus Election Code, which reads: Judicial counting of votes in election contest. – Where allegations in a protest or counter-protest so warrant, or whenever in the opinion of the court in the interests of justice so require, it shall immediately order the book of voters, ballot boxes and their keys, ballots and other documents used in the election be brought before it and that the ballots be examined and the votes recounted. In this case, the COMELEC Second Division found that the allegations in the protest and counter-protest warranted the opening of the contested ballot boxes and the examination of their contents to settle at once the conflicting claims of petitioner and private respondent. In an election case, the election tribunal has an imperative duty to ascertain, by all means within its command, who is the real candidate elected by the electorate. Indeed, the Court frowns upon any interpretation of the law or the rules that would hinder in any way not only the free and intelligent casting of votes in an election, but also the correct ascertainment of the results.

6. ID.; CONSTITUTIONAL LAW; CONSTITUTION; CONSTITUTIONAL COMMISSIONS; COMMISSION ON ELECTIONS; JURISDICTION OVER ELECTION PROTEST; FILING OF PROTEST BEFORE THE BOARD OF ELECTION INSPECTORS, NOT A CONDITION *SINE QUA NON* BEFORE THE COMMISSION ON ELECTIONS ACQUIRES JURISDICTION OVER THE ELECTION PROTEST.— The filing of a protest before the Board of Election Inspectors is not a condition *sine qua non* before the COMELEC acquires jurisdiction over the present election protest. Jurisdiction is conferred only by law and cannot be acquired through, or waived by, any act or omission of the parties. Section 2(2), Article IX-C of the 1987 Constitution, reads: Section 2. The Commission on Elections shall exercise the following powers and functions: (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. The COMELEC exercises exclusive original jurisdiction over all contests relating to the elections of all elective regional, provincial, and city officials. Since the COMELEC has jurisdiction over petitioner's election protest, it has the authority to issue the assailed Orders.

7. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; DEFINED.— Grave abuse of discretion means such capricious and whimsical exercise of judgment as is equivalent to an excess or lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility. We find none in this case.

APPEARANCES OF COUNSEL

Ernesto B. Francisco, Jr. for petitioner.
The Solicitor General for public respondent.
George Erwin M. Garcia for private respondent.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Before us is a Petition for *Certiorari* under Rule 65, in relation to Rule 64 of the Rules of Court, seeking the nullification of the following issuances of the COMELEC:

(1) COMELEC Second Division Order[1] dated July 23, 2007 giving due course to respondent Lilia G. Pineda's election protest and, *inter alia*, directing the revision of ballots of the protested precincts of the Province of Pampanga;

(2) COMELEC Second Division Order[2] dated August 1, 2007 denying petitioner Governor Eddie T. Panlilio's motion for reconsideration of the aforesaid order; and

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[1] *Rollo*, pp. 116-121.

[2] *Id.* at 122.

(3) COMELEC *En Banc* Order[3] dated February 6, 2008 denying petitioner's omnibus motion to (a) certify his said motion for reconsideration to the COMELEC *En Banc*; and (b) stay Order dated August 7, 2007 directing the collection of ballot boxes in the contested precincts.

The parties herein were two of the contending gubernatorial candidates in the province of Pampanga during the May 14, 2007 national and local elections. On May 18, 2007, the Provincial Board of Canvassers of Pampanga proclaimed petitioner as the duly elected governor of Pampanga having garnered the highest number of votes of Two Hundred Nineteen Thousand Seven Hundred Six (219,706) votes[4] with a winning margin of One Thousand One Hundred Forty-Seven (1,147) votes over the 218,559 votes of private respondent.

On May 25, 2007, private respondent filed an election protest[5] against petitioner based on the following grounds:

a). Votes in the ballots lawfully and validly cast in favor of protestant were deliberately misread and/or mis-appreciated by the various chairmen of the different boards of election inspectors;

b). Thousands of votes of protestant such as "NANAY BABY", her registered nickname were intentionally and/or erroneously not counted or tallied in the election returns as votes validly cast for the protestant;

c). Valid votes legally cast in favor of protestant were considered stray;

d). Ballots containing valid votes for protestant were intentionally and erroneously mis-appreciated or considered as marked and declared as null and void;

e). Ballots with blank spaces in the line for governor were just the same read and counted in favor of protestee;

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[3] *Id.* at 123-127.

[4] *Id.* at 176.

[5] *Id.* at 130-162.

f). Ballots prepared by persons other than the voters themselves and fake or unofficial ballots wherein the name of protestee was written illegally, read and counted in favor of the latter;

g). Groups of ballots prepared by one (1) person and/or individual ballots prepared by two (2) persons were purposely considered as valid ballots and counted in favor of protestee;

h). Votes that are void because the ballots containing them were pasted with stickers or because of pattern markings appearing in them or because of other fraud and election anomalies, were unlawfully read and counted in favor of the protestee; and,

i). Votes reported in numerous election returns were unlawfully increased in favor of the protestee, while votes in said election returns for the protestant were unlawfully decreased ("*dagdag-bawas*"), such that the protestee appeared to have obtained more votes than those actually cast in his favor, while the protestant appeared to have obtained less votes than the actually cast in her (protestant's) favor; and,

j). Moreover, buying of votes and other forms of vote-buying were resorted to by protestee in order to pressure voters to vote for him or not to cast their votes for the protestant herein.[6]

On June 12, 2007, petitioner filed his answer with counter-protest and counterclaims.

On July 23, 2007, the COMELEC, Second Division, issued the first assailed order giving due course to private respondent's election protest and directed among others, the revision of ballots pertaining to the protested precincts of the Province of Pampanga.

Petitioner filed a motion for reconsideration of the aforesaid order but the same was denied by the same Division, in the second challenged Order dated August 1, 2007.

On August 1, 2007, private respondent filed her compliance stating that she deposited with the COMELEC Four Million Eight Hundred Eighty Six pesos (₱4,000,886.00) pursuant to the July 23, 2007 Order.

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

On August 8, 2007, petitioner filed an Omnibus Motion (1) to certify his earlier motion for reconsideration at the COMELEC *En Banc*; and (2) to stay the COMELEC's order directing the collection of ballot boxes. Thereafter, on August 16, 2007, petitioner filed an urgent motion to hold in abeyance the retrieval and collection of ballot boxes.

On February 6, 2008, the COMELEC *En Banc* issued the third assailed Order, the dispositive portion of which reads:

> WHEREFORE, premises considered, protestee Eddie Panlilio's Omnibus Motion dated August 7, 2007 is hereby DENIED for lack of merit. Consequently, the Order of the Commission (Second Division) dated August 16, 2007 ordering the Provincial Election Supervisor (PES) of Pampanga to defer the inventory, sealing and transmittal of the contested ballot boxes involved in this case is hereby LIFTED and SET ASIDE.
>
> SO ORDERED.

In arriving at such a disposition, the COMELEC *En Banc* ratiocinated that the assailed orders of the COMELEC Second Division were interlocutory orders, which are not one of the orders required by Section 5 (C) Rule 3 and Section 5 Rule 19 of the COMELEC Rules of Procedure to be certified to the Commission *en banc* for resolution.

Aggrieved, petitioner filed the instant petition for *certiorari* contending that the COMELEC acted with grave abuse of discretion amounting to lack or excess of jurisdiction in denying his omnibus motion and in failing to dismiss the alleged sham election protest filed by private respondent against him:

I

PUBLIC RESPONDENT COMELEC (*EN BANC*) COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DENYING PETITIONER'S OMNIBUS MOTION ON THE BASIS OF SECTION 5 (C), RULE 3 IN RELATION TO SECTION 5, RULE 19 OF THE COMELEC RULES OF PROCEDURE

II

PUBLIC RESPONDENT COMELEC (*EN BANC*) COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DENYING PETITIONER'S OMNIBUS MOTION DESPITE THE SERIOUS IRREGULARITIES WHICH ATTENDED THE ISSUANCE OF PUBLIC RESPONDENT COMELEC (SECOND DIVISION) OF THE ASSAILED ORDER DATED 1 AUGUST 2007, DENYING HIS MOTION FOR RECONSIDERATION, AND WHICH RENDERED DOUBTFUL THE PROPRIETY OF SUCH DENIAL

III

PUBLIC RESPONDENT COMELEC (*EN BANC*) COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DENYING PETITIONER'S OMNIBUS MOTION AND REFUSING TO RULE ON PETITIONER'S MOTION FOR RECONSIDERATION ON THE BASIS THAT SUCH WILL BE TANTAMOUNT TO SANCTIONING A SECOND MOTION FOR RECONSIDERATION

IV

PUBLIC RESPONDENT COMELEC (*EN BANC*) AND SECOND DIVISION) COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN FAILING TO DISMISS OUTRIGHT PRIVATE RESPONDENT'S SHAM PROTEST BELOW

The petition is without merit.

Petitioner insists that the COMELEC *En Banc* gravely abused its discretion when it denied his omnibus motion to certify his earlier motion for reconsideration and to stay the order directing the collection of ballot boxes of the contested precincts in the province of Pampanga. He argues that Section 5, Rule 19 of the COMELEC Rules of Procedure, on which the omnibus motion was anchored, clearly mandates the Presiding Commissioner of the Division of the COMELEC to certify the case to the COMELEC *En Banc* once a motion for reconsideration is filed, regardless of whether the order or resolution sought to be reconsidered is an interlocutory order or a final one.

This issue has been squarely addressed [I]n *Repol v. COMELEC*,[7] x x x the Court has declared that the remedy to assail an interlocutory order of the COMELEC in Division, which allegedly was issued with grave abuse of discretion or without or in excess of jurisdiction, is provided in Section 5(c), Rule 3 of the 1993 COMELEC Rules of Procedure, which pertinently reads:

Section 5. Quorum; Votes Required. –
(a) x x x.
(b) x x x.
(c) Any motion to reconsider a decision, resolution, order or ruling of a Division shall be resolved by the Commission *en banc* except motions on interlocutory orders of the Division, which shall be resolved by the Division which issued the order.

In *Repol*, the Court held that since the COMELEC's Division issued the interlocutory Order, the same COMELEC Division should resolve the motion for reconsideration of the Order. The remedy of the aggrieved party is neither to file a motion for reconsideration for certification to the COMELEC *En Banc* nor to elevate the issue to this Court *via* a petition for *certiorari* under Rule 65 of the Rules of Civil Procedure. In the same case the Court added that:

Section 5, Rule 19 of the 1993 COMELEC Rules of Procedure governs motions for reconsideration of decisions of a COMELEC Division, as follows:

> 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*.

In *Gementiza v. Commission on Elections*, the Court explained the import of this rule in this wise:

Under the above-quoted rule, the acts of a Division that are subject of a motion for reconsideration must have a character of finality

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[7] G.R. No. 161418, April 28, 2004, 428 SCRA 321.

before the same can be elevated to the COMELEC *en banc*. The elementary rule is that an order is final in nature if it completely disposes of the entire case. But if there is something more to be done in the case after its issuance, that order is interlocutory.

Only final orders of the COMELEC in Division may be raised before the COMELEC *en banc*. Section 3, Article IX-C of the 1987 Constitution mandates that only motions for reconsideration of final decisions shall be decided by the COMELEC *en banc*, 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*.

It is clear from the foregoing constitutional provision that the COMELEC *En Banc* shall decide motions for reconsideration only of "decisions" of a Division, meaning those acts having a final character. Here, the assailed Second Division order did not completely dispose of the case, as there was something more to be done, which was to decide the election protest. Being interlocutory, the assailed Second Division orders may not be resolved by the COMELEC *En Banc*.

Furthermore, the present controversy does not fall under any of the instances of which the COMELEC *En Banc* can take cognizance. Section 2, Rule 3 of the 1993 COMELEC Rules of Procedure provides:

> SEC. 2. The Commission *En Banc*. – The Commission shall sit *en banc* in cases hereinafter specifically provided, or in pre-proclamation cases upon a vote of a majority of the members of the Commission, or in all other cases where a division is not authorized to act, or where, upon a unanimous vote of all the Members of a Division, an interlocutory matter or issue relative to an action or proceeding before it is decided to be referred to the Commission *en banc*.

This case is not among those specifically provided under the COMELEC Rules of Procedure in which the COMELEC may

sit *en banc*. Neither is it one where a Division is not authorized to act nor one where the members of the Second Division have unanimously voted to refer the issue to the COMELEC *En Banc*. Thus, the COMELEC *En Banc* is not the proper forum where petitioner may bring the assailed interlocutory Orders for resolution.

The July 23, 2007 Second Division Order was not a final disposition of the case. It was an interlocutory order, which resolved an incidental matter and which did not put a complete end to the controversy. Accordingly, petitioner's motion for reconsideration of the said order was correctly resolved by the COMELEC Second Division, which issued the assailed order. Hence the COMELEC *En Banc* cannot be faulted for issuing its February 6, 2008 Order denying petitioner's Omnibus Motion to certify his motion for reconsideration to the COMELEC *En Banc* and to stay the order for the collection of ballot boxes.

Petitioner would next argue that the August 21, 2007 COMELEC Second Division's Order denying his motion for reconsideration was attended by serious irregularities, warranting a closer review by the COMELEC *En Banc*. According to petitioner, despite his thirty-nine page motion for reconsideration filed on July 31, 2007, the COMELEC Second Division sweepingly disposed of the same motion and issued an order denying the subject motion the following day, or on August 1, 2007, an order that was signed by the Presiding Commissioner only.

A cursory reading of the motion for reconsideration[8] shows that the grounds raised therein were a mere rehash of the ground raised in his Answer,[9] which prayed for the dismissal of the election protest. There was no point in reiterating and discussing anew the issues previously resolved. Instead of assailing the COMELEC Second Division for immediately resolving petitioner's motion for reconsideration, it should be commended for doing so.

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[8] *Rollo,* pp. 322-360.

[9] *Id.* at 205-261.

This Court has emphasized that in this species of controversy involving the determination of the true will of the electorate, time is indeed of paramount importance – second to none, perhaps, except the genuine will of the majority. To be sure, an election controversy, which by its very nature touches upon the ascertainment of the people's choice as gleaned from the medium of the ballot, should be resolved with utmost dispatch, precedence and regard to due process.[10] The considerations that dictate early on the expeditious disposition of election protests hold true today. The term of an elective office is short. There is the contestant's personal stake which generates feuds and discords. Above all is the public interest. A title to public elective office must not be left long under a cloud. The efficiency of public administration should not be impaired. It is thus understandable why pitfalls that may retard the determination of election contests should be avoided. Courts should heed the imperative need for dispatch. Obstacles and technicalities that fetter the people's will should not stand in the way of a prompt termination of election contests.[11] For the same reason, COMELEC's rules of procedure for the verification of protests and certifications of non-forum shopping should be liberally construed, and COMELEC's interpretation of such rules in accordance with its constitutional mandate should carry great weight.

Quintos v. Commission on Elections[12] ruled as follows:

> We agree with the Solicitor General that the alleged lack of verification of private respondents' Manifestation and motion for Partial Reconsideration is merely a technicality that should not defeat the will of the electorate. The COMELEC may liberally construe or even suspend its rules of procedure on the interest of justice, including obtaining a speedy disposition of all matters pending before the COMELEC.

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[10] *Miguel v. Commission on Elections*, G.R. No. 136966, July 5, 2000, 335 SCRA 172, 180.

[11] *Estrada v. Sto. Domingo*, No. L-30570, July 29, 1969, 28 SCRA 890, 904.

[12] G.R. 149800, November 21, 2002, 392 SCRA 489, 503.

We also see no irregularity in the fact that the Order dated August 1, 2007 was signed only by the Presiding Commissioner of the Second Division. He acted within the authority vested in him by Section 6, Rule 2 of the COMELEC Rules of Procedure, which provides:

> SECTION 6. Powers and Duties of the Presiding Commissioner. – The powers and duties of the Presiding Commissioner of a Division when discharging its functions in cases pending before the Division shall be as follows:
>
> (a) To issue calls for the sessions of the Division;
>
> (b) To preside over the sessions of the Divisions;
>
> (c) To preserve order and decorum during the sessions of the Division;
>
> (d) To sign interlocutory resolutions, orders or ruling and temporary restraining orders in cases already assigned to the Division;
>
> (e) To decide all questions or order, subject to appeal to the full Division; and
>
> (f) To take such other measures as he may deem proper upon consultation with the other members of the Division.

Petitioner's claim – that the COMELEC Second Division's Order dated August 1, 2007 denying his motion for reconsideration is defective because the order does not contain the facts and the law on which it is based – deserves scant consideration. The issuance of a minute order/resolution has long been sanctioned in this jurisdiction. The minute Order of August 1, 2007, which denied petitioner's motion for reconsideration, reiterated the COMELEC Second Division's earlier Order dated July 23, 2007, which sufficiently stated the facts and the law on which it was based.

Petitioner likewise imputes grave abuse of discretion on the part of the COMELEC in giving due course to private respondent's election protest. Petitioner insists that the election protest is a sham and is insufficient in form and substance.

In *Miguel v. COMELEC*,[13] the Court belittled the petitioner's argument that the protestant had no cause of action, as the allegations of fraud and irregularities, which were couched in general terms, were not sufficient to order the opening of ballot boxes and counting of ballots. The Court states the rules in election protests cognizable by the COMELEC and courts of general jurisdiction, as follows:

> The rule in this jurisdiction is clear and jurisprudence is even clearer. In a string of categorical pronouncements, we have consistently ruled that when there is an allegation in an election protest that would require the perusal, examination or counting of ballots as evidence, it is the ministerial duty of the trial court to order the opening of the ballot boxes and the examination and counting of ballots deposited therein.

In a kindred case, *Homer Saquilayan v. COMELEC*,[14] the Court considered the allegations in an election protest, similar to those in this case, as sufficient in form and substance.

Again, in *Dayo v. COMELEC*,[15] the Court declared that allegations of fraud and irregularities are sufficient grounds for opening the ballot boxes and examining the questioned ballots. The pronouncement is in accordance with Section 255 of the Omnibus Election Code, which reads:

> Judicial counting of votes in election contest. – Where allegations in a protest or counter-protest so warrant, or whenever in the opinion of the court in the interests of justice so require, it shall immediately order the book of voters, ballot boxes and their keys, ballots and other documents used in the election be brought before it and that the ballots be examined and the votes recounted.

In this case, the COMELEC Second Division found that the allegations in the protest and counter-protest warranted the

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[13] *Supra* note 10, pp. 177-178.

[14] G.R. No. 157249, November 28, 2003,416 SCRA 658, 660.

[15] G.R. No. 94681, July 18, 1991, 199 SCRA 449, 453.

opening of the contested ballot boxes and the examination of their contents to settle at once the conflicting claims of petitioner and private respondent.

In an election case, the election tribunal has an imperative duty to ascertain, by all means within its command, who is the real candidate elected by the electorate. Indeed, the Court frowns upon any interpretation of the law or the rules that would hinder in any way not only the free and intelligent casting of votes in an election, but also the correct ascertainment of the results.[16]

Lastly, petitioner argues that the COMELEC acted with grave abuse of discretion amounting to lack or excess of jurisdiction in giving due course to the election protest, notwithstanding that private respondent failed to raise her objections first before the Board of Election Inspectors.

The filing of a protest before the Board of Election Inspectors is not a condition *sine qua non* before the COMELEC acquires jurisdiction over the present election protest. Jurisdiction is conferred only by law and cannot be acquired through, or waived by, any act or omission of the parties.

Section 2(2), Article IX-C of the 1987 Constitution, reads:

> Section 2. The Commission on Elections shall exercise the following powers and functions:
>
> (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.

The COMELEC exercises exclusive original jurisdiction over all contests relating to the elections of all elective regional, provincial, and city officials. Since the COMELEC has jurisdiction

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[16] *Benito v. Commission on Elections*, G.R. No. 106053, August 17, 1994, 235 SCRA 436, 442.

over petitioner's election protest, it has the authority to issue the assailed Orders.[17]

We quote with approval the COMELEC's ratiocination on this matter:

> As to the assertion of Protestee that objections should have been first raised before the Board of Election Inspectors, the same holds no water. Such failure is not fatal to her instant protest case as the same is not a requirement precedent to the acquisition by the Commission of jurisdiction over the case.

Grave abuse of discretion means such capricious and whimsical exercise of judgment as is equivalent to an excess or lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility. We find none in this case.

WHEREFORE, premises considered, the instant petition for *certiorari* is hereby *DISMISSED*, and the *status quo ante* order issued by this Court on February 19, 2008 is lifted.

SO ORDERED.

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

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[17] *Quintos v. COMELEC*, G.R. No. 149800, November 21, 2002, 392 SCRA 489, 505.

SECOND DIVISION

[G.R. No. 185035. July 15, 2009]

GOVERNMENT SERVICE INSURANCE SYSTEM, *petitioner, vs.* **SALVADOR A. DE CASTRO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; RULE 45 OF THE RULES OF COURT; QUESTION OF LAW DISTINGUISHED FROM QUESTION OF FACT; DETERMINATION OF THE VALIDITY OF THE CONCLUSION DRAWN FROM THE GIVEN FACTS FROM THE POINT OF VIEW OF COMPENSABILITY INVOLVES A DETERMINATION OF QUESTION OF LAW AND IS APPROPRIATE FOR A PETITION UNDER RULE 45 OF THE RULES OF COURT. — We first resolve the procedural question De Castro raised on whether the present petition is appropriate; De Castro alleges that a Rule 45 petition should involve only questions of law, while the present petition places in issue the CA's factual findings. In effect, De Castro claims that the present petition should be dismissed outright under the terms of Rule 45 of the Rules of Court. De Castro's procedural objection has no merit. A question of law is involved when a doubt or controversy exists on what the law is or how it applies to a given set of facts; a question of fact exists when the doubt or difference arises on the truth or falsehood of given facts, or on the existence or non-existence of claimed facts. In this case, the set of facts on which the CA decision is anchored is largely undisputed. De Castro experienced chest pains while on duty; he was medically examined and diagnosed to be afflicted with CAD and hypertensive cardiovascular disease. For this reason, he was separated from the service and given a certificate of disability. The findings and evaluation of the military physicians, while indicating that De Castro smoked and drank, showed a work connection with De Castro's ailments. These findings were affirmed by the AFP's DSB. The GSIS and the ECC refused to be bound by the findings of the military physicians, invoking in this regard their exclusive jurisdiction over employees' compensation cases. They ruled out compensation for De Castro on the ground that his ailments were not work-related because

of De Castro's drinking and smoking; the CA held otherwise. The issue before us is whether, under our present laws and jurisprudence, the conclusions of the CA on compensability are correct, based on the facts before it. In other words, the facts of the case are given and laid out; our task is to determine the validity of the conclusions drawn from the given facts from the point of view of compensability. This task involves a determination of a question of law and is appropriate for a petition under Rule 45 of the Rules of Court.

2. LABOR AND SOCIAL LEGISLATION; EMPLOYEES' COMPENSATION; CONDITIONS FOR COMPENSABILITY; AGE COUPLED WITH AN AGE-AFFECTED WORK ACTIVITY MAY LEAD TO COMPENSABILITY.— We find it strange that both the ECC and the GSIS singled out the presence of smoking and drinking as the factors that rendered De Castro's ailments, otherwise listed as occupational, to be non-compensable. To be sure, the causes of CAD and hypertension that the ECC listed and explained in its decision cannot be denied; smoking and drinking are undeniably among these causes. However, they are ***not the sole causes*** of CAD and hypertension and, at least, not under the circumstances of the present case. For this reason, we fear for the implication of the ECC ruling if it will prevail and be read as definitive on the effects of smoking and drinking on compensability issues, even on diseases that are listed as occupational in character. The ruling raises the possible reading that smoking and drinking, by themselves, are factors that can bar compensability. We ask the question of whether these factors can be sole determinants of compensability as the ECC has apparently failed to consider other factors such as age and gender from among those that the ECC itself listed as major and minor causes of atherosclerosis and, ultimately, of CAD. While age and gender are characteristics inherent in the person (and thereby may be considered non-work related factors), they also do affect a worker's job performance and may in this sense, together with stresses of the job, significantly contribute to illnesses such as CAD and hypertension. To cite an example, some workplace activities are appropriate only for the young (such as the lifting of heavy objects although these may simply be office files), and when repeatedly undertaken by older workers, may lead to ailments and disability. Thus, age coupled with an age-affected work activity may lead to compensability. From this perspective, none of the ECC's listed factors should

be disregarded to the exclusion of others in determining compensability.

3. ID.; ID.; ID.; THE NATURE AND CHARACTERISTICS OF THE CLAIMANT'S JOB ARE AS IMPORTANT AS RAW MEDICAL FINDINGS AND HIS PERSONAL AND SOCIAL HISTORY IN THE DETERMINATION OF COMPENSABILITY.— In any determination of compensability, the nature and characteristics of the job are as important as raw medical findings and a claimant's personal and social history. This is a basic legal reality in workers' compensation law. We are therefore surprised that the ECC and the GSIS simply brushed aside the disability certification that the military issued with respect to De Castro's disability, based mainly on their primacy as the agencies with expertise on workers' compensation and disability issues. While ECC and GSIS are admittedly the government entities with jurisdiction over the administration of workers' disability compensation and can thus claim primacy in these areas, they cannot however claim infallibility, particularly when they use wrong or limited considerations in determining compensability. In the present case, they should at least have considered the very same standards that they stated in their own decisions, and should not have simply brushed aside as incorrect the basis for disability that the AFP, as home agency, used in passing upon De Castro's separation from the service and discharge for disability. In saying this, we are not unmindful that neither the GSIS nor the ECC conducted a medical examination of De Castro on their own; they merely relied on the results of De Castro's medical examination conducted at the V. Luna General Hospital, a government military hospital. It was from these same medical findings that the GSIS and ECC derived their conclusion that De Castro's drinking and smoking habits and personal lifestyle caused his ailments. We are aware, too, that De Castro's discharge based on disability was not the sole result of the AFP medical findings; the medical findings were further reviewed and deliberated upon by the AFP's DSB which certified on the causes of De Castro's separation from the service and his disability.

4. ID.; ID.; ID.; RESPONDENT'S AILMENTS ARE WORK-CONNECTED AND ARE COMPENSABLE.— In contrast, the assailed CA ruling was sensitive to all these concerns and

found reasonable work connection between De Castro's ailments and his duties as a soldier for 32 years without at all disregarding De Castro's drinking and smoking habits that could have contributed to his afflictions. xxx We consider it significant that De Castro entered military service as a fit and healthy new soldier. We note, too, De Castro's service record and the medals, awards, and commendations he earned, all attesting to 32 years of very active and productive service in the military. Thus, the CAD and the hypertension came while he was engaged in these endeavors. To say, as the GSIS and the ECC did, that his ailments are conclusively non-work related because he smoked and drank, is to close our eyes to the rigors of military service and to the demands of De Castro's specific positions in the military service, and to single out factors that would deny the respondent's claim. *This is far from the balancing that the GSIS invokes between sympathy for the workingman and the equally vital interest of denying underserving claims.* Thus, based on the totality of the circumstances surrounding De Castro's case, we are convinced that his long years of military service, with its attendant stresses and pressures, contributed in no small measure to the ailments that led to his disability retirement. We, therefore, agree with the CA when it concluded that De Castro's "*illness was contracted during and by reason of his employment, and any non-work related factor that contributed to its aggravation is immaterial.*"

5. ID.; EMPLOYEES' COMPENSATION COMMISSION; DISABILITY COMPENSATION; PROBABILITY, NOT THE ULTIMATE DEGREE OF CERTAINTY, IS THE TEST OF PROOF IN COMPENSATION PROCEEDINGS.— We close by reiterating that what the law requires is a reasonable work connection and not direct causal relation. Probability, not the ultimate degree of certainty, is the test of proof in compensation proceedings. For, in interpreting and carrying out the provisions of the Labor Code and its Implementing Rules and Regulations, the primordial and paramount consideration is the employee's welfare. To safeguard the worker's rights, any doubt on the proper interpretation and application must be resolved in favor of labor. We reiterate these same principles in the present case. Accordingly, we hold that De Castro's ailments – CAD and hypertensive cardiovascular disease – are work-connected under the circumstances of the present case and are, therefore, compensable.

APPEARANCES OF COUNSEL

Chief legal Counsel for petitioner.
Erwin VA Machica III for respondent.

D E C I S I O N

BRION, *J.*:

Before the Court is the petition for review on *certiorari*[1] filed by the Government Service Insurance System (*GSIS*) to seek the reversal of the decision[2] and the resolution[3] of the Court of Appeals (*CA*) in CA-G.R. SP No. 100375 entitled "*Salvador A. De Castro v. Government Service Insurance System and Employees' Compensation Commission*."

THE ANTECEDENTS

Respondent Salvador De Castro (*De Castro*) rendered service in the Philippine Air Force (*PAF*) from April 1, 1974 until his retirement on March 2, 2006.

On December 22, 2004, De Castro was admitted at the V. Luna General Hospital, AFP Medical Center due to chest pains. He underwent on January 21, 2005 a 2-D echocardiography which revealed that he had "*dilated left atrium eccentric left ventricular hyperthropy and left ventricular dysfunction*." His full diagnosis consisted of hypertensive cardiovascular disease, dilated atrium, eccentric left ventricular hypertrophy and left ventricular dysfunction, and old anterior wall myocardial infarction. He also underwent coronary angiogram procedure which showed that he had significant simple vessel coronary artery disease (*CAD*).

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[1] *Rollo*, pp. 3-27; filed under Rule 45 of the Rules of Court.

[2] *Id.*, pp. 33-52; promulgated on July 16, 2008, penned by Associate Justice Celia C. Librea-Leagogo, and concurred in by Associate Justice Mario L. Guariña IV (retired) and Associate Justice Ricardo R. Rosario.

[3] *Id.*, pp. 53-54; promulgated on October 20, 2008.

On August 15, 2005, De Castro was confined in the same hospital and was diagnosed to be suffering from (1) 41X-D21 – Coronary artery disease and (2) 400-533 – Hypertensive cardiovascular disease.

De Castro retired from the service on March 2, 2006 with a "*Certificate of Disability Discharge*."[4] On this basis, he filed a claim for permanent total disability benefits with the GSIS.

In a decision dated June 20, 2006, the GSIS denied De Castro's claim based on the finding that De Castro's illnesses were non-occupational. De Castro appealed to the Employees' Compensation Commission (*ECC*).

THE ECC DECISION

At its meeting on June 11, 2007, the ECC Board affirmed the GSIS ruling and dismissed De Castro's claim for lack of merit.[5] The ECC, however, also held that, contrary to the ruling of the GSIS, CAD is a form of cardiovascular disease included in the list of occupational diseases. The ECC still denied the claim despite this observation because of "*the presence of factors which are not work-related, such as smoking and alcohol consumption*."[6] It likewise noted that manifestations of Cardiomyopathy in De Castro's 2-D echocardiography examination results could be related to his drinking habits.

De Castro sought relief from the CA through a petition for review under Rule 43 of the Rules of Court. Relying on *Dominga A. Salmone v. ECC*,[7] De Castro argued that the causal relation between his illness and the resultant disability, on the one hand, and his work, on the other, is not that essential; it is enough that his illness is listed as an occupational disease. He disputed the findings of the ECC that hypertension or high blood pressure (which causes CAD) may have been caused by his cigarette smoking and drinking habits. He posited that other factors, such as stress brought about by the

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[4] *Rollo*, p. 129.

[5] *Id.*, pp. 57-64.

[6] *Id.*, p. 58.

[7] G.R. No. 142392, September 26, 2000, 341 SCRA 150.

nature of his work, could have caused his illness. He claimed that the positions he held in the PAF, the last being First Sergeant, were comparable to a managerial position in the civilian business community because it served as an extension of the office of his commanding officer in the management, administration, and supervision of his fellow enlisted personnel within the unit.

In response to the petition, the GSIS maintained that hypertensive cardiovascular disease and CAD are not inherent occupational hazards, nor are they concomitant effects of De Castro's employment with the PAF. It argued that there was no significant causal or contributory relationship between De Castro's duties as a soldier and his ailments.

THE CA DECISION

The CA granted the petition.[8] It noted that, as found by the ECC itself, De Castro's illnesses are listed as occupational diseases in Annex "A" of the Amended Rules of the Employees' Compensation Commission (*Amended ECC Rules*). It explained that under the same rules, the sickness must be the result of an occupational disease under Annex "A" in order for the illness and the resulting disability or death to be compensable.[9]

The CA further explained that it is not necessary that there be proof of causal relation between the work and the illness which resulted in De Castro's disability. Citing *GSIS v. Baul*,[10] it held that in general, a covered claimant suffering from an occupational disease is automatically paid benefits. While it noted that the exact etiology of hypertension which led to De Castro's cardiovascular ailments cannot be accurately traced, it stressed that medical experiments tracing the etiology of essential hypertension show a relationship between this illness and the nature and conditions of work. The CA found significant the statement in De Castro's Certificate of Disability Discharge that his CAD and hypertensive cardiovascular diseases were aggravated

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[8] *Supra*.

[9] Section 1(5), Rule III, Amended ECC Rules.

[10] G.R. No. 166556, July 31, 2006, 497 SCRA 397.

during active service; were not incurred while on AWOL; did not exist prior to entry into service; were incident to service; were not incurred by private avocation; were not due to misconduct; and, were incurred while in line of duty. The appellate court, therefore, brushed aside the findings *a quo* that De Castro's illnesses might have been caused by his smoking and drinking habits.

THE PETITION

GSIS' present petition presents the following issues: (1) whether the CA erred in reversing the decisions of the ECC and the GSIS that denied De Castro's claim for disability benefits; and (2) whether De Castro proved that his heart ailments are work-related and/or have been precipitated by his duties with the Armed Forces of the Philippines (*AFP*).

The GSIS asks for a reversal of the CA's July 16, 2008 decision,[11] arguing that it is not enough that a disease or illness is listed as compensable under Annex "A" of the Amended ECC Rules.[12] Other than the listing, the conditions/requisites specified in No. 18, Annex "A" of the rules must be complied with for De Castro's heart ailment to be compensable. These conditions/requisites are:

1. If the heart disease was known to have been present during employment, there must be proof that an acute exacerbation was clearly precipitated by the unusual strain by reasons of the nature of his work.
2. The strain of work that brings about an acute attack must be of sufficient severity and must be followed within 24 hours by the clinical signs of a cardiac insult to constitute causal relationship.
3. If a person who was apparently asymptomatic before being subject to strain at work showed signs and symptoms of cardiac injury during the performance of his work and such symptoms and signs persisted, it is reasonable to claim a causal relationship.

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[11] *Supra* note 2.

[12] *Supra* note 10.

Given the above conditions, the GSIS posits that it is incumbent on De Castro to prove that there was an unusual and extraordinary strain in his work when his chest pain developed, or that there was causal connection between his working condition and heart ailments. The GSIS then submits that De Castro failed to discharge the burden of presenting evidence that his heart ailments were caused by his work. It brushes aside De Castro's reliance on his certificate of disability discharge,[13] contending that it was issued relative to his separation from the AFP; the tests and findings on which the certificate was based are not conclusive or binding in the determination by the GSIS and the ECC of the compensability of De Castro's illness under the law – Presidential Decree No. 626, as amended, and the ECC Rules of Procedure for the Filing and Disposition of Employees' Compensation claims. It maintains that under Rule 2, Section 1 of these rules, the GSIS (in the public sector), and the Social Security System (in the private sector) have original and exclusive jurisdiction, and the ECC, the appellate jurisdiction, to settle any dispute with respect to coverage, entitlement to benefits, collection, and payment of contributions and penalties.

The GSIS further argues, relying on *GSIS v. CA*,[14] that the proceedings in the AFP and the administrative machinery tasked by law to handle the government's employees compensation program are separate and distinct from one another; thus, the AFP's conclusions may not be used as basis in the determination of the compensability of De Castro's ailments. It thus objects to the CA's rejection of the ECC's findings of fact on the nature of the heart ailments of De Castro, stressing that the decision of the ECC clearly elaborated on what CAD is and why De Castro is not entitled to the employees' compensation. The ECC decision, it explains, was based on well-respected and often quoted medical references;[15] its medical evaluations revealed that De Castro's

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[13] *Supra* note 5.

[14] G.R. No. 128523, September 28, 1998, 296 SCRA 514.

[15] *Harrison's Principles of Internal Medicine and Robbins Pathological Basis of Diseases*.

heart illnesses were related to his drinking and smoking habits. Finding further support in the declarations of the American Heart Association,[16] it maintains that the ECC is correct in taking into consideration De Castro's lifestyle, particularly his smoking and drinking habits, in denying his claim for compensation. The GSIS concludes that based on the findings of the ECC, De Castro's ailments were not acquired by reason of his employment with the PAF and were, therefore, not work-connected.

THE CASE FOR DE CASTRO

In his March 9, 2009 Comment,[17] De Castro asks the Court to deny the petition for lack of merit. He presents the following arguments:

1. No further proof of work connection is necessary since his illnesses are listed as occupational diseases.
2. There is substantial evidence to prove the work connection of his illnesses.
3. The factual findings of the CA are not subject to review.

De Castro submits that under Annex "A" of the Amended ECC Rules, CAD and essential hypertension are listed as occupational diseases;[18] once an ailment is so listed, the causal relation between the ailment and the resultant disability and his work is not essential to declare his disability compensable, citing in this regard the Court's ruling in *Dominga A. Salmore v. ECC*.[19]

Further, De Castro contends that the GSIS' theory that his drinking and smoking habits must have caused his hypertension is unwarranted; this theory conveniently and arbitrarily disregarded other factors or causes that might have contributed to his illnesses, such as the stress brought about by the nature

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[16] *Rollo*, pp. 22-23.

[17] *Id.*, pp. 108-124.

[18] Nos. 18 & 29, respectively.

[19] *Supra* note 8.

of his work. De Castro posits that as the Court held in *GSIS v. Baul*,[20] the presence of other factors that are work-related makes his ailments compensable; what is required is reasonable work connection and not direct causal relation.

De Castro stresses that the conditions laid down under Item No. 18 of Annex "A" of the Amended ECC Rules, are alternative, not concurrent, pointing out that the caption of the rule states: "*Any of the following conditions*," meaning, any one of the conditions mentioned in the rule. He argues that the diagnosed ailments that resulted in his separation from the service never existed prior to his entry into the service (as indicated in his certificate of disability discharge),[21] and were, therefore, incurred while he was in the military service; the same document also states that his illnesses were incident to and aggravated by the service. He claims that the circumstances under which he incurred his illnesses satisfy the requirements under No. 18a of the cited rule.

De Castro posits that substantial evidence exists to prove that his ailments were caused by his employment with the PAF. He reiterates that the duties he performed at the PAF as non-commissioned officer-in-charge for operational security, Asst. First Sergeant, and ultimately, as First Sergeant, contributed to the progress of his ailments and, eventually, led to his separation from the service. He contends that the CA upheld his position when it ruled that he contracted CAD and hypertensive cardiovascular diseases in the course of his employment with the PAF, and these were brought about by the stress and the nature of his work.

While De Castro does not dispute that the GSIS has original and exclusive jurisdiction and the ECC has appellate jurisdiction over disputes on compensation benefits,[22] he stresses that neither

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[20] *Supra* note 11.

[21] *Supra* note 5.

[22] Section 1, Rule 2, Rules of Procedure for the Filing and Disposition of Employees' Compensation Claims.

the GSIS nor the ECC subjected him to any separate medical examination. He argues that the GSIS and the ECC only made a paper evaluation of his condition, based on the medical findings and diagnoses of the V. Luna General Hospital, AFPMC. These hospital findings underwent review by the AFP Disability and Separation Board (*DSB*) before his discharge for disability was approved. The GSIS and ECC did not take into account his service with the AFP and the nature of his assignments which greatly contributed to the development of his ailments.

Finally, De Castro argues that, procedurally, the CA's findings that his ailments are service-connected are no longer reviewable. Rule 45 of the Rules of Court – the petitioner's chosen mode of review, only allows a review of legal issues.[23]

THE COURT'S RULING

We first resolve the procedural question De Castro raised on whether the present petition is appropriate; De Castro alleges that a Rule 45 petition should involve only questions of law, while the present petition places in issue the CA's factual findings. In effect, De Castro claims that the present petition should be dismissed outright under the terms of Rule 45 of the Rules of Court.

De Castro's procedural objection has no merit. A question of law is involved when a doubt or controversy exists on what the law is or how it applies to a given set of facts; a question of fact exists when the doubt or difference arises on the truth or falsehood of given facts, or on the existence or non-existence of claimed facts.[24]

In this case, the set of facts on which the CA decision is anchored is largely undisputed. De Castro experienced chest pains while on duty; he was medically examined and diagnosed to be afflicted with CAD and hypertensive cardiovascular disease. For this reason, he was separated from the service and given a

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[23] Rule 45, Section 1.

[24] *Estate of Encarnacion vda. De Panlilio, et al. v. Gonzalo Dizon, et al.*, G.R. No. 148777 and *Reynaldo Villanueva, et al. v. Court of Appeals*, G.R. No. 157598, October 18, 2007, 536 SCRA 565; see also *Pilar Dev. Corp. v. IAC, et al.*, G.R. No. 72283, December 12, 1986, 146 SCRA 215.

certificate of disability. The findings and evaluation of the military physicians, while indicating that De Castro smoked and drank, showed a work connection with De Castro's ailments. These findings were affirmed by the AFP's DSB.[25] The GSIS and the ECC refused to be bound by the findings of the military physicians, invoking in this regard their exclusive jurisdiction over employees' compensation cases. They ruled out compensation for De Castro on the ground that his ailments were not work-related because of De Castro's drinking and smoking; the CA held otherwise.

The issue before us is whether, under our present laws and jurisprudence, the conclusions of the CA on compensability are correct, based on the facts before it. In other words, the facts of the case are given and laid out; our task is to determine the validity of the conclusions drawn from the given facts from the point of view of compensability. This task involves a determination of a question of law and is appropriate for a petition under Rule 45 of the Rules of Court.

We find no merit in the petition.

Other than the given facts, another undisputed aspect of the case is the status of the ailments that precipitated De Castro's separation from the military service – CAD and hypertensive cardiovascular disease. These are occupational diseases.[26] No less than the ECC itself confirmed the status of these ailments when it declared that *"Contrary to the ruling of the System, CAD is a form of cardiovascular disease which is included in the list of Occupational Diseases."*[27] Essential hypertension is also listed under Item 29 in Annex "A" of the Amended ECC Rules as an occupational disease.

Despite the compensable character of his ailments, both the GSIS and the ECC found De Castro's CAD to be non-work related and, therefore, non-compensable. To use the wording of the ECC decision, it denied De Castro's claim *"due to the*

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[25] *Supra* note 5.

[26] *Supra* note 19.

[27] *Rollo*, p. 58.

presence of factors which are not work-related, such as smoking and alcohol consumption."[28] De Castro's own military records triggered this conclusion as his Admitting Notes,[29] made when he entered the V. Luna General Hospital due to chest pains and hypertension, were that he was a smoker and a drinker.

As the CA did, we cannot accept the validity of this conclusion at face value because it considers only one side – the purely medical side – of De Castro's case and even then may not be completely correct. The ECC itself, in its decision,[30] recites that CAD is caused, among others, by *atherosclerosis* of the coronary arteries that in turn, and lists the following **major causes**: increasing age; male gender; cigarette smoking; lipid disorder due to accumulation of too much fats in the body; hypertension or high blood pressure; insulin resistance due to diabetes; family history of CAD. The minor factors are: obesity; physical inactivity; stress; menopausal estrogen deficiency; high carbohydrate intake; and alcohol.

We find it strange that both the ECC and the GSIS singled out the presence of smoking and drinking as the factors that rendered De Castro's ailments, otherwise listed as occupational, to be non-compensable. To be sure, the causes of CAD and hypertension that the ECC listed and explained in its decision cannot be denied; smoking and drinking are undeniably among these causes. However, they are ***not the sole causes*** of CAD and hypertension and, at least, not under the circumstances of the present case. For this reason, we fear for the implication of the ECC ruling if it will prevail and be read as definitive on the effects of smoking and drinking on compensability issues, even on diseases that are listed as occupational in character. The ruling raises the possible reading that smoking and drinking, by themselves, are factors that can bar compensability.

We ask the question of whether these factors can be sole determinants of compensability as the ECC has apparently failed to

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[28] *Supra* note 7.

[29] *Rollo*, p. 101.

[30] *Supra* note 6.

consider other factors such as age and gender from among those that the ECC itself listed as major and minor causes of *atherosclerosis* and, ultimately, of CAD. While age and gender are characteristics inherent in the person (and thereby may be considered non-work related factors), they also do affect a worker's job performance and may in this sense, together with stresses of the job, significantly contribute to illnesses such as CAD and hypertension. To cite an example, some workplace activities are appropriate only for the young (such as the lifting of heavy objects although these may simply be office files), and when repeatedly undertaken by older workers, may lead to ailments and disability. Thus, age coupled with an age-affected work activity may lead to compensability. From this perspective, none of the ECC's listed factors should be disregarded to the exclusion of others in determining compensability.

In any determination of compensability, the nature and characteristics of the job are as important as raw medical findings and a claimant's personal and social history. This is a basic legal reality in workers' compensation law.[31] We are therefore surprised that the ECC and the GSIS simply brushed aside the disability certification that the military issued with respect to De Castro's disability, based mainly on their primacy as the agencies with expertise on workers' compensation and disability issues.

While ECC and GSIS are admittedly the government entities with jurisdiction over the administration of workers' disability compensation and can thus claim primacy in these areas, they cannot however claim infallibility, particularly when they use wrong or limited considerations in determining compensability.

In the present case, they should at least have considered the very same standards that they stated in their own decisions, and should not have simply brushed aside as incorrect the basis for disability that the AFP, as home agency, used in passing upon De Castro's separation from the service and discharge

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[31] *Narazo v. Employees Compensation Commission,* G.R. No. 80157, February 6, 1990, 181 SCRA 874; see also *Clemente v. GSIS*, G.R. No. L-47521, July 31, 1987, 152 SCRA 500; *Ceniza v. ECC*, G.R. No. 55645, November 2, 1982, 118 SCRA 138.

for disability. In saying this, we are not unmindful that neither the GSIS nor the ECC conducted a medical examination of De Castro on their own; they merely relied on the results of De Castro's medical examination conducted at the V. Luna General Hospital, a government military hospital. It was from these same medical findings that the GSIS and ECC derived their conclusion that De Castro's drinking and smoking habits and personal lifestyle caused his ailments. We are aware, too, that De Castro's discharge based on disability was not the sole result of the AFP medical findings; the medical findings were further reviewed and deliberated upon by the AFP's DSB which certified on the causes of De Castro's separation from the service and his disability.

The military's disability certification clearly states that De Castro's ailments were: (1) aggravated by active service, (2) incident to service, (3) not incurred while on AWOL, (4) never existed prior to entry to military service, (5) not due to misconduct, (6) not incurred by private avocation and, (7) in line of duty. De Castro further stated in the course of this case that the positions he occupied as the PAF-Non-Commissioned Officer-in-Charge for Operational Security, Asst. First Sergeant and First Sergeant of the 577th CS, 570th CTW stationed at Puerto Princesa, Palawan were positions comparable to managerial positions in the private business sector; he served as the extension of his commanding officer in the management, administration, and supervision of the activities of his fellow enlisted soldiers within the unit – tasks whose urgency and sensitivity resulted in job stress. While the task before the GSIS and the ECC was to determine compensability, not merely the fact of disability that justifies a separation from the service, still, these agencies should not have simply glossed over the findings of the military on the matters they certified to, as these are the same facts that are material to compensability. The health of De Castro upon entry into the service and how his work affected his health are very relevant facts that should not have been disregarded in favor of singled out facts that the GSIS and the ECC considered as conclusive indicators of incompensability. The ECC and the GSIS, in short, did not seriously look at all the relevant factors determinative of compensability and thereby *decided De Castro's*

case based on incomplete, if not wrong, considerations. This is a reversible error that requires rectification.

In contrast, the assailed CA ruling was sensitive to all these concerns and found reasonable work connection between De Castro's ailments and his duties as a soldier for 32 years without at all disregarding De Castro's drinking and smoking habits that could have contributed to his afflictions. On the latter concerns, we quote with approval the following CA observations:

> Intoxication which does not incapacitate the employee from following his occupation is not sufficient to defeat the recovery of compensation, although intoxication may be a contributory cause to his injury. While smoking may contribute to the development of a heart ailment, heart ailment may be cause by other factors such as working and living under stressful conditions. Thus, the peremptory presumption that petitioner's habit of smoking heavily was the wilfull act which causes his illness and resulting disability, without more, cannot suffice to bar petitioner's claim for disability benefits.[32]

We consider it significant that De Castro entered military service as a fit and healthy new soldier. We note, too, De Castro's service record and the medals, awards, and commendations he earned,[33] all attesting to 32 years of very active and productive service in the military. Thus, the CAD and the hypertension came while he was engaged in these endeavors. To say, as the GSIS and the ECC did, that his ailments are conclusively non-work related because he smoked and drank, is to close our eyes to the rigors of military service and to the demands of De Castro's specific positions in the military service, and to single out factors that would deny the respondent's claim. *This is far from the balancing that the GSIS invokes between sympathy for the workingman and the equally vital interest of denying underserving claims.*[34] Thus, based on the totality of the circumstances surrounding De Castro's case, we are convinced that his long years of military service, with its attendant stresses

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[32] *Rollo*, p. 49.

[33] *Id.*, pp. 69-70.

[34] *Id.*, p. 25, citing *Raro v. ECC*, 172 SCRA 845, 852 (1989).

and pressures, contributed in no small measure to the ailments that led to his disability retirement. We, therefore, agree with the CA when it concluded that De Castro's "*illness was contracted during and by reason of his employment, and any non-work related factor that contributed to its aggravation is immaterial.*"

We close by reiterating that what the law requires is a reasonable work connection and not direct causal relation.[35] Probability, not the ultimate degree of certainty, is the test of proof in compensation proceedings.[36] For, in interpreting and carrying out the provisions of the Labor Code and its Implementing Rules and Regulations, the primordial and paramount consideration is the employee's welfare. To safeguard the worker's rights, any doubt on the proper interpretation and application must be resolved in favor of labor.[37]

We reiterate these same principles in the present case. Accordingly, we hold that De Castro's ailments – CAD and hypertensive cardiovascular disease – are work-connected under the circumstances of the present case and are, therefore, compensable.

WHEREFORE, premises considered, the petition for review on *certiorari* filed by the Government Service Insurance System (*GSIS*) is hereby *DENIED* for lack of merit. The challenged decision and resolution of the Court of Appeals in CA-G.R. SP No. 100375 are hereby *AFFIRMED*.

SO ORDERED.

Quisumbing (Chairperson), Carpio Morales, Chico-Nazario,[*] and *Leonardo-de Castro,*[**] *JJ.,* concur.

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[35] *Supra* note 11.

[36] *Government Service Insurance System v. Cuanang*, G.R. No. 158846, June 3, 2004, 430 SCRA 639, citing *Philippine Transmarine Carriers, Inc. v. National Labor Relations Commission*, 353 SCRA 47 (2001).

[37] *Quizon v. Employees' Compensation Commission*, G.R. No. 87590, November 12, 1991, 203 SCRA 426.

[*] 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. 159624. July 17, 2009]

CEBU MACTAN MEMBERS CENTER, INC., *petitioner, vs.* **MASAHIRO TSUKAHARA,** *respondent.*

SYLLABUS

1. COMMERCIAL LAW; CORPORATION LAW; CORPORATIONS; ABSENT AUTHORITY FROM THE BOARD OF DIRECTORS, NO PERSON, NOT EVEN ITS OFFICERS, CAN VALIDLY BIND A CORPORATION.— A corporation, being a juridical entity, may act through its board of directors, which exercises almost all corporate powers, lays down all corporate business policies and is responsible for the efficiency of management. The general rule is that, in the absence of authority from the board of directors, no person, not even its officers, can validly bind a corporation. Section 23 of the Corporation Code of the Philippines provides: SEC. 23. *The Board of Directors or Trustees*. — Unless otherwise provided in this Code, the corporate powers of all corporations formed under this Code shall be exercised, all business conducted and all property of such corporations controlled and held by the board of directors or trustees x x x.

2. ID.; ID.; ID.; ID.; THE BOARD OF DIRECTORS MAY VALIDLY DELEGATE SOME OF ITS FUNCTION AND POWERS TO THE OFFICERS, COMMITTEES OR AGENTS.— In *People's Aircargo and Warehousing Co., Inc. v. Court of Appeals*, we held that under Section 23, the power and the responsibility to decide whether the corporation should enter into a contract that will bind the corporation are lodged in the board of directors, subject to the articles of incorporation, by-laws, or relevant provisions of law. However, just as a natural person may authorize another to do certain acts for and on his behalf, the board of directors may validly delegate some of its functions and powers to **officers**, committees or agents. The authority of such individuals to bind the corporation is generally derived from law, **corporate by-laws** or authorization from the board, either expressly or impliedly by habit, custom

or acquiescence in the general course of business. This Court has held, thus: A corporate officer or agent may represent and bind the corporation in transactions with third persons to the extent that [the] authority to do so has been conferred upon him, and this includes powers which have been intentionally conferred, and also such powers as, in the usual course of the particular business, are incidental to, or may be implied from, the powers intentionally conferred, powers added by custom and usage, as usually pertaining to the particular officer or agent, and such apparent powers as the corporation has caused persons dealing with the officer or agent to believe that it has conferred.

3. ID.; ID.; ID.; WHEN MAYBE HELD LIABLE TO PAY THE LOANS CONTRACTED BY ITS PRESIDENT ON BEHALF OF THE CORPORATION; CASE AT BAR.— In this case, the corporate by-laws of CMMCI provide: xxx. It is clear from the foregoing that the president of CMMCI is given the power to borrow money, execute contracts, and sign and indorse checks and promissory notes, in the name and on behalf of CMMCI. With such powers expressly conferred under the corporate by-laws, the CMMCI president, in exercising such powers, need not secure a resolution from the company's board of directors. xxx Thus, given the president's express powers under the CMMCI's by-laws, Sugimoto, as the president of CMMCI, was more than equipped to enter into loan transactions on CMMCI's behalf. Accordingly, the loans obtained by Sugimoto from Tsukahara on behalf of CMMCI are valid and binding against the latter, and CMMCI may be held liable to pay such loans.

APPEARANCES OF COUNSEL

Monteclar Sibi & Trinidad Law Offices for petitioner.
J. Neri & Associates Law Firm for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition for review[1] of the Court of Appeals' Decision[2] dated 29 July 2003 in CA-G.R. CV No. 68321. The Court of Appeals affirmed the Decision[3] dated 24 September 1999 of the Regional Trial Court of Cebu City, Branch 58 (RTC).

The Antecedent Facts

In February 1994, petitioner Cebu Mactan Members Center, Inc. (CMMCI), through Mitsumasa Sugimoto (Sugimoto), the President and Chairman of the Board of Directors of CMMCI, obtained a loan amounting to ₱6,500,000 from respondent Masahiro Tsukahara. As payment for the loan, CMMCI issued seven postdated checks of CMMCI payable to Tsukahara, with details as follows:[4]

Check No.	*Date*	*Amount*
PNB Check No. 892657	6 May 1994	₱4,860,000
PNB Check No. 892683	6 September 1994	280,000
PNB Check No. 892684	25 December 1994	270,000
PNB Check No. 892685	31 March 1995	270,000
PNB Check No. 892686	30 June 1995	280,000
PNB Check No. 892687	30 September 1995	270,000
PNB Check No. 892688	25 December 1995	270,000
	Total	₱6,500,000

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

[2] *Rollo*, pp. 48-54. Penned by Associate Justice Eloy R. Bello, Jr. with Presiding Justice Cancio C. Garcia and Associate Justice Mariano C. Del Castillo, concurring.

[3] *Id.* at 55-63. Penned by Judge Jose P. Soberano, Jr.

[4] Records, pp. 171-183.

On 13 April 1994, CMMCI, through Sugimoto, obtained another loan amounting to ₱10,000,000 from Tsukahara. Sugimoto executed and signed a promissory note in his capacity as CMMCI President and Chairman, as well as in his personal capacity.[5] The promissory note states:

> FOR VALUE RECEIVED, the undersigned CEBU MACTAN MEMBERS CENTER, INC., a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, through its undersigned chairman and president, MITSUMASA SUGIMOTO, hereby promise to pay MASAHIRO TSUKAHARA or order the sum of TEN MILLION PESOS (₱10,000,000.00) on or before August 30, 1996, plus interest thereon at the rate of EIGHTEEN PERCENT (18%) per annum computed from the date of this instrument until fully paid.
>
> x x x x x x x x x
>
> CEBU MACTAN MEMBERS CENTER, INC.
>
> By:
>
> (Signed)
> MITSUMASA SUGIMOTO
> In his capacity as Chairman and President
> and in his personal capacity.
>
> x x x x x x x x x

Upon maturity, the seven checks were presented for payment by Tsukahara, but the same were dishonored by PNB, the drawee bank. After several failed attempts to collect the loan amount totaling ₱16,500,000, Tsukahara filed the instant case for collection of sum of money against CMMCI and Sugimoto.

Tsukahara alleged that the amount of ₱16,500,000 was used by CMMCI for the improvement of its beach resort, which included the construction of a wave fence, the purchase of airconditioners and curtains, and the provision of salaries of resort employees. He also asserted that Sugimoto, as the President of CMMCI, "has the power to borrow money for said corporation

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[5] *Id.* at 185.

by any legal means whatsoever and to sign, endorse and deliver all checks and promissory notes on behalf of the corporation."[6]

CMMCI, on the other hand, denied borrowing the amount from Tsukahara, and claimed that both loans were personal loans of Sugimoto. The company also contended that if the loans were those of CMMCI, the same should have been supported by resolutions issued by CMMCI's Board of Directors.

On 24 September 1999, the RTC rendered a Decision, the dispositive portion of which reads:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff and against the defendants by ordering the defendants to pay jointly and severally to the plaintiff the sum of Six Millions (sic) Five Hundred Thousand Pesos (₱6,500,000.00), Philippine Currency, with interest thereon at the legal rate from the filing of the amended complaint on September 13, 1996 until fully paid, the sum of Ten Million Pesos (₱10,000,000.00), Philippine Currency, with interest of eighteen percent (18%) per annum from April 13, 1994 until fully paid, the sum of One Hundred Fifty Thousand Pesos (₱150,000.00), Philippine Currency, as and for attorney's fees and costs of suit.
>
> As the defendant Mitsumasa Sugimoto, who was served with summons by publication, was declared in default, let this decision be served upon him by publication once in a newspaper of general circulation at the expense of the plaintiff, pursuant to Section 9, Rule 13 of the 1997 Revised Rules of Civil Procedure.
>
> SO ORDERED.[7]

The Court of Appeals' Ruling

On appeal, the Court of Appeals rendered judgment, affirming the decision of the RTC, thus:

> WHEREFORE, the instant appeal is hereby DISMISSED and the Decision dated September 24, 1999 AFFIRMED.
>
> SO ORDERED.[8]

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[6] *Rollo,* p. 49.

[7] *Id.* at 62-63.

[8] *Id.* at 54.

Hence, this petition.

The Issue

The sole issue for resolution in this case is: Whether the Court of Appeals erred in holding that CMMCI is liable for the loan contracted by its President without a resolution issued by the CMMCI Board of Directors.

The Court's Ruling

We find the petition without merit.

A corporation, being a juridical entity, may act through its board of directors, which exercises almost all corporate powers, lays down all corporate business policies and is responsible for the efficiency of management.[9] The general rule is that, in the absence of authority from the board of directors, no person, not even its officers, can validly bind a corporation.[10] Section 23 of the Corporation Code of the Philippines provides:

> SEC. 23. *The Board of Directors or Trustees*. — Unless otherwise provided in this Code, the corporate powers of all corporations formed under this Code shall be exercised, all business conducted and all property of such corporations controlled and held by the board of directors or trustees x x x.

In *People's Aircargo and Warehousing Co., Inc. v. Court of Appeals*,[11] we held that under Section 23, the power and the responsibility to decide whether the corporation should enter into a contract that will bind the corporation are lodged in the board of directors, subject to the articles of incorporation, by-laws, or relevant provisions of law. However, just as a natural person may authorize another to do certain acts for and on his

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[9] CAMPOS, *THE CORPORATION CODE: COMMENTS, NOTES AND SELECTED CASES*, Vol. 1 (1990), p. 340.

[10] *People's Aircargo and Warehousing Co., Inc. v. Court of Appeals*, 357 Phil. 850, 862 (1998), citing *Premium Marble Resources, Inc. v. Court of Appeals*, 332 Phil. 10, 20 (1996).

[11] *Supra*, citing *Yao Ka Sin Trading v. Court of Appeals*, G.R. No. 53820, 15 June 1992, 209 SCRA 763, 781.

behalf, the board of directors may validly delegate some of its functions and powers to **officers**, committees or agents.[12] The authority of such individuals to bind the corporation is generally derived from law, **corporate by-laws** or authorization from the board, either expressly or impliedly by habit, custom or acquiescence in the general course of business.[13] This Court has held, thus:

> A corporate officer or agent may represent and bind the corporation in transactions with third persons to the extent that [the] authority to do so has been conferred upon him, and this includes powers which have been intentionally conferred, and also such powers as, in the usual course of the particular business, are incidental to, or may be implied from, the powers intentionally conferred, powers added by custom and usage, as usually pertaining to the particular officer or agent, and such apparent powers as the corporation has caused persons dealing with the officer or agent to believe that it has conferred.[14]

In this case, the corporate by-laws of CMMCI provide:

> ARTICLE III
>
> Officers
>
> x x x x x x x x x
>
> 2. President. The President shall be elected by the Board of Directors from their own number. He shall have the following powers and duties:
>
> x x x x x x x x x
>
> c. Borrow money for the company by any legal means whatsoever, including the arrangement of letters of credit and overdrafts with any and all banking institutions;
>
> d. Execute on behalf of the company all contracts and agreements which the said company may enter into;

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[12] *Id.* See also *San Juan Structural and Steel Fabricators, Inc. v. Court of Appeals*, 357 Phil. 631, 644 (1998).

[13] *Id.*

[14] *Id.*, citing 19 C.J.S. 456.

e. Sign, indorse, and deliver all checks, drafts, bill of exchange, promissory notes and orders of payment of sum of money in the name and on behalf of the corporation;[15]

It is clear from the foregoing that the president of CMMCI is given the power to borrow money, execute contracts, and sign and indorse checks and promissory notes, in the name and on behalf of CMMCI. With such powers expressly conferred under the corporate by-laws, the CMMCI president, in exercising such powers, need not secure a resolution from the company's board of directors. We quote with approval the ruling of the appellate court, *viz*:

x x x The court *a quo* correctly ruled that a board resolution in this case is a superfluity given the express provision of the corporate by-laws.

To insist that a board resolution is still required in order to bind the corporation with respect to the obligations contracted by its president is to defeat the purpose of the by-laws. By-laws of a corporation should be construed and given effect according to the general rules governing the construction of contracts. They, as the self-imposed private laws of a corporation, have, when valid, substantially the same force and effect as laws of the corporation, as have the provisions of its charter insofar as the corporation and the persons within it are concerned. They are in effect written into the charter and in this sense, they become part of the fundamental law of the corporation. And the corporation and its directors (or trustees) and officers are bound by and must comply with them.

The corporation is now estopped from denying the authority of its president to bind the former into contractual relations. x x x[16]

Thus, given the president's express powers under the CMMCI's by-laws, Sugimoto, as the president of CMMCI, was more than equipped to enter into loan transactions on CMMCI's behalf. Accordingly, the loans obtained by Sugimoto from Tsukahara on behalf of CMMCI are valid and binding against the latter, and CMMCI may be held liable to pay such loans.

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[15] Records, pp. 195-196.

[16] *Rollo*, p. 52, citing DE LEON, *THE CORPORATION CODE OF THE PHILIPPINES* (1997), p. 425.

WHEREFORE, we *DENY* the petition. We *AFFIRM* the Court of Appeals' Decision dated 29 July 2003 in CA-G.R. CV No. 68321.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 165678. July 17, 2009]

ROSARIO S. PANUNCIO, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; INFORMATION; FAILURE TO OBJECT TO THE ALLEGATION IN THE INFORMATION BEFORE THE ACCUSED ENTERED A PLEA OF NOT GUILTY AMOUNTS TO A WAIVER OF THE DEFECT IN THE INFORMATION.— At the outset, petitioner argues that the Information was defective because it did not specifically mention the provision that she violated. As such, she was not informed of the specific violation for which she was held liable. We cannot sustain petitioner's argument. Petitioner failed to raise the issue of the defective information before the trial court through a motion for bill of particulars or a motion to quash the information. Petitioner's failure to object to the allegation in the information before she entered her plea of not guilty amounted to a waiver of the defect in the information. Objections as to matters of form or substance in the information cannot be made for the first time on appeal.

2. CRIMINAL LAW; FALSIFICATION OF PUBLIC DOCUMENT BY PRIVATE INDIVIDUAL; ELEMENTS; PRESENT IN CASE AT BAR.— Falsification of documents under paragraph 1,

Article 172 in relation to Article 171 of the RPC refers to falsification by a private individual, or a public officer or employee who did not take advantage of his official position, of public, private, or commercial documents. The elements of falsification of documents under paragraph 1, Article 172 of the RPC are: (1) that the offender is a private individual or a public officer or employee who did not take advantage of his official position; (2) that he committed any of the acts of falsification enumerated in Article 171 of the RPC; and (3) that the falsification was committed in a public, official or commercial document. In this case, petitioner is a private individual. MVRR No. 63231478, denominated as LTO Form No. 2, is an official document issued by the LTO. It is the owner's copy of the Official Receipt of the payment of the vehicle's registration fee. Petitioner falsified the owner's copy of MVRR No. 63231478 by making it appear that it was an owner's copy issued to a vehicle of Manlite with Plate No. DEU 127 when in the LTO's files, it was issued to a vehicle of Manlite with Plate No. DFK 587. The discrepancies between the document in LTO's files and the document confiscated in petitioner's house were duly noted by the trial court and remained undisputed. The alteration made by petitioner changed the meaning of the document within the context of Article 171(6) of the RPC which punishes as falsification the making of "any alteration or intercalation in a genuine document which changes its meaning."

3. ID.; ID.; A PERSON IN POSSESSION OF A FALSIFIED DOCUMENT IS PRESUMED TO HAVE FALSIFIED THE SAME AND WAS USING IT FOR HIS BENEFIT.— Petitioner argues that MVRR No. 63231478 was not found in her possession and that it was not proved that she had participation in the criminal act. The Court disagrees with petitioner. The falsified copy of MVRR No. 63231478 was found during a valid search conducted in petitioner's residence. It was issued in the name of Manlite which petitioner admitted as co-owned by her together with her late husband. Thus, there is a presumption that she falsified it and she was using it for her benefit. The falsified document, purportedly issued in the name of Manlite, could be used for another vehicle operated by Manlite to make it appear that it was validly registered with the LTO. In this case, the original document in LTO's files was issued to a Manlite vehicle with Plate No. DFK 587 plying

Arroceros-Project 4, Quezon City via España. The falsified document was purportedly issued to a Manlite vehicle with Plate No. DEU 127 plying Binangonan-Cubao via Marcos Highway.

4. REMEDIAL LAW; CRIMINAL PROCEDURE; SEARCH; REQUIREMENTS TO BE VALID; COMPLIED WITH IN CASE AT BAR.— Section 8, Rule 126 of the Rules of Court provides: SEC. 8. *Search of house, room, or premises, to be made in presence of two witnesses.* – No search of a house, room, or any other premise shall be made except in the presence of the lawful occupant thereof or any member of his family or in the absence of the latter, two witnesses of sufficient age and discretion residing in the same locality. Even assuming that petitioner or any lawful occupant of the house was not present when the search was conducted, the search was done in the presence of at least two witnesses of sufficient age and discretion residing in the same locality. Manalo was the *barangay* chairman of the place while Velasco was petitioner's employee. Petitioner herself signed the certification of orderly search when she arrived at her residence. Clearly, the requirements of Section 8, Rule 126 of the Rules of Court were complied with by the police authorities who conducted the search. Further, petitioner failed to substantiate her allegation that she was just forced to sign the search warrant, inventory receipt, and the certificate of orderly search. In fact, the records show that she signed these documents together with three other persons, including the *barangay* chairman who could have duly noted if petitioner was really forced to sign the documents against her will.

5. ID.; ID.; ID.; ARTICLES SEIZED DURING A VALID SEARCH ARE ADMISSIBLE IN EVIDENCE AGAINST THE ACCUSED.— Articles which are the product of unreasonable searches and seizures are inadmissible as evidence pursuant to Article III, Section 3(2) of the Constitution. However, in this case, we sustain the validity of the search conducted in petitioner's residence and, thus, the articles seized during the search are admissible in evidence against petitioner.

6. CRIMINAL LAW; FALSIFICATION OF A PUBLIC DOCUMENT BY A PRIVATE INDIVIDUAL UNDER ARTICLE 172 (1) IN RELATION TO ARTICLE 171 OF THE REVISED PENAL CODE; IMPOSABLE PENALTY; APPLICATION OF INDETERMINATE SENTENCE LAW.— Falsification of a public document by a private individual under Article 172(1)

in relation to Article 171 of the RPC is punishable by *prision correccional* in its medium and maximum periods, which ranges from two years, four months and one day to six years, and a fine of not more than ₱5,000. Applying the ISL, petitioner may be sentenced to an indeterminate penalty the minimum of which must be within the range of *arresto mayor* in its maximum period to *prision correccional* in its minimum period, or four months and one day to two years and four months. In this case, the Court of Appeals sentenced petitioner to serve an indeterminate penalty of two years and four months of *prision correccional* as minimum to six years of *prision correccional* as maximum. There being no mitigating or aggravating circumstances, we deem it proper in this case to lower the maximum penalty imposed by the Court of Appeals from six years to four years, nine months and eleven days of *prision correccional*. Further, the penalty for falsification of a public document under Article 172(1) in relation to Article 171 of the RPC includes a fine of not more than ₱5,000 which the Court of Appeals failed to impose. Hence, we also modify the penalty to include the fine.

APPEARANCES OF COUNSEL

Gatmaytan Law Office for petitioner.
The Solicitor General for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

Before the Court is a petition for review assailing the 15 June 2004 Decision[1] and 15 October 2004 Resolution[2] of the Court of Appeals in CA-G.R. CR No. 25254.

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[1] *Rollo*, pp. 35-50. Penned by Associate Justice Mariano C. Del Castillo with Associate Justices Roberto A. Barrios and Magdangal M. De Leon, concurring.

[2] *Id.* at 76.

The Antecedent Facts

On 3 August 1992, at about 4 o' clock in the afternoon, operatives of the Land Transportation Office (LTO) and the Special Mission Group Task Force Lawin of the Presidential Anti-Crime Commission (PACC) led by then Philippine National Police Superintendent Panfilo Lacson and Police Senior Inspector Cesar Ouano, Jr., armed with Search Warrant No. 581-92 issued by then Regional Trial Court Judge Bernardo P. Pardo, raided the residence of Rosario S. Panuncio (petitioner), a jeepney operator, at 204 E. Rodriguez, Sr. Avenue, Quezon City. The operatives confiscated LTO documents, 17 pieces of private vehicle plates, a copying machine, several typewriters, and other tools and equipment. One of the LTO documents confiscated was MVRR No. 63231478 issued to Manlite Transport Corporation (Manlite). The document was photographed during the raid while it was still mounted on one of the typewriters.

Petitioner signed a certification of orderly search, together with Barangay Chairman Antonio Manalo (Manalo), petitioner's employee Myrna Velasco (Velasco), and one Cesar Nidua (Nidua). Petitioner, Manalo, Velasco, and Nidua also signed a Receipt of Property Seized issued by PO3 Manuel Nicolas Abuda. Petitioner and one Jaime L. Lopez (Lopez) were arrested and brought to the PACC.

Juan V. Borra, Jr., Assistant Secretary for the LTO, Department of Transportation and Communications, who was representing his office, filed a complaint against petitioner for violation of Articles 171, 172, 176, and 315 of the Revised Penal Code (RPC), as amended; Presidential Decree No. 1730; Sections 31 and 56 of Republic Act No. 4136; and *Batas Pambansa Blg*. 43. Lopez was not charged since it was shown that he was only a visitor of the house when the raid took place. An Information for violation of Article 172(1) in relation to Article 171 of the RPC was filed against petitioner, thus:

That on August 3, 1992 at about 4:00 p.m., accused ROSARIO PANUNCIO *y* SY, a private individual and owner/operator of a residence/office located at 204 E. Rodriguez Avenue, Quezon City, did, then and there, willfully, unlawfully and feloniously with intent

to cause damage falsified the vital informations as appearing on Land Transportation Office (LTO) official receipt no. MVRR No. 63231478 dated July 31, 1992 changing the meaning of the document and causing the document to speak something false, when in truth and in fact, accused knew fully well that the document as falsified do not legally exist and is different from the official file of the LTO, to the prejudice of public interest.

CONTRARY TO LAW.[3]

Petitioner filed a motion for reinvestigation, which the Regional Trial Court of Quezon City, Branch 107 (trial court), granted in its order of 1 March 1993.[4] The trial court gave the public prosecutor 20 days within which to submit his report on the reinvestigation. On 1 June 1994, the Department of Justice, through State Prosecutor Mario A.M. Caraos, submitted its Resolution[5] recommending that petitioner be prosecuted for falsification. The trial court set the arraignment, and on 28 June 1994, petitioner entered a plea of not guilty. Thereafter, pre-trial and the trial of the case ensued.

During the trial, a photocopy of the duplicate original of MVRR No. 63231478 dated 31 July 1992, which was a faithful reproduction of the document in LTO's file, was presented and compared with MVRR No. 63231478 confiscated from petitioner's residence. The following discrepancies were noted:

	As Per EDP/LTO File	As Per Photocopy of Owner's Copy (recovered from petitioner's residence)
File No.	4B-0476-20101	0478-50065
Plate No.	DFK 587	DEU 127
Route	Arroceros-Project 4, Quezon City via España	Binangonan-Cubao via Marcos Highway and vice-versa
Motor No.	179837	100002
Serial No.	SP-MM-12857-87-C	MEL-3002-C

[3] Records, p. 1.

[4] *Id.* at 33.

[5] *Id.* at 39-42.

Gross Weight	3,000	2,700
Net Capacity	1,500	1,350
Payment of 1992 Renewal Registration	₱513	₱468
Owner	Manlite Transport Co., Inc.	Manlite Transport Co., Inc.
Address	204 E. Rodriguez Ave., Q.C.	204 E. Rodriguez Ave., Q.C.[6]

Petitioner denied that she was the source of the falsified documents. She alleged that Manlite, which she used to co-own with her late husband, already stopped operating in April 1992 and her business was operating under the name Rosario Panuncio. She alleged that she was not at home when the raid took place, and when she returned home, the police authorities had already emptied her shelves and she was just forced to sign the search warrant, inventory receipt, and the certificate of orderly search. She further alleged that she was charged with falsification because she refused the police authorities' demand for money.

The Decision of the Trial Court

In its 2 September 1997 Decision,[7] the trial court found petitioner guilty beyond reasonable doubt of the crime of falsification of a public document under Articles 171 and 172 of the RPC. The trial court ruled that the facts established by the prosecution were not substantially disputed by the defense. The trial court ruled that the raid yielded incriminatory evidence to support the theory that petitioner was engaged in falsifying LTO documents and license plate registration receipts. The dispositive portion of the trial court's Decision reads:

> WHEREFORE, the prosecution having proven the guilt of the accused beyond reasonable doubt, the accused is found guilty as charged with the crime of Falsification of Public Document under Art. 171 and Art. 172 of the Revised Penal Code which carries the penalty of *prision correccional* in its medium and maximum period and a fine of not more than ₱5,000.00. Applying the Indeterminate

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[6] *Id.* at 318.

[7] *Rollo*, pp. 29-34. Penned by Judge Marcelino F. Bautista, Jr.

Sentence Law, accused Rosario Panuncio *y* Sy is hereby sentenced to suffer the penalty of imprisonment of Six (6) Months and One (1) Day of *arresto mayor* as minimum to FOUR (4) Years or *prision correccional* as maximum, and a fine of ₱2,000.00 with subsidiary imprisonment in case of insolvency. Without costs.

SO ORDERED.[8]

Petitioner appealed from the trial court's Decision.

The Decision of the Court of Appeals

In its 15 June 2004 Decision, the Court of Appeals affirmed the trial court's Decision with modification. The Court of Appeals held that petitioner committed falsification of a public document. The Court of Appeals ruled that the search warrant did not suffer from any legal infirmity because the items to be seized were already specified and identified in the warrant. The Court of Appeals declared that the court's designation of the place to be searched and the articles to be seized left the police authorities with no discretion, ensured that unreasonable searches and seizures would not take place and abuses would be avoided. The Court of Appeals further ruled that the Rules of Court do not require that the owner of the place to be searched be present during the conduct of the raid. The Court of Appeals noted that the search was conducted not only in the presence of petitioner but also in the presence of Manalo, Velasco, and Nidua.

The dispositive portion of the Decision of the Court of Appeals reads:

WHEREFORE, the judgment of conviction rendered by the trial court against accused-appellant Rosario Panuncio *y* Sy is AFFIRMED, but with the MODIFICATION that she should be, as she hereby is, sentenced to serve an indeterminate penalty of two (2) years and four (4) months of *prision correccional* as minimum to six (6) years of *prision correccional* as maximum. No pronouncement as to costs.

SO ORDERED.[9]

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[8] *Id.* at 33-34.

[9] *Id.* at 49.

Petitioner filed a motion for reconsideration. In its 15 October 2004 Resolution, the Court of Appeals denied the motion.

Hence, the petition before this Court.

The Issues

Petitioner raises the following issues:

1. Whether the elements of falsification of a public document under Article 172(1) in relation to Article 171 of the RPC have been established;
2. Whether the search was regularly conducted;
3. Whether the evidence gathered during the search are admissible in evidence; and
4. Whether the Court of Appeals properly applied the Indeterminate Sentence Law (ISL).

The Ruling of this Court

The petition has no merit.

Falsification of Public Documents

At the outset, petitioner argues that the Information was defective because it did not specifically mention the provision that she violated. As such, she was not informed of the specific violation for which she was held liable.

We cannot sustain petitioner's argument. Petitioner failed to raise the issue of the defective information before the trial court through a motion for bill of particulars or a motion to quash the information. Petitioner's failure to object to the allegation in the information before she entered her plea of not guilty amounted to a waiver of the defect in the information.[10] Objections as to matters of form or substance in the information cannot be made for the first time on appeal.[11]

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[10] *People v. Almendral*, G.R. No. 126025, 6 July 2004, 433 SCRA 440.

[11] *Id.*

Falsification of documents under paragraph 1, Article 172[12] in relation to Article 171[13] of the RPC refers to falsification by a private individual, or a public officer or employee who did

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[12] Art. 172. *Falsification by private individuals and use of falsified documents*. — The penalty of *prision correccional* in its medium and maximum periods and a fine of not more than 5,000 pesos shall be imposed upon:

1. Any private individual who shall commit any of the falsifications enumerated in the next preceding article in any public or official document or letter of exchange or any other kind of commercial document; and
2. Any person who, to the damage of a third party, or with the intent to cause such damage, shall in any private document commit any of the acts of falsification enumerated in the next preceding article.

Any person who shall knowingly introduce in evidence in any judicial proceeding or to the damage of another or who, with the intent to cause such damage, shall use any of the false documents embraced in the next preceding article or in any of the foregoing subdivisions of this article, shall be punished by the penalty next lower in degree.

[13] ART. 171. *Falsification by public officer, employee or notary or ecclesiastic minister*. — The penalty of *prision mayor* and a fine not to exceed 5,000 pesos shall be imposed upon any public officer, employee, or notary who, taking advantage of his official position, shall falsify a document by committing any of the following acts:

1. Counterfeiting or imitating any handwriting, signature or rubric;
2. Causing it to appear that persons have participated in any act or proceeding when they did not in fact so participate;
3. Attributing to persons who have participated in an act or proceeding statements other than those in fact made by them;
4. Making untruthful statements in a narration of facts;
5. Altering true dates;
6. Making any alteration or intercalation in a genuine document which changes its meaning;
7. Issuing in an authenticated form a document purporting to be a copy of an original document when no such original exists, or including in such a copy of a statement contrary to, or different from, that of the genuine original; or
8. Intercalating any instrument or note relative to the issuance thereof in a protocol, registry, or official book.

The same penalty shall be imposed upon any ecclesiastical minister who shall commit any of the offenses enumerated in the preceding paragraphs of this article, with respect to any record or document of such character that its falsification may affect the civil status of persons.

not take advantage of his official position, of public, private, or commercial documents.[14] The elements of falsification of documents under paragraph 1, Article 172 of the RPC are:

(1) that the offender is a private individual or a public officer or employee who did not take advantage of his official position;

(2) that he committed any of the acts of falsification enumerated in Article 171 of the RPC; and

(3) that the falsification was committed in a public, official or commercial document.[15]

In this case, petitioner is a private individual. MVRR No. 63231478, denominated as LTO Form No. 2, is an official document issued by the LTO. It is the owner's copy of the Official Receipt of the payment of the vehicle's registration fee. Petitioner falsified the owner's copy of MVRR No. 63231478 by making it appear that it was an owner's copy issued to a vehicle of Manlite with Plate No. DEU 127 when in the LTO's files, it was issued to a vehicle of Manlite with Plate No. DFK 587. The discrepancies between the document in LTO's files and the document confiscated in petitioner's house were duly noted by the trial court and remained undisputed. The alteration made by petitioner changed the meaning of the document within the context of Article 171(6) of the RPC which punishes as falsification the making of "any alteration or intercalation in a genuine document which changes its meaning."

Petitioner argues that MVRR No. 63231478 was not found in her possession and that it was not proved that she had participation in the criminal act. The Court disagrees with petitioner. The falsified copy of MVRR No. 63231478 was found during a valid search conducted in petitioner's residence. It was issued in the name of Manlite which petitioner admitted as co-owned by her together with her late husband. Thus, there is a presumption that she falsified it and she was using it for

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[14] *Santos, Jr. v. People*, G.R. No. 167671, 8 September 2008, 564 SCRA 60, 65.

[15] *Id.*

her benefit. The falsified document, purportedly issued in the name of Manlite, could be used for another vehicle operated by Manlite to make it appear that it was validly registered with the LTO. In this case, the original document in LTO's files was issued to a Manlite vehicle with Plate No. DFK 587 plying Arroceros-Project 4, Quezon City via España. The falsified document was purportedly issued to a Manlite vehicle with Plate No. DEU 127 plying Binangonan-Cubao via Marcos Highway.

Petitioner further argues that only a photocopy of the purported owner's copy was presented to the trial court and there could be no falsification of a mere photocopy.

Again, we do not agree with petitioner. It has been established that there is a genuine copy of MVRR No. 63231478 in the LTO's files and the owner's copy of it was in petitioner's possession. The original copy of MVRR No. 63231478 was not presented during the trial because petitioner kept it in her possession. However, it has been established during the trial that as per usual practice, the owner's copy is usually photocopied and it is the photocopy which is usually kept inside the vehicle.[16] As pointed out by the Solicitor General, the presentation of a mere photocopy of the document to any traffic enforcer is enough to convince the traffic enforcer that the public vehicle was validly and lawfully registered. The fact remains that LTO Form No. 2, which petitioner falsified, is a genuine and public document.

Validity of the Search and Admissibility of the Articles Seized

Petitioner assails the validity of the search which was allegedly conducted while she was not in the house. Petitioner alleges that since the search warrant was defective, the items seized during the search could not be used in evidence against her.

We will discuss these issues together.

Section 8, Rule 126 of the Rules of Court provides:

SEC. 8. *Search of house, room, or premises, to be made in presence of two witnesses.* – No search of a house, room, or any

[16] TSN, Menelia Mortel, 29 August 2005, p. 19.

other premise shall be made except in the presence of the lawful occupant thereof or any member of his family or in the absence of the latter, two witnesses of sufficient age and discretion residing in the same locality.

Even assuming that petitioner or any lawful occupant of the house was not present when the search was conducted, the search was done in the presence of at least two witnesses of sufficient age and discretion residing in the same locality. Manalo was the *barangay* chairman of the place while Velasco was petitioner's employee.[17] Petitioner herself signed the certification of orderly search when she arrived at her residence. Clearly, the requirements of Section 8, Rule 126 of the Rules of Court were complied with by the police authorities who conducted the search. Further, petitioner failed to substantiate her allegation that she was just forced to sign the search warrant, inventory receipt, and the certificate of orderly search. In fact, the records show that she signed these documents together with three other persons, including the *barangay* chairman who could have duly noted if petitioner was really forced to sign the documents against her will.

Articles which are the product of unreasonable searches and seizures are inadmissible as evidence pursuant to Article III, Section 3(2) of the Constitution.[18] However, in this case, we sustain the validity of the search conducted in petitioner's residence and, thus, the articles seized during the search are admissible in evidence against petitioner.

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[17] In her testimony, petitioner denied that Velasco was her employee although she admitted that Velasco used to work for her. Petitioner also admitted that Velasco is her neighbor. TSN, 11 March 1997, p. 7.

[18] *People v. Sarap*, 447 Phil. 642 (2003). Sections 2 and 3, Article III of the 1987 Constitution provide:

Section 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

Application of the ISL

Falsification of a public document by a private individual under Article 172(1) in relation to Article 171 of the RPC is punishable by *prision correccional* in its medium and maximum periods, which ranges from two years, four months and one day to six years, and a fine of not more than ₱5,000. Applying the ISL, petitioner may be sentenced to an indeterminate penalty the minimum of which must be within the range of *arresto mayor* in its maximum period to *prision correccional* in its minimum period, or four months and one day to two years and four months.

In this case, the Court of Appeals sentenced petitioner to serve an indeterminate penalty of two years and four months of *prision correccional* as minimum to six years of *prision correccional* as maximum. There being no mitigating or aggravating circumstances, we deem it proper in this case to lower the maximum penalty imposed by the Court of Appeals from six years to four years, nine months and eleven days of *prision correccional*. Further, the penalty for falsification of a public document under Article 172(1) in relation to Article 171 of the RPC includes a fine of not more than ₱5,000 which the Court of Appeals failed to impose. Hence, we also modify the penalty to include the fine.

WHEREFORE, we *DENY* the petition. We *AFFIRM* with *MODIFICATION* the 15 June 2004 Decision and 15 October 2004 Resolution of the Court of Appeals in CA-G.R. CR No. 25254. We find petitioner Rosario S. Panuncio guilty beyond reasonable doubt of the crime of falsification of a public document under Article 172(1) in relation to Article 171 of the Revised Penal Code and hereby sentence her to suffer the indeterminate

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Section 3. (1) The privacy of communication and correspondence shall be inviolable except upon lawful order of the court, or when public safety or order requires otherwise, as prescribed by law.

(2) Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding.

penalty of *IMPRISONMENT* from two years and four months of *prision correccional* as minimum to four years, nine months and eleven days of *prision correccional* as maximum and to pay a *FINE* of ₱3,000.

Costs against petitioner.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 166198. July 17, 2009]

MARCELINO A. MAGDADARO, *petitioner, vs.* **PHILIPPINE NATIONAL BANK,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; RETIREMENT; DEFINED.— Retirement is the result of a bilateral act of the parties, a voluntary agreement between the employer and the employee whereby the latter, after reaching a certain age, agrees to sever his or her employment with the former. Retirement is provided for under Article 287 of the Labor Code, as amended by Republic Act No. 7641, or is determined by an existing agreement between the employer and the employee.

2. ID.; ID.; MANAGEMENT PREROGATIVE; THE EXERCISE THEREOF IS VALID PROVIDED IT IS NOT PERFORMED IN A MALICIOUS, HARSH, OPPRESSIVE, VINDICTIVE OR WANTON MANNER OR OUT OF MALICE OR SPITE.— Whether petitioner's early retirement within the SSIP period will improve or impair the delivery of bank services is a business decision properly within the exercise of management

prerogative. More importantly, the SSIP provides: 7. Management shall have the discretion and prerogative in approving the applications filed under the Plan, **as well as in setting the effectivity dates for separation within the implementation period of the Plan.** It is clear that it is within respondent's prerogative to set the date of effectivity of retirement and it may not be necessarily what is stated in the application. We see no grave abuse of discretion on the part of respondent in the exercise of this management prerogative. The exercise of management prerogative is valid provided it is not performed in a malicious, harsh, oppressive, vindictive or wanton manner or out of malice or spite. In this case, the NLRC's finding that petitioner received a rating of 70.5% in his working and business relations is not enough reason to ascribe bad faith on the part of respondent in accelerating the date of effectivity of petitioner's retirement.

D E C I S I O N

CARPIO, *J.*:

The Case

Before the Court is a petition for review assailing the 26 October 2004 Decision[1] and 6 December 2004 Resolution[2] of the Court of Appeals in CA-G.R. SP No. 80176.

The Antecedent Facts

Marcelino A. Magdadaro (petitioner) was employed by Philippine National Bank (respondent) since 8 January 1968. On 21 September 1998, petitioner filed his application for early retirement under respondent's Special Separation Incentive Program (SSIP). Petitioner was then holding the position of

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[1] *Rollo*, pp. 103-109. Penned by Associate Justice Isaias P. Dicdican with Associate Justices Elvi John S. Asuncion and Ramon M. Bato, Jr., concurring.

[2] *Id.* at 125-126. Penned by Associate Justice Isaias P. Dicdican with Associate Justices Mercedes Gozo-Dadole and Ramon M. Bato, Jr., concurring.

Senior Assistant Manager of respondent's Branch Operations and Consumer Finance Division for the Visayas. Petitioner stated in his application that 31 December 1999 was his preferred effective date of retirement.

Respondent approved petitioner's application for early retirement but made it effective on 31 December 1998. Petitioner protested the acceleration of his retirement. He received, under protest, his retirement and separation benefits amounting to ₱908,950.44. On 18 October 1999, petitioner filed a complaint for illegal dismissal and payment of moral, exemplary and actual damages against respondent before the Regional Arbitration Branch No. VII of the National Labor Relations Commission (NLRC), Cebu City.

The Ruling of the Labor Arbiter and the NLRC

In a Decision dated 3 August 2000,[3] the Labor Arbiter ruled that respondent had the discretion and prerogative to set the effective date of retirement under the SSIP. The Labor Arbiter ruled that respondent's insistence on the date of effectivity of petitioner's retirement was not tantamount to illegal dismissal. The Labor Arbiter ruled that there was no dismissal to speak of because petitioner voluntarily availed of the SSIP. Still, the Labor Arbiter granted petitioner's preferred date of retirement and awarded him additional retirement benefits. The dispositive portion of the Labor Arbiter's Decision reads:

> WHEREFORE, in the light of the foregoing premises, judgment is hereby rendered ordering respondent PHILIPPINE NATIONAL BANK to pay complainant the amount of ₱287,606.50 as additional retirement benefits and salaries with fixed allowances and ₱100,000.00 in the concept of moral and exemplary damages or a total amount of THREE HUNDRED EIGHTY-SEVEN THOUSAND SIX HUNDRED SIX and 50/00 (₱387,606.50).
>
> The other claims are dismissed for lack of merit.
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> SO ORDERED.[4]

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[3] *Id.* at 191-205. Penned by Labor Arbiter Violeta Ortiz-Bantug.

[4] *Id.* at 204-205.

Both petitioner and respondent appealed from the Labor Arbiter's Decision.

In its 4 March 2003 Decision,[5] the NLRC affirmed the Labor Arbiter's Decision. However, the NLRC considered petitioner's retirement on 31 December 1998 as tantamount to illegal dismissal. The NLRC ruled that while it recognized respondent's prerogative to change petitioner's retirement date, management prerogative should be exercised with prudence and without malice.

Petitioner and respondent filed their respective motions for reconsideration. In its 24 July 2003 Resolution,[6] the NLRC denied both motions for reconsideration for lack of merit.

Respondent filed a petition for *certiorari* before the Court of Appeals.

The Ruling of the Court of Appeals

In its 26 October 2004 Decision, the Court of Appeals granted the petition. The Court of Appeals ruled that the NLRC acted with grave abuse of discretion in affirming the decision of the Labor Arbiter, while at the same time finding that petitioner's retirement was tantamount to illegal dismissal.

The Court of Appeals held that petitioner voluntarily applied for the SSIP. The Court of Appeals ruled that petitioner could not claim to have been illegally dismissed just because the date of effectivity of his retirement did not conform to his preferred retirement date. The dispositive portion of the Decision of the Court of Appeals reads:

WHEREFORE, the foregoing premises considered, the petition is hereby GRANTED. The assailed Resolution and Decision of the NLRC, Fourth Division are (a) MODIFIED by deleting entirely the award to private respondent of ₱287,606.50 as additional retirement benefits and salaries with fixed allowances and ₱100,000.00 in the

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[5] *Id.* at 241-250. Penned by Commissioner Edgardo M. Enerlan with Commissioner Oscar S. Uy, concurring.

[6] *Id.* at 265-266. Penned by Commissioner Edgardo M. Enerlan with Commissioners Gerardo C. Nograles and Oscar S. Uy, concurring.

concept of moral and exemplary damages or a total amount of THREE HUNDRED EIGHTY-SEVEN THOUSAND SIX HUNDRED SIX & 50/100 (₱387,606.50), but (b) AFFIRMED in all other respects.

SO ORDERED.[7]

Petitioner filed a motion for reconsideration. In its 6 December 2004 Resolution, the Court of Appeals denied the motion.

Hence, the petition before this Court.

The Issue

The only issue in this case is whether petitioner was illegally dismissed from employment.

The Ruling of this Court

The petition has no merit.

Retirement is the result of a bilateral act of the parties, a voluntary agreement between the employer and the employee whereby the latter, after reaching a certain age, agrees to sever his or her employment with the former.[8] Retirement is provided for under Article 287 of the Labor Code, as amended by Republic Act No. 7641,[9] or is determined by an existing agreement between the employer and the employee.

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[7] *Id.* at 108.

[8] *Universal Robina Sugar Milling Corporation (URSUMCO) v. Caballeda*, G.R. No. 156644, 28 July 2008, 560 SCRA 115.

[9] An Act Amending Article 287 of Presidential Decree No. 442, as amended, Otherwise Known As The Labor Code of the Philippines, By Providing For Retirement Pay to Qualified Private Sector Employees In The Absence of Any Retirement Plan In The Establishment. As amended, Article 287 reads:

Art. 287. *Retirement*. — Any employee may be retired upon reaching the retirement age established in the collective bargaining agreement or other applicable employment contract.

In case of retirement, the employee shall be entitled to receive such retirement benefits as he may have earned under existing laws and any collective bargaining agreement and other agreements: Provided, however, That an employee's retirement benefits under any collective bargaining and other agreements shall not be less than those provided herein.

In this case, respondent offered the SSIP to overhaul the bank structure and to allow it to effectively compete with local peer and foreign banks. SSIP was not compulsory on employees. Employees who wished to avail of the SSIP were required to accomplish a form for availment of separation benefits under the SSIP and to submit the accomplished form to the Personnel Administration and Industrial Relations Division (PAIRD) for approval.

Petitioner voluntarily availed of the SSIP. He accomplished the application form and submitted it to the PAIRD. He only questioned the approval of his retirement on a date earlier than his preferred retirement date.

The Labor Arbiter ruled that petitioner was not illegally dismissed from the service. Even the NLRC ruled that petitioner could no longer withdraw his application for early retirement under the SSIP. However, the NLRC ruled that respondent could not accelerate the petitioner's retirement date. The NLRC ruled that it could not imagine how petitioner's continued employment until 31 December 1999 would impair the delivery of bank services and attribute bad faith on respondent when it accelerated petitioner's retirement.

In the absence of a retirement plan or agreement providing for retirement benefits of employees in the establishment, an employee upon reaching the age of sixty (60) years or more, but not beyond sixty-five (65) years which is hereby declared the compulsory retirement age, who has served at least five (5) years in the said establishment, may retire and shall be entitled to retirement pay equivalent to at least one-half (1/2) month salary for every year of service, a fraction of at least six (6) months being considered as one whole year.

Unless the parties provide for broader inclusions, the term one-half (1/2) month salary shall mean fifteen (15) days plus one-twelfth (1/12) of the 13th month pay and the cash equivalent of not more than five (5) days of service incentive leaves.

Retail, service and agricultural establishments or operations employing not more than (10) employees or workers are exempted from the coverage of this provision." Violation of this provision is hereby declared unlawful and subject to the penal provisions provided under Article 288 of this Code.

We do not agree. Whether petitioner's early retirement within the SSIP period will improve or impair the delivery of bank services is a business decision properly within the exercise of management prerogative. More importantly, the SSIP provides:

> 7. Management shall have the discretion and prerogative in approving the applications filed under the Plan, **as well as in setting the effectivity dates for separation within the implementation period of the Plan.**[10] (Emphasis supplied)

It is clear that it is within respondent's prerogative to set the date of effectivity of retirement and it may not be necessarily what is stated in the application. We see no grave abuse of discretion on the part of respondent in the exercise of this management prerogative. The exercise of management prerogative is valid provided it is not performed in a malicious, harsh, oppressive, vindictive or wanton manner or out of malice or spite.[11] In this case, the NLRC's finding that petitioner received a rating of 70.5% in his working and business relations is not enough reason to ascribe bad faith on the part of respondent in accelerating the date of effectivity of petitioner's retirement.

WHEREFORE, we *DENY* the petition. We *AFFIRM* the 26 October 2004 Decision and 6 December 2004 Resolution of the Court of Appeals in CA-G.R. SP No. 80176.

SO ORDERED.

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

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[10] CA *rollo,* p. 73.

[11] See *Nagkahiusang Namumuo sa Dasuceco-National Federation of Labor (NAMADA-NFL) v. Davao Sugar Central Co., Inc.*, G.R. No. 145848, 9 August 2006, 498 SCRA 271.

FIRST DIVISION

[G.R. No. 167546. July 17, 2009]

SONNY ROMERO *Y* DOMINGUEZ, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES, ISABEL PADUA, REGINA BREIS, MINERVA MONTES and OFELIA BELANDO BREIS,**[1] *respondents.*

SYLLABUS

1. CRIMINAL LAW; CRIMINAL LIABILITY; WILL GIVE RISE TO CIVIL LIABILITY ONLY IF THE FELONIOUS ACT OR OMISSION RESULTS IN DAMAGE OR INJURY TO ANOTHER AND IS THE DIRECT AND PROXIMATE CAUSE THEREOF.— The rule is that every person criminally liable is also civilly liable. Criminal liability will give rise to civil liability only if the felonious act or omission results in damage or injury to another and is the direct and proximate cause thereof. Every crime gives rise to (1) a criminal action for the punishment of the guilty party and (2) a civil action for the restitution of the thing, repair of the damage, and indemnification for the losses.

2. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF CIVIL ACTION; COURTS CAN ACQUIT AN ACCUSED ON REASONABLE DOUBT BUT STILL ORDER PAYMENT OF CIVIL DAMAGES IN THE SAME CASE; CASE AT BAR.— However, the reverse is not always true. In this connection, the relevant portions of Section 2, Rule 111 and Section 2, Rule 120 of the Rules of Court provide: Sec. 2. *When separate civil action is suspended*.—xxx Sec. 2. *Contents of the judgment*.—xxx Thus, the rule is that the acquittal of an accused of the crime charged will not necessarily extinguish his civil liability, unless the court declares in a final judgment that the fact from which the civil liability might arise did not exist. Courts can acquit an accused on reasonable doubt but still order payment of civil damages in the same case. It is not even

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[1] The surnames of respondents Regina Breis and Ofelia Belando Breis were erroneously stated as "Bries" in the caption of the petition.

necessary that a separate civil action be instituted. In this case, the MTC held that it could not ascertain with moral certainty the wanton and reckless manner by which petitioner drove the bus in view of the condition of the highway where the accident occurred and the short distance between the bus and the taxi before the collision. However, it categorically stated that while petitioner may be acquitted based on reasonable doubt, he may nonetheless be held civilly liable. The RTC added that there was *no* finding by the MTC that the act from which petitioner's civil liability may arise did not exist. Therefore, the MTC was correct in holding petitioner civilly liable to the heirs of the victims of the collision for the tragedy, mental anguish and trauma they suffered plus expenses they incurred during the wake and interment.

3. ID.; ID.; ID.; ACQUITTAL OF THE ACCUSED FROM CRIMINAL LIABILITY FOR FAILURE OF THE EVIDENCE TO PROVE NEGLIGENCE WITH MORAL CERTAINTY DOES NOT NEGATE A FINDING OF CIVIL LIABILITY IF HIS NEGLIGENCE WAS ESTABLISHED BY PREPONDERANCE OF EVIDENCE.— In view of the pronouncements of the MTC and the RTC, we agree with the conclusion of the CA that petitioner was acquitted not because he did not commit the crime charged but because the RTC and the MTC could not ascertain with moral conviction the wanton and reckless manner by which petitioner drove the bus at the time of the accident. Put differently, petitioner was acquitted because the prosecution failed to prove his guilt beyond reasonable doubt. However, his civil liability for the death, injuries and damages arising from the collision is another matter. While petitioner was absolved from criminal liability because his negligence was not proven beyond reasonable doubt, he can still be held civilly liable if his negligence was established by preponderance of evidence. In other words, the failure of the evidence to prove negligence with moral certainty does not negate (and is in fact compatible with) a ruling that there was preponderant evidence of such negligence. And that is sufficient to hold him civilly liable. Thus, the MTC (as affirmed by the RTC and the CA) correctly imposed civil liability on petitioner despite his acquittal. Simple logic also dictates that petitioner would not have been held civilly liable if his act from which the civil liability had arisen did not in fact exist.

4. ID.; EVIDENCE; THE SUPREME COURT IS NOT A TRIER OF FACTS.— Anent the second issue, it would be well to remind petitioner of the time-honored doctrine that this Court is not a trier of facts. The rule finds greater relevance in this case because the MTC, the RTC and the CA uniformly held that it was Jimmy Padua, and not Gerardo Breis, Sr., who was driving the taxi at the time of the accident. There are of course instances when this Court can embark on a re-examination of the evidence adduced by the parties during trial. Sad to say, none of those instances is present here.

APPEARANCES OF COUNSEL

Esteban R. Abonal for petitioner.
The Solicitor General for respondents.

R E S O L U T I O N

CORONA, *J.*:

On April 1, 1999[2] at around 12:00 noon, the JC Liner[3] driven by petitioner Sonny Romero and the Apego Taxi[4] driven by Jimmy Padua figured in a head-on collision along Governor Jose Fuentebella Highway at Barangay Hibago, Ocampo, Camarines Sur. The bus was bound for Naga City while the taxi was going in the opposite direction of Partido Area. The collision resulted in the death of Gerardo Breis, Sr.,[5] Arnaldo Breis,[6] Gerardo Breis, Jr.,[7] Rene Montes,[8] Erwin Breis[9] and

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[2] Erroneously indicated as April 21, 1999 by the Court of Appeals.

[3] With Plate No. EAW-533 and Body No. 1019.

[4] With Plate No. PVZ-345.

[5] 36 years old.

[6] 13 years old.

[7] 9 years old.

[8] 14 years old.

[9] 7 years old.

Jimmy Padua.[10] Luckily, Edwin Breis and his son Edmund Breis survived although they sustained serious injuries.

As a consequence, petitioner was charged with the crime of reckless imprudence resulting in multiple homicide and multiple serious physical injuries with damage to property in the Municipal Trial Court (MTC) of Ocampo, Camarines Sur.

After trial on the merits, the MTC acquitted petitioner of the crime charged in a decision[11] dated November 9, 2000. Petitioner was, however, held civilly liable and was ordered to pay the heirs of the victims the total amount of ₱3,541,900 by way of actual damages, civil indemnity for death, moral damages, temperate damages and loss of earning capacity.

Petitioner appealed to the Regional Trial Court (RTC) of Pili, Camarines Sur, claiming that the MTC erred in holding him civilly liable in view of his acquittal. On July 17, 2001, the RTC affirmed the MTC judgment *in toto*.[12]

Refusing to give up, petitioner appealed[13] to the Court of Appeals (CA). On March 3, 2005, the CA rendered the assailed decision[14] affirming the RTC.

Left with no other recourse, petitioner now argues[15] that his acquittal should have freed him from payment of civil liability. He also claims that he should be totally exonerated from any liability because it was Gerardo Breis, Sr., not the regular driver, Jimmy Padua, who was actually driving the taxi at the time of the accident, which was clearly in violation of insurance and transportation laws.

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[10] 41 years old.

[11] Penned by Judge Manuel E. Contreras. *Rollo*, pp. 24-36.

[12] Decision penned by Judge Martin P. Badong, Jr. *Id.*, pp. 37-42.

[13] Under Rule 42 of the Rules of Court.

[14] Penned by Justice Eliezer R. De Los Santos (deceased) and concurred in by Justices Eugenio S. Labitoria (retired) and Arturo D. Brion (now a member of the Supreme Court). *Rollo*, pp. 43-48.

[15] Petitioner appealed to this Court via Rule 45 of the Rules of Court.

We disagree.

The rule is that every person criminally liable is also civilly liable.[16] Criminal liability will give rise to civil liability only if the felonious act or omission results in damage or injury to another and is the direct and proximate cause thereof.[17] Every crime gives rise to (1) a criminal action for the punishment of the guilty party and (2) a civil action for the restitution of the thing, repair of the damage, and indemnification for the losses.[18]

However, the reverse is not always true. In this connection, the relevant portions of Section 2, Rule 111 and Section 2, Rule 120 of the Rules of Court provide:

Sec. 2. *When separate civil action is suspended*.—xxx

The **extinction of the penal action does not carry with it extinction of the civil action**. However, **the civil action based on delict shall be deemed extinguished if there is a finding in a final judgment in the criminal action that the act or omission from which the civil liability may arise did not exist**. (emphasis supplied)

Sec. 2. *Contents of the judgment*.—xxx

In case the judgment is of acquittal, it shall state whether the evidence of the prosecution absolutely failed to prove the guilt

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[16] Revised Penal Code, Art. 100. Underlying the principle that every person criminally liable is also civilly liable is the view that from the standpoint of its effects, a crime has dual character: (1) as an offense against the State because of the disturbance of the social order; and (2) as an offense against the private person injured by the crime unless it involves the crime of treason, rebellion, espionage, contempt and others where no civil liability arises on the part of the offender either because there are no damages to be compensated or there is no private person injured by the crime. *Occena v. Icamina*, G.R. No. 82146, 22 January 1990, 181 SCRA 328, 333, citing H. Jarencio, *Torts and Damages*, 1983 ed., p. 237. In the ultimate analysis, what gives rise to the civil liability is really the obligation of everyone to repair or to make whole the damage caused by another by reason of his act or omission, whether done intentionally or negligently and whether or not punishable by law. *Id.*, citing C. Sangco, *Philippine Law on Torts and Damages*, Revised Edition, pp. 246-257.

[17] *Banal v. Tadeo, Jr.*, G.R. Nos. 78911-25, 11 December 1987, 156 SCRA 325.

[18] *United States v. Bernardo*, 19 Phil. 265 (1911).

of the accused or merely **failed to prove his guilt beyond reasonable doubt.** In either case, **the judgment shall determine if the act or omission from which the civil liability might arise did not exist**. (emphasis supplied)

Thus, the rule is that the acquittal of an accused of the crime charged will not necessarily extinguish his civil liability, unless the court declares in a final judgment that the fact from which the civil liability might arise did not exist.[19] Courts can acquit an accused on reasonable doubt but still order payment of civil damages in the same case.[20] It is not even necessary that a separate civil action be instituted.[21]

In this case, the MTC held that it could not ascertain with moral certainty the wanton and reckless manner by which petitioner drove the bus in view of the condition of the highway where the accident occurred and the short distance between the bus and the taxi before the collision. However, it categorically stated that while petitioner may be acquitted based on reasonable doubt, he may nonetheless be held civilly liable.[22]

The RTC added that there was *no* finding by the MTC that the act from which petitioner's civil liability may arise did not

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[19] *Bautista v. Court of Appeals*, G.R. No. L-46025, 2 September 1992, 213 SCRA 231, 236; *Calalang v. IAC*, G.R. No. 74613, 27 February 1991, 194 SCRA 514.

[20] *Padilla v. Court of Appeals*, G.R. No. L-39999, 31 May 1984, 129 SCRA 558, 567. "There appear to be no sound reasons to require a separate civil action to still be filed considering that the facts to be proved in the civil case have already been established in the criminal proceedings where the accused was acquitted. xxx To require a civil action simply because the accused was acquitted would mean clogging of court dockets and unnecessary duplication of litigation with all its attendant loss of time, effort, and money on the part of all concerned." *See* also *People v. Jalandoni*, G.R. No. 57555, 28 August 1984, 131 SCRA 454; *Maximo v. Garuchi*, G.R. Nos. L-47994-97, 24 September 1986, 144 SCRA 326; *Vizconde v. Intermediate Appellate Court*, G.R. No. 74231, 10 April 1987, 149 SCRA 226; *People v. Ligon*, G.R. No. 74041, 29 July 1987, 152 SCRA 419.

[21] *Id.*

[22] *Rollo*, p. 31.

exist. Therefore, the MTC was correct in holding petitioner civilly liable to the heirs of the victims of the collision for the tragedy, mental anguish and trauma they suffered plus expenses they incurred during the wake and interment.[23]

In view of the pronouncements of the MTC and the RTC, we agree with the conclusion of the CA that petitioner was acquitted not because he did not commit the crime charged but because the RTC and the MTC could not ascertain with moral conviction the wanton and reckless manner by which petitioner drove the bus at the time of the accident. Put differently, petitioner was acquitted because the prosecution failed to prove his guilt beyond reasonable doubt. However, his civil liability for the death, injuries and damages arising from the collision is another matter.

While petitioner was absolved from criminal liability because his negligence was not proven beyond reasonable doubt, he can still be held civilly liable if his negligence was established by preponderance of evidence.[24] In other words, the failure of the evidence to prove negligence with moral certainty does not negate (and is in fact compatible with) a ruling that there was preponderant evidence of such negligence. And that is sufficient to hold him civilly liable.

Thus, the MTC (as affirmed by the RTC and the CA) correctly imposed civil liability on petitioner despite his acquittal. Simple logic also dictates that petitioner would not have been held civilly liable if his act from which the civil liability had arisen did not in fact exist.

Anent the second issue, it would be well to remind petitioner of the time-honored doctrine that this Court is not a trier of facts.[25] The rule finds greater relevance in this case because

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[23] *Id.,* pp. 41-42.

[24] In that case, his civil liability remains to be *ex delicto*. (See *Manantan v. CA*, 403 Phil. 298 [2001].)

[25] *Vicente Delos Santos, et al. v. Fred Elizalde*, G.R. Nos. 141810 & 141812, 2 February 2007, 514 SCRA 14.

the MTC,[26] the RTC[27] and the CA[28] uniformly held that it was Jimmy Padua, and not Gerardo Breis, Sr., who was driving the taxi at the time of the accident.

There are of course instances[29] when this Court can embark on a re-examination of the evidence adduced by the parties during trial. Sad to say, none of those instances is present here.

WHEREFORE, the petition is hereby *DENIED.*

Costs against petitioner.

SO ORDERED.

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

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[26] *Rollo*, p. 24.

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

[28] *Id.*, p. 45.

[29] It is a settled rule that in the exercise of the Supreme Court's power of review, the Court is not a trier of facts and does not normally undertake the re-examination of the evidence presented by the contending parties during the trial of the case considering that the findings of facts of the CA are conclusive and binding on the Court. However, the Court had recognized several exceptions to this rule, to wit: (1) when the findings are grounded entirely on speculation, surmises or conjectures; 2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion. *Sampayan v. CA*, G.R. No. 156360, 14 January 2005, 448 SCRA 220, 229.

FIRST DIVISION

[G.R. No. 169519. July 17, 2009]

IRENORIO B. BALABA, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; COURTS; SANDIGANBAYAN; EXCLUSIVE APPELLATE JURISDICTION THEREOF.— Upon Balaba's conviction by the trial court, his remedy should have been an appeal to the Sandiganbayan. Paragraph 3, Section 4(c) of Republic Act No. 8249 (RA 8249), which further defined the jurisdiction of the Sandiganbayan, reads: The *Sandiganbayan* shall exercise **exclusive appellate jurisdiction** over final judgments, resolutions or orders of the regional trial courts whether in the exercise of their own original jurisdiction or of their appellate jurisdiction as herein provided. There is nothing in said paragraph which can conceivably justify the filing of Balaba's appeal before the Court of Appeals instead of the Sandiganbayan. Clearly, the Court of Appeals is bereft of any jurisdiction to review the judgment Balaba seeks to appeal.

2. ID.; APPEALS; ERROR IN DESIGNATING THE APPELLATE COURT IS NOT FATAL; CORRECTION IN DESIGNATING THE PROPER APPELLATE COURT SHOULD BE MADE WITHIN THE 15-DAY PERIOD TO APPEAL.— In *Melencion v. Sandiganbayan*, we ruled: An error in designating the appellate court is not fatal to the appeal. However, the correction in designating the proper appellate court should be made within the 15-day period to appeal. Once made within the said period, the designation of the correct appellate court may be allowed even if the records of the case are forwarded to the Court of Appeals. Otherwise, the second paragraph of Section 2, Rule 50 of the Rules of court would apply. The second paragraph of Section 2, Rule 50 of the Rules of Court reads: **"An appeal erroneously taken to the Court of Appeals shall not be transferred to the appropriate court but shall be dismissed outright."** In this case, Balaba sought the correction of the error in filing the appeal only after the expiration of the period to appeal. The trial court promulgated its Decision on

9 December 2002. Balaba filed his notice of appeal on 14 January 2003. The Court of Appeals issued the Decision declaring its lack of jurisdiction on 15 December 2004. Balaba tried to correct the error only on 27 January 2005, clearly beyond the 15-day period to appeal from the decision of the trial court. Therefore, the Court of Appeals did not commit any error when it dismissed Balaba's appeal because of lack of jurisdiction.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
The Solicitor General for respondent.

R E S O L U T I O N

CARPIO, *J.*:

This petition for review[1] assails the 15 December 2004 Decision[2] and 24 August 2005 Resolution[3] of the Court of Appeals in CA-G.R. CR No. 27178. In its 15 December 2004 Decision, the Court of Appeals dismissed petitioner Irenorio B. Balaba's (Balaba) appeal of the 9 December 2002 Decision[4] of the Regional Trial Court of Loay, Bohol, Branch 50 (trial court), finding him guilty of Malversation of Public Funds. In its 24 August 2005 Resolution, the Court of Appeals denied Balaba's motion for reconsideration.

On 18 and 19 October 1993, State Auditors Arlene Mandin and Loila Laga of the Provincial Auditor's Office conducted an examination of the cash and accounts of the accountable officers of the Municipality of Guindulman, Bohol. The State Auditors discovered a cash shortage of ₱56,321.04, unaccounted cash tickets of ₱7,865.30 and an unrecorded check of ₱50,000 payable

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

[2] *Rollo*, pp. 55-58. Penned by Associate Justice Vicente L. Yap with Associate Justices Mercedes Gozo-Dadole and Pampio A. Abarintos, concurring.

[3] *Id.* at 64-65.

[4] *Id.* at 24-36. Penned by Executive Judge Dionisio R. Calibo, Jr.

to Balaba, or a total shortage of ₱114,186.34. Three demand letters were sent to Balaba asking him to explain the discrepancy in the accounts. Unsatisfied with Balaba's explanation, Graft Investigation Officer I Miguel P. Ricamora recommended that an information for Malversation of Public Funds, as defined and penalized under Article 217 of the Revised Penal Code, be filed against Balaba with the Sandiganbayan.[5]

In an Information[6] dated 26 April 1995, the Office of the Special Prosecutor charged Balaba with the crime of Malversation of Public Funds.[7] The Information against Balaba reads as follows:

> That on or about October 19, 1993, in the Municipality of Guindulman, Bohol, Philippines, and within the jurisdiction of this Honorable Court, the said accused, Assistant Municipal Treasurer of Guindulman, Bohol and accountable public officer for the funds collected and received by virtue of his position, willfully, unlawfully and feloniously misappropriate, embezzle and take away from said funds, the total amount of ₱114,186.34, which he converted to his personal use and benefit, to the damage and prejudice of the government.
>
> CONTRARY TO LAW.[8]

During his arraignment on 17 May 1996, Balaba entered a plea of not guilty. Trial soon followed.

On 9 December 2002, the trial court found Balaba guilty. The dispositive portion of the 9 December 2002 Decision reads:

> PREMISES CONSIDERED, the Court resolves that the prosecution has proved beyond reasonable doubt the guilt of the accused. Accordingly, pursuant to law, the Court has no recourse but to sentence the accused, Irenorio B. Balaba, to an indeterminate sentence of 10

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[5] Records, pp. 4-5. Graft Investigation Officer III Edgardo C. Labella recommended the approval of the recommendation. Deputy Ombudsman for the Visayas Arturo C. Mojica approved the recommendation.

[6] *Rollo*, pp. 22-23.

[7] The Information was originally filed with the Sandiganbayan but was subsequently transferred to the trial court on 30 June 1995 upon the effectivity of Republic Act No. 7975.

[8] *Rollo*, p. 22.

YEARS AND ONE DAY as minimum, to 17 YEARS, 4 MONTHS AND ONE DAY of *Reclusion Temporal* as maximum. He shall suffer the penalty of perpetual special disqualification and a fine equal to the amount of the funds malversed which is ₱114,186.34.

SO ORDERED.[9]

On 14 January 2003, Balaba filed his Notice of Appeal, where he indicated that he would file his appeal before the Court of Appeals.[10] On 6 August 2003, Balaba filed his Appellant's Brief.[11]

The Office of the Solicitor General, instead of filing an Appellee's Brief, filed a Manifestation and Motion[12] praying for the dismissal of the appeal for being improper since the Sandiganbayan has exclusive jurisdiction over the appeal.

In its 15 December 2004 Decision, the Court of Appeals dismissed Balaba's appeal. The Court of Appeals declared that it had no jurisdiction to act on the appeal because the Sandiganbayan has exclusive appellate jurisdiction over the case.

On 27 January 2005, Balaba filed a Motion for Reconsideration and asked that he be allowed to pursue his appeal before the proper court, the Sandiganbayan.[13] In its 24 August 2005 Resolution, the Court of Appeals denied Balaba's motion.

On 7 October 2005, Balaba filed his present petition before this Court where he raised the sole issue of whether the Court of Appeals erred in dismissing his appeal instead of certifying the case to the proper court. Balaba claims that it was due to inadvertence that the notice of appeal was filed before the Court of Appeals instead of the Sandiganbayan. Balaba adds that his appeal was dismissed on purely technical grounds. Balaba asks the Court to relax the rules to afford him an opportunity to correct the error and fully ventilate his appeal on the merits.

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[9] *Id.* at 36.

[10] *Id.* at 37.

[11] *Id.* at 39-49.

[12] *Id.* at 50-53.

[13] CA *rollo*, pp. 111-113.

The petition has no merit.

Upon Balaba's conviction by the trial court, his remedy should have been an appeal to the Sandiganbayan. Paragraph 3, Section 4(c) of Republic Act No. 8249 (RA 8249),[14] which further defined the jurisdiction of the Sandiganbayan, reads:

> The *Sandiganbayan* shall exercise **exclusive appellate jurisdiction** over final judgments, resolutions or orders of the regional trial courts whether in the exercise of their own original jurisdiction or of their appellate jurisdiction as herein provided. (Emphasis ours)

There is nothing in said paragraph which can conceivably justify the filing of Balaba's appeal before the Court of Appeals instead of the Sandiganbayan. Clearly, the Court of Appeals is bereft of any jurisdiction to review the judgment Balaba seeks to appeal.

In *Melencion v. Sandiganbayan*,[15] we ruled:

> An error in designating the appellate court is not fatal to the appeal. However, the correction in designating the proper appellate court should be made within the 15-day period to appeal. Once made within the said period, the designation of the correct appellate court may be allowed even if the records of the case are forwarded to the Court of Appeals. Otherwise, the second paragraph of Section 2, Rule 50 of the Rules of court would apply. The second paragraph of Section 2, Rule 50 of the Rules of Court reads:
>
> "**An appeal erroneously taken to the Court of Appeals shall not be transferred to the appropriate court but shall be dismissed outright**." (Emphasis ours)

In this case, Balaba sought the correction of the error in filing the appeal only after the expiration of the period to appeal. The trial court promulgated its Decision on 9 December 2002. Balaba filed his notice of appeal on 14 January 2003. The Court of Appeals issued the Decision declaring its lack of

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[14] Entitled "An Act Further Defining The Jurisdiction Of The Sandiganbayan, Amending For The Purpose Presidential Decree No. 1606, As Amended, Providing Funds Therefor, And For Other Purposes." Approved on 5 February 1997.

[15] G.R. No. 150684, 12 June 2008, 554 SCRA 345, 353.

jurisdiction on 15 December 2004. Balaba tried to correct the error only on 27 January 2005, clearly beyond the 15-day period to appeal from the decision of the trial court. Therefore, the Court of Appeals did not commit any error when it dismissed Balaba's appeal because of lack of jurisdiction.

WHEREFORE, we *DENY* the petition. We *AFFIRM* the 15 December 2004 Decision and 24 August 2005 Resolution of the Court of Appeals in CA-G.R. CR No. 27178.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 171386. July 17, 2009]

GLORIA R. MOTOS and MARTIN MOTOS, *petitioners, vs.* **REAL BANK (A THRIFT BANK), INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; JUDGMENT; WRIT OF POSSESSION; WHEN MAY BE ISSUED.— A writ of possession is an order by which the sheriff is commanded to place a person in possession of a real or personal property. It may be issued under any of the following instances: (1) land registration proceedings under Section 17 of Act No. 496; (2) judicial foreclosure, provided the debtor is in possession of the mortgaged realty and no third person, not a party to the foreclosure suit, had intervened; and (3) extrajudicial foreclosure of a real estate mortgage under Section 7 of Act No. 3135 as amended by Act No. 4118. The third instance obtains in the instant case.

2. ID.; SPECIAL CIVIL ACTIONS; EXTRAJUDICIAL FORECLOSURE OF MORTGAGE; ACT NO. 3135, AS AMENDED; PETITION FOR THE ISSUANCE OF A WRIT

OF POSSESSION IS IN THE NATURE OF AN *EX-PARTE* MOTION, TAKEN OR GRANTED AT THE INSTANCE AND FOR THE BENEFIT OF ONE PARTY, WITHOUT NEED OF NOTICE TO OR CONSENT BY ANY PARTY WHO MIGHT BE ADVERSELY AFFECTED.— The procedure for extrajudicial foreclosure of real estate mortgage is governed by Act No. 3135, as amended by Act No. 4118. The purchaser at the public auction sale of an extrajudicially foreclosed real property may seek possession thereof in accordance with Section 7 of Act No. 3135, as amended. xxx A petition for the issuance of a writ of possession under Section 7 of Act No. 3135, as amended, is not an ordinary civil action by which one party sues another for the enforcement or protection of a right, or the prevention or redress of a wrong. It is in the nature of an *ex parte* motion, taken or granted at the instance and for the benefit of one party, without need of notice to or consent by any party who might be adversely affected.

3. ID.; ID.; ID.; ID.; ISSUANCE OF A WRIT OF POSSESSION IN FAVOR OF THE PURCHASER OF THE MORTGAGED REALTY IS MINISTERIAL UPON THE COURT DURING THE PERIOD OF REDEMPTION; ISSUE ON VALIDITY OF THE SALE NOT A JUSTIFICATION FOR OPPOSING THE ISSUANCE OF THE WRIT.— Moreover, during the period of redemption, it is ministerial upon the court to issue a writ of possession in favor of the purchaser of the mortgaged realty. The law requires only that the proper motion be filed, the bond approved, and no third person is involved. No discretion is left to the court. Any question regarding the regularity and validity of the sale (and consequent cancellation of the writ) is left to be determined in a subsequent proceeding as outlined in Section 8. Indeed, such question should not be raised as a justification for opposing the issuance of the writ of possession, since, under the Act, the proceeding for this is *ex parte*.

4. ID.; ID.; ID.; ID.; THE RIGHT OF THE PURCHASER TO THE POSSESSION OF THE FORECLOSED PROPERTY BECOMES ABSOLUTE UPON THE EXPIRATION OF THE REDEMPTION PERIOD; A BOND IS NO LONGER NECESSARY.— Upon the expiration of the redemption period, the right of the purchaser to the possession of the foreclosed property becomes absolute. The basis of this right to possession is the purchaser's ownership of the property. In like manner,

the mere filing of an *ex parte* motion for the issuance of the writ of possession would suffice and a bond is no longer necessary. This is because possession has become the absolute right of the purchaser as the confirmed owner.

5. ID.; ID.; ID.; ID.; AN *EX-PARTE* PETITION FOR THE ISSUANCE OF WRIT OF POSSESSION IS A NON-LITIGIOUS PROCEEDING; ANY OBJECTION ON THE VALIDITY OF THE SALE AND THE WRIT ISSUED SHOULD BE THRESHED OUT IN A SUBSEQUENT PROCEEDING.— It is indisputable from the foregoing discussion that the RTC did not commit grave abuse of discretion in issuing the writ of possession to respondent. In the same vein, the Court of Appeals did not err in upholding the writ. When the spouses Motos failed to redeem the foreclosed land, respondent bank, as the purchaser at the foreclosure sale, became the absolute owner thereof. Therefore, once respondent filed the *Ex Parte* Petition for the issuance of a writ of possession, it became ministerial upon the RTC to issue the writ in its favor. By its nature, an *ex parte* petition for the issuance of a writ of possession is a non-litigious proceeding authorized under Act No. 3135, as amended. As such, petitioners were neither entitled to a copy of the petition nor to a notice of hearing thereon. Any objection they may have had on the validity of the sale and the writ issued pursuant thereto should have been threshed out in a subsequent proceeding under Section 8 of Act No. 3135: xxx.

6. ID.; ID.; ID.; ID.; AN ORDER DENYING THE MOTION TO QUASH THE WRIT OF POSSESSION IS AN INTERLOCUTORY ORDER.— Under the law, the mortgagor may file a petition to set aside the sale and writ of possession before the RTC. In case the lower court denies the petition, the mortgagor may appeal in accordance with Section 14 of Act No. 496, also known as The Land Registration Act. Even then, the order of possession shall continue in effect during the pendency of the appeal. Here, petitioners moved to quash the writ of possession issued by the RTC. When the court denied the motion to quash, petitioners appealed the denial. However, the court *a quo* did not give due course to the notice of appeal. Petitioners sought reconsideration which the trial court, likewise, denied. The spouses Motos next elevated the case to the Court of Appeals on *certiorari*. Much to their relief, the appellate

court reversed the Orders dated May 5, 2004 and June 22, 2004 of the RTC. The appellate court, however, sustained the writ of possession issued by the court *a quo*, prompting petitioners to further appeal to us. Certainly, even as we had sustained the appellate court in upholding the writ of possession, we cannot take a similar stance as regards its order directing the RTC to give due course to petitioners' appeal. It bears stressing that petitioners erroneously substituted a motion to quash writ of possession for the remedy provided by law – a petition to set aside sale and writ of possession. Resultantly, the Order dated May 5, 2004 denying said motion did not settle the issue on the validity of the sale, and is at best, interlocutory.

7. ID.; ID.; ID.; ID.; AN ORDER OF POSSESSION SHALL CONTINUE IN EFFECT DURING THE PENDENCY OF THE APPEAL.— Petitioners inquire whether the writ of possession issued by the RTC may be enforced "pending **appeal which was given due course**." In reality, however, the notice of appeal which the Court of Appeals directed the RTC to give due course to is petitioners' appeal from the denial of their motion to quash the writ of possession – an interlocutory order; hence, unappealable. Nonetheless, even assuming that petitioners followed the orderly procedure and had successfully appealed a judgment upholding the sale and issuance of the writ of possession, we must stress that Section 8 of Act No. 3135 is clear that the order of possession shall continue in effect during the pendency of the appeal.

8. ID.; PROVISIONAL REMEDIES; INTERLOCUTORY ORDER; DOES NOT DISPOSE OF THE CASE COMPLETELY BUT LEAVES SOMETHING TO BE DECIDED UPON; AN INTERLOCUTORY ORDER IS UNAPPEALABLE.— An interlocutory order is one which does not dispose of the case completely but leaves something to be decided upon. Under Section 1(c), Rule 41 of the Rules, no appeal may be taken from an interlocutory order. Hence, the Court of Appeals committed reversible error in ordering the RTC to give due course to petitioners' appeal.

APPEARANCES OF COUNSEL

Rosenberg G. Palabasan for petitioners.
Marcos Ochoa Serapio & Tan Law Firm for respondent.

D E C I S I O N

QUISUMBING, *J.*:

This appeal seeks to set aside the Decision[1] dated May 16, 2005 of the Court of Appeals in CA-G.R. SP No. 85064. The Court of Appeals had affirmed the Decision[2] dated January 29, 2002 and the Order[3] dated March 15, 2004 but set aside the Orders dated May 5, 2004[4] and June 22, 2004[5] of the Regional Trial Court (RTC) of Quezon City, Branch 222 in LRC No. Q15302 (02).

The antecedent facts of the case are as follows:

Spouses Martin and Gloria Motos (spouses Motos) acquired several loans from Real Bank in the total amount of ₱4,000,000. To secure the obligation, they mortgaged to the bank a land covered by Transfer Certificate of Title (TCT) No. 116759[6] on April 4, 1997.

When the spouses failed to pay the loans, Real Bank extrajudicially foreclosed the mortgage in accordance with Act No. 3135,[7] as amended by Act No. 4118.[8] The bank emerged as the highest bidder. Consequently, the sheriff issued a Certificate

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[1] *Rollo*, pp. 17-26. Penned by Associate Justice Vicente S.E. Veloso, with Associate Justices Roberto A. Barrios and Amelita G. Tolentino, concurring.

[2] *Id.* at 70. Penned by Judge Rogelio M. Pizarro.

[3] *Id.* at 79.

[4] *Id.* at 82.

[5] *Id.* at 87.

[6] *Id.* at 57.

[7] AN ACT TO REGULATE THE SALE OF PROPERTY UNDER SPECIAL POWERS INSERTED IN OR ANNEXED TO REAL ESTATE MORTGAGES. Also known as the "Extrajudicial Foreclosure of Mortgage," approved on March 6, 1924.

[8] AN ACT TO AMEND ACT NUMBERED THIRTY-ONE HUNDRED AND THIRTY-FIVE, ENTITLED "AN ACT TO REGULATE THE SALE OF PROPERTY UNDER SPECIAL POWERS INSERTED IN OR ANNEXED TO REAL ESTATE MORTGAGES," approved on December 7, 1933.

of Sale[9] dated December 2, 1998 which the spouses filed with the Registry of Deeds on April 14, 1999.

After the one-year redemption period had lapsed, the bank filed an affidavit of consolidation with the Registry of Deeds of Quezon City. The new TCT No. N-220068 was issued in the name of Real Bank. Thereafter, the bank filed an *Ex Parte* Petition[10] for the issuance of a writ of possession, which was docketed as LRC No. Q15302 (02) and raffled to Branch 222 of the Quezon City RTC.

On January 29, 2002, the RTC promulgated a Decision which granted the petition, thus:

> WHEREFORE, premises considered the instant petition is hereby **GRANTED**. Accordingly, let a Writ of Possession issue in favor of petitioner and the Sheriff IV of this branch or his duly authorized deputy is directed to place petitioner in possession of the subject property covered by TCT No. N-220068 of the Registry of Deeds of Quezon City.
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> SO ORDERED.[11]

Subsequently, Sheriff Neri G. Loy served a copy of the Writ of Possession[12] dated September 12, 2003 and a notice to vacate on the spouses Motos. The latter, however, refused to comply, and instead, filed a Motion to Quash Writ of Possession[13] on the ground that they were not heard on the petition. The RTC denied the motion in an Order dated March 15, 2004. The spouses filed a Notice of Appeal[14] from said order which was, however, denied due course through another Order dated May 5, 2004. Their Motion for Reconsideration[15] was similarly denied in an Order dated June 22, 2004.

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[9] *Rollo*, p. 62.

[10] *Id.* at 44-48.

[11] *Id.* at 70.

[12] *Id.* at 71-72.

[13] *Id.* at 73-78.

[14] *Id.* at 80.

[15] *Id.* at 83-86.

On July 8, 2004, the sheriff served a third notice to vacate[16] on the spouses Motos. This prompted them to file a petition for *certiorari*[17] under Rule 65 of the Rules of Court with the Court of Appeals.

In a Decision dated May 16, 2005, the Court of Appeals granted the petition in part. The *fallo* of its decision reads:

> *WHEREFORE*, the instant petition is **PARTLY GRANTED**. The assailed Decision dated 29 January 2003 and the Order dated 15 March 2004 are **AFFIRMED** while the Orders dated 05 May 2004 and 22 June 2004 are **SET ASIDE**. Respondent Judge is hereby directed to give due course to petitioners' Notice of Appeal filed on April 15, 2004.
>
> SO ORDERED.[18]

The appellate court explained that it is the ministerial duty of the RTC to issue the writ of possession prayed for by Real Bank since it had consolidated title to the subject property in its name. Nevertheless, the Court of Appeals upheld the spouses' right to appeal the denial of their motion to quash the writ, citing Section 8[19] of Act No. 3135.

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[16] *Id.* at 88.

[17] *Id.* at 33-43.

[18] *Id.* at 25-26.

[19] SEC. 8. ***Setting aside of sale and writ of possession.*** **–** The debtor may, in the proceedings in which possession was requested, but not later than thirty days after the purchaser was given possession, petition that the sale be set aside and the writ of possession cancelled, specifying the damages suffered by him, because the mortgage was not violated or the sale was not made in accordance with the provisions hereof, and the court shall take cognizance of this petition in accordance with the summary procedure provided for in section one hundred and twelve of Act Numbered Four Hundred and Ninety-Six; and if it finds the complaint of the debtor justified, it shall dispense in his favor of all or part of the bond furnished by the person who obtained possession. Either of the parties may appeal from the order of the judge in accordance with section fourteen of Act Numbered Four Hundred and Ninety-Six; but the order of possession shall continue in effect during the pendency of the appeal.

Both parties moved for reconsideration but were denied by Resolution[20] dated January 23, 2006.

Before us, the spouses Motos filed the instant petition which raises the sole issue:

WHETHER OR NOT PENDING APPEAL WHICH WAS GIVEN DUE COURSE, THE WRIT OF POSSESSION ISSUED BY THE COURT *A QUO* CAN BE ENFORCED.[21]

To fully resolve the foregoing issue, we find two questions needing a close review: (1) whether a writ of possession may be issued *ex parte*; and (2) whether an order denying a motion to quash writ of possession is appealable.

Petitioners argue that the judgment of the Court of Appeals is futile insofar as it sustained their right to appeal but upheld the issuance of the writ of possession by the RTC. They contend mainly that the trial court's grant of the writ is void for lack of notice of hearing. Owing to this, petitioners argue, that they were left with no recourse but to move for the quashal of the writ.

Respondent simply counters that petitioners erred in bringing the case to this Court on a petition for *certiorari*. While the petition was captioned as a petition for *certiorari*, respondent points out that petitioners neither impleaded the Court of Appeals nor alleged grave abuse of discretion against it. Respondent also faults the RTC for acting on the motion to quash writ of possession filed by petitioners because said motion was not the proper petition contemplated by law.

The instant petition lacks merit.

Although denominated as a petition for *certiorari* under Rule 65 of the Rules of Court, a reading of the petition readily shows that the issue posed and the arguments presented by petitioners are those cognizable under a petition for review on *certiorari*. Thus, we shall proceed to treat the instant petition as one for review on *certiorari* under Rule 45 of the Rules of Court.

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[20] *Rollo*, pp. 27-32.

[21] *Id.* at 11.

The first question we shall tackle concerns the propriety of the trial court's issuance of the writ of possession over the contested property in favor of respondent Real Bank. Thereafter, we shall discuss the appealability of the order denying the motion to quash the writ of possession.

A writ of possession is an order by which the sheriff is commanded to place a person in possession of a real or personal property. It may be issued under any of the following instances: (1) land registration proceedings under Section 17 of Act No. 496;[22] (2) judicial foreclosure, provided the debtor is in possession of the mortgaged realty and no third person, not a party to the foreclosure suit, had intervened; and (3) extrajudicial foreclosure of a real estate mortgage under Section 7 of Act No. 3135 as amended by Act No. 4118.[23] The third instance obtains in the instant case.

The procedure for extrajudicial foreclosure of real estate mortgage is governed by Act No. 3135, as amended by Act No. 4118. The purchaser at the public auction sale of an extrajudicially foreclosed real property may seek possession thereof in accordance with Section 7 of Act No. 3135, as amended, thus:

> SEC. 7. In any sale made under the provisions of this Act, the purchaser may petition the Court of First Instance of the province or place where the property or any part thereof is situated, to give him possession thereof during the redemption period, furnishing bond in an amount equivalent to the use of the property for a period of twelve months, to indemnify the debtor in case it be shown that the sale was made without violating the mortgage or without complying with the requirements of this Act. **Such petition shall be made under oath and filed in form of an *ex parte* motion** in the registration or cadastral proceedings if the property is registered, or in special proceedings in the case of property registered under the Mortgage Law or under section one hundred and ninety-four of the Administrative Code, or any other real property encumbered

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[22] THE LAND REGISTRATION ACT, approved on November 6, 1902.

[23] *Fernandez v. Espinoza*, G.R. No. 156421, April 14, 2008, 551 SCRA 136, 144-145.

with a mortgage duly registered in the office of any register of deeds in accordance with any existing law, and in each case the clerk of court shall, upon the filing of such petition, collect the fees specified in paragraph eleven of section one hundred and fourteen of Act Numbered Four hundred and ninety-six as amended by Act Numbered Twenty-eight hundred and sixty-six, and the court shall, upon approval of the bond, order that a writ of possession issue addressed to the sheriff of the province in which the property is situated, who shall execute said order immediately. (Emphasis supplied.)[24]

A petition for the issuance of a writ of possession under Section 7 of Act No. 3135, as amended, is not an ordinary civil action by which one party sues another for the enforcement or protection of a right, or the prevention or redress of a wrong. It is in the nature of an *ex parte* motion, taken or granted at the instance and for the benefit of one party, without need of notice to or consent by any party who might be adversely affected.[25]

Moreover, during the period of redemption, it is ministerial upon the court to issue a writ of possession in favor of the purchaser of the mortgaged realty. The law requires only that the proper motion be filed, the bond approved, and no third person is involved.[26] No discretion is left to the court. Any question regarding the regularity and validity of the sale (and consequent cancellation of the writ) is left to be determined in a subsequent proceeding as outlined in Section 8.[27] Indeed, such question should not be raised as a justification for opposing the issuance of the writ of possession, since, under the Act, the proceeding for this is *ex parte*.[28]

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[24] *China Banking Corporation v. Lozada*, G.R. No. 164919, July 4, 2008, 557 SCRA 177, 193-194.

[25] *Metropolitan Bank and Trust Company v. Bance*, G.R. No. 167280, April 30, 2008, 553 SCRA 507, 515-516.

[26] *Metropolitan Bank and Trust Company v. Tan*, G.R. No. 159934, June 26, 2008, 555 SCRA 502, 512.

[27] *Supra* note 19.

[28] *China Banking Corporation v. Lozada*, *supra* at 195.

Upon the expiration of the redemption period, the right of the purchaser to the possession of the foreclosed property becomes absolute. The basis of this right to possession is the purchaser's ownership of the property. In like manner, the mere filing of an *ex parte* motion for the issuance of the writ of possession would suffice and a bond is no longer necessary. This is because possession has become the absolute right of the purchaser as the confirmed owner.[29]

It is indisputable from the foregoing discussion that the RTC did not commit grave abuse of discretion in issuing the writ of possession to respondent. In the same vein, the Court of Appeals did not err in upholding the writ. When the spouses Motos failed to redeem the foreclosed land, respondent bank, as the purchaser at the foreclosure sale, became the absolute owner thereof. Therefore, once respondent filed the *Ex Parte* Petition for the issuance of a writ of possession, it became ministerial upon the RTC to issue the writ in its favor. By its nature, an *ex parte* petition for the issuance of a writ of possession is a non-litigious proceeding authorized under Act No. 3135, as amended.[30] As such, petitioners were neither entitled to a copy of the petition nor to a notice of hearing thereon. Any objection they may have had on the validity of the sale and the writ issued pursuant thereto should have been threshed out in a subsequent proceeding under Section 8 of Act No. 3135:

SEC. 8. ***Setting aside of sale and writ of possession.*** **–** The debtor may, in the proceedings in which possession was requested, but not later than thirty days after the purchaser was given possession, petition that the sale be set aside and the writ of possession cancelled, specifying the damages suffered by him, because the mortgage was not violated or the sale was not made in accordance with the provisions hereof, and the court shall take cognizance of this petition in accordance with the summary procedure provided for in section one hundred and twelve of Act Numbered Four Hundred and Ninety-Six; and if it finds the complaint of the debtor justified, it shall dispense

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[29] *Fernandez v. Espinoza*, *supra* at 149.

[30] *Metropolitan Bank and Trust Company v. Bance*, *supra* at 520.

in his favor of all or part of the bond furnished by their person who obtained possession. Either of the parties may appeal from the order of the judge in accordance with section fourteen of Act Numbered Four Hundred and Ninety-Six; **but the order of possession shall continue in effect during the pendency of the appeal**. (Emphasis supplied.)

Under the law, the mortgagor may file a petition to set aside the sale and writ of possession before the RTC. In case the lower court denies the petition, the mortgagor may appeal in accordance with Section 14[31] of Act No. 496, also known as The Land Registration Act. Even then, the order of possession shall continue in effect during the pendency of the appeal.

Here, petitioners moved to quash the writ of possession issued by the RTC. When the court denied the motion to quash, petitioners appealed the denial. However, the court *a quo* did not give due course to the notice of appeal. Petitioners sought reconsideration which the trial court, likewise, denied. The

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[31] SEC. 14. Every order, decision, and decree of the Court of Land Registration may be reviewed by the Supreme Court in the same manner as an order, decision, decree, judgment of a Court of First Instance might be reviewed, … except as otherwise provided in this section: *Provided, however,* That no certificates of title shall be issued by the Court of Land Registration until after the expiration of the period for perfecting a bill of exceptions for filing: *And provided, further,* That the Court of Land Registration may grant a new trial in any case that has not passed to the Supreme Court, in the manner and under the circumstances provided in Sections 145, 146 and 147 of Act No. 190; *And, Provided, also,* That the certificates of judgment to be issued by the Supreme Court, in cases passing to it from the Court of Land Registration, shall be certified to the clerk of the last-named court as well as the copies of the opinion of the Supreme Court; *And provided, also,* That in the bill of exceptions to be printed, no testimony or exhibits shall be printed except such limited portions thereof as are necessary to enable the Supreme Court to understand the points of law reserved. The original testimony and exhibits shall be transmitted to the Supreme Court: *And provided, further,* That the period within which the litigating parties must file their appeals and bills of exceptions against the final judgment in land registration cases shall be thirty days, counting from the date on which the party received a copy of the decision. (Amended by Sec. 4, Act No. 1108; Sec. 26[a] and [b], Act No. 2347.)

spouses Motos next elevated the case to the Court of Appeals on *certiorari*. Much to their relief, the appellate court reversed the Orders dated May 5, 2004 and June 22, 2004 of the RTC. The appellate court, however, sustained the writ of possession issued by the court *a quo*, prompting petitioners to further appeal to us.

Certainly, even as we had sustained the appellate court in upholding the writ of possession, we cannot take a similar stance as regards its order directing the RTC to give due course to petitioners' appeal. It bears stressing that petitioners erroneously substituted a motion to quash writ of possession for the remedy provided by law – a petition to set aside sale and writ of possession. Resultantly, the Order dated May 5, 2004 denying said motion did not settle the issue on the validity of the sale, and is at best, interlocutory.

An interlocutory order is one which does not dispose of the case completely but leaves something to be decided upon.[32] Under Section 1(c),[33] Rule 41 of the Rules, no appeal may be taken from an interlocutory order. Hence, the Court of Appeals committed reversible error in ordering the RTC to give due course to petitioners' appeal.

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[32] *City of Naga v. Asuncion*, G.R. No. 174042, July 9, 2008, 557 SCRA 528, 541.

[33] **SECTION 1.** *Subject of appeal.* — An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.

No appeal may be taken from:

(a) An order denying a motion for new trial or reconsideration;

x x x x x x x x x

(c) An interlocutory order;

x x x x x x x x x

In all the above instances where the judgment or final order is not appealable, the aggrieved party may file an appropriate special civil action under Rule 65.

Prescinding from the foregoing discussion, we address the sole issue which petitioners have raised in this appeal. Petitioners inquire whether the writ of possession issued by the RTC may be enforced "pending **appeal which was given due course**."[34] In reality, however, the notice of appeal which the Court of Appeals directed the RTC to give due course to is petitioners' appeal from the denial of their motion to quash the writ of possession – an interlocutory order; hence, unappealable. Nonetheless, even assuming that petitioners followed the orderly procedure and had successfully appealed a judgment upholding the sale and issuance of the writ of possession, we must stress that Section 8 of Act No. 3135 is clear that the order of possession shall continue in effect during the pendency of the appeal.

WHEREFORE, the petition is *DENIED*. The Decision dated May 16, 2005 of the Court of Appeals in CA-G.R. SP No. 85064 is *AFFIRMED WITH MODIFICATION* in that the Orders dated May 5, 2004 and June 22, 2004 of the Regional Trial Court of Quezon City, Branch 222 in LRC No. Q15302 (02) are *REINSTATED*. Costs against petitioners.

SO ORDERED.

Carpio Morales, Chico-Nazario,[*] *Leonardo-de Castro,*[**] and *Brion, JJ.*, concur.

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[34] *Supra* note 21.

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

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

SECOND DIVISION

[G.R. No. 173252. July 17, 2009]

UNISOURCE COMMERCIAL AND DEVELOPMENT CORPORATION, *petitioner, vs.* **JOSEPH CHUNG, KIAT CHUNG and KLETO CHUNG,** *respondents.*

SYLLABUS

1. CIVIL LAW; EASEMENT; DEFINED.— As defined, an easement is a real right on another's property, corporeal and immovable, whereby the owner of the latter must refrain from doing or allowing somebody else to do or something to be done on his property, for the benefit of another person or tenement. Easements are established either by law or by the will of the owner. The former are called legal, and the latter, voluntary easements.

2. ID.; ID.; THE OPENING OF AN ADEQUATE OUTLET TO A HIGHWAY CAN EXTINGUISH ONLY LEGAL OR COMPULSORY EASEMENTS, NOT VOLUNTARY EASEMENTS; CASE AT BAR.— In this case, petitioner itself admitted that a voluntary easement of right of way exists in favor of respondents. In its petition to cancel the encumbrance of voluntary easement of right of way, petitioner alleged that "[t]he easement is personal. It was voluntarily constituted in favor of a certain Francisco Hidalgo *y* Magnifico, the owner of [the lot] described as Lot No. 2, Block 2650." It further stated that "the voluntary easement of the right of way in favor of Francisco Hidalgo *y* Magnifico was constituted simply by will or agreement of the parties. It was not a statutory easement and definitely not an easement created by such court order because '[the] Court merely declares the existence of an easement created by the parties." In its Memorandum dated September 27, 2001, before the trial court, petitioner reiterated that "[t]he annotation found at the back of the TCT of Unisource is a voluntary easement." Having made such an admission, petitioner cannot now claim that what exists is a legal easement and that the same should be cancelled since the dominant estate is not an enclosed estate as it has an adequate access to a public road which is Callejon Matienza Street. As we have said, the opening of an adequate outlet to a highway can extinguish only

legal or compulsory easements, not voluntary easements like in the case at bar. The fact that an easement by grant may have also qualified as an easement of necessity does not detract from its permanency as a property right, which survives the termination of the necessity. A voluntary easement of right of way, like any other contract, could be extinguished only by mutual agreement or by renunciation of the owner of the dominant estate.

3. ID.; ID.; VOLUNTARY EASEMENT OF RIGHT OF WAY; BINDING NOT ONLY UPON THE PARTIES MENTIONED IN THE ANNOTATION BUT ALSO UPON THEIR HEIRS AND ASSIGNS; RULING IN *CITY OF MANILA* CASE (NO. L-24776, JUNE 28, 1974), INAPPLICABLE TO CASE AT BAR.— Neither can petitioner claim that the easement is personal only to Hidalgo since the annotation merely mentioned Sandico and Hidalgo without equally binding their heirs or assigns. That the heirs or assigns of the parties were not mentioned in the annotation does not mean that it is not binding on them. Again, a voluntary easement of right of way is like any other contract. As such, it is generally effective between the parties, their heirs and assigns, except in case where the rights and obligations arising from the contract are not transmissible by their nature, or by stipulation or by provision of law. Petitioner cites *City of Manila v. Entote* in justifying that the easement should bind only the parties mentioned therein and exclude those not so mentioned. However, that case is inapplicable since the issue therein was whether the easement was intended not only for the benefit of the owners of the dominant estate but of the community and the public at large. In interpreting the easement, the Court ruled that the clause "any and all other persons whomsoever" in the easement embraces only "those who are privy to the owners of the dominant estate, Lots 1 and 2 Plan Pcs-2672" and excludes "the indiscriminate public from the enjoyment of the right-of-way easement."

4. ID.; ID.; ID.; REGISTRATION OF THE DOMINANT ESTATE UNDER THE TORRENS SYSTEM WITHOUT ANNOTATION OF THE VOLUNTARY EASEMENT IN ITS FAVOR DOES NOT EXTINGUISH THE EASEMENT.— We also hold that although the easement does not appear in respondents' title over the dominant estate, the same subsists.

It is settled that the registration of the dominant estate under the Torrens system without the annotation of the voluntary easement in its favor does not extinguish the easement. On the contrary, it is the registration of the servient estate as free, that is, without the annotation of the voluntary easement, which extinguishes the easement.

5. ID.; ID.; NOT EXTINGUISHED BY THE SUBDIVISION OF THE PROPERTY.— Finally, the mere fact that respondents subdivided the property does not extinguish the easement. Article 618 of the Civil Code provides that if the dominant estate is divided between two or more persons, each of them may use the easement in its entirety, without changing the place of its use, or making it more burdensome in any other way.

APPEARANCES OF COUNSEL

Puno and Associates Law Office for petitioner.
Oliver O. Lozano for respondents.

D E C I S I O N

QUISUMBING, *J.*:

The instant petition assails the Decision[1] dated October 27, 2005 and the Resolution[2] dated June 19, 2006 of the Court of Appeals in CA-G.R. CV No. 76213. The appellate court had reversed and set aside the Decision[3] dated August 19, 2002 of the Regional Trial Court of Manila, Branch 49, in Civil Case No. 00-97526.

The antecedent facts are as follows:

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[1] *Rollo*, pp. 26-34. Penned by Associate Justice Josefina Guevara-Salonga, with Associate Justices Delilah Vidallon-Magtolis and Fernanda Lampas Peralta, concurring.

[2] *Id.* at 35-36. Penned by Associate Justice Josefina Guevara-Salonga, with Associate Justices Godardo A. Jacinto and Fernanda Lampas Peralta, concurring.

[3] Records, pp. 233-238. Penned by Judge Concepcion S. Alarcon-Vergara.

Petitioner Unisource Commercial and Development Corporation is the registered owner of a parcel of land covered by Transfer Certificate of Title (TCT) No. 176253[4] of the Register of Deeds of Manila. The title contains a memorandum of encumbrance of a voluntary easement which has been carried over from the Original Certificate of Title of Encarnacion S. Sandico. The certified English translation[5] of the annotation reads:

> By order dated 08 October 1924 of the Court of First Instance of Manila, Chamber IV (AP-7571/T-23046), it is declared that Francisco Hidalgo *y* Magnifico has the right to open doors in the course of his lot described as Lot No. 2, Block 2650 of the map that has been exhibited, towards the left of the Callejon that is used as a passage and that appears as adjacent to the said Lot 2 and to pass through the land of Encarnacion Sandico *y* Santana, until the bank of the estero that goes to the Pasig River, and towards the right of the other Callejon that is situated between the said Lot 2 and Lot 4 of the same Block N.[6]

As Sandico's property was transferred to several owners, the memorandum of encumbrance of a voluntary easement in favor of Francisco M. Hidalgo was consistently annotated at the back of every title covering Sandico's property until TCT No. 176253 was issued in petitioner's favor. On the other hand, Hidalgo's property was eventually transferred to respondents Joseph Chung, Kiat Chung and Cleto Chung under TCT No. 121488.[7]

On May 26, 2000, petitioner filed a Petition to Cancel the Encumbrance of Voluntary Easement of Right of Way[8] on the ground that the dominant estate has an adequate access to a public road which is Matienza Street. The trial court dismissed the petition on the ground that it is a land registration case. Petitioner moved for reconsideration. Thereafter, the trial court

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[4] *Id.* at 10.

[5] *Id.* at 11-12.

[6] *Id.* at 12.

[7] *Id.* at 50.

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

conducted an ocular inspection of the property. In an Order[9] dated November 24, 2000, the trial court granted the motion and made the following observations:

> 1. The dominant estate is a property enclosed with a concrete fence with no less than three (3) doors in it, opening to an alley belonging to the servient estate owned by the petitioner. The alley is leading to Matienza St.;
>
> 2. The dominant estate has a house built thereon and said house has a very wide door accessible to Matienza St. without any obstruction. Said street is perpendicular to J.P. Laurel St.
>
> It is therefore found that the dominant estate has an egress to Matienza St. and does not have to use the servient estate.[10]

In their Answer,[11] respondents countered that the extinguishment of the easement will be of great prejudice to the locality and that petitioner is guilty of laches since it took petitioner 15 years from acquisition of the property to file the petition.

In a Decision dated August 19, 2002, the trial court ordered the cancellation of the encumbrance of voluntary easement of right of way in favor of the dominant estate owned by respondents. It found that the dominant estate has no more use for the easement since it has another adequate outlet to a public road which is Matienza Street. The dispositive portion of the decision reads:

> IN VIEW OF ALL THE FOREGOING, the Court hereby orders the cancellation of the Memorandum of Encumbrance annotated in TCT No. 176253 which granted a right of way in favor of the person named therein and, upon the finality of this decision, the Register of Deeds of the City of Manila is hereby directed to cancel said encumbrance.
>
> With respect to the other prayers in the petition, considering that the same are mere incidents to the exercise by the owners of right of their ownership which they could well do without the Court's intervention, this Court sees no need to specifically rule thereon.

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[9] *Id.* at 34.

[10] *Id.*

[11] *Id.* at 42-47.

The Court cannot award plaintiff's claims for damages and attorney's fees for lack of sufficient bases therefor.

SO ORDERED.[12]

Respondents appealed to the Court of Appeals. On October 27, 2005, the appellate court reversed the decision of the trial court and dismissed the petition to cancel the encumbrance of voluntary easement of right of way.

The appellate court ruled that when petitioner's petition was initially dismissed by the executive judge, the copy of the petition and the summons had not yet been served on respondents. Thus, when petitioner moved to reconsider the order of dismissal, there was no need for a notice of hearing and proof of service upon respondents since the trial court has not yet acquired jurisdiction over them. The trial court acquired jurisdiction over the case and over respondents only after the summons was served upon them and they were later given ample opportunity to present their evidence.

The appellate court also held that the trial court erred in canceling the encumbrance of voluntary easement of right of way. The appellate court ruled that Article 631(3)[13] of the Civil Code, which was cited by the trial court, is inapplicable since the presence of an adequate outlet to a highway extinguishes only legal or compulsory easements but not voluntary easements like in the instant case. There having been an agreement between the original parties for the provision of an easement of right of way in favor of the dominant estate, the same can be extinguished only by mutual agreement or by renunciation of the owner of the dominant estate.

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

[13] ART. 631. Easements are extinguished:

x x x x x x x x x

(3) When either or both of the estates fall into such condition that the easement cannot be used; but it shall revive if the subsequent condition of the estates or either of them should again permit its use, unless when the use becomes possible, sufficient time for prescription has elapsed, in accordance with the provisions of the preceding number;

The decretal portion of the decision reads:

WHEREFORE, the foregoing considered, the appeal is hereby **GRANTED** and the assailed decision is **REVERSED** and **SET ASIDE**. Accordingly, the petition to cancel the encumbrance of right of way is dismissed for lack of merit.

No costs.

SO ORDERED.[14]

Before us, petitioner alleges that the Court of Appeals erred in:

I.

… BRUSHING ASIDE PETITIONER'S CONTENTION THAT THE EASEMENT IS PERSONAL SINCE THE ANNOTATION DID NOT PROVIDE THAT IT IS BINDING ON THE HEIRS OR ASSIGNS OF SANDICO.

II.

… NOT CONSIDERING THAT THE EASEMENT IS PERSONAL SINCE NO COMPENSATION WAS GIVEN TO PETITIONER.

III.

… DISREGARDING THE CIVIL CODE PROVISION ON UNJUST ENRICHMENT.

IV.

… TREATING THE EASEMENT AS PREDIAL.[15]

Petitioner contends that the fact that Sandico and Hidalgo resorted to judicial intervention only shows that they contested the existence of the requisite factors establishing a legal easement. Besides, the annotation itself provides that the easement is exclusively confined to the parties mentioned therein, *i.e.*, Sandico and Hidalgo. It was not meant to bind their heirs or assigns; otherwise, they would have expressly provided for it. Petitioner adds that it would be an unjust enrichment on respondents'

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[14] *Rollo*, p. 33.

[15] *Id.* at 17-18.

part to continue enjoying the easement without adequate compensation to petitioner. Petitioner also avers that to say that the easement has attached to Hidalgo's property is erroneous since such property no longer exists after it has been subdivided and registered in respondents' respective names.[16] Petitioner further argues that even if it is bound by the easement, the same can be cancelled or revoked since the dominant estate has an adequate outlet without having to pass through the servient estate.

Respondents adopted the disquisition of the appellate court as their counter-arguments.

The petition lacks merit.

As defined, an easement is a real right on another's property, corporeal and immovable, whereby the owner of the latter must refrain from doing or allowing somebody else to do or something to be done on his property, for the benefit of another person or tenement. Easements are established either by law or by the will of the owner. The former are called legal, and the latter, voluntary easements.[17]

In this case, petitioner itself admitted that a voluntary easement of right of way exists in favor of respondents. In its petition to cancel the encumbrance of voluntary easement of right of way, petitioner alleged that "[t]he easement is personal. It was voluntarily constituted in favor of a certain Francisco Hidalgo *y* Magnifico, the owner of [the lot] described as Lot No. 2, Block 2650."[18] It further stated that "the voluntary easement of the right of way in favor of Francisco Hidalgo *y* Magnifico was constituted simply by will or agreement of the parties. It was not a statutory easement and definitely not an easement created by such court order because '[the] Court merely declares

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[16] *Id.* at 37-39. On May 3, 2005, the property was divided and TCT Nos. 267948, 267949 and 267950 were issued to respondents.

[17] *Private Development Corporation of the Philippines v. Court of Appeals*, G.R. No. 136897, November 22, 2005, 475 SCRA 591, 602.

[18] Records, p. 2.

the existence of an easement created by the parties."[19] In its Memorandum[20] dated September 27, 2001, before the trial court, petitioner reiterated that "[t]he annotation found at the back of the TCT of Unisource is a voluntary easement."[21]

Having made such an admission, petitioner cannot now claim that what exists is a legal easement and that the same should be cancelled since the dominant estate is not an enclosed estate as it has an adequate access to a public road which is Callejon Matienza Street.[22] As we have said, the opening of an adequate outlet to a highway can extinguish only legal or compulsory easements, not voluntary easements like in the case at bar. The fact that an easement by grant may have also qualified as an easement of necessity does not detract from its permanency as a property right, which survives the termination of the necessity.[23] A voluntary easement of right of way, like any other contract, could be extinguished only by mutual agreement or by renunciation of the owner of the dominant estate.[24]

Neither can petitioner claim that the easement is personal only to Hidalgo since the annotation merely mentioned Sandico and Hidalgo without equally binding their heirs or assigns. That the heirs or assigns of the parties were not mentioned in the annotation does not mean that it is not binding on them. Again, a voluntary easement of right of way is like any other contract. As such, it is generally effective between the parties, their heirs and assigns, except in case where the rights and obligations arising from the contract are not transmissible by their nature, or by stipulation or by provision of law.[25] Petitioner cites *City*

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[19] *Id.* at 3-4.

[20] *Id.* at 132-142.

[21] *Id.* at 135.

[22] *Id.* at 4.

[23] *La Vista Association, Inc. v. Court of Appeals*, G.R. No. 95252, September 5, 1997, 278 SCRA 498, 514.

[24] *Id.* at 513.

[25] CIVIL CODE, Art. 1311.

of Manila v. Entote[26] in justifying that the easement should bind only the parties mentioned therein and exclude those not so mentioned. However, that case is inapplicable since the issue therein was whether the easement was intended not only for the benefit of the owners of the dominant estate but of the community and the public at large.[27] In interpreting the easement, the Court ruled that the clause "any and all other persons whomsoever" in the easement embraces only "those who are privy to the owners of the dominant estate, Lots 1 and 2 Plan Pcs-2672" and excludes "the indiscriminate public from the enjoyment of the right-of-way easement."[28]

We also hold that although the easement does not appear in respondents' title over the dominant estate, the same subsists. It is settled that the registration of the dominant estate under the Torrens system without the annotation of the voluntary easement in its favor does not extinguish the easement. On the contrary, it is the registration of the servient estate as free, that is, without the annotation of the voluntary easement, which extinguishes the easement.[29]

Finally, the mere fact that respondents subdivided the property does not extinguish the easement. Article 618[30] of the Civil Code provides that if the dominant estate is divided between two or more persons, each of them may use the easement in its entirety, without changing the place of its use, or making it more burdensome in any other way.

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[26] No. L-24776, June 28, 1974, 57 SCRA 497.

[27] *Id.* at 504.

[28] *Id.* at 507.

[29] *Purugganan v. Paredes*, No. L-23818, January 21, 1976, 69 SCRA 69, 77-78.

[30] ART. 618. Easements are indivisible. If the servient estate is divided between two or more persons, the easement is not modified, and each of them must bear it on the part which corresponds to him.

If it is the dominant estate that is divided between two or more persons, each of them may use the easement in its entirety, without changing the place of its use, or making it more burdensome in any other way.

WHEREFORE, the instant petition is *DENIED*. The Decision dated October 27, 2005 and the Resolution dated June 19, 2006 of the Court of Appeals in CA-G.R. CV No. 76213 are *AFFIRMED.*

SO ORDERED.

Carpio Morales, Chico-Nazario,[*] *Leonardo-de Castro,*[**] and *Brion, JJ.,* concur.

SECOND DIVISION

[G.R. No. 177766. July 17, 2009]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **CLARO JAMPAS *Y* LUAÑA,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; INFORMATION; THE DATE OF THE COMMISSION OF THE CRIME NEED NOT BE ALLEGED WITH ULTIMATE PRECISION.— Appellant questions the sufficiency of the Information only now when he had all the opportunity to raise it before his arraignment during which he could have conveniently filed a bill of particulars to apprise himself of the exact date of the alleged rape, or he could have moved to quash the Information on the ground that it does not conform substantially to the prescribed form. By such lapses, appellant is deemed to have waived any objection to the sufficiency of the Information. At any rate, in a prosecution for rape, the material fact to be considered is the occurrence of carnal knowledge, not the time of its commission. It is enough that the Information indicates a date which is not so remote as to surprise and prejudice the

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

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

accused. It is not essential that the date be alleged in the Information with ultimate precision.

2. ID.; EVIDENCE; CREDIBILITY OF WITNESSES; UNEXPLAINED DELAY IN REPORTING THE RAPE INCIDENT IS FATAL.— The Court finds that with respect to the unexplained delay in reporting the alleged incident to the police authorities, the present petition is impressed with merit. It bears noting that AAA claimed to have reported the rape to her mother the day after it happened, the threat to her life notwithstanding. Oddly, however, it took more than two years before such alleged rape was reported to the police and the victim examined by a physician. The prosecution offered no reasonable or justifiable explanation for the delay nor presented AAA's relative *Tita* FFF or the *barangay* captain who reported the matter to the police to shed light on this crucial matter. AAA's following testimony quoted *verbatim,* on this score, is most revealing: xxx From the above-quoted testimony of AAA, it is gathered that when AAA's grandmother refused to believe her claim of rape, there was a lull in the chain of events before it was finally reported to the police. Nothing in the records, however, sufficiently explains why there was indeed such "considerable delay." Appellant's contention then to the effect that *absent any proof that AAA was under a continuing threat to her life,* the delay affects AAA's credibility assumes importance. For more than two years or from mid-1999 to September 27, 2001 when she filed the complaint, the Court does not appreciate any continuing threat against her life as in fact, it does not appear that the threat was reiterated. Even considering then the inherent weakness of the defense of alibi as to preclude the possibility of the occurrence of the incident prior to appellant's date of departure, appellant's testimony to the effect that he was in Manila from June 20, 1999 and returned only in February 2000 indicates that every opportunity was available for AAA and her family to bring the matter to the attention of the authorities. It is not thus farfetched to consider the delay an indication that the complaint was made in a desire other than to bring the culprit to justice.

3. ID.; ID.; ID.; LONE UNCORROBORATED TESTIMONY OF A RAPE VICTIM SHOULD NOT BE RECEIVED WITH PRECIPITATE CREDIBILITY BUT WITH THE UTMOST CAUTION; RAPE VICTIM'S TESTIMONY IN CASE AT

BAR IS TAINTED WITH AMBIGUITY AND DEFICIENCY ON VITAL POINTS.— The lone uncorroborated testimony of a complainant in a rape case suffices to warrant a conviction, provided that it is credible, natural, convincing, and consistent with human nature and the normal course of things. Such testimony should not be received with precipitate credulity, however, but with the utmost caution. The test for determining the credibility of a complainant's testimony is whether it is in conformity with common knowledge and consistent with the experience of mankind. Whatever is repugnant to these standards becomes incredible and lies outside of judicial cognizance. That this Court should refrain from disturbing the conclusions of the trial court on the credibility of witnesses and their testimony does not apply where the trial court might have overlooked certain facts of substance or value which, if considered, would affect the outcome of the case. After opening the entire criminal case for review and subjecting AAA's testimony to judicial scrutiny, the Court finds her narrative tainted with ambiguity and deficiency on vital points.

4. ID.; ID.; ID.; MINOR INCONSISTENCIES ARE CONSIDERED BADGES OF TRUTH; INCONSISTENCIES IN THE COMPLAINANT'S TESTIMONY IN CASE AT BAR CANNOT BE CONSIDERED MINOR.— The stark outline of AAA's testimony is so simplistic that it leaves much to be desired and leaves unmentioned those expectedly required. In view of the inevitability of a judicial scrutiny, it is a given that evidentiary matters of a descriptive or illustrative nature be supplied during trial to detail the recital of elemental facts in the Information. How AAA was "successfully raped" by appellant, the prosecution did not bother to elicit from her. It took the trial court's clarificatory questioning to obtain the pithy statement that "he tried to insert his penis to my vagina and [a]fterwards he successfully inserted his penis" without her describing any thrusting motion. And the Court observes that in the four corners of AAA's testimony, no kissing was disclosed to have happened and no knife was mentioned at all, contrary to what appears in the Information. Her testimony on these key aspects contains gaps that allow the crevices of reasonable doubt to creep in. While rape victims are not required or expected to remember all the details of their harrowing experience, and minor inconsistencies are considered badges of truth, the inconsistencies drawn from AAA's declarations on examination

vis-à-vis the Information cannot be considered as mere minor not affecting her credibility of testimony.

5. ID.; ID.; ID.; THE PRESUMPTION THAT A WOMAN WOULD NOT MAKE AN ACCUSATION OF RAPE HAD IT NOT BEEN THE TRUTH MUST BE WEIGHED AGAINST THE CONSTITUTIONAL RIGHT OF THE ACCUSED TO BE PRESUMED INNOCENT.— With respect to the rigor and indignities of an open trial that a private complainant chooses to endure by pursuing a rape case, the Court has viewed such sensitive predicament in this perspective: This is too simplistic a view to adopt regarding a crime that could cost the accused his liberty for the rest of his life. To warrant a conviction, it is necessary that the complainant's story, standing alone independently of the presumption, be believable. Otherwise, if such presumption alone is sufficient to convict the accused, every accusation of rape would result in the conviction of the accused, contrary to the fundamental right of the accused in every criminal prosecution to be presumed innocent until proven otherwise. The presumption that a woman would not make an accusation of rape had it not been the truth finds justification in the natural reticence of a woman to expose herself to a trial which would further degrade her and make her relive an experience that she would in fact want to forget. Against such a presumption, however, must be weighed the constitutional right of the accused to be presumed innocent. x x x

6. ID.; ID.; ID.; THE CONDUCT OF THE RAPE VICTIM IMMEDIATELY FOLLOWING THE ALLEGED SEXUAL ASSAULT CONSIDERED MATERIAL IN CASE AT BAR.— AAA testified that after the agonizing experience past 11:00 o'clock in the morning, she still went to school in the afternoon. To the Court, this episode of the story is remarkable. In a case where a 7-year old girl was ravished and yet was still thereafter able to continue selling junkfood, the Court stated: The conduct of the victim immediately following an alleged sexual assault should prove to be material. Whether her personal behavior would tend to establish the truth or the falsity of the accusation would depend in large measure on whether that conduct, in turn, is expected to be, or would instead be contrary to, the natural reaction of an outraged woman robbed of her honor. In this instance, the Court sees a situation where, after the alleged incident of rape, complainant has gone about her usual chore of peddling her goods. x x x

7. ID.; ID.; WHERE THE INCULPATORY FACTS AND CIRCUMSTANCES ARE CAPABLE OF TWO OR MORE EXPLANATIONS, ONE OF WHICH IS CONSISTENT WITH THE INNOCENCE OF THE ACCUSED AND THE OTHER CONSISTENT WITH HIS GUILT, THE EVIDENCE DOES NOT FULFILL THE TEST OF MORAL CERTAINTY AND IS NOT SUFFICIENT TO SUPPORT A CONVICTION.— With respect to the medical finding of healed incomplete hymenal laceration which, the physician opined, could have been caused by a sharp object or a male sex organ, the Court resolves such possibilities in favor of the innocence of appellant as his guilt has not been proven beyond reasonable doubt. Considering the medical results, AAA could either have been actually raped several months prior to the examination by appellant or by someone else, or she had not been raped at all. Where the inculpatory facts and circumstances are capable of two or more explanations, one of which is consistent with the innocence of the accused and the other consistent with his guilt, the evidence does not fulfill the test of moral certainty and is not sufficient to support a conviction.

8. ID.; ID.; PROSECUTION FOR RAPE; GUIDING PRINCIPLES. — In reviewing rape cases, this Court observes the following guiding principles: (1) **an accusation for rape can be made with facility;** it is difficult to prove but more difficult for the person accused, though innocent, to disprove; (2) in view of the intrinsic nature of the crime where only two persons are usually involved, **the testimony of the complainant must be scrutinized with extreme caution;** (3) the evidence for the prosecution must stand or fall on its own merits, and **cannot be allowed to draw strength from the weakness of the evidence for the defense.**

9. ID.; ID.; WEIGHT AND SUFFICIENCY; PROOF BEYOND REASONABLE DOUBT; ABSOLUTE GUARANTEE OF GUILT IS NOT DEMANDED BY LAW TO CONVICT A PERSON BUT THERE MUST, AT LEAST, BE MORAL CERTAINTY ON EACH ELEMENT ESSENTIAL TO CONSTITUTE THE OFFENSE AND ON THE RESPONSIBILITY OF THE OFFENDER.— Before an accused is convicted, there should be moral certainty — a certainty that convinces and satisfies the reason and conscience of those who are to act upon it. Absolute guarantee of guilt is

not demanded by the law to convict a person of a criminal charge but there must, at least, be moral certainty on each element essential to constitute the offense and on the responsibility of the offender. Proof beyond reasonable doubt is meant to be that, all things given, the mind of the judge can rest at ease concerning its verdict.

10. ID.; ID.; ID.; ID.; IF THE PROSECUTION FAILS TO DISCHARGE ITS BURDEN, THE COURT MUST SUSTAIN THE PRESUMPTION OF INNOCENCE OF THE ACCUSED, WHOSE EXONERATION MUST THEN BE GRANTED AS A MATTER OF RIGHT.— Undoubtedly, rape is a vicious crime, and it is rendered more loathsome in a case where the victim is a minor and the accused is a person whom she perceives as a figure of authority. However, sympathy for the victim and disgust at the bestial criminal act cannot prevail over the court's primordial role as interpreters of the law and dispensers of justice. It is thus the primordial duty of the prosecution to present its case with clarity and persuasion, to the end that conviction becomes the only logical and inevitable conclusion. If the prosecution fails to discharge its burden, the court must sustain the presumption of innocence of the accused, whose exoneration must then be granted as a matter of right. It is better to liberate a guilty man than to unjustly keep in prison one whose guilt has not been proven by the required quantum of evidence.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for appellant.

D E C I S I O N

CARPIO MORALES, *J.*:

From the August 10, 2006 Decision of the Court of Appeals which affirmed the April 13, 2004 Decision of the Regional Trial Court of Naval, Biliran (Branch 16) finding him guilty of rape and sentencing him to *reclusion perpetua*, Claro Jampas *y* Luaña (appellant) lodged the present appeal.

In a complaint[1] dated September 27, 2001 which was filed with the Municipal Trial Court of Naval, Biliran, AAA[2] charged appellant with rape alleged to have committed as follows:

That sometime in the mid month of 1999 at around 11:00 o'clock in the morning[,] the above named accused did, then and there willfully, unlawfully and feloniously have carnal knowledge with me against my will and continued to have carnal knowledge with me several times in 1999 and the year 2000. (Underscoring supplied)

After preliminary investigation,[3] appellant was charged in an Information dated May 13, 2002 as follows:

That **sometime during the mid-year of 1999**, at around 11:00 o'clock in the morning, more or less, [AAA], a 10-year old grade III pupil and a resident of Bgy. Villa-consuelo, Naval, Biliran Province, was called by herein accused, her uncle being the husband of her aunt, and when she went near him, he carried her to the upper part of his house called in dialect 'lawting', and once thereat, with lewd designs, did then and there wilfully, unlawfully and feloniously, accused removed [AAA]'s short pants and panty and afterwhich, accused removed his long maong pants and brief, placed on top of her and kissed her, pointed a knife to her and warned her not to tell anyone for he would kill her should she do and succeeded in having carnal knowledge of her against her will, to her damage and prejudice.

CONTRARY TO LAW **with the aggravating circumstances that accused is her uncle and that offended party is under twelve years of age**.[4] (Emphasis and underscoring supplied)

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[1] Records, p. 1.

[2] The real name of the victim is withheld per REPUBLIC ACT Nos. 7610 and 9262, and *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

[3] The preliminary investigation was carried out under the old rules prior to amendment introduced by A.M. No. 05-8-26-SC of August 30, 2005. The resolution was signed by MTC Judge-Designate Dulcisimo Pitao and reviewed by Provincial Prosecutor Gary Cruz; records, pp. 10-11.

[4] *Id.* at 12.

The prosecution, via the testimony of two witnesses, that of AAA who was only eight years old when the alleged rape occurred,[5] she having been born on November 29, 1991,[6] and that of Dr. Josephine Dayoha (Dr. Dayoha) who examined her, proffered the following version:

During the middle part of 1999, at 11:00 o'clock in the morning, as AAA was playing "*sayasaya*" with two girl friends near the adjacent house of appellant and DDD, appellant's common-law spouse and AAA's aunt, appellant summoned AAA. Obliging, AAA approached appellant who was then in his house and who then closed the door and carried her to the "*lawting*" (mezzanine) of the house.[7] There, once inside, appellant took off AAA's short pants and panties, undressed himself, and placed himself on top of AAA[8] and inserted his penis into the vagina of AAA who felt pain as a result thereof.[9] Appellant threatened AAA that he would kill her if she would tell what transpired between them.[10]

AAA, then a Grade 1 pupil, went to school in the afternoon without her telling anyone about the incident. The following day, she mustered the courage to tell her mother BBB about it. BBB relayed it to her *Ate* CCC, who in turn relayed it to AAA's grandmother EEE. EEE disbelieved the tale, however. It took a relative, *Tita* FFF, to report the incident to the *barangay* captain who in turn informed the police of the crime.[11] When the report was made to the police, the records do not show. As reflected above, AAA's complaint is dated September 24, 2001 or more than two years after the mid-1999 rape was alleged to have occurred.

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[5] Transcript of Stenographic Notes (TSN), February 6, 2003, pp. 2-3.

[6] Records, p. 37, Exhibit "B-2".

[7] TSN, February 6, 2003, pp. 4-5.

[8] *Id.* at 6.

[9] *Id.* at 17.

[10] *Id*. at 6.

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

Dr. Dayoha of the Biliran Provincial Hospital who examined the victim on September 21, 2001 issued on even date a medical certificate[12] stating that there were "healed incomplete hymenal laceration[s]" at 6 and 11 o'clock positions. The doctor opined that the lacerations could have been caused by a sharp object or a male sex organ,[13] and that sexual contact was the strongest possible cause of AAA's injuries.[14]

Appellant, denying the accusation and proffering alibi, claimed that he went to Manila with his nephew to look for work in June 1999 and returned to Biliran only in February 2000;[15] and that he was still in Manila when his common-law wife gave birth to their youngest child in August 7, 1999,[16] which claim his common-law wife corroborated.

To buttress his alibi, appellant presented Virgie Comayas who testified that her live-in partner Mario Sañosa and her sister accompanied appellant when he left for Manila in June 1999 and that it was only in February 2000 when appellant returned to Biliran.[17]

Further, appellant claimed that AAA was impelled by vengeance in filing the criminal complaint because he was rumored to have impregnated her mother BBB.[18]

By Judgment of April 13, 2004, the trial court convicted appellant as reflected early on, disposing as follows:

WHEREFORE, premises considered, this Court finds the accused Claro Jampas *Y* Luaña GUILTY in Criminal Case No. N-2164 hereby imposing upon him the penalty of *Reclusion Perpetua*.

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[12] Records, p. 2.

[13] TSN, February 6, 2003, p. 20.

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

[15] TSN, January 14, 2004, pp. 4-5.

[16] *Ibid*.

[17] TSN, February 26, 2003, pp. 7-8, 11-12.

[18] TSN, January 14, 2004, p. 6.

The accused shall pay [AAA] the amount of ₱75,000.00 in moral damages and to further pay ₱50,000.00 in civil indemnity for the rape committed.

SO ORDERED.[19]

Appellant appealed before this Court which, pursuant to the ruling in *People v. Mateo*,[20] referred the case to the Court of Appeals for disposition.[21]

By Decision[22] of August 10, 2006, the appellate court affirmed the decision of the trial court.

Hence, the present petition for review on *certiorari*,[23] appellant insisting that there was grave error in

I

…CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE FAILURE OF THE PROSECUTION TO PROVE THE GUILT OF THE ACCUSED-APPELLANT BEYOND REASONABLE DOUBT.

II

…NOT CONSIDERING THE DEFENSE INTERPOSED BY THE ACCUSED-APPELLANT.

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[19] Records, p. 77.

[20] G.R. No. 147678-87, July 7, 2004, 433 SCRA 640; *vide* A.M. No. 00-5-03-SC (October 15, 2004) which modified Sections 3 and 10 of Rule 122, Sections 12 and 13 of Rule 134 of the Rules of Court and any other rule insofar as they provide direct appeals from the Regional Trial Court to this Court in cases where the penalty imposed is death, *reclusion perpetua* or life imprisonment and allowed an intermediate review by the Court of Appeals before such cases are elevated to this Court.

[21] Per Resolution dated December 5, 2005.

[22] *Rollo*, pp. 4-16; penned by Justice Apolinario D. Bruselas, Jr. and concurred by Justices Isaias P. Dicdican and Agustin S. Dizon.

[23] In this petition, both parties dispensed with the submission of supplemental briefs and instead adopted their respective Briefs filed with the appellate court.

III

… NOT CONSIDERING [THE] INFORMATION CHARGING THE ACCUSED-APPELLANT OF RAPE INSUFFICIENT TO SUPPORT A JUDGMENT OF CONVICTION FOR FAILURE OF THE PROSECUTION TO STATE THE PRECISE DATE OF THE COMMISSION OF THE ALLEGED RAPE.[24]

Appellant takes issue on the sufficiency of the Information as to the approximate date of the commission of the offense which, he posits, is fatally defective to thus jeopardize his right to be informed of the nature of the offense charged.[25]

Appellant questions the sufficiency of the Information only now when he had all the opportunity to raise it before his arraignment during which he could have conveniently filed a bill of particulars[26] to apprise himself of the exact date of the alleged rape, or he could have moved to quash the Information on the ground that it does not conform substantially to the prescribed form.[27] By such lapses, appellant is deemed to have waived any objection to the sufficiency of the Information.

At any rate, in a prosecution for rape, the material fact to be considered is the occurrence of carnal knowledge, not the time of its commission.[28] It is enough that the Information indicates a date which is not so remote as to surprise and prejudice the accused.[29] It is not essential that the date be alleged in the Information with ultimate precision.[30]

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[24] CA *rollo*, p. 54.

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

[26] RULES OF COURT, Rule 116, Sec. 9 reads: The accused may, before arraignment, move for a bill of particulars to enable him properly to plead and prepare for trial. The motion shall specify the alleged defects of the complaint or information and the details desired.

[27] RULES OF COURT, Rule 117, Secs. 1 and 3(e); *vide People v. Ibañez*, G.R. No. 174656, May 11, 2007, 523 SCRA 136, 143.

[28] *People v. Losano*, 369 Phil. 966, 978 (1999).

[29] *People v. Bugayong*, 359 Phil. 870, 879 (1998).

[30] *People v. Ibañez*, *supra* note 27 at 142.

Appellant goes on to question the trial and appellate courts failure to take note of the "considerable delay" in filing the complaint, given that there is no showing that AAA was under a continuing threat to her life,[31] which delay "affects the credibility" of AAA, citing *People v. Miñano.*[32]

The Court finds that with respect to the unexplained delay in reporting the alleged incident to the police authorities, the present petition is impressed with merit. It bears noting that AAA claimed to have reported the rape to her mother the day after it happened, the threat to her life notwithstanding. Oddly, however, it took more than two years before such alleged rape was reported to the police and the victim examined by a physician. The prosecution offered no reasonable or justifiable explanation for the delay nor presented AAA's relative *Tita* FFF or the *barangay* captain who reported the matter to the police to shed light on this crucial matter. AAA's following testimony quoted *verbatim*, on this score, is most revealing:

A: He threatened me not to tell somebody because if I will tell somebody he will kill me.

Q: But despite what he said to you, did you tell somebody what happened to you?

A: Yes sir.

Q: Whom did you confine?

A: **At the following day, I tell my mother.**

x x x x x x x x x

Q: What did your mother do?

A: My mother told this matter to Ate [CCC].

Q: **What did your Ate [CCC] do?**

A: Ate [CCC] revealed this to my grandmother and **my grandmother did not mind**.

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[31] CA *rollo*, p. 60.

[32] G.R. No. 97609, March 31, 1993, 220 SCRA 681.

x x x x x x x x x

Q: **When your grandmother did not believe, what did you (sic) Ate [CCC] do?**

A: **We just leave and forget it.**

Q: **How did this incident reached . . . the Police?**

A: **Tita [FFF] revealed it.**

Q: **To whom?**

A: **. . . the *Brgy.* Captain.**

Q: **What did the *Brgy.* Captain do?**

A: **The *Brgy.* Captain reported the incident to the Police**.[33] (Emphasis and underscoring supplied)

From the above-quoted testimony of AAA, it is gathered that when AAA's grandmother refused to believe her claim of rape, there was a lull in the chain of events before it was finally reported to the police. Nothing in the records, however, sufficiently explains why there was indeed such "considerable delay." Appellant's contention then to the effect that absent any proof that AAA was under a continuing threat to her life, the delay affects AAA's credibility assumes importance.

For more than two years or from mid-1999 to September 27, 2001 when she filed the complaint, the Court does not appreciate any continuing threat against her life as in fact, it does not appear that the threat was reiterated.

Even considering then the inherent weakness of the defense of alibi as to preclude the possibility of the occurrence of the incident prior to appellant's date of departure, appellant's testimony to the effect that he was in Manila from June 20, 1999 and returned only in February 2000[34] indicates that every opportunity was available for AAA and her family to bring the matter to the attention of the authorities. It is not thus farfetched

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[33] TSN, February 6, 2003, pp. 6-8.

[34] TSN, January 14, 2004, pp. 4-5; July 30, 2003, p. 10.

to consider the delay an indication that the complaint was made in a desire other than to bring the culprit to justice.

In reviewing rape cases, this Court observes the following guiding principles: (1) **an accusation for rape can be made with facility**; it is difficult to prove but more difficult for the person accused, though innocent, to disprove; (2) in view of the intrinsic nature of the crime where only two persons are usually involved, **the testimony of the complainant must be scrutinized with extreme caution**; (3) the evidence for the prosecution must stand or fall on its own merits, and **cannot be allowed to draw strength from the weakness of the evidence for the defense**.[35]

The lone uncorroborated testimony of a complainant in a rape case suffices to warrant a conviction, provided that it is credible, natural, convincing, and consistent with human nature and the normal course of things. Such testimony should not be received with precipitate credulity, however, but with the utmost caution.

The test for determining the credibility of a complainant's testimony is whether it is in conformity with common knowledge and consistent with the experience of mankind. Whatever is repugnant to these standards becomes incredible and lies outside of judicial cognizance.[36]

That this Court should refrain from disturbing the conclusions of the trial court on the credibility of witnesses and their testimony does not apply where the trial court might have overlooked certain facts of substance or value which, if considered, would affect the outcome of the case.[37]

After opening the entire criminal case for review[38] and subjecting AAA's testimony to judicial scrutiny, the Court finds her narrative

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[35] *People v. Lumibao*, 465 Phil. 771, 780 (2004).

[36] *People v. De la Cruz*, 408 Phil. 838, 848 (2001).

[37] *People v. Ladrillo*, 377 Phil. 904, 917 (1999).

[38] *People v. Flores, Jr.*, 442 Phil. 561, 569 (2002) enunciates that an appeal in a criminal proceeding throws the whole case wide open for review and the appellate court can correct errors, though unassigned, that may be found in the appealed judgment.

tainted with ambiguity and deficiency on vital points. Consider her narration of the supposedly harrowing incident:

Q: What did you do when he called you up?

A: I approach him.

Q: After that what did he do to you?

A: He closed the door.

Q: Whose door of the house?

A: Claro Jampas.

Q: When he closed the door, what did he do to you next?

A: He carried me and he brought me to the mezzanine locally known as "*lawting*"

Q: When you reached *lawting*, what did he do next to you, if any?

A: He took off my black short pant and white panty.

Q: How about him, what did he do?

A: He undressed himself.

Q: After that, what did he do to you?

A: He raped me.

Q: How did he rape you?

A: He put himself on top of me.

Q: And then what happened?

A: And then he successfully raped me.

Q: How did you feel when he successfully raped you?

A: I felt pain.[39] (Italics and underscoring supplied)

The stark outline of AAA's testimony is so simplistic that it leaves much to be desired and leaves unmentioned those expectedly required. In view of the inevitability of a judicial

[39] TSN, February 6, 2003, pp. 5-6.

scrutiny, it is a given that evidentiary matters of a descriptive or illustrative nature be supplied during trial to detail the recital of elemental facts in the Information.

How AAA was "successfully raped" by appellant, the prosecution did not bother to elicit from her. It took the trial court's clarificatory questioning to obtain the pithy statement that "he tried to insert his penis to my vagina and [a]fterwards he successfully inserted his penis"[40] without her describing any thrusting motion. And the Court observes that in the four corners of AAA's testimony, no kissing was disclosed to have happened and no knife was mentioned at all, contrary to what appears in the Information. Her testimony on these key aspects contains gaps that allow the crevices of reasonable doubt to creep in.

While rape victims are not required or expected to remember all the details of their harrowing experience, and minor inconsistencies are considered badges of truth, the inconsistencies drawn from AAA's declarations on examination *vis-à-vis* the Information cannot be considered as mere minor not affecting her credibility of testimony.[41]

With respect to the rigor and indignities of an open trial that a private complainant chooses to endure by pursuing a rape case, the Court has viewed such sensitive predicament in this perspective:

> This is too simplistic a view to adopt regarding a crime that could cost the accused his liberty for the rest of his life. To warrant a conviction, it is necessary that the complainant's story, standing alone independently of the presumption, be believable. Otherwise, if such presumption alone is sufficient to convict the accused, every accusation of rape would result in the conviction of the accused, contrary to the fundamental right of the accused in every criminal prosecution to be presumed innocent until proven otherwise.
>
> The presumption that a woman would not make an accusation of rape had it not been the truth finds justification in the natural reticence

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[40] *Id.* at 17.

[41] Vide *People v. Perez,* G.R. No. 172875, August 15, 2007, 530 SCRA 376.

of a woman to expose herself to a trial which would further degrade her and make her relive an experience that she would in fact want to forget. Against such a presumption, however, must be weighed the constitutional right of the accused to be presumed innocent. In *People v. Godoy*, it was held:

> The presumption of innocence. . . is founded upon the first principles of justice, and is not a mere form but a substantial part of the law. It is not overcome by mere suspicion or conjecture; a probability that the defendant committed the crime; nor by the fact that he had the opportunity to do so. Its purpose is to balance the scales in what would otherwise be an uneven contest between the lone individual pitted against the People and all the resources at their command. Its inexorable mandate is that, for all the authority and influence of the prosecution, the accused must be acquitted and set free if his guilt cannot be proved beyond the whisper of a doubt. This is in consonance with the rule that conflicts in evidence must be resolved upon the theory of innocence rather than upon a theory of guilt when it is possible to do so.[42]

More. AAA testified that after the agonizing experience past 11:00 o'clock in the morning, she still went to school in the afternoon.[43] To the Court, this episode of the story is remarkable. In a case where a 7-year old girl was ravished and yet was still thereafter able to continue selling junkfood, the Court stated:

> The conduct of the victim immediately following an alleged sexual assault should prove to be material. Whether her personal behavior would tend to establish the truth or the falsity of the accusation would depend in large measure on whether that conduct, in turn, is expected to be, or would instead be contrary to, the natural reaction of an outraged woman robbed of her honor. In this instance, the Court sees a situation where, after the alleged incident of rape, complainant has gone about her usual chore of peddling her goods. x x x[44] (Underscoring supplied)

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[42] *People v. De la Cruz, supra* note 36 at 851.

[43] TSN, February 6, 2003, p. 15.

[44] *People v. Dela Cruz*, 388 Phil. 678, 687 (2000).

In another vein, there is grain of doubt as to whether there was indeed an attic or mezzanine locally known as *lawting* that was described by AAA to be eight meters high,[45] where appellant's house was depicted to be a mere bungalow.[46]

With respect to the medical finding of healed incomplete hymenal laceration which, the physician opined, could have been caused by a sharp object or a male sex organ, the Court resolves such possibilities in favor of the innocence of appellant as his guilt has not been proven beyond reasonable doubt. Considering the medical results, AAA could either have been actually raped several months prior to the examination by appellant or by someone else, or she had not been raped at all.

Where the inculpatory facts and circumstances are capable of two or more explanations, one of which is consistent with the innocence of the accused and the other consistent with his guilt, the evidence does not fulfill the test of moral certainty and is not sufficient to support a conviction.[47]

Before an accused is convicted, there should be moral certainty — a certainty that convinces and satisfies the reason and conscience of those who are to act upon it. Absolute guarantee of guilt is not demanded by the law to convict a person of a criminal charge but there must, at least, be moral certainty on each element essential to constitute the offense and on the responsibility of the offender. Proof beyond reasonable doubt is meant to be that, all things given, the mind of the judge can rest at ease concerning its verdict.[48]

Undoubtedly, rape is a vicious crime, and it is rendered more loathsome in a case where the victim is a minor and the accused is a person whom she perceives as a figure of authority. However, sympathy for the victim and disgust at the bestial criminal act

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[45] TSN, February 6, 2003, p. 14.

[46] TSN, February 26, 2003, p. 5.

[47] *People v. De la Cruz*, *supra* note 36 at 853-854.

[48] *People v. Lumibao*, *supra* note 35 at 781.

cannot prevail over the court's primordial role as interpreters of the law and dispensers of justice.

It is thus the primordial duty of the prosecution to present its case with clarity and persuasion, to the end that conviction becomes the only logical and inevitable conclusion. If the prosecution fails to discharge its burden, the court must sustain the presumption of innocence of the accused, whose exoneration must then be granted as a matter of right.[49]

It is better to liberate a guilty man than to unjustly keep in prison one whose guilt has not been proven by the required quantum of evidence.[50]

WHEREFORE, appellant CLARO JAMPAS *y* LUANA is *ACQUITTED* of the crime of rape for failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered immediately *RELEASED* unless he is being detained for some other lawful cause.

Let a copy of this Decision be furnished the Director of the Bureau of Corrections, Muntinlupa City, who is *ORDERED* to cause the immediate release of appellant, unless he is being lawfully held for another cause, and to inform this Court of action taken within 10 days from notice.

No pronouncement as to costs.

SO ORDERED.

Quisumbing (Chairperson), Chico-Nazario,[*] *Leonardo-de Castro,*[**] and *Brion, JJ.,* concur.

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[49] *Vide People v. Ramirez, Jr.*, G.R. Nos. 150079-80, June 10, 2004, 431 SCRA 666, 679, 681.

[50] *People v. Perez, supra* note 41 at 393.

[*] Additional member per Special Order No. 658.

[**] Additional member per Special Order No. 635.

SECOND DIVISION

[G.R. No. 179937. July 17, 2009]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **GERALD LIBREA,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002; CUSTODY AND DISPOSITION OF SEIZED DANGEROUS DRUGS; NON COMPLIANCE WITH THE PROCEDURAL REQUIREMENTS BY THE APPREHENDING/BUY-BUST TEAM IS NOT FATAL; CONDITIONS; THE INTEGRITY AND THE EVIDENTIARY VALUE OF THE CONFISCATED ITEM WAS NOT PROPERLY PRESERVED IN CASE AT BAR.— Non-compliance by the apprehending/buy-bust team with Section 21 of R.A. No. 9165 is not fatal as long as there is justifiable ground therefor and the integrity and the evidentiary value of the confiscated/seized items are properly preserved by the apprehending officer/team. The prosecution justifies the failure of the buy-bust team to have the confiscated sachet photographed with the non-availability of a photographer. And it claims that no DOJ, as well as media representative, arrived at the time and after the buy-bust operation took place. Without passing on the merits of this claim, the Court finds that the integrity, as well as the evidentiary value of the confiscated item, was not shown to have been preserved. While Yema claimed to have marked the plastic sachet at the police station, what was done to it afterwards remains unexplained. And there is no showing that the substance allegedly confiscated was the same substance which was subjected to examination. As earlier mentioned, while during pre-trial appellant admitted the authenticity and due execution of the laboratory report, he denied that the specimen subject thereof was taken from him.

2. ID.; ID.; SECTION 5, ARTICLE II THEREOF; ACQUITTAL OF THE ACCUSED-APPELLANT PROPER WHERE HIS GUILT FOR VIOLATION THEREOF WAS NOT PROVED BEYOND REASONABLE DOUBT; INTEGRITY OF THE

EVIDENCE MUST BE PRESERVED.— The request for forensic examination, together with the specimen, was delivered to the laboratory by a certain SPO4 D.R. Mercado (Mercado), who was not part of the buy-bust team, at 11:15 in the morning of October 10, 2003, a day after the conduct of the alleged buy-bust operation. There is no showing, however, under what circumstances Mercado, who did not take the witness stand, came into possession of the specimen. *Apropos* is the Court's ruling in *People v. Ong*: x x x [T]he *Memorandum-Request for Laboratory Examination* . . . indicates that a certain SPO4 Castro submitted the specimen for examination. However, the rest of the records of the case failed to show the role of SPO4 Castro in the buy-bust operation, if any. x x x x x x Since SPO4 Castro appears **not to be part of the buy-bust team**, how and when did he get hold of the specimen examined by Police Inspector Eustaquio? Who entrusted the substance to him and requested him to submit it for examination? For how long was he in possession of the evidence before he turned it over to the PNP Crime Laboratory? Who else had access to the specimen from the time it was allegedly taken from appellants when arrested? ***These questions should be answered satisfactorily to determine whether the integrity of the evidence was compromised in any way. Otherwise, the prosecution cannot maintain that it was able to prove the guilt of the appellants beyond reasonable doubt.*** On this score alone, the Court finds that the prosecution failed to prove beyond reasonable doubt the guilt of appellant. His acquittal is thus in order.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for appellant.

D E C I S I O N

CARPIO MORALES, *J.*:

Gerald Librea (appellant) was charged and convicted by the Regional Trial Court (RTC) of Lipa City, Batangas of violation of Section 5, Article II of Republic Act (RA) No. 9165.

The Information against appellant reads:

> That on or about the 9th day of October 2003 at about 7:30 o'clock [*sic*] in the evening at Basang Hamog, Barangay 1, Lipa City, Philippines, the above-named accused, without authority of law, did then and there willfully, unlawfully sell, deliver, dispose or give away to a police officer/informer-poseur buyer, 0.04 grams/s of Methamphetamine Hydrochloride locally known as "*shabu*", which is a dangerous drug, contained in one (1) plastic sachet/s.[1] (Underscoring supplied)

At the pre-trial, appellant admitted, among other things, the "authenticity and due execution of Chemistry Report No. D-2424-03 prepared by P/Sr. Insp. Lorna R. Tria, but den[ied] that the specimen subject matter thereof came from [him]."[2]

From the testimonies of prosecution witnesses PChief Insp. Dante Novicio (Novicio) and SPO1 Alexander Yema (Yema) of the Anti-Illegal Drugs Special Operation Task Force (Task Force) of the Lipa City Police Station, the following version is gathered:[3]

On receipt from an "asset-informant" by Novicio of information that appellant was actively pushing drugs in various areas of Lipa City, surveillance and a test-buy was conducted which validated the information.

A buy-bust operation was soon conducted on October 9, 2003 at around 7:30 in the evening at "a squatters area" in *Basang Hamog*, Barangay 1, Lipa City, about 30 meters from the police station. Novicio, Yema, and PO1 Cleofe Pera (Cleofe), in the company of the informant who was given two ₱100 bills on which were marked "DPN" beside their serial numbers,[4] repaired to *Basang Hamog*. As the informant approached appellant who was standing by a store, Novicio, Yema, and Cleofe positioned themselves at a spot seven to ten meters away from appellant.

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[1] Records, p. 3.

[2] *Id.* at 21.

[3] *Vide* TSN, June 2, 2004, pp. 2-15, TSN, September 6, 2004, pp. 2-17, TSN, December 13, 2004, pp. 2-20.

[4] Exhibit "C", Exhibits for the Prosecution.

After the informant spoke to appellant to whom he gave the marked bills, appellant handed him a small plastic sachet which he scrutinized and brought to the members of the buy-bust team. Soon after Yema received the sachet and smelled it to be *shabu*, he, Novicio, and Cleofe approached appellant, introduced themselves as members of the police force, informed him of his rights, arrested him, and conducted a body search which yielded the two marked ₱100 bills.

Appellant was thereupon brought to the police station where Yema marked the sachet with "ACY" (representing his initials) on one side and "GCL" (representing the initials of appellant) on the other. Cleofe at once prepared the Inventory of Confiscated/ Seized Items (Inventory)[5] on which appellant refused to affix his signature and a request for laboratory examination.

Upon the other hand, appellant gave his version as follows:[6]

After 7:00 in the evening of October 9, 2003, while he was at the store of his aunt Ester Calingasan (Ester) waiting for the *pancit* which he had ordered, three police officers arrived, arrested him, and forcibly took him to the police headquarters where he was detained. No test-buy or buy-bust operation took place. He saw the Inventory and the plastic sachet for the first time during the trial.

Ester corroborated appellant's testimony, adding that after he was arrested, she fetched his mother and accompanied her to the police headquarters where appellant was detained.

Branch 12 of the Lipa City RTC convicted appellant as charged, disposing as follows:

> WHEREFORE, the Court finds the accused, GERALD LIBREA *y* CAMITAN, guilty beyond reasonable doubt, as principal by direct participation, of the crime of Violation [of] Section 5, 1st paragraph, Article II of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002 and sentences him to suffer the penalty of LIFE IMPRISONMENT and pay a fine of ₱500,000.00 and the costs.

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[5] Exhibit "A", Exhibits for the Prosecution.

[6] TSN, July 6, 2005, pp. 2-17; TSN, August 17, 2005, pp. 2-14.

The 0.04 gram of methamphetamine hydrochloride subject of this case is forfeited in favor of the government and ordered turned over to the Chief of Police of Lipa City for proper disposal in accordance with law.

Also, let the corresponding commitment order be issued for the transfer of detention of the accused to the Bureau of Correction, Muntinlupa City, Metro Manila.

Given this 14th day of September, 2005 at Lipa City.[7]

Before the Court of Appeals, appellant faulted the trial court

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x x x IN CONVICTING [HIM] FOR VIOLATION OF SECTION 5, ARTICLE II OF R.A. 9165 NOTWITHSTANDING THE NON-PRESENTATION OF THE POSEUR-BUYER.

II

x x x IN GIVING CREDENCE TO THE TESTIMONIES OF THE PROSECUTION POLICE WITNESSES NOTWITHSTANDING THE IRREGULARITIES IN THE PERFORMANCE OF THEIR DUTIES.

III

x x x IN FINDING [HIM] GUILTY OF THE CRIME CHARGED DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[8] (Underscoring supplied)

By Decision[9] of June 29, 2007, the Court of Appeals affirmed the trial court's decision, hence, the present appeal.[10] Both appellant and the Solicitor General adopted their respective arguments in the Briefs they had filed before the appellate court.[11]

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[7] Records, p. 91.

[8] CA *rollo*, p. 33.

[9] Penned by Court of Appeals Associate Justice Marina L. Buzon, with the concurrence of Court of Appeals Associate Justices Rosmari D. Carandang and Mariflor P. Punzalan-Castillo, *id.* at 87-94.

[10] *Id.* at 97-98.

[11] *Rollo*, pp. 22-24, 31-35.

Appellant assails, among other things, the failure of the buy-bust team to photograph the allegedly confiscated sachet and to have a representative of the media as well as of the Department of Justice (DOJ) sign the Inventory of Confiscated/Seized Items, as required under Section 21 of RA 9165.[12]

Non-compliance by the apprehending/buy-bust team with Section 21 of R.A. No. 9165 is not fatal as long as there is justifiable ground therefor and the integrity and the evidentiary value of the confiscated/seized items are properly preserved by the apprehending officer/team.[13]

The prosecution justifies the failure of the buy-bust team to have the confiscated sachet photographed with the non-availability of a photographer.[14] And it claims that no DOJ, as well as media representative, arrived at the time and after the buy-bust operation took place. Without passing on the merits of this claim, the Court finds that the integrity, as well as the evidentiary value of the confiscated item, was not shown to have been preserved.

While Yema claimed to have marked the plastic sachet at the police station, what was done to it afterwards remains unexplained.

And there is no showing that the substance allegedly confiscated was the same substance which was subjected to examination.[15] As earlier mentioned, while during pre-trial appellant admitted the authenticity and due execution of the laboratory report, he denied that the specimen subject thereof was taken from him.

More. The request for forensic examination, together with the specimen, was delivered to the laboratory by a certain SPO4 D.R. Mercado (Mercado),[16] who was not part of the buy-bust

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[12] *Vide* CA *rollo*, pp. 40-41.

[13] *Vide People v. Pringas*, G.R. No. 175928, August 31, 2007, 531 SCRA 828, 842.

[14] TSN, June 2, 2004, pp. 11-12.

[15] *Vide People v. Ong*, G.R. No. 137348, June 21, 2004, 432 SCRA 470, 488.

[16] Exhs. "B" – "B-1", Exhibits for the Prosecution.

team, at 11:15 in the morning of October 10, 2003, a day after the conduct of the alleged buy-bust operation. There is no showing, however, under what circumstances Mercado, who did not take the witness stand, came into possession of the specimen. *Apropos* is the Court's ruling in *People v. Ong*:[17]

> x x x [T]he *Memorandum-Request for Laboratory Examination* . . . indicates that a certain SPO4 Castro submitted the specimen for examination. However, the rest of the records of the case failed to show the role of SPO4 Castro in the buy-bust operation, if any. x x x
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> x x x Since SPO4 Castro appears **not to be part of the buy-bust team**, how and when did he get hold of the specimen examined by Police Inspector Eustaquio? Who entrusted the substance to him and requested him to submit it for examination? For how long was he in possession of the evidence before he turned it over to the PNP Crime Laboratory? Who else had access to the specimen from the time it was allegedly taken from appellants when arrested? **These questions should be answered satisfactorily to determine whether the integrity of the evidence was compromised in any way. Otherwise, the prosecution cannot maintain that it was able to prove the guilt of the appellants beyond reasonable doubt.**[18] (Emphasis and underscoring supplied)

On this score alone, the Court finds that the prosecution failed to prove beyond reasonable doubt the guilt of appellant. His acquittal is thus in order.

WHEREFORE, the Decision of the Court of Appeals dated June 29, 2007 is *REVERSED* and *SET ASIDE*. Appellant, GERALD LIBREA, is *ACQUITTED* of the crime charged and is ordered released from custody, unless he is being held for some other lawful cause.

Let a copy of this Decision be furnished the Director of the Bureau of Corrections, Muntinlupa City, who is *DIRECTED* to implement it immediately and to inform this Court within five (5) days of action taken.

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[17] *People v. Ong*, G.R. No. 137348, June 21, 2004, 432 SCRA 470.

[18] *Id.* at 489-490.

SO ORDERED.

Quisumbing (Chairperson), Chico-Nazario,[*] *Leonardo-de Castro,*[**] and *Brion, JJ.,* concur.

FIRST DIVISION

[UDK-14071. July 17, 2009]

MARTIN GIBBS FLETCHER, *petitioner, vs.* **THE DIRECTOR OF BUREAU OF CORRECTIONS or his representative,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL PROCEEDINGS; *HABEAS CORPUS*; STRICT COMPLIANCE WITH THE TECHNICAL REQUIREMENTS MAY BE DISPENSED WITH WHERE THE ALLEGATIONS IN THE APPLICATION ARE SUFFICIENT TO MAKE OUT A CASE FOR *HABEAS CORPUS*.— We disagree with the OSG insofar as it argues that the petition should be dismissed for failure to comply with Section 3, Rule 102 of the Rules of Court. Strict compliance with the technical requirements for a *habeas corpus* petition as provided in the Rules of Court may be dispensed with where the allegations in the application are sufficient to make out a case for *habeas corpus*. In *Angeles v. Director of New Bilibid Prison*, we held that the formalities required for petitions for *habeas corpus* shall be construed liberally. The petition for the writ is required to be verified but the defect in form is not fatal. Indeed, in the landmark case of *Villavicencio v. Lukban*, this Court declared that it is the duty of a court to issue the writ if there is evidence that a person is unjustly restrained of his liberty within its jurisdiction *even if there is no application therefor.*

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[*] Additional member per Special Order No. 658.

[**] Additional member per Special Order No. 635.

So long as this Court sits, technicality cannot trump liberty. Therefore, a petition which is deficient in form, such as petitioner's petition-letter in this case, may be entertained so long as its allegations sufficiently make out a case for *habeas corpus*.

2. ID.; ID.; ID.; ID.; RATIONALE.— The ultimate purpose of the writ of *habeas corpus* is to relieve a person from unlawful restraint. The writ exists as a speedy and effectual remedy to relieve persons from unlawful restraint and as an effective defense of personal freedom. Where the restraint of liberty is allegedly authored by the State, the very entity tasked to ensure the liberty of all persons (citizens and aliens alike) within its jurisdiction, courts must be vigilant in extending the *habeas corpus* remedy to one who invokes it. To strictly restrict the great writ of liberty to technicalities not only defeats the spirit that animates the writ but also waters down the precious right that the writ seeks to protect, the right to liberty. To dilute the remedy that guarantees protection to the right is to negate the right itself. Thus, the Court will not unduly confine the writ of *habeas corpus* in the prison walls of technicality. Otherwise, it will betray its constitutional mandate to promulgate rules concerning the protection and enforcement of constitutional rights.

3. ID.; ID.; ID.; WHEN WRIT NOT ALLOWED.— The writ of *habeas corpus* extends to all cases of illegal confinement or detention by which any person is deprived of his liberty. However, Section 4, Rule 102 of the Rules of Court provides: Sec. 4. *When writ not allowed or discharge authorized.* – **If it appears that the person to be restrained of his liberty is in the custody of an officer under process issued by a court or judge; or by virtue of a judgment or order of a court of record, and that court or judge had jurisdiction to issue the process, render the judgment, or make the order, the writ shall not be allowed;** or if the jurisdiction appears after the writ is allowed, the person shall not be discharged by reason of any informality or defect in the process, judgment, or order. **Nor shall anything in this rule be held to authorize the discharge of a person charged with** or convicted of an offense in the Philippines, or of a person suffering imprisonment under lawful judgment. Plainly stated, the writ obtains immediate relief for those who have been illegally confined or imprisoned without sufficient cause. The writ, however, should not be issued when the custody over the person is by virtue of a judicial process or a valid judgment.

4. ID.; ID.; ID.; ID.; THE PENDENCY OF ANOTHER CRIMINAL CASE DISQUALIFIES A CONVICT FROM BEING RELEASED ON PAROLE; CASE AT BAR.— A convict may be released on parole after serving the minimum period of his sentence. However, the pendency of another criminal case is a ground for the disqualification of such convict from being released on parole. Unfortunately, petitioner is again on trial in Criminal Case No. 94-6988 for *estafa*. The case was filed as early as 1996 but he was arraigned only on October 6, 2008. He pleaded not guilty to the charge against him. Pre-trial was set on January 26, 2009. Clearly, he is disqualified from being released on parole and consequently must serve out the entirety of his sentence. We note the issuance of a warrant for petitioner's arrest on March 8, 1996, the date he was first set for arraignment in Criminal Case No. 94-6988. Pursuant to Section 4, Rule 102 of the Rules of Court, the writ cannot be issued and petitioner cannot be discharged since he has been charged with another criminal offense. His continued detention is without doubt warranted under the circumstances.

5. CRIMINAL LAW; PARTIAL EXTINCTION OF CRIMINAL LIABILITY; COMMUTATION OF SENTENCE; SOLE PREROGATIVE OF THE PRESIDENT.— Petitioner asserts that his sentence in Criminal Case No. 95-995 was commuted by then President Ramos. However, he presented no proof of such commutation. Other than indorsements by the Chief Justice, Public Attorney's Office and Undersecretary of the Department of Justice, no document purporting to be the commutation of his sentence by then President Ramos was attached in his petition and in his subsequent missives to this Court. His barren claim of commutation therefore deserves scant consideration, lest we be accused of usurping the President's sole prerogative to commute petitioner's sentence in Criminal Case No. 95-995.

APPEARANCES OF COUNSEL

Raymond Gonzales & Associates for petitioner.
The Solicitor General for respondent.

R E S O L U T I O N

CORONA, *J.*:

Petitioner Martin Gibbs Fletcher seeks his release from prison in this petition for the issuance of the writ of *habeas corpus*. He claims that his prison sentence of 12 to 17 years was commuted by then President Fidel V. Ramos to nine to 12 years. Since he had already served 14 years, three months and 12 days, including his good conduct allowance, his continued imprisonment is illegal.[1]

In its return to the writ, the Office of the Solicitor General (OSG) posited that the petition should be denied for failure to comply with Section 3, Rule 102 of the Rules of Court. In particular, the petition was neither signed nor verified by petitioner or a person on his behalf or by his purported counsel. Moreover, it was not accompanied by a copy of the cause of petitioner's detention or commitment order.

The OSG further opposed the issuance of the writ on the following grounds: petitioner's prison sentence was never commuted by then President Ramos; he had not been granted the status of a colonist; there were other pending cases against him warranting his continued detention[2] and he was put under custody by virtue of a judicial process or a valid judgment.

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[1] Petitioner added that he was classified as a colonist who could be released from prison as early as on his tenth year. However, petitioner's official prison record did not yield evidence that he was classified as such. *Rollo*, p. 3.

[2] Per the OSG's return, the following cases were filed against petitioner:

a) Criminal Case No. 160213 filed in the Metropolitan Trial Court of Manila (MeTC), Branch 27, for *estafa* (non-payment of hotel fees). A warrant of arrest was issued against petitioner but was not served. The case was archived on September 1994.

b) Criminal Case No. 93-744 filed in the MeTC of Pasay City, Branch 48 for *estafa*. This case was provisionally dismissed on July 8, 1993.

c) Criminal Case Nos. 168546 and 168549 filed in the MeTC of Makati City, Branch 65 for violation of BP 22. This case was provisionally dismissed on October 8, 2001.

We disagree with the OSG insofar as it argues that the petition should be dismissed for failure to comply with Section 3, Rule 102 of the Rules of Court. Strict compliance with the technical requirements for a *habeas corpus* petition as provided in the Rules of Court may be dispensed with where the allegations in the application are sufficient to make out a case for *habeas corpus*. In *Angeles v. Director of New Bilibid Prison*,[3] we held that the formalities required for petitions for *habeas corpus* shall be construed liberally. The petition for the writ is required to be verified but the defect in form is not fatal.[4] Indeed, in the landmark case of *Villavicencio v. Lukban*,[5] this Court declared that it is the duty of a court to issue the writ if there is evidence that a person is unjustly restrained of his liberty within its

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d) Criminal Case No. 186105 filed in the MeTC of Makati City, Branch 61 for violation of BP 22. This case was archived on September 30, 1996.

e) Criminal Case No. 029049 filed in the MeTC of Quezon City, Branch 35 for violation of BP 22. This case was provisionally dismissed on January 13, 1998.

f) Criminal Case No. 36581-2 filed in the MeTC of Muntinlupa City, Branch 80 for two counts of violation of BP 22. This case was archived on March 3, 2000 with an outstanding warrant for petitioner's arrest. The OSG noted in its writ that the status of this case can no longer be verified because its records were among those burned by the fire that razed the Muntinlupa City Hall on August 3, 2007.

g) Criminal Case No. 160911 filed in the MeTC of Makati City, Branch 63 for violation of BP 22. This case was allegedly archived.

h) Criminal Case No. 94-6988 filed in the RTC of Makati City, Branch 143 for *estafa*. Petitioner allegedly rented a unit in EGI Homes Condominium but he left without paying the rentals therein. A warrant for petitioner's arrest was issued on March 8, 1996, the date he was first set for arraignment. Petitioner was finally arraigned on October 6, 2008 and he pleaded not guilty to the charge. Pre-trial was set on January 26, 2009.

i) Criminal Case No. 24685 filed in the MeTC of Pasig City, Branch 70 for violation of BP 22. A warrant dated November 28, 1996 was issued for petitioner's arrest together with the order archiving the case. The warrant stands. *Rollo*, pp. 53-57.

[3] 310 Phil. 56, 60 (1995).

[4] Regalado, Florenz P., *REMEDIAL LAW COMPENDIUM*, Volume Two, 7th Revised Edition (1995), p. 158.

[5] 39 Phil. 778 (1919).

jurisdiction *even if there is no application therefor.* So long as this Court sits, technicality cannot trump liberty. Therefore, a petition which is deficient in form, such as petitioner's petition-letter in this case, may be entertained so long as its allegations sufficiently make out a case for *habeas corpus*.[6]

The ultimate purpose of the writ of *habeas corpus* is to relieve a person from unlawful restraint.[7] The writ exists as a speedy and effectual remedy to relieve persons from unlawful restraint and as an effective defense of personal freedom.[8]

Where the restraint of liberty is allegedly authored by the State, the very entity tasked to ensure the liberty of all persons (citizens and aliens alike) within its jurisdiction, courts must be vigilant in extending the *habeas corpus* remedy to one who invokes it. To strictly restrict the great writ of liberty to technicalities not only defeats the spirit that animates the writ but also waters down the precious right that the writ seeks to protect, the right to liberty. To dilute the remedy that guarantees protection to the right is to negate the right itself. Thus, the Court will not unduly confine the writ of *habeas corpus* in the prison walls of technicality. Otherwise, it will betray its constitutional mandate to promulgate rules concerning the protection and enforcement of constitutional rights.[9]

Nonetheless, we agree with the OSG that petitioner is not entitled to the issuance of the writ.

The writ of *habeas corpus* extends to all cases of illegal confinement or detention by which any person is deprived of

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[6] In the connection, it is worthy to note that one of the landmark cases in American jurisprudence, *Gideon v. Wainwright* (372 U.S. 335 [1963]), was initiated through a five-page handwritten letter of the accused himself, Clarence Earl Gideon.

[7] *Castriciones v. Chief of Staff of the Armed Forces of the Philippines*, G.R. No. 65731, 28 September 1989, *En banc* minute resolution.

[8] *Villavicencio v. Lukban, supra* note 5.

[9] *See* Section 5(5), Article VIII, CONSTITUTION.

his liberty.[10] However, Section 4, Rule 102 of the Rules of Court provides:

> Sec. 4. *When writ not allowed or discharge authorized.* – **If it appears that the person to be restrained of his liberty is in the custody of an officer under process issued by a court or judge; or by virtue of a judgment or order of a court of record, and that court or judge had jurisdiction to issue the process, render the judgment, or make the order, the writ shall not be allowed**; or if the jurisdiction appears after the writ is allowed, the person shall not be discharged by reason of any informality or defect in the process, judgment, or order. **Nor shall anything in this rule be held to authorize the discharge of a person charged with** or convicted of an offense in the Philippines, or of a person suffering imprisonment under lawful judgment. (emphasis supplied)

Plainly stated, the writ obtains immediate relief for those who have been illegally confined or imprisoned without sufficient cause. The writ, however, should not be issued when the custody over the person is by virtue of a judicial process or a valid judgment.[11]

It is undisputed that petitioner was convicted of *estafa* in Criminal Case No. 95-995.[12] On June 24, 1996, he was sentenced to imprisonment of 12 years of *prision mayor* as minimum to 17 years and four months of *reclusion temporal* as maximum, with payment of actual damages of ₱102,235.56.[13]

Based on petitioner's prison records,[14] he began serving his sentence on July 24, 1997. He claims that after having served good conduct time allowance for 14 years, three months and 12 days,[15] he should now be released from prison.

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[10] RULES OF COURT, Rule 102, Sec. 1.

[11] *Barredo v. Hon. Vinarao, Director, Bureau of Corrections*, G.R. No. 168728, 02 August 2007, 529 SCRA 120, 124.

[12] *Rollo*, pp. 89-93.

[13] *Id.*, p. 93.

[14] *Id.*, p. 95.

[15] As of July 29, 2008. *Id.*, p. 2.

We disagree.

A convict may be released on parole after serving the minimum period of his sentence. However, the pendency of another criminal case is a ground for the disqualification of such convict from being released on parole.[16] Unfortunately, petitioner is again on trial in Criminal Case No. 94-6988 for *estafa*.[17] The case was filed as early as 1996 but he was arraigned only on October 6, 2008. He pleaded not guilty to the charge against him. Pre-trial was set on January 26, 2009.[18] Clearly, he is disqualified from being released on parole and consequently must serve out the entirety of his sentence.

We note the issuance of a warrant for petitioner's arrest on March 8, 1996, the date he was first set for arraignment in Criminal Case No. 94-6988. Pursuant to Section 4, Rule 102 of the Rules of Court, the writ cannot be issued and petitioner cannot be discharged since he has been charged with another criminal offense.[19] His continued detention is without doubt warranted under the circumstances.

Petitioner asserts that his sentence in Criminal Case No. 95-995 was commuted by then President Ramos. However, he presented no proof of such commutation. Other than

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[16] Rules on Parole which took effect on March 13, 2006. Rule 2.2 thereof provides: "RULE 2.2 ***Disqualification for Parole*** – Pursuant to, among others, Section 2 of Act No. 4103, as amended, otherwise known as the "Indeterminate Sentence Law," said Act shall not apply, and parole shall not be granted, to the following prisoners: a. xxx **k. Those with pending criminal case/s;** x x x" (emphasis supplied).

[17] *Rollo*, p. 116.

[18] *Id.*, p. 56.

[19] *In The Matter of the Petition for Habeas Corpus of Engr. Ashraf Kunting*, G.R. No. 167193, 19 April 2006, 487 SCRA 602, 607.

indorsements by the Chief Justice,[20] Public Attorney's Office[21] and Undersecretary of the Department of Justice,[22] no document purporting to be the commutation of his sentence by then President Ramos was attached in his petition and in his subsequent missives to this Court. His barren claim of commutation therefore deserves scant consideration, lest we be accused of usurping the President's sole prerogative to commute petitioner's sentence in Criminal Case No. 95-995.[23]

Having established that petitioner's continued imprisonment is by virtue of a valid judgment and court process, we see no need to discuss petitioner's other arguments.

WHEREFORE, the petition is hereby *DISMISSED.*

SO ORDERED.

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

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[20] By Atty. Jose Midas P. Marquez, for the Chief Justice. The indorsement dated March 5, 2008 referred petitioner's letter dated February 22, 2008 to Atty. Persida V. Rueda-Acosta, Chief, Public Attorney's Office. Petitioner's letter was a request for legal assistance to file a petition for *habeas corpus*.

[21] Dated April 29, 2008. The indorsement referred petitioner's letter dated April 22, 2008 to Ret. P/Dir. Gen. Oscar C. Calderon, Director of the New Bilibid Prisons, for appropriate action.

[22] Dated August 14, 2008. Indorsement was signed by Undersecretary Jose Vicente B. Salazar, for the Secretary of Justice, referring petitioner's e-mail to the Executive Director of the Board of Pardons and Parole for appropriate action. In his e-mail, petitioner sought assistance for his immediate release.

[23] CONSTITUTION, Article VII, Section 19 provides: "Except in cases of impeachment, or as otherwise provided in this Constitution, the President may grant reprieves, commutations, and pardons, and remit fines and forfeitures, after conviction by final judgment. x x x."

FIRST DIVISION

[G.R. Nos. 160243-52. July 20, 2009]

ROMEO D. LONZANIDA, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF THE SANDIGANBAYAN ARE CONCLUSIVE UPON THE SUPREME COURT; EXCEPTIONS; NOT PRESENT IN CASE AT BAR.— The general rule is that the factual findings of the Sandiganbayan are conclusive upon this Court except where: (1) the conclusion is a finding grounded entirely on speculation, surmise and conjectures; (2) the inference made is manifestly an error or founded on a mistake; (3) there is grave abuse of discretion; (4) the judgment is based on misapprehension of facts; and (5) the findings of fact are premised on a want of evidence and are contradicted by evidence on record. A perusal of the records reveals that none of the above exceptions obtains in this case. There is no showing that the conclusion made by the Sandiganbayan on the sufficiency of the evidence of the prosecution is manifestly mistaken or grounded entirely on speculation and conjectures.

2. CRIMINAL LAW; FALSIFICATION OF PUBLIC OR OFFICIAL DOCUMENTS; ELEMENTS; PROVEN IN CASE AT BAR.— Under Article 171 of the Revised Penal Code, for falsification of a public document to be established, the following elements must concur: 1. That the offender is a public officer, employee, or notary public; 2. That he takes advantage of his official position; 3. That he falsifies a document by committing any of the following acts: a) Counterfeiting or imitating any handwriting, signature or rubric; b) Causing it to appear that persons have participated in any act or proceeding when they did not in fact so participate; c) Attributing to persons who have participated in an act or proceeding statements other than those in fact made by them; d) Making untruthful statements in a narration of facts; e) Altering true dates; f) Making any alteration or intercalation in a genuine document which changes its meaning; g) Issuing in authenticated form a document purporting

to be a copy of an original document when no such original exists, or including in such copy a statement contrary to, or different from, that of the genuine original; h) Intercalating any instrument or note relative to the issuance thereof in a protocol, registry or official book x x x Undeniably, the foregoing elements of the crime were proven in the present case. Petitioner is a public officer who has taken advantage of his position to commit the felonious acts charged against him, *i.e.* knowingly subscribing or signing the oath as administering officer the affidavits mentioned in the informations under false circumstances. The petitioner's acts of signing the oaths as administering officer in the said affidavits were clearly in abuse of the powers of his office for his authority to do so was granted to him by law as municipal mayor and only in matters of official business.

3. ID.; ID.; IT IS UNNECESSARY THAT THERE BE PRESENT THE IDEA OF GAIN OR THE INTENT TO INJURE A THIRD PERSON; REASON; DIRECT PROOF THAT THE ACCUSED WAS THE AUTHOR OF THE FORGERY IS NOT REQUIRED.— In *Lumancas v. Intas*, this Court held that in the falsification of public or official documents, whether by public officials or by private persons, it is unnecessary that there be present the idea of gain or the intent to injure a third person, for the reason that, in contradistinction to private documents, the principal thing punished is the violation of the public faith and the destruction of the truth as therein solemnly proclaimed. Petitioner repeatedly decries that there was no proof that he authored such falsification or that the forgery was done under his direction. This argument is without merit. Under the circumstances, there was no need of any direct proof that the petitioner was the author of the forgery. As keenly observed by the Sandiganbayan, petitioner notarized the *Joint Affidavits* allegedly executed by Querubin and Aniceto whom petitioner admittedly never met and who were later proven to have been incapable of signing the said affidavits. Petitioner's signature also appeared as the attesting officer in the *Affidavits of Ownership*, nine of which were undoubtedly without the participation of the indicated affiants.

4. ID.; ID.; THE PERSON WHO STOOD TO BENEFIT BY THE FALISIFICATION OF THE DOCUMENTS IS PRESUMED TO BE THE MATERIAL AUTHOR OF THE FALSIFICATIONS; PRESUMPTION NOT OVERCOME BY

THE PETITIONER IN CASE AT BAR.— To overcome the presumption that the person who stood to benefit by the falsification of the documents is the material author of the falsifications, petitioner points out that it was Madarang, not him, who was authorized to sell and receive the proceeds of the sale of the land. Thus, he would not have benefited from the issuance of the Tax Declaration. True, Madarang was the one designated as attorney-in-fact in the Special Power of Attorney, but it is a fact that Madarang was petitioner's Assistant Municipal Treasurer. Undeniably, petitioner would not have allowed the falsification of these documents if he would not benefit from them. As aptly pointed out by the Sandiganbayan, all the acts of herein petitioner, *i.e.*, from administering the oath of the alleged affiants, which included the petitioner's minor children, in the questioned documents to his act of issuing a Mayor's Certification attesting to the fact that the applicants, which again included the petitioner's minor children, for tax declaration have been in possession of the lot for more than thirty years, prove beyond cavil that he was the one who falsified the documents and would benefit therefrom.

5. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY; CIRCUMSTANTIAL EVIDENCE; MAY BE RESORTED TO WHEN TO INSIST ON DIRECT TESTIMONY WOULD ULTIMATELY LEAD TO SETTING FELONS FREE; STANDARD IN APPRECIATING CIRCUMSTANTIAL EVIDENCE.— Jurisprudence has already settled that in the falsification of public or official documents, whether by public officials or by private persons, it is not necessary that there be present the idea of gain or intent to injure a third person. This notwithstanding, it cannot be denied that petitioner consummated his act in falsifying the documents, and which documents petitioner used in successfully obtaining the tax declaration in the names of the alleged applicants causing prejudice to the real occupant, Efren Tayag. Circumstantial evidence may be resorted to when to insist on direct testimony would ultimately lead to setting felons free. The standard that should be observed by the courts in appreciating circumstantial evidence was extensively discussed in the case of *People of the Philippines v. Modesto, et al*. thus: . . . No general rule can be laid down as to the quantity of circumstantial evidence which in any case will suffice. All the circumstances proved must be consistent with each other, consistent with the

hypothesis that the accused is guilty, and at the same time inconsistent with the hypothesis that he is innocent, and with every other rational hypothesis except that of guilt. It has been said, and we believe correctly, that the circumstances proved should constitute an unbroken chain which leads to one fair and reasonable conclusion which points to the accused, to the exclusion of all others, as the guilty person. From all the circumstances, there should be a combination of evidence which in the ordinary and natural course of things, leaves no room for reasonable doubt as to his guilt. Stated in another way, where the inculpatory facts and circumstances are capable of two or more explanations, one of which is consistent with innocence and the other with guilt, the evidence does not fulfill the test of moral certainty and is not sufficient to convict the accused.

6. ID.; ID.; ID.; ID.; REQUISITES FOR CIRCUMSTANTIAL EVIDENCE TO SUSTAIN A CONVICTION OF THE ACCUSED, MET IN CASE AT BAR.— The evidence presented by the prosecution, albeit mostly circumstantial, is sufficient to warrant petitioner's conviction. The following requisites for circumstantial evidence to sustain a conviction were met, to wit: (a) There is more than one circumstance; (b) The facts from which the inferences are derived are proven; and (c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.

7. CRIMINAL LAW; FALSIFICATION OF PUBLIC DOCUMENTS; PETITIONER IS GUILTY THEREFOR.— All told, the Court finds no reason to disagree with the Sandiganbayan's judgment of conviction. With the overwhelming evidence presented by the prosecution and applying Sec. 5, Rule 133 of the Revised Rules of Court, there are more than enough bases to sustain the findings of the Sandiganbayan that herein petitioner is guilty beyond reasonable doubt of ten (10) counts of Falsification under Article 171, particularly paragraph 2, "causing it to appear that persons have participated in an act or proceeding when in fact and in truth, they did not participate in the act or proceeding."

APPEARANCES OF COUNSEL

Defensor Lantion Villamor & Tolentino Law Offices and *Sarmiento Law Office* for petitioner.

The Solicitor General for respondent.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

On appeal to this Court by way of a petition for review on *certiorari* under Rule 45 of the Rules of Court are the [1] Decision[1] of the Sandiganbayan dated July 25, 2003, convicting petitioner of ten (10) counts of Falsification of Public Document defined and penalized under paragraph 2 of Article 171 of the Revised Penal Code, and [2] Resolution[2] dated September 24, 2003, denying petitioner's motion for reconsideration.

Petitioner Romeo D. Lonzanida, then Municipal Mayor of San Antonio, Zambales, was among those criminally charged with Falsification of Public Document as defined and penalized under Paragraph 2 of Article 171 of the Revised Penal Code before the Office of the Provincial Prosecutor on separate complaints[3] filed on various dates by Efren Tayag, Elsie de Dios, Daniel Alegado and Rene Abad. Also included in the complaints was Romulo Madarang (Madarang), the Assistant Municipal Treasurer.

The complaints alleged that petitioner, as Municipal Mayor of San Antonio, Zambales, notarized thirteen (13) *Affidavits of Ownership*[4] of parcels of 117-hectare public land located at Barangay Pundakit, San Antonio, Zambales, particularly described as Lot No. 5504. *The Affidavits of Ownership* appeared to have been executed by Edzel L. Lonzanida, Leo Lonzanida, Japhet Lonzanida, Peter John Madarang, Leo Madarang, Dolores Joy Madarang, Elsie de Dios, Medardo Domingo, Pedro Lacorte, Efren Tayag, Cedric Legrama, Charlie Lacap and Raphael Gonzales (Edzel Lonzanida, *et al*.). The purported affiants either denied executing and signing the same or were the minor children of petitioner and of Madarang.

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[1] Penned by Associate Justice Rodolfo G. Palattao (ret.) with Associate Justices Gregory S. Ong and Ma. Cristina G. Cortez-Estrada, concurring; *rollo*, pp. 44-54.

[2] *Id*. at 40-42.

[3] Sandiganbayan *rollo*, volume I, pp. 43-46, Folder of Exhibits, pp. 52-53.

[4] *Id*. at 14-22.

The complaints also alleged that petitioner notarized thirteen (13) identically worded *Joint Affidavits*[5] of two disinterested persons purportedly executed and signed by Rufino Aniceto who is an illiterate and Roberto Querubin who was already deceased at the time of their execution.

On March 16, 1998, the Office of the Special Prosecutor issued a Memorandum[6] recommending that petitioner be charged with ten (10) counts of falsification, one for the *Joint Affidavits* and nine in connection with the *Affidavits of Ownership*. The recommendation was based upon the finding that of the thirteen (13) affiants in the *Affidavits of Ownership*, seven (7) were minors.[7] Hence, their signatures appearing thereon and the facts stated in the said documents were all false. In addition, two (2) affiants, Efren Tayag and Elsie de Dios denied their participation in the *Affidavits of Ownership*.

Thus, ten (10) Informations for Falsification of Public Document against petitioner were filed before the Sandiganbayan.

Criminal Case Nos. 24644 to 24652,[8] except for the names of the alleged affiants of the falsified *Affidavits of Ownership*, were similarly worded, *viz*.:

> That on or about the 17th day of October, 1995, in the Municipality of San Antonio, province of Zambales, Philippines and within the jurisdiction of this Honorable Court, the said accused being then the Municipal Mayor of San Antonio, Zambales, taking advantage of his official position and committing the offense in relation to his duties, did then and there, willfully, unlawfully and feloniously

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[5] *Id*. at 1-13.

[6] Sandiganbayan *rollo*, volume I, pp. 3-10.

[7] Edzel L. Lonzanida, Leo Lonzanida, Japhet Lonzanida, Peter John Madarang, Leo Madarang, Dolores Joy Madarang, and Cedric Legrama.

[8] Criminal Case No. 24645 — Edzel L. Lonzanida; Criminal Case No. 24646 — Leo Madarang; Criminal Case No. 24647 — Elsie de Dios; Criminal Case No. 24648 — Efren Tayag; Criminal Case No. 24649 — Leo Lonzanida; Criminal Case No. 24650 — Cedric Legrama; Criminal Case No. 24651 — Japhet Lonzanida; and, Criminal Case No. 24652 — Peter John Madarang; *rollo*, pp. 61-75.

falsify or cause to be falsified the Affidavit of Ownership dated October 17, 1995 which he subscribed thus making said document a public or official document, by making it appear, as it did appear, that said document was made, prepared and signed by DOLORES JOY MADARANG thereby attributing to the latter participation and intervention in the making and preparation of said document by signing his name and affixing his signature thereon when in truth and in fact, said accused well knew, the said DOLORES JOY MADARANG did not so participate nor authorize the herein accused or anybody else to prepare and sign the same, thereby causing damage and prejudice to public interest.[9]

The Information in Criminal Case No. 23850[10] contained the following allegations:

> That on or about the 17th day of October, 1995, in the Municipality of San Antonio, Province of Zambales, Philippines and within the jurisdiction of this Honorable Court, the said accused being then Municipal Mayor of San Antonio, Zambales, did then and there, willfully, unlawfully and feloniously prepare a Joint-Affidavit which he ratified by stating and making it appear in the said document that the same was executed and signed before him by Rufino Aniceto and Roberto Querubin, as affiants who declared to know personally the owners of the parcel of land at Sitio Talisayen, Barangay Pundakit as Edzel L. Lonzanida, Peter John Madarang, Elsie de Dios, Leo Madarang, Leo Lonzanida, Japhet Lonzanida, Dolores Joy Madarang, Medardo Domingo, Pedro Lacorte, Efren Tayag, Cedric Legrama, Charlie Lacap and Rafael Gonzales and who have openly and continuously occupied the said land for thirty (30) years, when in truth and in fact, as said accused well knew, the said "Joint-Affidavit" was not executed and signed by Rufino Aniceto and Roberto Querubin, the latter having died prior to the execution of the said joint-affidavit, nor said affiants, ever appear before the accused for the purpose of swearing and subscribing the said document, to the damage and prejudice of the government.

Upon arraignment on November 5, 1998, petitioner, assisted by counsel, entered a plea of "not guilty" to all the charges.

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[9] Criminal Case No. 23850, *id*. at 56-57.

[10] *Id*. at 56-58.

During trial, the prosecution presented as witnesses Municipal Assessor Leopoldo Cacho; complainants Efren Tayag, Elsie de Dios and Daniel C. Alegado; and relatives of purported affiants in the *Joint Affidavits* Rodolfo Querubin and Lydia Aniceto *y* dela Cruz.

Municipal Assessor Leopoldo Cacho testified that he is in charge of the preparation of Tax Declarations. He explained that for Tax Declarations of undeclared lands, the applicant is required to submit a Joint Affidavit of the neighboring owners of the property subject of the application together with the Affidavit of Ownership, a sketch plan and a Certification from the Community Environment and Natural Resources Office (CENRO). Cacho disclosed that in the latter part of 1995, Madarang filed 13 applications for Tax Declaration for Lot No. 5504. The applicants for the said parcel of land were, as mentioned earlier, Edzel Lonzanida, *et al.* Attached to each application were the *Joint Affidavits* of Rufino Aniceto and Roberto Querubin, *Affidavits of Ownership* of each of the applicants, Sketch Plan and the Certification from the CENRO. According to Cacho, after preparing the Tax Declarations, he advised Madarang to present to him the applicants to personally sign their respective Tax Declaration. However, Madarang took the Tax Declarations and assured Cacho that he [Madarang] would be the one to make the declarants sign. Cacho found out later that the Tax Declarations were already approved by the Provincial Assessor.

Efren Tayag testified that he is the real occupant of Lot No. 5504. He has been occupying the subject land since 1971 together with twenty-four (24) other persons and that none of the individuals who executed the *Affidavits of Ownership* were ever in possession of the said parcel of land.

Daniel C. Alegado, the Municipal Planning and Development Officer of San Antonio, Zambales, narrated that sometime in July 1996, he visited Vice-Governor Saturnino Bactad in his office at Capitol Building, Iba, Zambales. Bactad showed to him 13 *Joint Affidavits*, 13 *Affidavits of Ownership*, a Mayor's Certification and a Special Power of Attorney. According to Alegado, said documents unraveled an attempt to sell Lot No. 5504. He also

testified that Edzel, Leo and Japhet, all surnamed Lonzanida, who appear to have signed the *Affidavits of Ownership*, are the minor children of petitioner. He stated further that Peter John, Leo and Dolores Joy, all surnamed Madarang, are the minor children of Romulo Madarang while Cedric Legrama is the son of Municipal Treasurer Cecilia Legrama and was only one year old at the time of the execution of the *Affidavits of Ownership* on October 17, 1995. Alegado added that on the same day — October 17, 1995, petitioner also administered the oath in the *13 Joint Affidavits* making it appear that the same were executed by Rufino Aniceto and Roberto Querubin and that petitioner personally knew the two affiants to be the owners of the land adjacent to that subject of the *Affidavits of Ownership.*

Elsie de Dios testified that the signature appearing in the *Affidavit of Ownership* she purportedly executed was not hers and was in fact a forgery. She had not been in possession of any portion of Lot No. 5504 for thirty (30) years and she did not apply for the issuance of a Tax Declaration of the same.

Rodolfo Querubin, brother of Roberto Querubin, testified that his brother Roberto could not have executed the *Joint Affidavits* on October 17, 1995 because Roberto died in Tarlac on May 3, 1981.

Lydia Aniceto *y* dela Cruz, the widow of the late Rufino Rafanan Aniceto who died on June 25, 1998, testified that she had been married to Rufino for 16 years. According to Lydia, the signatures in the *Joint Affidavits* appearing over the typewritten name Rufino R. Aniceto could not have been her husband's because the latter was illiterate and only used his thumbmark in affixing his signature on any document. As proof thereof, she presented a community tax certificate of Rufino with the latter's thumbmark.

The prosecution also presented the Counter-Affidavit of Cecilia Legrama, the mother of said Cedric Legrama wherein Cecilia declared that her son Cedric Legrama was only eleven (11) months old at the time of the execution of the purported *Affidavits of Ownership* and could not have therefore executed the same.

On the other hand, petitioner testified in his own defense. He acknowledged the signatures in the *Joint Affidavits* as his. According to petitioner, the documents were brought to him by Madarang and he signed on each of the affidavits as oath administering officer. He also admitted that he did not know Roberto Querubin and Rufino Aniceto, the affiants therein. Petitioner posited that the affidavits in question or the documentary exhibits of the public prosecutor are not documents, as contemplated under Article 171 of the Revised Penal Code and therefore, they cannot be falsified and made a criminal act thereunder. As to the *Affidavits of Ownership*, petitioner insisted that no witness was presented to show and state under oath that the signatures on the contested documents belong to him. He contended that in the absence of such evidence, he should be acquitted.

On October 20, 2000, the Sandiganbayan through its Fourth Division rendered a decision[11] convicting petitioner of ten (10) counts of Falsification as charged in Criminal Case Nos. 23850, 24644 to 24652.

On October 24, 2000, petitioner filed a motion for reconsideration. Again on December 22, 2000, without awaiting the resolution of said motion for reconsideration, petitioner filed a *Manifestation with Motion to Consider the Motion for Reconsideration as a Motion for New Trial as per Rule VIII of the Revised Rules of the Sandiganbayan in relation to Section 2 (a) of Rule 121 of the Rules on Criminal Procedure*.[12]

On January 8, 2001, the Sandiganbayan denied the motion for reconsideration.[13] On January 19, 2001, petitioner filed a *Manifestation and Submission of Evidence Which Became Available Only Recently*.[14] The evidence consisted of affidavits of recantation executed by Elsie de Dios, Rene Abad and Rodolfo Querubin.

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[11] *Rollo*, pp. 77-97.

[12] *Id.* at 105-106.

[13] *Id.* at 110-113.

[14] *Id.* at 114-117.

In the resolution[15] dated April 5, 2001, the Sandiganbayan deferred ruling on the *Manifestation with Motion to Consider the Motion for Reconsideration as a Motion for New Trial* and required Elsie de Dios, Rene Abad and Rodolfo Querubin, to appear and testify before it.

In the resolution[16] dated October 30, 2001, petitioner's *Motion to Consider the Motion for Reconsideration as a Motion for New Trial* was treated as a second motion for reconsideration, and denied on the ground that the same was filed without leave of court and that the filing of a second motion is proscribed by the rules. With the denial of his motion, petitioner filed a third motion for reconsideration which was opposed by the prosecution.

Unperturbed, petitioner filed a *Manifestation and/or Explanation with Leave of Court to File a Motion for Reconsideration*[17] questioning the October 30, 2001 resolution.

In the resolution[18] dated January 3, 2002, the Sandiganbayan gave in to petitioner's plea for a new trial and allowed him a last chance to present evidence in his behalf.

The prosecution filed a petition for *certiorari*, prohibition with prayer for a temporary restraining order and/or writ of preliminary injunction with this Court assailing the Sandiganbayan's January 3, 2002 resolution. The petition was docketed as G.R. Nos. 152365-74 but eventually dismissed by the Court in the resolution[19] dated July 24, 2002.

Petitioner was thus given a new trial and allowed to present, before the Sandiganbayan, witnesses Elsie de Dios, Leopoldo Cacho and Rene Abad as part of his testimonial evidence.

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[15] *Id.* at 118-119.

[16] *Id.* at 120-122.

[17] *Id.* at 123-125.

[18] *Id.* at 137.

[19] *Id.* at 237.

The three claimed that they were compelled by the political enemies of petitioner to testify against him and to sign the document, the contents of which they did not understand. Principally, their testimony was geared towards proving that no one was prejudiced with the issuance of the Tax Declaration.

Elsie de Dios and Leopoldo Cacho previously testified as witnesses for the prosecution. Recanting her previous testimony, Elsie de Dios testified that the complaint-affidavit which she signed was already prepared at the time she first laid eyes on it in the office of Atty. Hermana Bactad, who was allegedly a political opponent of petitioner. She claimed that no prejudice had been caused her by the execution of the *Joint-Affidavits* and *Affidavit of Ownership* because she did not apply for the issuance of a Tax Declaration on any portion of Lot No. 5504.

Leopoldo Cacho's recantation was to the effect that no one was prejudiced by the issuance of subject Tax Declarations. He rationalized that the government was not prejudiced by the issuance of the Tax Declarations in favor of the thirteen (13) applicants because the taxes therefor had been duly paid. He added that no person, other than the thirteen persons who signed the applications and *Affidavits of Ownership*, has claimed ownership over Lot No. 5504 which remains a public land until a title is issued to cover it.

Rene Abad claimed that he was used as a pawn by petitioner's political adversaries. According to him, he was brought by Atty. Hermana Bactad to the Office of the Provincial Prosecutor of Zambales where he was made to sign a prepared affidavit which he neither read nor fully comprehended. He likewise claimed that he was not prejudiced by the execution of the affidavits of ownership and the issuance of the tax declarations over the subject land.

On July 25, 2003, the Sandiganbayan promulgated a Decision convicting petitioner of the crimes charged. In so ruling, the Sandiganbayan belittled the recantation of the three prosecution witnesses. Dispositively, the decision reads:

WHEREFORE, premises considered, judgment is hereby rendered finding accused Mayor Romeo Lonzanida *y* Dumlao guilty of ten (10) counts of Falsification of Public Document defined and penalized under Article 171 par. 2 of the Revised Penal Code, and in the absence of any mitigating and aggravating circumstances, applying the Indeterminate Sentence Law, said accused is hereby sentenced to suffer in each of the cases the penalty of imprisonment of four (4) years and one (1) day of *prision correccional* as minimum to eight (8) years and one (1) day of *prison mayor* (sic) as maximum, and to pay a fine of ₱5,000.00, in each of the cases without subsidiary imprisonment in case of insolvency.

Considering that this decision is the result of the new trial granted upon motion of the accused and notwithstanding that the same finding of guilt was arrived at despite the evidence presented in the new trial, the resolution of this court promulgated on January 21, 2003, ordering the issuance of a warrant of arrest against the accused, and which is the subject of accused's *Motion for Clarification/ Reconsideration (With Prayer to Recall/Set Aside Warrant of Arrest)*, is hereby set aside and the arrest accused is held in abeyance until such time that the new decision becomes final and executory, pursuant to the provisions of Secs. 22 and 24, Rule 114 of the Rules of Court.[20]

SO ORDERED.

Petitioner filed a motion for reconsideration and a supplemental motion for reconsideration but both motions were denied by the Sandiganbayan in its Resolution[21] dated September 24, 2003.

Unable to accept the judgment of conviction, petitioner elevated the case to this Court *via* a petition for review on *certiorari* imputing the following errors against the Sandiganbayan:

I

THE COURT *A QUO* SERIOUSLY MISAPPRECIATED THE FACTS THEREBY LEADING IT TO A CONCLUSION NOT IN ACCORD WITH LAW OR APPLICABLE DECISION OF THE SUPREME COURT.

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[20] *Supra* note 1.

[21] *Supra* note 2.

II

THE COURT *A QUO* RELIED ON PURELY CIRCUMSTANTIAL EVIDENCE IN JUSTIFYING THE CONVICTION OF THE ACCUSED WHEN THE FACTS FROM WHICH THE INFERENCE WERE DERIVED WERE NOT ESTABLISHED THEREBY DEPARTING FROM THE RULING OF THE SUPREME COURT IN *PEOPLE V. GENOBIA*, 234 SCRA 699 ON JUDGMENT OF CONVICTION BASED ON CIRCUMSTANTIAL EVIDENCE.

III

ALL THE REQUISITES FOR CONVICTION OF AN ACCUSED BASED ON CIRCUMSTANTIAL EVIDENCE WERE NOT PRESENTED/PROVEN, HENCE HE IS ENTITLED TO AN ACQUITTAL AS HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.

In the Resolution[22] dated July 14, 2004, the Court denied the petition, thus:

> Considering the allegations, issues, and arguments adduced in the petition for review on *certiorari* of the decision and resolution of the Sandiganbayan dated July 25, 2003 and September 24, 2003, respectively, the Court further Resolves to ***DENY*** the petition for failure of the petitioners to sufficiently show that the Sandiganbayan committed any reversible error in the challenged decision and resolution as to warrant the exercise by this Court of its discretionary appellate jurisdiction in this case.

However, upon motion for reconsideration, the Court, in its Resolution[23] of January 26, 2005, reinstated and gave due course to the petition. We now take a second look at this case and the facts and circumstances obtaining herein.

In handing down a verdict of guilty, the Sandiganbayan appreciated against petitioner the following factual circumstances:

1. Petitioner did not deny having signed as subscribing officer the thirteen *Joint Affidavits*;

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[22] *Rollo*, p. 526.

[23] *Id.* at 624-625.

2. Even as petitioner admitted that he signed as subscribing officer the subject *Joint Affidavits*, he denied that he knew Roberto Querubin and Roberto Aniceto, the affiants therein;

3. A Joint Affidavit is an indispensable requirement in an application for a tax declaration;

4. It was upon the submission of the *Joint Affidavits, Affidavits of Ownership*, Certification from CENRO and the sketch plan that Tax Declarations were issued in favor of the thirteen applicants for Tax Declaration;

5. Of the thirteen applicants for Tax Declarations, three were minor children of petitioner; one was a two-month old child of Municipal Treasurer Cecilia Legrama; and, three were the children of Assistant Municipal Treasurer Romulo Madarang;

6. None of the 7 children were more than thirty years old, yet, there was a declaration in the *Affidavits of Ownership* that the affiants were in possession of the subject lot for more than thirty years;

7. Two of the alleged applicants for tax declaration, Elsie de Dios and Efren Tayag, never applied for the issuance of a Tax Declaration in their favor nor filed any document relative to the said application;

8. Petitioner issued a Mayor's Certification dated February 19, 1996 attesting that the thirteen applicants for Tax Declaration were the actual occupants of Lot No. 5504 and had been in possession of the same for more than thirty years; and,

9. The applicants for Tax Declaration executed a Special Power of Attorney giving Madarang the authority to sell the land subject thereof and to receive the proceeds of the sale.

The general rule is that the factual findings of the Sandiganbayan are conclusive upon this Court except where: (1) the conclusion is a finding grounded entirely on speculation, surmise and conjectures; (2) the inference made is manifestly

an error or founded on a mistake; (3) there is grave abuse of discretion; (4) the judgment is based on misapprehension of facts; and (5) the findings of fact are premised on a want of evidence and are contradicted by evidence on record.[24]

A perusal of the records reveals that none of the above exceptions obtains in this case. There is no showing that the conclusion made by the Sandiganbayan on the sufficiency of the evidence of the prosecution is manifestly mistaken or grounded entirely on speculation and conjectures.

Under Article 171 of the Revised Penal Code, for falsification of a public document to be established, the following elements must concur:

1. That the offender is a public officer, employee, or notary public;
2. That he takes advantage of his official position;
3. That he falsifies a document by committing any of the following acts:
    a) Counterfeiting or imitating any handwriting, signature or rubric;
    b) Causing it to appear that persons have participated in any act or proceeding when they did not in fact so participate;
    c) Attributing to persons who have participated in an act or proceeding statements other than those in fact made by them;
    d) Making untruthful statements in a narration of facts;
    e) Altering true dates;
    f) Making any alteration or intercalation in a genuine document which changes its meaning;
    g) Issuing in authenticated form a document purporting to be a copy of an original document when no such original exists, or including in such copy a statement contrary to, or different from, that of the genuine original;

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[24] *Florante Soriquez v. Sandiganbayan* (Fifth Division), G.R. No. 153526, October 25, 2005, 474 SCRA 222, 231.

h) Intercalating any instrument or note relative to the issuance thereof in a protocol, registry or official book x x x[25]

Undeniably, the foregoing elements of the crime were proven in the present case. Petitioner is a public officer who has taken advantage of his position to commit the felonious acts charged against him, *i.e.*, knowingly subscribing or signing the oath as administering officer the affidavits mentioned in the informations under false circumstances. The petitioner's acts of signing the oaths as administering officer in the said affidavits were clearly in abuse of the powers of his office for his authority to do so was granted to him by law as municipal mayor and only in matters of official business.

As alleged in the Informations and proven during the trial of the cases, the accused was exercising his authority to administer oath as a municipal mayor when he committed the acts complained of. The Administrative Code of 1987, as amended by R.A. No. 6733 (July 25, 1989), pertinently provides:

Sec. 41. Officers Authorized to Administer Oath. — The following officers have general authority to administer oaths: President; Vice-President; Members and Secretaries of both Houses of the Congress; Members of the Judiciary; Secretaries of Departments; provincial governors and lieutenant-governors; city mayors; **municipal mayors**; bureau directors; regional directors; clerks of courts; registrars of deeds; other civilian officers in the public service of the government of the Philippines whose appointments are vested in the President and are subject to confirmation by the Commission on Appointments; all other constitutional officers; and notaries public.

Sec. 42. Duty to Administer Oath. — Officers authorized to administer oaths, with the exception of notaries public, municipal judges and clerks of court, are not obliged to administer oaths or execute certificates **save in matters of official business**; and with the exception of notaries public, the officer performing the service in those matters shall charge no fee, unless specifically authorized by law. (emphasis supplied)[26]

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[25] *Andres S. Suero v. People*, G.R. No. 156408, January 31, 2005, 450 SCRA 350, 358-359.

[26] Sections 41 and 42 were later further amended by R.A. No. 9406 to

As for the petitioner's defenses, this Court finds them to be without merit.

In *Lumancas v. Intas*,[27] this Court held that in the falsification of public or official documents, whether by public officials or by private persons, it is unnecessary that there be present the idea of gain or the intent to injure a third person, for the reason that, in contradistinction to private documents, the principal thing punished is the violation of the public faith and the destruction of the truth as therein solemnly proclaimed.

Petitioner repeatedly decries that there was no proof that he authored such falsification or that the forgery was done under his direction. This argument is without merit. Under the circumstances, there was no need of any direct proof that the petitioner was the author of the forgery. As keenly observed by the Sandiganbayan, petitioner notarized the *Joint Affidavits* allegedly executed by Querubin and Aniceto whom petitioner admittedly never met and who were later proven to have been incapable of signing the said affidavits. Petitioner's signature also appeared as the attesting officer in the *Affidavits of Ownership*, nine of which were undoubtedly without the participation of the indicated affiants.

As attesting officer, petitioner was required to verify and ascertain from the affiants whether they voluntarily executed their affidavits; whether they understood the contents of their affidavits; and, whether the allegations contained therein are true. In addition to these, and as evidenced by the questioned affidavits, petitioner attested that the affiants swore and signed their affidavits in his presence when in fact they never did. Petitioner likewise issued a Mayor's Certification falsely attesting that the alleged applicants for tax declaration (three of whom are his children while the other four are the minor children of his municipal officials) had been occupying the said lot for thirty years.

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include lawyers of the Public Attorneys' Office in the enumeration of officers authorized to administer oaths in connection with the performance of their duties.

[27] G.R. No. 133472, December 5, 2000, 347 SCRA 22, 33-34.

These *Affidavits of Ownership* and *Joint Affidavits* were material to the issuance of a Tax Declaration after which, the alleged applicants would then able to use as proof of ownership of the lot subject thereof. Here, the Tax Declarations were successfully obtained and the applicants, in the exercise of their purported right of ownership over the subject land, executed a Special Power of Attorney authorizing Madarang to sell their respective lots.

Petitioner maintains that he had no participation in the preparation and/or execution of the *Affidavits of Ownership*, and no witness was presented to prove that he signed said Affidavits. We quote with approval the findings of the Sandiganbayan on this matter:

> Interestingly, the accused maintains that his signatures appearing in the thirteen Affidavits of Ownership were forged. The Court cannot accept the claim of the accused that he has no knowledge of the Affidavit of Ownership. Besides, his signatures appearing in the thirteen Joint-Affidavits appear to be the same as those of his signatures appearing in the Affidavit of Ownership. But what the accused cannot deny, however, is that while he maintains that he has no knowledge that his three (3) children had been included as applicants for the issuance of a tax declaration, the Certification, (Exh. "TT"), shows that it was signed by him (accused), declaring that his children, among others, were the actual occupants of the subject land. Clearly, therefore, as Mr. Romulo Madarang appears to be only a subordinate to the herein accused who was undeniably the municipal mayor when he signed the documents as subscribing officer, he then took advantage of his position as municipal mayor.[28]

Petitioner singles out the *Affidavit of Ownership* pertaining to Dolores Joy Madarang and capitalizes on the absence of his signature therein to get an acquittal. It must be pointed out that this *Affidavit of Ownership* is inextricably connected with the rest of the documents *i.e.*, the *Joint Affidavit*, the other *Affidavits of Ownership* purportedly executed on the same date and Mayor's Certification of 30-year occupancy, all of which were intended

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[28] *Supra* note 11 at pp. 93-94.

to enable the purported affiants to obtain the Tax Declarations over Lot No. 5504. There is no other logical conclusion but that petitioner was also the author of the supposed *Affidavit of Ownership* of Dolores Joy Madarang or that he caused its preparation albeit unsigned by him.

Petitioner belatedly, at this stage of the case, pointed out the prosecution's failure to present the original of the Mayor's Certification,[29] and complained in his petition that only a *certified xerox copy* of the xerox copy on file was submitted in the proceedings *a quo*. It must be stressed that the Mayor's Certification was not even the subject of any of the criminal cases against petitioner. It is only one among equally damning evidence presented by the prosecution.

Although petitioner contested the authenticity of his signature in the Mayor's Certification as well as those appearing in the *Affidavits of Ownership*, he nonetheless admitted having signed the *Joint Affidavits* and upon comparison of the signatures thereon, the Sandiganbayan found that they were made by one and the same person. We find no reason to deviate from this factual finding of the Sandiganbayan.

To overcome the presumption that the person who stood to benefit by the falsification of the documents is the material author of the falsifications, petitioner points out that it was Madarang, not him, who was authorized to sell and receive the proceeds of the sale of the land. Thus, he would not have benefited from the issuance of the Tax Declaration.

True, Madarang was the one designated as attorney-in-fact in the Special Power of Attorney, but it is a fact that Madarang was petitioner's Assistant Municipal Treasurer. Undeniably, petitioner would not have allowed the falsification of these documents if he would not benefit from them. As aptly pointed out by the Sandiganbayan, all the acts of herein petitioner, *i.e.*, from administering the oath of the alleged affiants, which included the petitioner's minor children, in the questioned documents to

[29] Folder of Exhibits, p. 59.

his act of issuing a Mayor's Certification attesting to the fact that the applicants, which again included the petitioner's minor children, for tax declaration have been in possession of the lot for more than thirty years, prove beyond cavil that he was the one who falsified the documents and would benefit therefrom.

Petitioner contends that the subject lot remains public and that no damage resulted from the issuance of the tax declaration.

Jurisprudence[30] has already settled that in the falsification of public or official documents, whether by public officials or by private persons, it is not necessary that there be present the idea of gain or intent to injure a third person. This notwithstanding, it cannot be denied that petitioner consummated his act in falsifying the documents, and which documents petitioner used in successfully obtaining the tax declaration in the names of the alleged applicants causing prejudice to the real occupant, Efren Tayag.

Circumstantial evidence may be resorted to when to insist on direct testimony would ultimately lead to setting felons free.[31] The standard that should be observed by the courts in appreciating circumstantial evidence was extensively discussed in the case of *People of the Philippines v. Modesto, et al.*[32] thus:

> . . . No general rule can be laid down as to the quantity of circumstantial evidence which in any case will suffice. All the circumstances proved must be consistent with each other, consistent with the hypothesis that the accused is guilty, and at the same time inconsistent with the hypothesis that he is innocent, and with every other rational hypothesis except that of guilt.
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> It has been said, and we believe correctly, that the circumstances proved should constitute an unbroken chain which leads to one fair and reasonable conclusion which points to the accused, to the exclusion of all others, as the guilty person. From all the

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[30] *People v. Po Giok To*, 96 Phil. 913, 918 (1955).

[31] *Solomon Alvarez v. Court of Appeals*, G.R. No. 141801, June 25, 2001, 359 SCRA 550.

[32] No. L-25484, September 21, 1968, 25 SCRA 36.

circumstances, there should be a combination of evidence which in the ordinary and natural course of things, leaves no room for reasonable doubt as to his guilt. Stated in another way, where the inculpatory facts and circumstances are capable of two or more explanations, one of which is consistent with innocence and the other with guilt, the evidence does not fulfill the test of moral certainty and is not sufficient to convict the accused.

The evidence presented by the prosecution, albeit mostly circumstantial, is sufficient to warrant petitioner's conviction. The following requisites for circumstantial evidence to sustain a conviction were met, to wit:

(a) There is more than one circumstance;

(b) The facts from which the inferences are derived are proven; and

(c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.[33]

All told, the Court finds no reason to disagree with the Sandiganbayan's judgment of conviction. With the overwhelming evidence presented by the prosecution and applying Sec. 5, Rule 133 of the Revised Rules of Court, there are more than enough bases to sustain the findings of the Sandiganbayan that herein petitioner is guilty beyond reasonable doubt of ten (10) counts of Falsification under Article 171, particularly paragraph 2, "causing it to appear that persons have participated in an act or proceeding when in fact and in truth, they did not participate in the act or proceeding."

WHEREFORE, the petition is *DENIED*. The assailed Decision dated July 25, 2003 and Resolution dated September 24, 2003 of the Sandiganbayan are hereby *AFFIRMED*.

SO ORDERED.

Puno, C.J.(Chairperson), Carpio, Corona, and *Bersamin, JJ.*, concur.

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[33] Rule 133, Section 5, Rules on Evidence.

THIRD DIVISION

[A.C. No. 8252. July 21, 2009]

NATIVIDAD UY, *complainant, vs.* **ATTY. BRAULIO RG TANSINSIN,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; EVERY CASE A LAWYER ACCEPTS DESERVES HIS FULL ATTENTION, DILIGENCE, SKILL AND COMPETENCE, REGARDLESS OF ITS IMPORTANCE AND WHETHER HE ACCEPTS IT FOR A FEE OR FOR FREE.— Verily, respondent's failure to file the required pleadings and to inform his client about the developments in her case fall below the standard exacted upon lawyers on dedication and commitment to their client's cause. Every case a lawyer accepts deserves his full attention, diligence, skill and competence, regardless of its importance, and whether he accepts it for a fee or for free. A lawyer should serve his client in a conscientious, diligent and efficient manner; and he should provide a quality of service at least equal to that which he, himself, would expect of a competent lawyer in a like situation. By agreeing to be his client's counsel, he represents that he will exercise ordinary diligence or that reasonable degree of care and skill demanded by the character of the business he undertakes to do, to protect the client's interests and take all steps or do all acts necessary therefor; and his client may reasonably expect him to discharge his obligations diligently.

2. ID.; ID.; CODE OF PROFESSIONAL RESPONSIBILITY; RULE 18.03 THEREOF; FAILURE TO FILE THE REQUIRED PLEADINGS IS *PER SE* A VIOLATION THEREOF.— Respondent's failure to file the required pleadings is *per se* a violation of Rule 18.03 of the Code of Professional Resposibility which states: Rule 18.03—A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

3. ID.; ID.; ID.; RULE 18-04 THEREOF; FAILURE OF THE COUNSEL TO ADEQUATELY AND FULLY INFORM THE

CLIENT ABOUT THE DEVELOPMENTS IN HIS CASE CONSTITUTE A VIOLATION THEREOF.— Aside from failing to file the required pleadings, respondent also lacked candor in dealing with his client, as he omitted to apprise complainant of the status of her ejectment case. It bears stressing that the lawyer-client relationship is one of trust and confidence. Thus, there is a need for the client to be adequately and fully informed about the developments in his case. A client should never be left groping in the dark, for to do so would be to destroy the trust, faith, and confidence reposed in the lawyer so retained in particular and in the legal profession in general. Respondent's act demonstrates utter disregard of Rule 18.04, Canon 18, Code of Professional Resposibility, which states: Rule 18.04–A lawyer shall keep the client informed of the status of his case and shall respond within a reasonable time to the client's request for information.

4. ID.; ID.; ID.; THE PRACTICE OF LAW IS A SPECIAL PRIVILEGE BESTOWED ONLY UPON THOSE WHO ARE COMPETENT INTELLECTUALLY, ACADEMICALLY AND MORALLY; IMPOSABLE PENALTY FOR VIOLATION OF RULES 18.02 AND 18.04 OF THE CODE OF PROFESSIONAL RESPONSIBILITY.— All told, we rule and so hold that on account of respondent's failure to protect the interest of complainant, respondent indeed violated Rules 18.03 and 18.04, Canon 18 of the Code of Professional Responsibility. Respondent is reminded that the practice of law is a special privilege bestowed only upon those who are competent intellectually, academically and morally. The appropriate sanction is within the sound discretion of this Court. In cases of similar nature, the penalty imposed by the Court consisted of either a reprimand or a fine of five hundred pesos with warning, suspension of three months or six months, and even disbarment in aggravated cases. Considering the circumstances surrounding the instant case, a six-month suspension from the practice of law is the proper penalty.

5. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; MEMORANDUM ON APPEAL; NON-FILING THEREOF IS A GROUND FOR DISMISSAL OF THE APPEAL.— It must be recalled that the MeTC (in the ejectment case) required the parties to submit their respective position papers. However, respondent did not bother to do so, in total disregard

of the court order. In addition, respondent failed to file the memorandum on appeal this time with the RTC where complainant's appeal was then pending. Civil Case No. C-20717 was, therefore, dismissed on that ground alone. The importance of filing a memorandum on appeal cannot be gainsaid. Section 7(b) of Rule 40 of the Rules of Court states: **SEC. 7.** *Procedure in the Regional Trial Court.* – x x x. (b) Within fifteen (15) days from such notice, it shall be the duty of the appellant to submit a memorandum which shall briefly discuss the errors imputed to the lower court, a copy of which shall be furnished by him to the adverse party. Within fifteen (15) days from receipt of the appellant's Memorandum, the appellee may file his memorandum. ***Failure of the appellant to file a memorandum shall be a ground for dismissal of the appeal.*** x x x. By express mandate of the said Rule, the appellant is duty-bound to submit his memorandum on appeal. Such submission is not a matter of discretion on his part. His failure to comply with this mandate or to perform this duty will compel the RTC to dismiss his appeal.

R E S O L U T I O N

NACHURA, *J.*:

For resolution is a Complaint[1] for Disbarment filed by complainant Natividad Uy against respondent Atty. Braulio RG Tansinsin.

Complainant was the defendant in an ejectment case filed with the Metropolitan Trial Court (MeTC), Branch 49, Caloocan City, entitled "*Josefina Orlanda herein represented by her Attorney-in-fact Ma. Divina Gracia Orlanda vs. Natividad Uy and all other persons claiming rights under her.*"[2] To defend her rights, complainant engaged the services of respondent who timely filed an Answer[3] to the complaint for ejectment. Required to file a Position Paper, respondent, however, failed to file one

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[1] *Rollo*, pp. 1-5.

[2] *Id.* 1.

[3] *Id.* 6-8.

for and on behalf of the complainant. Eventually, a decision was rendered by the MeTC against the complainant. Complainant, through respondent, elevated the case to the Regional Trial Court (RTC)[4] by filing a Notice of Appeal.[5] In an Order[6] dated May 25, 2004, the RTC dismissed the appeal solely because of the failure of respondent to file a memorandum on appeal. The motion for reconsideration was likewise denied for having been filed out of time.[7]

Realizing that she lost her case because of the negligence of her counsel, complainant initiated the disbarment case against respondent, before the Integrated Bar of the Philippines (IBP) Committee on Bar Discipline (CBD). Complainant averred that she gave her full trust and confidence to respondent, but the latter failed miserably in his duty as a lawyer and advocate.[8] She also claimed that respondent's failure to file the required position paper and memorandum on appeal constituted gross incompetence and gross negligence, which caused grave injury to complainant.[9] Lastly, complainant alleged that not only did respondent fail to file the required pleadings, he also was remiss in informing her of the status of the case.

For his part, respondent admitted that complainant obtained his legal services, but no legal fee was ever paid to him. Respondent explained that he could not submit an intelligible position paper, because the contract between complainant and her lessor had long expired. He added that he failed to file the position paper and memorandum on appeal, because complainant told him that she would work out the transfer of ownership to her of the land subject matter of the ejectment case. In effect, respondent said that he did not submit the required pleadings,

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[4] Branch 131, Caloocan City.

[5] *Rollo*, p. 9.

[6] *Id.* at 16-18.

[7] *Rollo*, Volume II, p. 3.

[8] *Rollo*, p. 2.

[9] *Id.* at 3-4.

because he knew that the law favored the plaintiff as against the defendant (complainant herein) in the ejectment case.[10]

In his Report and Recommendation, IBP Commissioner Salvador B. Hababag made the following findings:

> Public interest requires that an attorney exert his best effort and ability in the prosecution or defense of his client's cause. A lawyer who performs that duty with diligence and candor not only protects the interest of his client; he also serves the ends of justice, does honor to the bar and helps maintain the respect of the community to the legal profession. This is so because the entrusted privilege to practice law carries with it the correlative duties not only to the client but also to the court, to the bar, or to the public.
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> x x x x x x x x x
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> WHEREFORE, foregoing considered, it is respectfully recommended that the respondent be suspended from the active practice of law for six (6) months with stern warning that repetition of similar acts/ omissions will be dealt [with] severely.[11]

In its Resolution No. XVII-2006-586 dated December 15, 2006, the IBP Board of Governors adopted and approved with modification the report and recommendation of Atty. Hababag, thus:

> RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, **with modification,** the Report and Recommendation of the Investigating Commissioner of the above-entitled case, herein made part of this Resolution as Annex "A"; and, finding the recommendation fully supported by the evidence on record and the applicable laws and rules, and considering Respondent's gross negligence and incompetence in handling cases, Atty. Braulio RG Tansinsin is hereby **SUSPENDED** from the practice of law for three (3) months.[12]

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[10] *Rollo*, Vol. II p. 4.

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

[12] *Id.* at 1.

Aggrieved, respondent filed a Motion for Reconsideration,[13] but the same was denied in Resolution No. XVIII-2008-706[14] dated December 11, 2008. The Board further modified its earlier resolution by increasing respondent's penalty of suspension from three (3) months to six (6) months.

We sustain the December 11, 2008 Resolution of the IBP Board of Governors.

Verily, respondent's failure to file the required pleadings and to inform his client about the developments in her case fall below the standard exacted upon lawyers on dedication and commitment to their client's cause.[15]

Every case a lawyer accepts deserves his full attention, diligence, skill and competence, regardless of its importance, and whether he accepts it for a fee or for free.[16] A lawyer should serve his client in a conscientious, diligent and efficient manner; and he should provide a quality of service at least equal to that which he, himself, would expect of a competent lawyer in a like situation. By agreeing to be his client's counsel, he represents that he will exercise ordinary diligence or that reasonable degree of care and skill demanded by the character of the business he undertakes to do, to protect the client's interests and take all steps or do all acts necessary therefor; and his client may reasonably expect him to discharge his obligations diligently.[17]

It must be recalled that the MeTC (in the ejectment case) required the parties to submit their respective position papers. However, respondent did not bother to do so, in total disregard of the court order. In addition, respondent failed to file the

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[13] *Id.* at 7-11.

[14] *Rollo*, Vol. III.

[15] *Villaflores v. Limos*, A.C. No. 7504, November 23, 2007, 538 SCRA 140, 146.

[16] *Id*. at 148; *Endaya v. Atty. Oca*, 457 Phil. 314, 326 (2003).

[17] *Villaflores v. Limos*, *supra* at 148-149.

memorandum on appeal this time with the RTC where complainant's appeal was then pending. Civil Case No. C-20717 was, therefore, dismissed on that ground alone.

The importance of filing a memorandum on appeal cannot be gainsaid. Section 7 (b) of Rule 40 of the Rules of Court states:

> **SEC. 7.** *Procedure in the Regional Trial Court. –*
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> x x x x x x x x x
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> (b) Within fifteen (15) days from such notice, it shall be the duty of the appellant to submit a memorandum which shall briefly discuss the errors imputed to the lower court, a copy of which shall be furnished by him to the adverse party. Within fifteen (15) days from receipt of the appellant's Memorandum, the appellee may file his memorandum. ***Failure of the appellant to file a memorandum shall be a ground for dismissal of the appeal.***
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> x x x x x x x x x x [Emphasis supplied.]

By express mandate of the said Rule, the appellant is duty-bound to submit his memorandum on appeal. Such submission is not a matter of discretion on his part. His failure to comply with this mandate or to perform this duty will compel the RTC to dismiss his appeal.[18]

Respondent's failure to file the required pleadings is *per se* a violation of Rule 18.03 of the Code of Professional Resposibility[19] which states:

> Rule 18.03-A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

Aside from failing to file the required pleadings, respondent also lacked candor in dealing with his client, as he omitted to apprise complainant of the status of her ejectment case.

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[18] *Gonzales v. Gonzales*, G.R. No. 151376, February 22, 2006, 483 SCRA 57, 67.

[19] See: *Canoy v. Ortiz*, Adm. Case No. 5485, March 16, 2005, 453 SCRA 410.

It bears stressing that the lawyer-client relationship is one of trust and confidence. Thus, there is a need for the client to be adequately and fully informed about the developments in his case. A client should never be left groping in the dark, for to do so would be to destroy the trust, faith, and confidence reposed in the lawyer so retained in particular and in the legal profession in general.[20] Respondent's act demonstrates utter disregard of Rule 18.04, Canon 18, Code of Professional Resposibility, which states:

> Rule 18.04–A lawyer shall keep the client informed of the status of his case and shall respond within a reasonable time to the client's request for information.

All told, we rule and so hold that on account of respondent's failure to protect the interest of complainant, respondent indeed violated Rules 18.03 and 18.04, Canon 18 of the Code of Professional Responsibility. Respondent is reminded that the practice of law is a special privilege bestowed only upon those who are competent intellectually, academically and morally.

The appropriate sanction is within the sound discretion of this Court. In cases of similar nature, the penalty imposed by the Court consisted of either a reprimand or a fine of five hundred pesos with warning, suspension of three months or six months, and even disbarment in aggravated cases.[21]

Considering the circumstances surrounding the instant case, a six-month suspension from the practice of law is the proper penalty.

WHEREFORE, the resolution of the IBP Board of Governors is hereby *AFFIRMED*. Accordingly, respondent ATTY. BRAULIO RG TANSINSIN is hereby *SUSPENDED* from the practice of law for a period of **SIX (6) MONTHS**, with a stern warning that

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[20] *Edquibal v. Ferrer, Jr.*, A.C. No. 5687, February 3, 2005, 450 SCRA 406, 411.

[21] *Villaflores v. Limos, supra* at 151; *Soriano v. Reyes*, A.C. No. 4676, May 4, 2006, 489 SCRA 328, 343; *Endaya v. Atty. Oca*, *supra* at 329-330 (2003).

a repetition of the same or similar wrongdoing will be dealt with more severely.

Let a copy of this decision be attached to respondent's personal record with the Office of the Bar Confidant and copies be furnished to all chapters of the Integrated Bar of the Philippines and to all courts of the land.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 155491. July 21, 2009]

SMART COMMUNICATIONS, INC., *petitioner, vs.* **THE CITY OF DAVAO, represented herein by its Mayor Hon. RODRIGO DUTERTE, and the SANGGUNIANG PANLUNSOD OF DAVAO CITY,** *respondents.*

SYLLABUS

1. STATUTORY CONSTRUCTION; STATUTES; REPUBLIC ACT 7294, SECTION 9 THEREOF; CLAUSE "IN LIEU OF ALL TAXES", CONSTRUED.— Section 9 of RA 7294 and Section 23 of RA 7925 are once again put in issue. Section 9 of Smart's legislative franchise contains the contentious "in lieu of all taxes" clause. x x x Section 23 of RA 7925, otherwise known as the most favored treatment clause or equality clause, contains the word "exemption," *viz*.: x x x. A review of the recent decisions of the Court on the matter of exemptions from local franchise tax and the interpretation of the word "exemption" found in Section 23 of RA 7925 is imperative in order to resolve this issue once and for all. In *Digital Telecommunications Philippines, Inc. (Digitel) v. Province of Pangasinan*, Digitel used as an argument the "in lieu of all taxes" clauses/provisos found in the

legislative franchises of Globe, Smart and Bell, *vis-à-vis* Section 23 of RA 7925, in order to claim exemption from the payment of local franchise tax. Digitel claimed, just like the petitioner in this case, that it was exempt from the payment of any other taxes except the national franchise and income taxes. Digitel alleged that Smart was exempted from the payment of local franchise tax. However, it failed to substantiate its allegation, and, thus, the Court denied Digitel's claim for exemption from provincial franchise tax. Cited was the ruling of the Court in *PLDT v. City of Davao*, wherein the Court, speaking through Mr. Justice Vicente V. Mendoza, held that in approving Section 23 of RA No. 7925, Congress did not intend it to operate as a blanket tax exemption to all telecommunications entities. Section 23 cannot be considered as having amended PLDT's franchise so as to entitle it to exemption from the imposition of local franchise taxes. The Court further held that tax exemptions are highly disfavored and that a tax exemption must be expressed in the statute in clear language that leaves no doubt of the intention of the legislature to grant such exemption. And, even in the instances when it is granted, the exemption must be interpreted in *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority.

2. ID.; ID.; REPUBLIC ACT 7925, SECTION 23 THEREOF; WORD "EXEMPTION", CONSTRUED.— The Court also clarified the meaning of the word "exemption" in Section 23 of RA 7925: that the word "exemption" as used in the statute refers or pertains merely to an exemption from regulatory or reporting requirements of the Department of Transportation and Communication or the National Transmission Corporation and not to an exemption from the grantee's tax liability. In *Philippine Long Distance Telephone Company (PLDT) v. Province of Laguna*, PLDT was a holder of a legislative franchise under Act No. 3436, as amended. On August 24, 1991, the terms and conditions of its franchise were consolidated under Republic Act No. 7082, Section 12 of which embodies the so-called "in-lieu-of-all taxes" clause. Under the said Section, PLDT shall pay a franchise tax equivalent to three percent (3%) of all its gross receipts, which franchise tax shall be "in lieu of all taxes." The issue that the Court had to resolve was whether PLDT was liable to pay franchise tax to the Province of Laguna in view of the "in lieu of all taxes" clause in its franchise and Section 23 of RA 7925. Applying the rule of

strict construction of laws granting tax exemptions and the rule that doubts are resolved in favor of municipal corporations in interpreting statutory provisions on municipal taxing powers, the Court held that Section 23 of RA 7925 could not be considered as having amended petitioner's franchise so as to entitle it to exemption from the imposition of local franchise taxes. In ruling against the claim of PLDT, the Court cited the previous decisions in *PLDT v. City of Davao* and *PLDT v. City of Bacolod*, in denying the claim for exemption from the payment of local franchise tax.

3. TAXATION; LOCAL GOVERNMENT CODE; LOCAL TAXATION; LOCAL FRANCHISE TAX; MUST BE PAID BY THE FRANCHISEE, ASIDE FROM THE NATIONAL FRANCHISE TAX, UNLESS IT IS EXPRESSLY AND UNEQUIVOCALLY EXEMPTED FROM THE PAYMENT THEREOF UNDER ITS LEGISLATIVE FRANCHISE.— In sum, the aforecited jurisprudence suggests that aside from the national franchise tax, the franchisee is still liable to pay the local franchise tax, unless it is expressly and unequivocally exempted from the payment thereof under its legislative franchise. The "in lieu of all taxes" clause in a legislative franchise should categorically state that the exemption applies to both local and national taxes; otherwise, the exemption claimed should be strictly construed against the taxpayer and liberally in favor of the taxing authority.

4. ID.; REPUBLIC ACT NO. 7716, OTHERWISE KNOWN AS THE EXPANDED VAT LAW; VALUE ADDED TAX REPLACED THE NATIONAL FRANCHISE TAX BUT IT DID NOT PROHIBIT NOR ABOLISH THE IMPOSITION OF LOCAL FRANCHISE TAX BY CITIES OR MUNICIPALITIES.— Republic Act No. 7716, otherwise known as the "Expanded VAT Law," did not remove or abolish the payment of local franchise tax. It merely replaced the national franchise tax that was previously paid by telecommunications franchise holders and in its stead imposed a ten percent (10%) VAT in accordance with Section 108 of the Tax Code. VAT replaced the national franchise tax, but it did not prohibit nor abolish the imposition of local franchise tax by cities or municipaties.

5. POLITICAL LAW; LOCAL GOVERNMENT CODE; LOCAL TAXATION; LOCAL FRANCHISE TAX; NOT INCONSISTENT WITH THE ADVENT OF VALUE ADDED TAX.— The power

to tax by local government units emanates from Section 5, Article X of the Constitution which empowers them to create their own sources of revenues and to levy taxes, fees and charges subject to such guidelines and limitations as the Congress may provide. The imposition of local franchise tax is not inconsistent with the advent of the VAT, which renders *functus officio* the franchise tax paid to the national government. VAT inures to the benefit of the national government, while a local franchise tax is a revenue of the local government unit.

APPEARANCES OF COUNSEL

Estelito P. Mendoza & Lorenzo G. Timbol for petitioner.
City Legal Officer (Davao City) for respondents.

R E S O L U T I O N

NACHURA, *J.*:

Before the Court is a Motion for Reconsideration[1] filed by Smart Communications, Inc. (Smart) of the Decision[2] of the Court dated September 16, 2008, denying its appeal of the Decision and Order of the Regional Trial Court (RTC) of Davao City, dated July 19, 2002 and September 26, 2002, respectively.

Briefly, the factual antecedents are as follows:

On February 18, 2002, Smart filed a special civil action for declaratory relief[3] for the ascertainment of its rights and obligations under the Tax Code of the City of Davao, which imposes a franchise tax on businesses enjoying a franchise within the territorial jurisdiction of Davao. Smart avers that its telecenter in Davao City is exempt from payment of franchise tax to the City.

On July 19, 2002, the RTC rendered a Decision denying the petition. Smart filed a motion for reconsideration, which was denied by the trial court in an Order dated September 26, 2002.

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[1] *Rollo*, pp. 395-436.

[2] *Id.* at 374-392.

[3] RULES OF COURT, Rule 63.

Smart filed an appeal before this Court, but the same was denied in a decision dated September 16, 2008. Hence, the instant motion for reconsideration raising the following grounds: (1) the "in lieu of all taxes" clause in Smart's franchise, Republic Act No. 7294 (RA 7294), covers local taxes; the rule of strict construction against tax exemptions is not applicable; (2) the "in lieu of all taxes" clause is not rendered ineffective by the Expanded VAT Law; (3) Section 23 of Republic Act No. 7925[4] (RA 7925) includes a tax exemption; and (4) the imposition of a local franchise tax on Smart would violate the constitutional prohibition against impairment of the obligation of contracts.

Section 9 of RA 7294 and Section 23 of RA 7925 are once again put in issue. Section 9 of Smart's legislative franchise contains the contentious "in lieu of all taxes" clause. The Section reads:

> Section 9. Tax provisions. — The grantee, its successors or assigns shall be liable to pay the same taxes on their real estate buildings and personal property, exclusive of this franchise, as other persons or corporations which are now or hereafter may be required by law to pay. **In addition thereto, the grantee, its successors or assigns shall pay a franchise tax equivalent to three percent (3%) of all gross receipts of the business transacted under this franchise by the grantee, its successors or assigns and the said percentage shall be in lieu of all taxes on this franchise or earnings thereof**: Provided, That the grantee, its successors or assigns shall continue to be liable for income taxes payable under Title II of the National Internal Revenue Code pursuant to Section 2 of Executive Order No. 72 unless the latter enactment is amended or repealed, in which case the amendment or repeal shall be applicable thereto.
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> x x x x x x x x x[5]

Section 23 of RA 7925, otherwise known as the most favored treatment clause or equality clause, contains the word "exemption," *viz*.:

> SEC. 23. Equality of Treatment in the Telecommunications Industry. — Any advantage, favor, privilege, **exemption**, or immunity

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[4] Public Telecommunications Policy Act of the Philippines.

[5] Emphasis supplied.

granted under existing franchises, or may hereafter be granted, shall *ipso facto* become part of previously granted telecommunications franchises and shall be accorded immediately and unconditionally to the grantees of such franchises: Provided, however, That the foregoing shall neither apply to nor affect provisions of telecommunications franchises concerning territory covered by the franchise, the life span of the franchise, or the type of the service authorized by the franchise.[6]

A review of the recent decisions of the Court on the matter of exemptions from local franchise tax and the interpretation of the word "exemption" found in Section 23 of RA 7925 is imperative in order to resolve this issue once and for all.

In *Digital Telecommunications Philippines, Inc. (Digitel) v. Province of Pangasinan*,[7] Digitel used as an argument the "in lieu of all taxes" clauses/provisos found in the legislative franchises of Globe,[8] Smart and Bell,[9] *vis-à-vis* Section 23 of RA 7925, in order to claim exemption from the payment of local franchise tax. Digitel claimed, just like the petitioner in this case, that it was exempt from the payment of any other taxes except the national franchise and income taxes. Digitel alleged that Smart was exempted from the payment of local franchise tax.

However, it failed to substantiate its allegation, and, thus, the Court denied Digitel's claim for exemption from provincial franchise tax. Cited was the ruling of the Court in *PLDT v. City of Davao*,[10] wherein the Court, speaking through Mr. Justice Vicente V. Mendoza, held that in approving Section 23 of RA No. 7925, Congress did not intend it to operate as a blanket tax exemption to all telecommunications entities. Section 23 cannot be considered as having amended PLDT's franchise so as to entitle it to exemption from the imposition of local franchise taxes. The Court further held that tax exemptions are highly disfavored and that a tax exemption must be expressed in the statute in clear

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[6] Emphasis supplied.

[7] G.R. No. 152534, February 23, 2007, 516 SCRA 541.

[8] Republic Act No. 7229.

[9] Republic Act No. 7692

[10] 415 Phil. 764 (2001).

language that leaves no doubt of the intention of the legislature to grant such exemption. And, even in the instances when it is granted, the exemption must be interpreted in *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority.

The Court also clarified the meaning of the word "exemption" in Section 23 of RA 7925: that the word "exemption" as used in the statute refers or pertains merely to an exemption from regulatory or reporting requirements of the Department of Transportation and Communication or the National Transmission Corporation and not to an exemption from the grantee's tax liability.

In *Philippine Long Distance Telephone Company (PLDT) v. Province of Laguna*,[11] PLDT was a holder of a legislative franchise under Act No. 3436, as amended. On August 24, 1991, the terms and conditions of its franchise were consolidated under Republic Act No. 7082, Section 12 of which embodies the so-called "in-lieu-of-all taxes" clause. Under the said Section, PLDT shall pay a franchise tax equivalent to three percent (3%) of all its gross receipts, which franchise tax shall be "in lieu of all taxes." The issue that the Court had to resolve was whether PLDT was liable to pay franchise tax to the Province of Laguna in view of the "in lieu of all taxes" clause in its franchise and Section 23 of RA 7925.

Applying the rule of strict construction of laws granting tax exemptions and the rule that doubts are resolved in favor of municipal corporations in interpreting statutory provisions on municipal taxing powers, the Court held that Section 23 of RA 7925 could not be considered as having amended petitioner's franchise so as to entitle it to exemption from the imposition of local franchise taxes.

In ruling against the claim of PLDT, the Court cited the previous decisions in *PLDT v. City of Davao*[12] and *PLDT v. City of Bacolod*,[13] in denying the claim for exemption from the payment of local franchise tax.

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[11] G.R. No. 151899, August 16, 2005, 467 SCRA 93.

[12] G.R. No. 143867, 415 Phil. 769, August 22, 2001, 447 Phil. 571, March 25, 2003.

[13] G.R. No. 149179, July 15, 2005, 463 SCRA 528.

In sum, the aforecited jurisprudence suggests that aside from the national franchise tax, the franchisee is still liable to pay the local franchise tax, unless it is expressly and unequivocally exempted from the payment thereof under its legislative franchise. The "in lieu of all taxes" clause in a legislative franchise should categorically state that the exemption applies to both local and national taxes; otherwise, the exemption claimed should be strictly construed against the taxpayer and liberally in favor of the taxing authority.

Republic Act No. 7716, otherwise known as the "Expanded VAT Law," did not remove or abolish the payment of local franchise tax. It merely replaced the national franchise tax that was previously paid by telecommunications franchise holders and in its stead imposed a ten percent (10%) VAT in accordance with Section 108 of the Tax Code. VAT replaced the national franchise tax, but it did not prohibit nor abolish the imposition of local franchise tax by cities or municipaties.

The power to tax by local government units emanates from Section 5, Article X of the Constitution which empowers them to create their own sources of revenues and to levy taxes, fees and charges subject to such guidelines and limitations as the Congress may provide. The imposition of local franchise tax is not inconsistent with the advent of the VAT, which renders *functus officio* the franchise tax paid to the national government. VAT inures to the benefit of the national government, while a local franchise tax is a revenue of the local government unit.

WHEREFORE, the motion for reconsideration is *DENIED,* and this denial is final.

SO ORDERED.

Ynares-Santiago (Chairperson), Chico-Nazario, Leonardo-de Castro,[*] and *Bersamin,*[**] *JJ.,* concur.

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[*] Additional member vice Justice Ruben T. Reyes (retired) per raffle dated February 23, 2009.

[**] Additional member vice Justice Alicia Austria-Martinez (retired) per raffle dated May 13, 2009.

THIRD DIVISION

[G.R. No. 184948. July 21, 2009]

CONG. GLENN A. CHONG, MR. CHARLES CHONG, and MR. ROMEO ARRIBE, *petitioners, vs.* **HON. PHILIP L. DELA CRUZ, HON. ROMEO D.C. GALVEZ, HON. RAMON CHITO R. MENDOZA, State Prosecutors, and HON. RAUL M. GONZALES, Secretary of Justice,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; PARTY WHO SEEKS TO AVAIL OF THE SAME MUST STRICTLY OBSERVE PROCEDURAL RULES LAID DOWN BY LAW AND NON-OBSERVANCE THEREOF IS NOT A MERE TECHNICALITY.— A petition for *certiorari* is an extraordinary remedy. As such, the party who seeks to avail of the same must strictly observe the procedural rules laid down by law, and non-observance thereof may not be brushed aside as mere technicality. The decision on whether or not to accept a petition for *certiorari*, as well as to grant due course thereto, is generally addressed to the sound discretion of the court. While there may have been exceptional cases where this Court has set aside procedural defects to correct patent injustice concomitant to the liberal interpretation of the rules, we find such reason lacking in the case at bar.

2. ID.; ID.; ID.; THE CONCURRENT JURISDICTION OF THE SUPREME COURT, THE REGIONAL TRIAL COURTS, AND THE COURT OF APPEALS, TO ISSUE THE WRIT DOES NOT GIVE THE PARTY UNRESTRICTED FREEDOM OF CHOICE OF COURT FORUM; DIRECT RECOURSE TO THE SUPREME COURT MAY BE ALLOWED IN EXCEPTIONAL CASES.— Likewise, petitioners failed to observe the rule on hierarchy of courts when they directly sought relief before this Court. In *Talento v. Escalada*, we explained: Although the Supreme Court, Regional Trial Courts, and the Court of Appeals have concurrent jurisdiction to issue writs of *certiorari*, prohibition, *mandamus*,

quo warranto, habeas corpus and injunction, such concurrence does not give the petitioner unrestricted freedom of choice of court forum. Recourse should have been made first with the Court of Appeals and not directly to this Court. True, we had, on certain occasions, entertained direct recourse to this Court as an exception to the rule on hierarchy of courts. In those exceptional cases, however, we recognized an exception because it was dictated by public welfare and the advancement of public policy, or demanded by the broader interest of justice, or the orders complained of were found to be patent nullities, or the appeal was considered as clearly an inappropriate remedy. In the instant case, however, the questions raised are issues evidently within the normal precincts of an appeal which cannot be peremptorily addressed by an extraordinary writ. In fact, the Court of Appeals (CA) has jurisdiction to review the resolution issued by the Secretary of the DOJ through a petition for *certiorari* under Rule 65 of the Rules of Court albeit solely on the ground that the Secretary of Justice committed grave abuse of his discretion amounting to excess or lack of jurisdiction. Petitioners could have easily availed themselves of such recourse instead of directly assailing the same before this Court.

3. ID.; ID.; ID.; ID.; DIRECT INVOCATION OF THE SUPREME COURT'S ORIGINAL JURISDICTION TO ISSUE THE WRIT, WHEN MAY BE ALLOWED.— The Supreme Court is a court of last resort, and must so remain if it is to satisfactorily perform the functions assigned to it by the fundamental charter and immemorial tradition. A direct invocation of this Court's original jurisdiction to issue said writs should be allowed only when there are special and important reasons therefor, clearly and specifically set out in the petition. This is established policy – a policy that is necessary to prevent inordinate demands upon the Court's time and attention which are better devoted to those matters within its exclusive jurisdiction, and to prevent further over-crowding of the Court's docket.

APPEARANCES OF COUNSEL

Gabino A. Velasquez, Jr. for petitioners.
The Solicitor General for respondents.

R E S O L U T I O N

NACHURA, *J.*:

This resolves the Motion for Reconsideration[1] filed by petitioners on January 29, 2009 from the Resolution[2] of this Court dated November 17, 2008 dismissing for lack of merit the petition for *certiorari* with prayer for preliminary injunction and restraining order. Petitioners filed a Rule 65 petition assailing the Joint Orders dated September 29, 2008 issued by the Department of Justice (DOJ) which denied the two motions for postponement and motion to remand interposed by petitioners in I.S. No. 2008-650, I.S. No. 2008-117, I.S. No. 2008-152, and I.S. No. 154.

Aside from its lack of merit, the petition for *certiorari* was also dismissed for failure to state the material dates on the receipt of the assailed joint orders, contrary to Section 4, Rule 65 in relation to the second paragraph of Section 3, Rule 46 of the Rules of Court. The petition also lacked legible duplicate original or certified true copies of the assailed orders, in violation of the second paragraph of Section 1, Rule 65 and Section 3, Rule 46 in relation to Section 2, Rule 56.[3]

We find no cogent reason to warrant a reconsideration of this Court's resolution.

A petition for *certiorari* is an extraordinary remedy.[4] As such, the party who seeks to avail of the same must strictly observe the procedural rules laid down by law,[5] and non-

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[1] *Rollo*, pp. 80-90.

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

[3] *Id.* at 78.

[4] *Garcia, Jr. v. Court of Appeals*, G.R. No. 171098, February 26, 2008, 546 SCRA 595, 602; *Solidum v. Court of Appeals*, G.R. No. 161647, June 22, 2006, 492 SCRA 261, 269; and *Manila Midtown Hotels & Land Corp. v. National Labor Relations Commission*, 351 Phil. 500, 506 (1998).

[5] *Garcia, Jr. v. Court of Appeals*, *supra* note 3 citing *Balayan v. Acorda*, G.R. No. 153537, May 5, 2006, 489 SCRA 637, 643; *Matagumpay Maritime Co., Inc., v. Dela Cruz*, G.R. No. 144638, August 9, 2005, 466 SCRA 130,

observance thereof may not be brushed aside as mere technicality.[6] The decision on whether or not to accept a petition for *certiorari*, as well as to grant due course thereto, is generally addressed to the sound discretion of the court.[7]

While there may have been exceptional cases where this Court has set aside procedural defects to correct patent injustice concomitant to the liberal interpretation of the rules, we find such reason lacking in the case at bar.

Likewise, petitioners failed to observe the rule on hierarchy of courts when they directly sought relief before this Court. In *Talento v. Escalada*,[8] we explained:

> Although the Supreme Court, Regional Trial Courts, and the Court of Appeals have concurrent jurisdiction to issue writs of *certiorari*, prohibition, *mandamus*, *quo warranto*, *habeas corpus* and injunction, such concurrence does not give the petitioner unrestricted freedom of choice of court forum. Recourse should have been made first with the Court of Appeals and not directly to this Court.[9]

True, we had, on certain occasions, entertained direct recourse to this Court as an exception to the rule on hierarchy of courts. In those exceptional cases, however, we recognized an exception because it was dictated by public welfare and the advancement of public policy, or demanded by the broader interest of justice, or the orders complained of were found to be patent nullities, or the appeal was considered as clearly an inappropriate remedy.[10]

134; *Seastar Marine Services, Inc. v. Bul-an, Jr.*, G.R. No. 142609, November 25, 2004, 444 SCRA 140, 153.

[6] *De Los Santos v. Court of Appeals*, G.R. No. 147912, April 26, 2006, 488 SCRA 351, 358; *Teoville Homeowners Association, Inc. v. Ferreira*, G.R. No. 140086, June 8, 2005, 459 SCRA 459, 472; *Sea Power Shipping Enterprises, Inc. v. Court of Appeals*, 412 Phil. 603, 611 (2001).

[7] *Tan v. Bausch and Lomb, Inc.*, G.R. No. 148420, December 15, 2005, 478 SCRA 115, 120.

[8] G.R. No. 180884, June 27, 2008, 556 SCRA 491.

[9] *Id.*

[10] See *Gelidon v. De la Rama*, G.R. No. 105072, December 9, 1993, 228 SCRA 322, 326-327.

In the instant case, however, the questions raised are issues evidently within the normal precincts of an appeal which cannot be peremptorily addressed by an extraordinary writ. In fact, the Court of Appeals (CA) has jurisdiction to review the resolution issued by the Secretary of the DOJ through a petition for *certiorari* under Rule 65 of the Rules of Court albeit solely on the ground that the Secretary of Justice committed grave abuse of his discretion amounting to excess or lack of jurisdiction.[11] Petitioners could have easily availed themselves of such recourse instead of directly assailing the same before this Court.

The Supreme Court is a court of last resort, and must so remain if it is to satisfactorily perform the functions assigned to it by the fundamental charter and immemorial tradition.[12] A direct invocation of this Court's original jurisdiction to issue said writs should be allowed only when there are special and important reasons therefor, clearly and specifically set out in the petition. This is established policy – a policy that is necessary to prevent inordinate demands upon the Court's time and attention which are better devoted to those matters within its exclusive jurisdiction, and to prevent further over-crowding of the Court's docket.[13]

WHEREFORE, premises considered, the Motion for Reconsideration[14] filed by herein petitioners is *DENIED* for lack of merit.

SO ORDERED.

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

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[11] *Alcaraz v. Gonzales*, G.R. No. 164715, September 20, 2006, 502 SCRA 518, 529.

[12] *Vergara v. Suelto*, G.R. No. 74766, December 21, 1987, 156 SCRA 753, 766.

[13] *People v. Cuaresma*, G.R. No. 67787, April 18, 1989, 172 SCRA 415, 424.

[14] *Supra* note 1.

EN BANC

[G.R. No. 185401. July 21, 2009]

HENRY "JUN" DUEÑAS, JR., *petitioner, vs.* **HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL and ANGELITO "JETT" P. REYES,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL (HRET); ANY FINAL ACTION TAKEN BY THE TRIBUNAL ON A MATTER WITHIN ITS JURISDICTION SHALL NOT BE REVIEWED BY THE SUPREME COURT.— We base our decision not only on the constitutional authority of the HRET as the "**sole judge** of all contests relating to the election, returns and qualifications" of its members but also on the limitation of the Court's power of judicial review. The Court itself has delineated the parameters of its power of review in cases involving the HRET – ... so long as the Constitution grants the HRET the power to be the sole judge of all contests relating to the election, returns and qualifications of members of the House of Representatives, any final action taken by the HRET on a matter within its jurisdiction shall, as a rule, not be reviewed by this Court …. **the power granted to the Electoral Tribunal x x x excludes the exercise of any authority on the part of this Court that would in any wise restrict it or curtail it or even affect the same.** Guided by this basic principle, the Court will neither assume a power that belongs exclusively to the HRET nor substitute its own judgment for that of the Tribunal. The acts complained of in this case pertain to the HRET's exercise of its discretion, an exercise which was well within the bounds of its authority.

2. ID.; ID.; ID.; ANY ACCUSATION OF GRAVE ABUSE OF DISCRETION ON THE PART THEREOF MUST BE ESTABLISHED BY A CLEAR SHOWING OF ARBITRARINESS AND IMPROVIDENCE.— Indeed, due regard and respect for the authority of the HRET as an independent constitutional body require that any finding of grave abuse of discretion against that body should be based on firm and

convincing proof, not on shaky assumptions. Any accusation of grave abuse of discretion on the part of the HRET must be established by a **clear showing** of arbitrariness and improvidence. But the Court finds no evidence of such grave abuse of discretion by the HRET. In *Co v. HRET,* we held that: **The Court does not venture into the perilous area of trying to correct perceived errors of independent branches of the Government.** It comes in only when it has to vindicate a denial of due process or correct an abuse of discretion so grave or glaring that no less than the Constitution calls for remedial action.

3. ID.; ID.; ID.; JURISDICTION THEREOF IN THE ADJUDICATION OF ELECTION CONTESTS INVOLVING ITS MEMBERS IS EXCLUSIVE AND EXHAUSTIVE.— [T]he Constitution mandates that the HRET "shall be the sole judge of all contests relating to the election, returns and qualifications" of its members. By employing the word "sole," the Constitution is emphatic that the jurisdiction of the HRET in the adjudication of election contests involving its members is exclusive and exhaustive. Its exercise of power is intended to be its own — full, complete and unimpaired.

4. ID.; ID.; ID.; RULE 88 OF THE HRET RULES; THE TRIBUNAL COULD CONTINUE OR DISCONTINUE THE REVISION PROCEEDINGS *EX PROPRIO MOTU*; PREREQUISITE.— Protective of its jurisdiction and assertive of its constitutional mandate, the Tribunal adopted Rule 7 of the HRET Rules: RULE 7. *Control of Own Functions.* — The Tribunal shall have **exclusive control, direction and supervision of all matters pertaining to its own functions and operation.** In this connection and in the matter of the revision of ballots, the HRET reserved for itself the discretion to continue or discontinue the process through Rule 88 of the HRET Rules. The meaning of Rule 88 is plain. The HRET could continue or discontinue the revision proceedings *ex proprio motu*, that is, of its own accord. Thus, even if we were to adopt petitioner's view that he ought to have been allowed by HRET to withdraw his counter-protest, there was nothing to prevent the HRET from continuing the revision **of its own accord** by authority of Rule 88. The only prerequisite to the exercise by the HRET of its prerogative under Rule 88 was its own determination that the evidence thus far presented could affect the officially proclaimed results. Much like the appreciation of contested

ballots and election documents, the determination of whether the evidence could influence the officially proclaimed results was a highly technical undertaking, a function best left to the specialized expertise of the HRET.

5. ID.; ID.; ID.; SOLE JUDGE OF ELECTION CONTESTS INVOLVING ITS MEMBERS; IN THE EXERCISE OF ITS CHECKING FUNCTION, THE SUPREME COURT MERELY TESTS WHETHER OR NOT THE GOVERNMENTAL AGENCY HAS GONE BEYOND THE CONSTITUTIONAL LIMITS OF ITS JURISDICTION, NOT THAT IT ERRED OR HAD A DIFFERENT VIEW.— On this specific point, the HRET held that it "[could] not determine the true will of the electorate from the [result of the] initial revision and appreciation." It was also "convinced that the revision of the 75% remaining precincts … [was] necessary under the circumstances in order to attain the objective of ascertaining the true intent of the electorate and to remove any doubt as to who between [private respondent] and [petitioner] obtained the highest number of votes in an election conducted in a fair, regular and honest manner." At the risk of unduly encroaching on the exclusive prerogative of the HRET as the sole judge of election contests involving its members, **the Court cannot substitute its own sense or judgment for that of the HRET on the issues of whether the evidence presented during the initial revision could affect the officially proclaimed results and whether the continuation of the revision proceedings could lead to a determination of the true will of the electorate.** In the exercise of its checking function, the Court should merely test whether or not the governmental branch or agency has gone beyond the constitutional limits of its jurisdiction, **not that it erred or had a different view.**

6. ID.; ID.; ID.; ID.; THE SUPREME COURT COULD NOT RESTRICT, DIMINISH OR AFFECT THE TRIBUNAL'S AUTHORITY WITH RESPECT TO THE EXERCISE OF ITS CONSTITUTIONAL MANDATE.— If the Court will dictate to the HRET on how to proceed with these election protest proceedings, the Tribunal will no longer have "exclusive control, direction and supervision of all matters pertaining to its own functions and operation." It will constitute an intrusion into the HRET's domain and a curtailment of the HRET's power to act **of its own accord** on its **own evaluation** of the evidentiary

weight and effect of the result of the initial revision. *Libanan v. HRET* expressed the Court's recognition of the limitation of its own power *vis-à-vis* the extent of the authority vested by the Constitution on the HRET as sole judge of election contests involving its members. The Court acknowledged that it could not restrict, diminish or affect the HRET's authority with respect to the latter's exercise of its constitutional mandate. Overturning the HRET's exercise of its power under Rule 88 will not only emasculate its authority but will also arrogate unto this Court that body's purely discretionary function.

7. ID.; ID.; ID.; THE MERE FILING OF THE MOTION TO WITHDRAW THE PROTEST ON THE REMAINING UNCONTESTED PRECINCTS, WITHOUT ANY ACTION ON THE PART OF THE TRIBUNAL, DOES NOT BY ITSELF DIVEST THE SAME OF ITS JURISDICTION OVER THE CASE.— *Finally*, it is hornbook doctrine that jurisdiction, once acquired, is not lost at the instance of the parties but continues until the case is terminated. Thus, in *Robles v. HRET*, the Court ruled: **The mere filing of the motion to withdraw protest on the remaining uncontested precincts, without any action on the part of respondent tribunal, does not by itself divest the tribunal of its jurisdiction over the case.** Jurisdiction, once acquired, is not lost upon the instance of the parties but continues until the case is terminated. xxx Petitioner's argument will in effect deprive the HRET of the jurisdiction it has already acquired. It will also hold the HRET hostage to the whim or caprice of the parties before it. If the HRET is the independent body that it truly is and if it is to effectively carry out its constitutional mandate, the situation urged by petitioner should not be allowed.

8. ID.; ID.; ID.; THE DISCRETION THEREOF TO USE ITS OWN FUNDS IN REVISION PROCEEDINGS IS AN EXERCISE OF A POWER NECESSARY OR INCIDENTAL TO THE ACCOMPLISHMENT OF ITS PRIMARY FUNCTION AS SOLE JUDGE OF ELECTION PROTEST CASES INVOLVING ITS MEMBERS.— When jurisdiction is conferred by law on a court or tribunal, that court or tribunal, unless otherwise provided by law, is deemed to have the authority to employ all writs, processes and other means to make its power effective. Where a general power is conferred or duty enjoined, every particular power necessary for the

exercise of one or the performance of the other is also conferred. Since the HRET possessed the authority to *motu proprio* continue a revision of ballots, it also had the wherewithal to carry it out. It thus ordered the disbursement of its own funds for the revision of the ballots in the remaining counter-protested precincts. We hark back to Rule 7 of the HRET Rules which provides that the HRET has exclusive control, direction and supervision of its functions. The HRET's order was but one aspect of its power. Moreover, Rule 8 of the HRET Rules provides: RULE 8. *Express and Implied Powers*. — The Tribunal shall have and exercise all such powers as are vested in it by the Constitution or by law, and **such other powers as are necessary or incidental to the accomplishment of its purposes and functions** as set forth in the Constitution or as may be provided by law. Certainly, the HRET's order that its own funds be used for the revision of the ballots from the 75% counter-protested precincts was an exercise of a power necessary or incidental to the accomplishment of its primary function as sole judge of election protest cases involving its members.

9. ID.; ID.; ID.; HAS WIDE LATITUDE IN THE DISBURSEMENT AND ALLOCATION OF ITS FUNDS; USE OF THE TRIBUNAL'S FUNDS FOR THE REVISION OF THE REMAINING 75% COUNTER-PROTESTED PRECINCTS, NOT ILLEGAL.— Petitioner has a very restrictive view of RA 9498. He conveniently fails to mention that Section 1, Chapter 1 of RA 9498 provides that the HRET has an allotted budget for the "Adjudication of Electoral Contests Involving Members of the House of Representatives." The provision is general and encompassing enough to authorize the use of the HRET's funds for the revision of ballots, whether in a protest or counter-protest. Being allowed by law, the use of HRET funds for the revision of the remaining 75% counter-protested precincts was not illegal, much less violative of Article 220 of the Revised Penal Code. To reiterate, the law (particularly RA 9498) itself has appropriated funds for adjudicating election contests in the HRET. As an independent constitutional body, and having received the proper appropriation for that purpose, the HRET had wide discretion in the disbursement and allocation of such funds.

10. ID.; ID.; ID.; HAS THE INHERENT POWER TO SUSPEND ITS OWN RULES AND DISBURSE ITS FUNDS FOR ANY

LAWFUL PURPOSE IT DEEMED BEST; THE TRIBUNAL'S ORDER FOR ANY OF THE PARTIES TO MAKE ADDITIONAL REQUIRED DEPOSITS TO COVER COSTS OF THE REVISION NOT DEEMED A GIVING OF UNWARRANTED BENEFIT TO A PARTY.— [E]ven assuming that RA 9498 did not expressly authorize the HRET to use its own funds for the adjudication of a protest or counter-protest, **it had the inherent power to suspend its own rules** and disburse its funds for any lawful purpose it deemed best. This is specially significant in election contests such as this where what is at stake is the vital public interest in determining the true will of the electorate. In any event, nothing prevented the HRET from ordering any of the parties to make the additional required deposit(s) to cover costs, as respondent in fact manifested in the HRET. xxx Such disbursement could not be deemed a giving of unwarranted benefit, advantage or preference to a party since the benefit would actually redound to the electorate whose true will must be determined. Suffrage is a matter of public, not private, interest. The Court declared in *Aruelo, Jr. v. Court of Appeals* that "[o]ver and above the desire of the candidates to win, is the deep public interest to determine the true choice of the people." Thus, in an election protest, any benefit to a party would simply be incidental.

11. ID.; ID.; ID.; SCOPE OF THE SUPREME COURT'S POWER OF JUDICIAL REVIEW OVER CASES INVOLVING THE RESPONDENT TRIBUNAL.— In sum, the supremacy of the Constitution serves as the safety mechanism that will ensure the faithful performance by this Court of its role as guardian of the fundamental law. Awareness of the proper scope of its power of judicial review in cases involving the HRET, an independent body with a specific constitutional mandate, behooves the Court to stay its hands in matters involving the exercise of discretion by that body, except in clear cases of grave abuse of discretion.

12. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; TO PROSPER, THERE MUST BE A CLEAR SHOWING OF CAPRICE AND ARBITRARINESS IN THE EXERCISE OF DISCRETION; GRAVE ABUSE OF DISCRETION, EXPLAINED.— All told, it should be borne in mind that the present petition is a petition for *certiorari* under Rule 65 of the Rules of Court. It alleges that the HRET

committed grave abuse of discretion amounting to lack or excess of jurisdiction when it promulgated Resolution No. 08-353 dated November 27, 2008. But what is "grave abuse of discretion?" It is such capricious and whimsical exercise of judgment which is tantamount to lack of jurisdiction. Ordinary abuse of discretion is insufficient. The abuse of discretion must be grave, that is, the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility. It must be so patent and gross as to amount to evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of the law. In other words, for a petition for *certiorari* to prosper, there must be a clear showing of caprice and arbitrariness in the exercise of discretion. There is also grave abuse of discretion when there is a contravention of the Constitution, the law or existing jurisprudence. Using the foregoing as yardstick, the Court finds that petitioner miserably failed to discharge the *onus probandi* imposed on him.

QUISUMBING, *J., dissenting opinion:*

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; TO PROSPER, THE PETITIONER MUST SHOW THAT CAPRICE AND ARBITRARINESS CHARACTERIZED THE ACT OF THE COURT OR AGENCY WHOSE EXERCISE OF DISCRETION IS BEING ASSAILED; GRAVE ABUSE OF DISCRETION, WHEN IT ARISES.— For a petition for *certiorari* to prosper, it is incumbent upon the petitioner to show that caprice and arbitrariness characterized the act of the court or agency whose exercise of discretion is being assailed. This is because grave abuse of discretion is the capricious and whimsical exercise of judgment that amounts to lack or excess of jurisdiction. It contemplates a situation where the power is exercised in an arbitrary and despotic manner by reason of passion or personal hostility—so patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform the duty enjoined by, or to act at all in contemplation of law. Grave abuse of discretion arises when a lower court or tribunal violates the Constitution, the law or existing jurisprudence.

2. POLITICAL LAW; CONSTITUTIONAL LAW; HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL (HRET); RULE 88 OF THE 2004 HRET RULES; TRIBUNAL HAS

DISCRETION TO EITHER DIRECT THE CONTINUATION OF THE REVISION OF BALLOTS IN THE REMAINING CONTESTED PRECINTS OR DISMISS THE PROTEST OR COUNTER-PROTEST; EXERCISE OF THE DISCRETION MUST BE EXERCISED WITHIN THE PARAMETERS SET BY THE RULES.— Crucial to our determination of whether grave abuse of discretion tainted the issuance of the assailed resolution of the Tribunal is Rule 88 of the 2004 HRET Rules. Said rule provides: **RULE 88.** ***Pilot Precincts; Initial Revision***.— xxx Rule 88 clearly vested the Tribunal the discretion to either direct the continuation of the revision of ballots in the remaining contested precincts or dismiss the protest or counter-protest. However, it is also explicit in the Rules that the exercise of this discretion is not unbridled, but one that must be exercised within the parameters set by the Rules. Under the said Rule, if the protest or counter-protest involves more than 50% of the total number of precincts in the district, the Tribunal may direct the protestant or counter-protestant to choose the precincts questioned by him in his protest or counter-protest that best exemplify or demonstrate the electoral irregularities or frauds pleaded by him, but in no case shall the selected precincts be more than 25% of the total number of precincts involved in the protest or counter-protest. The revision of ballots shall begin initially with said pilot precincts. If the protest or counter-protest involves less than 50% of the total number of precincts in the district, then the entire ballots involved in the protest or counter-protest shall be revised. The Rules provides further that the Tribunal may *motu proprio* direct the continuation of the revision or dismiss the protest or counter-protest if the results of the initial revision reasonably show that the same affected the officially-proclaimed results of the contested election. In other words, the Tribunal can *motu proprio* dismiss the protest or counter-protest if the results of the *initial* revision show that such revision cannot possibly change the results of the contested election; otherwise, the revision of the ballots in the remaining contested precincts will continue.

3. ID.; ID.; ID.; RESULTS OF THE REVISION OF BALLOTS IN THE REMAINING COUNTER-PROTESTED PRECINTS CANNOT AFFECT THE RESULTS OF THE CONTESTED ELECTION IN CASE AT BAR; ORDER THEREOF TO CONTINUE THE REVISION OF BALLOTS BASED ON

PURE CONJECTURE CONSTITUTES GRAVE ABUSE OF DISCRETION.— All things carefully considered and viewed in their proper perspective, it is my considered view that the Tribunal acted with grave abuse of discretion in issuing the assailed Resolution. In the case at bar, respondents invoked the discretion granted to the Tribunal under Rule 88 to direct the continuation of the revision of ballots in the remaining 75% counter-protested precincts. As I have stated, the Rules had set guidelines for the exercise of this discretion. At the risk of being redundant, I emphasize that the ballots in the entire protested precincts had been revised. Thus, there had been not only an initial revision of ballots therein, but a total revision. Hence, with more reason that the results thereof must show that Reyes garnered significantly higher votes. However, there was no categorical pronouncement as to this. Instead, the Tribunal issued a vague Order wherein it directed the continuation of the revision of ballots in the remaining 75% counter-protested precincts, because it could not determine the true will of the electorate from the initial revision and appreciation of the 100% protested precincts and 25% counter-protested precincts and in view of the discovery of fake/spurious ballots. The justification given for the continuation of the revision is premised on the discovery of fake/spurious ballots, which according to the respondents created serious doubts as to who really won in the election. The records show, however, that the fake/spurious ballots that surfaced were inconsequential. Reyes claimed that 87 fake/spurious ballots were uncovered after the revision of 100% of the protested precincts and 25% of the counter-protested precincts, while Dueñas said there were only 75. No matter what the number, we do not see how such can affect the result of the contested election. As admitted by the parties in the preliminary conference, Dueñas enjoys a lead of 1,457 votes. Eighty-seven votes are but a fraction of Dueñas' lead margin. What can be gleaned from the foregoing is that respondents are only speculating that a sufficient number of fake/spurious ballots will be discovered in the remaining 75% counter-protested precincts and that these fake/spurious ballots will overturn the result of the election. Thus, it was a grave abuse of discretion for the Tribunal to order the continuation of the said revision based on pure conjecture.

4. ID.; ID.; ID.; MERE ACT OF FILING A MOTION TO WITHDRAW OR ABANDON A COUNTER-PROTEST

DOES NOT AUTOMATICALLY DIVEST THE TRIBUNAL OF ITS JURISDICTION OVER THE CASE.— It is conceded that the mere act of filing a motion to withdraw or abandon a counter-protest does not automatically divest the Tribunal of its jurisdiction over the case. To have it any other way will frustrate the intent of the Rules to accord the Tribunal the right to proceed with the case or dismiss the same if the evidence obtaining in the case warrants. However, to repeat, such discretion may not be exercised wantonly and in reckless disregard of the limitations set by the Rules.

5. ID.; ELECTIONS; ELECTION PROTEST; THE PROTESTANT OR COUNTER-PROTESTANT MUST STAND OR FALL UPON THE ISSUES HE HAD RAISED IN HIS ORIGINAL OR AMENDED PLEADING FILED PRIOR TO THE LAPSE OF THE STATUTORY PERIOD FOR THE FILING OF THE PROTEST OR COUNTER-PROTEST.— What is apparent is the desire of Reyes for the revision to continue in the hope that the results therefrom would redound to his benefit, under the pretense that the paramount interest of the electorate to know the true winner prevails over technicalities. Ultimately, what Reyes is trying to do is underhandedly change the theory of his case by banking on the results of the revision of ballots in the remaining 75% counter-protested precincts. This cannot be allowed. At the outset, Reyes seemed confident that the revision of ballots in the 170 precincts he protested will guarantee his win. Seeing that the revision thereof did not give him the results he was expecting, he veered away from his original theory, and this time impugned the elections in the precincts not involved in his protest by claiming that revision of ballots must be brought to completion in order that the people's choice may be ascertained. Allowing Reyes to rely on the results of the precincts not included in his protest to establish his case is tantamount to allowing him to substantially amend his protest by broadening its scope at this very late date which is not allowed under Rule 28 of the 2004 HRET Rules. As the clear import of what Reyes intended to do was violative of the Rules, the Tribunal should not have acquiesced to the same by ordering the continuation of the revision. The rule in an election protest is that the protestant or counter-protestant must stand or fall upon the issues he had raised in his original or amended pleading filed prior to the lapse of the statutory period for the filing of the protest or counter-protest. Thus,

Reyes is bound by the issue that he essentially raised in his election protest; that is, the revision of ballots in the 170 precincts involved in his protest will reveal the massive fraud that transpired during the election and will confirm his victory. Besides, it is difficult to comprehend why Reyes did not include in his protest the precincts he now questions, albeit impliedly, if from the very start he was convinced that the election therein was marred by electoral fraud. What can be inferred from his act is that he did not attribute any irregularity or fraud therein and accepts the results of the counting as is, but had to change his stance later on as a last-ditch effort to prove his case.

6. ID.; ID.; ID.; SHOULD BE DECIDED PROMPTLY, SUCH THAT TITLE TO PUBLIC ELECTIVE OFFICE BE NOT LEFT LONG UNDER CLOUD.— While it is true that an election contest is impressed with public interest, such that the correct expression of the will of the electorate must be ascertained without regard to technicalities, this noble principle, however, must not be used as a subterfuge to hide the real intent of a party to prove his case through unacceptable means. For it is also the policy of the law that election contests should be decided promptly, such that title to public elective office be not left long under cloud for the obvious reason that the term of the contested office grows shorter with the passing of each day.

7. ID.; CONSTITUTIONAL LAW; HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL; NO AUTHORITY TO USE ITS OWN FUNDS TO COVER EXPENSES FOR THE REVISION OF BALLOTS INVOLVED IN ANY ELECTORAL CONTEST.— Having said that the Tribunal gravely abused its discretion in ordering the continuation of the revision of ballots in the remaining 75% counter-protested precincts, it follows that the Tribunal had no authority to use its own funds to cover the expenses of the said revision. Even assuming that under the circumstances it could lawfully order the continuation of the revision, still nowhere in Rep. Act No. 9498 does it state that the Tribunal may use its own funds for the revision. The ₱49,727,000 allotted budget of the Tribunal for the adjudication of electoral contests involving members of the House of Representatives was never intended by Rep. Act No. 9498 to cover expenses for the revision of ballots involved in any electoral contest. The said amount is intended to be used for

personal services and maintenance and other operating expenses. As succinctly stated in Section 1 of Rep. Act No. 9498, the funds are appropriated for the operation of the government and, therefore, not for any other purpose. It will be a different situation, however, if the protestant was able to reasonably demonstrate, based on the results of the revision of ballots in the precincts he protested, that he stood a good chance of winning, and then the counter-protestant refused to pay for the costs of the continuation of the revision of the counter-protested precincts yet to be revised for the sole purpose of preventing the protestant from confirming his victory. In this scenario, I submit that nothing prevents the HRET from relaxing or suspending its Rules. Sadly, such is not the situation in this case. To repeat, the protestant has not shown that he has any chance of winning.

NACHURA, ***J., separate dissenting opinion:***

1. POLITICAL LAW; CONSTITUTIONAL LAW; HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL (HRET); USE THEREOF OF ITS OWN FUNDS TO COVER THE EXPENSES IN THE REVISION OF THE REMAINING 75% COUNTER-PROTESTED PRECINCTS IS VIOLATIVE OF ARTICLE 220 OF THE REVISED PENAL CODE AND MAY BE PROSECUTED UNDER SECTION 3 (E) OF THE ANTI-GRAFT AND CORRUPT PRACTICES ACT.—Albeit I concur with the majority that the House of Representative Electoral Tribunal (HRET) is vested by the Constitution with ample discretionary power in the resolution of contests relating to the election, returns and qualifications of the Members of the House. I cannot agree that the HRET may utilize its own funds —public funds—to cover the expenses in the revision of the remaining 75% counter-protested precincts. If such were done, then the HRET would violate Article 220 of the Revised Penal Code, and even risk likely prosecution under Section 3(e) of Republic Act No. 3019 as amended, or the Anti-Graft and Corrupt Practices Act, by causing undue injury to the Government and giving a party an unwarranted benefit, advantage of preference in the discharge of their judicial functions through manifest partiality.

2. ID.; ID.; ID.; ORDERING THE PROTESTANT TO SHOULDER THE EXPENSES OF REVISION OF THE REMAINING 75%

COUNTER-PROTESTED PRECINCT CONSTITUTE A VIOLATION OF THE 2004 RULES OF THE HRET.— If on the other hand the HRET eventually were to order respondent Reyes (the protestant) to shoulder the expenses of revision, then the same would constitute a violation of the 2004 Rules of the HRET, established law and jurisprudence. It would be equivalent to allowing the protestant to amend his protest by broadening its scope, or permitting him to file a separate protest on the remaining 75% counter-protested precincts, after the expiry of the jurisdictional period of filing election protests.

APPEARANCES OF COUNSEL

Brillantes Navarro Jumamil Arcilla Escolin Martinez Law Offices for petitioner.
The Solicitor General for public respondent.
Borje Atienza and Partners for private respondent.

D E C I S I O N

CORONA, *J.*:

Sed quis custodiet ipsos custodies? (But who is to guard the guardians themselves?)[1]

Under our constitutional scheme, the Supreme Court is the ultimate guardian of the Constitution, particularly of the allocation of powers, the guarantee of individual liberties and the assurance of the people's sovereignty.[2] The Court has the distinguished but delicate duty of determining and defining constitutional meaning, divining constitutional intent and deciding constitutional disputes. Nonetheless, its judicial supremacy is never judicial superiority (for it is co-equal with the other branches) or judicial tyranny (for it is supposed to be the least dangerous branch).[3] Instead,

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[1] Juvenal (Roman poet and author [AD. 60-138]), *Satires*.

[2] These correspond to the basic parts of a constitution, namely, the constitution of government, the constitution of liberties or rights and the constitution of sovereignty.

[3] This is how the American constitutional scholar Alexander Bickel describes the Supreme Court, "the least dangerous branch."

judicial supremacy is the conscious and cautious awareness and acceptance of its proper place in the overall scheme of government with the objective of asserting and promoting the supremacy of the Constitution. Thus, whenever the Court exercises its function of checking the excesses of any branch of government, it is also duty-bound to check itself. Otherwise, who will guard the guardian?

The Court should exercise judicial restraint as it resolves the two interesting issues that confront it in this petition: *first*, whether the House of Representatives Electoral Tribunal (HRET) committed grave abuse of discretion when it denied petitioner Henry "Jun" Dueñas, Jr.'s motion to withdraw or abandon his remaining 75% counter-protested precincts and *second*, whether the HRET committed grave abuse of discretion when it ordered that its own funds be used for the revision of the ballots from said 75% counter-protested precincts.

FACTUAL BACKDROP

Petitioner Henry "Jun" Dueñas, Jr. and private respondent Angelito "Jett" P. Reyes were rival candidates for the position of congressman in the 2nd legislative district of Taguig City in the May 14, 2007 synchronized national and local elections. After the canvass of the votes, petitioner was proclaimed the winner, having garnered 28,564 votes[4] as opposed to private respondent's 27,107 votes.[5]

Not conceding defeat, private respondent filed an election protest *ad cautelam*,[6] docketed as HRET Case No. 07-27, in the HRET on June 4, 2007. He prayed for a revision/recount in 170[7] of the 732 precincts in the 2nd legislative district of Taguig City so that the true and real mandate of the electorate

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[4] *Rollo*, p. 68.

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

[6] *Id.*, pp. 57-66.

[7] *Id.*, pp. 108-111.

may be ascertained.[8] In support of his protest, he alleged that he was cheated in the protested precincts through insidious and well-orchestrated electoral frauds and anomalies which resulted in the systematic reduction of his votes and the corresponding increase in petitioner's votes.[9]

Petitioner filed his answer[10] on June 25, 2007. Not to be outdone, he also counter-protested 560 precincts claiming that massive fraud through deliberate misreading, miscounting and misappreciation of ballots were also committed against him in said precincts resulting in the reduction of his votes in order to favor private respondent.[11]

After the issues were joined, the HRET ordered that all ballot boxes and other election materials involved in the protest and counter-protest be collected and retrieved, and brought to its offices for custody.

In the preliminary conference held on July 26, 2007, petitioner and private respondent agreed that, since the total number of the protested precincts was less than 50% of the total number of the precincts in the 2nd legislative district of Taguig City, all of the protested precincts would be revised without need of designation of pilot precints by private respondent pursuant to Rule 88 of the HRET Rules.[12]

The HRET thereafter directed the revision of ballots starting September 18, 2007.[13] Reception of evidence of the contending parties followed after the revision of ballots in 100% of the protested precincts and 25% pilot of the counter-protested precincts. The case was then submitted for resolution upon submission by the parties of their memoranda.

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[8] *Id.*, pp. 61-63.

[9] *Id.*, pp. 57-66.

[10] *Id.*, pp. 113-128.

[11] *Id.*, p. 118.

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

[13] *Id.*, pp. 136-137.

In an order dated September 25, 2008, the HRET directed the continuation of the revision and appreciation of the remaining 75% of the counter-protested precincts pursuant to Rule 88 of the HRET Rules, "[i]t appearing that the [HRET] cannot determine the true will of the electorate from the initial revision and appreciation of the 100% protested precincts and 25% counter-protested precincts and in view of the discovery of fake/spurious ballots in some of the protested and counter-protested precincts."[14]

Petitioner moved for reconsideration[15] but the HRET denied his motion in an order dated October 21, 2008.[16] On the same day, the HRET issued another order directing petitioner to augment his cash deposit in the amount of ₱320,000 to cover the expenses of the revision of ballots in the remaining 75% counter-protested precincts within a non-extendible period of ten days from notice.[17]

Instead of complying with the order, petitioner filed an urgent motion to withdraw/abandon the remaining 75% counter-protested precincts on October 27, 2008.[18] This was denied by the HRET in Resolution No. 08-353 dated November 27, 2008, reiterating its order directing the continuation of the revision of ballots in the remaining 75% counter-protested precincts and recalling its order requiring petitioner to augment his cash deposit. The Tribunal instead ordered the use of its own funds for the revision of the remaining 75% counter-protested precincts.[19]

In issuing Resolution No. 08-353 dated November 27, 2008, the HRET invoked Rule 88 of the HRET Rules and settled jurisprudence, ruling that it had the discretion either to dismiss the protest or counter-protest, or to continue with the revision if necessitated by reasonable and sufficient grounds affecting

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[14] *Id.*, p. 167.

[15] *Id.*, pp. 168-177.

[16] *Id.*, p. 183.

[17] *Id.*, p. 184.

[18] *Id.*, pp. 185-199.

[19] *Id.*, pp. 53-55.

the validity of the election. This was with the end in view of ascertaining the true choice of the electorate. It was the HRET's position that the mere filing of a motion to withdraw/abandon the unrevised precincts did not automatically divest the HRET of its jurisdiction over the same. Moreover, it ruled that its task of determining the true will of the electorate was not confined to the examination of contested ballots. Under its plenary power, it could *motu proprio* review the validity of every ballot involved in a protest or counter-protest and the same could not be frustrated by the mere expedient of filing a motion to withdraw/abandon the remaining counter-protested precincts. Convinced that it could not determine the true will of the electorate of the 2nd legislative district of Taguig City on the basis alone of the initial revision of the 100% protested precincts and the 25% counter-protested precincts, it had no other recourse but to continue the revision and appreciation of all the remaining 75% counter-protested precincts.[20]

Aggrieved by the HRET's Resolution No. 08-353 dated November 27, 2008, petitioner elevated the matter to this Court.

CENTRAL ISSUE TO BE RESOLVED

The core issue for our determination is whether the HRET committed grave abuse of discretion, amounting to lack or excess of jurisdiction, in issuing Resolution No. 08-353 dated November 27, 2008.

CONTENTIONS OF THE PARTIES

Petitioner argues mainly that private respondent as protestant in the election protest at the HRET had the burden of proving his cause. Failing to do so, the protest should have been dismissed promptly and not unduly prolonged. For petitioner, the HRET's declaration of its failure to ascertain the true will of the electorate after the complete revision of all protested precincts demonstrated private respondent's failure to discharge his burden. Thus, the HRET committed grave abuse of discretion in ordering the continuation of the revision of ballots in the remaining unrevised

[20] *Id.*

precincts as its acts amounted to giving private respondent the undeserved chance to prevail by assisting him in his search for evidence to support his case. The HRET in effect took the cudgels for him and thereby compromised its impartiality and independence.

Petitioner also avers that private respondent's failure to prove his contentions and his (petitioner's) concomitant exercise of his right to withdraw his counter-protest made the continued revision irrelevant. He claims that, since a counter-protest is designed to protect and advance the interest of the protestee, private respondent should not expect to derive any benefit therefrom. This justified the allowance of the withdrawal of the counter-protest.[21]

Petitioner also labels as grave abuse of discretion the HRET's assumption of the burden of the costs of the continued revision. For him, the funds of the HRET should not be used for the benefit of a private party, specially when its only objective was to speculate whether "the failed protestant can win."[22] Also, the HRET's act amounted to an illegal and unconstitutional disbursement of public funds which is proscribed under Section 29 (1),[23] Article VI of the Constitution.[24]

Petitioner adds that the discretion extended to the HRET pursuant to Rule 88 of the HRET Rules (whether or not to continue with the revision) may be exercised only when the results of the initial revision show that the same reasonably affected the officially-proclaimed results of the contested election. However, the HRET never made any determination that the results of the revision showed private respondent to have made substantial recoveries in support of his cause but simply directed

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[21] *Id.*, pp. 18-21, 32-36.

[22] *Id.*, pp. 14-18.

[23] SEC. 29 (1) No money shall be paid out of the Treasury except in pursuance of an appropriation made by law.

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[24] *Rollo*, pp. 14-18.

the continuation of the revision on the premise of its failure to determine the true will of the electorate as well as in its discovery of fake/spurious ballots. Yet, the total number of alleged fake/spurious ballots was only 75, or a little over 5% of his 1,457 lead votes; hence, it could not reasonably be inferred to have affected the officially proclaimed results. Thus, for petitioner, the fake/spurious ballots could not be made the basis for the continuation of revision of ballots.[25]

In his comment,[26] private respondent counters that no grave abuse of discretion could be attributed to the HRET in issuing the assailed resolution. The HRET had every right to order the continuation of the revision of ballots after its discovery of fake/spurious ballots in favor of petitioner. Its pronouncement that it could not determine the true will of the electorate centered on this discovery. Thus, its constitutional mandate dictated that it ferret out the truth by completing the said revision.[27]

Private respondent further argues that, under Rule 88 of its Rules, the HRET had the discretion to either dismiss the counter-protest or continue with the revision based on the outcome of the initial revision and appreciation proceedings and initial evidence presented by the parties. The mere filing of a motion to withdraw the protest on the remaining unrevised precincts did not divest the HRET of its jurisdiction over the electoral protest.[28]

Furthermore, the HRET could use its available funds to shoulder the cost of revision as this was merely an incident to its discretion under Rule 88 and of its plenary powers under the Constitution. To hold otherwise would render its mandated functions meaningless and nugatory.[29]

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[25] *Id.*, pp. 21-29.

[26] *Id.*, pp. 255-278.

[27] *Id.*, pp. 256-258, 270.

[28] *Id.*, pp. 263-267.

[29] *Id.*, p. 272.

For its part, the HRET insists in its comment[30] that it did not commit any grave abuse of discretion. It contends that there was a sufficient and legitimate reason to proceed with the revision of the remaining 75% counter-protested precincts. The discovery of fake/spurious ballots created serious doubts about the sanctity of the ballots subject matter of the protest and counter-protest. Thus, the HRET had no other choice but to open the ballot boxes in the counter-protested precincts and continue with its revision in order to ascertain and determine the true will of the electorate. Moreover, its discretion under the HRET Rules gave it the imprimatur to order the continuation of the revision if, based on its independent evaluation of the results of the initial revision, the same affected the officially proclaimed results of the contested election. Since the discovery of fake/spurious ballots, to its mind, had a bearing on the true results of the election, the HRET submits that it was justified in issuing said order.[31]

The HRET also points out that the withdrawal of the revision of ballots was not a vested right of any party but must give way to the higher dictates of public interest, that of determining the true choice of the people. This determination did not depend on the desire of any party but was vested solely on the discretion of the HRET as the "sole judge" of all contests relating to the elections, returns and qualifications of members of the House of Representatives. Moreover, under the HRET's plenary powers, it could *motu proprio* review the validity of every ballot involved in a protest or counter-protest.[32]

The HRET further claims that petitioner had no reason to worry or to object to its disbursement of its funds for the continuation of the revision since it had the allotted budget for

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[30] *Id.*, pp. 288-318.

[31] *Id.*, pp. 301-306.

[32] *Id.*, pp. 306-307.

the same under paragraph I, (C.1) of RA[33] No. 9498,[34] or the General Appropriations Act for Fiscal Year 2008.[35]

RULING OF THE COURT

The petition has no merit.

We base our decision not only on the constitutional authority of the HRET as the "**sole judge** of all contests relating to the election, returns and qualifications"[36] of its members but also on the limitation of the Court's power of judicial review.

The Court itself has delineated the parameters of its power of review in cases involving the HRET –

> ... so long as the Constitution grants the HRET the power to be the sole judge of all contests relating to the election, returns and qualifications of members of the House of Representatives, any final action taken by the HRET on a matter within its jurisdiction shall, as a rule, not be reviewed by this Court …. **the power granted to the Electoral Tribunal x x x excludes the exercise of any authority on the part of this Court that would in any wise restrict it or curtail it or even affect the same**.[37] (emphasis supplied)

Guided by this basic principle, the Court will neither assume a power that belongs exclusively to the HRET nor substitute its own judgment for that of the Tribunal.

The acts complained of in this case pertain to the HRET's exercise of its discretion, an exercise which was well within the bounds of its authority.

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[33] Republic Act.

[34] AN ACT APPROPRIATING FUNDS FOR THE OPERATION OF THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES FROM JANUARY ONE TO DECEMBER THIRTY-ONE, TWO THOUSAND AND EIGHT, AND FOR OTHER PURPOSES.

[35] *Rollo*, p. 312.

[36] Section 17, Article VI, Constitution.

[37] *Libanan v. HRET*, 347 Phil. 797, 804 (1997).

POWER OF HRET TO DENY THE MOTION TO WITHDRAW/ABANDON COUNTER-PROTEST

Petitioner submits that there was no point in continuing with the revision of the remaining 75% of the counter-protested precincts because, notwithstanding the revision of 100% of the protested precincts and 25% of the counter-protested precincts, petitioner's margin over private respondent was still more than a thousand votes.

Petitioner is wrong.

First, there are 732 precincts in the 2nd Legislative District of Taguig City, where respondent protested the election results in 170 precincts and petitioner counter-protested 560 precincts.[38] All in all, therefore, 730 precincts were the subject of the revision proceedings. While 100% of the protested precincts were already revised, only 25% or 140 of the counter-protested precincts (or a total of 310 precincts) were actually done. Yet, with 420 more precincts to go had the HRET only been allowed to continue its proceedings, petitioner claims that respondents were only speculating that a sufficient number of fake/spurious ballots would be discovered in the remaining 75% counter-protested precincts and that these fake/spurious ballots would overturn the result of the election.

This is ironic because, while petitioner faults the HRET for allegedly engaging in speculation, his position is itself based on conjectures. He assumes that revising the 420 remaining precincts will not substantially or significantly affect the original result of the election which will remain the same. As such, he speculates that, if revised, the 420 remaining precincts will only yield the same or similar finding as that generated in the 310 precincts already subjected to revision. He presupposes that the HRET can determine the true will of the electorate even without the 420 or 75% of counter-protested precincts. (This in fact constitutes 57% of all 730 precincts in the legislative district.)

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[38] 170 protested precincts plus 560 counter-protested precincts equals 730 precincts. This leaves 2 unprotested precincts.

Petitioner may have assumed too much.

Indeed, due regard and respect for the authority of the HRET as an independent constitutional body require that any finding of grave abuse of discretion against that body should be based on firm and convincing proof, not on shaky assumptions. Any accusation of grave abuse of discretion on the part of the HRET must be established by a **clear showing** of arbitrariness and improvidence.[39] But the Court finds no evidence of such grave abuse of discretion by the HRET.

In *Co v. HRET*,[40] we held that:

> **The Court does not venture into the perilous area of trying to correct perceived errors of independent branches of the Government**. It comes in only when it has to vindicate a denial of due process or correct an abuse of discretion so grave or glaring that no less than the Constitution calls for remedial action.[41] (emphasis supplied)

Second, the Constitution mandates that the HRET "shall be the sole judge of all contests relating to the election, returns and qualifications"[42] of its members. By employing the word "sole," the Constitution is emphatic that the jurisdiction of the HRET in the adjudication of election contests involving its members is exclusive and exhaustive.[43] Its exercise of power is intended to be its own — full, complete and unimpaired.[44]

Protective of its jurisdiction and assertive of its constitutional mandate, the Tribunal adopted Rule 7 of the HRET Rules:

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[39] *Robles v. HRET*, G.R. No. 86647, 05 February 1990, 181 SCRA 780.

[40] G.R. Nos. 92191-92 and 92202-03, 30 July 1991, 199 SCRA 692.

[41] *Id.*

[42] *Supra* note 36.

[43] *Dimaporo v. House of Representatives Electoral Tribunal*, G.R. No. 158359, 23 March 2004, 426 SCRA 226; *Angara v. Electoral Commission*, 63 Phil. 139 (1936).

[44] *Angara v. Electoral Commission*, *id.*, p. 175.

RULE 7. *Control of Own Functions*. — The Tribunal shall have **exclusive control, direction and supervision of all matters pertaining to its own functions and operation**. (emphasis supplied)

In this connection and in the matter of the revision of ballots, the HRET reserved for itself the discretion to continue or discontinue the process. Rule 88 of the HRET Rules provides:

RULE 88. *Pilot Precincts; Initial Revision*. — Any provision of these Rules to the contrary notwithstanding, as soon as the issues in any contest before the Tribunal have been joined, it may direct and require the protestant and counter-protestant, in case the protest or counter-protest involves more than 50% of the total number of precincts in the district, to state and designate in writing within a fixed period at most twenty-five (25%) percent of the total number of precincts involved in the protest or counter-protest, as the case may be, which said party deems as best exemplifying or demonstrating the electoral irregularities or frauds pleaded by him; and the revision of the ballots and/or reception of evidence shall begin with such pilot precincts designated. Upon the termination of such initial revision and/or reception of evidence, which presentation of evidence should not exceed ten (10) days, and based upon what reasonably appears therefrom as **affecting** or not the officially-proclaimed results of the contested election, **the Tribunal may direct *motu proprio* the continuation of the revision of ballots in the remaining contested precincts**, or dismiss the protest, or the counter-protest, without further proceedings. (emphasis supplied)

The meaning of Rule 88 is plain. The HRET could continue or discontinue the revision proceedings *ex proprio motu*, that is, of its own accord.[45] Thus, even if we were to adopt petitioner's view that he ought to have been allowed by HRET to withdraw his counter-protest, there was nothing to prevent the HRET from continuing the revision **of its own accord** by authority of Rule 88.

The only prerequisite to the exercise by the HRET of its prerogative under Rule 88 was its own determination that the evidence thus far presented could affect the officially proclaimed

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[45] Black's *Law Dictionary*.

results. Much like the appreciation of contested ballots and election documents, the determination of whether the evidence could influence the officially proclaimed results was a highly technical undertaking, a function best left to the specialized expertise of the HRET. In *Abubakar v. HRET*,[46] this Court declined to review the ruling of the HRET on a matter that was discretionary and technical. The same sense of respect for and deference to the constitutional mandate of the HRET should now animate the Court in resolving this case.

On this specific point, the HRET held that it "[could] not determine the true will of the electorate from the [result of the] initial revision and appreciation."[47] It was also "convinced that the revision of the 75% remaining precincts … [was] necessary under the circumstances in order to attain the objective of ascertaining the true intent of the electorate and to remove any doubt as to who between [private respondent] and [petitioner] obtained the highest number of votes in an election conducted in a fair, regular and honest manner."[48]

At the risk of unduly encroaching on the exclusive prerogative of the HRET as the sole judge of election contests involving its members, **the Court cannot substitute its own sense or judgment for that of the HRET on the issues of whether the evidence presented during the initial revision could affect the officially proclaimed results and whether the continuation of the revision proceedings could lead to a determination of the true will of the electorate.** Regrettably, that is what petitioner actually wants the Court to do. But in the exercise of its checking function, the Court should merely test whether or not the governmental branch or agency has gone beyond the constitutional limits of its jurisdiction, **not that it erred or had a different view**.[49]

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[46] G.R. No. 173310, 07 March 2007, 517 SCRA 762.

[47] HRET order dated September 25, 2008. *Rollo*, p. 167.

[48] HRET order dated October 21, 2008. *Id.*, pp. 180-183.

[49] *Co v. HRET*, *supra* note 40.

Petitioner's position disregards, or at least waters down, Rules 7 and 88 of the HRET Rules. If the Court will dictate to the HRET on how to proceed with these election protest proceedings, the Tribunal will no longer have "exclusive control, direction and supervision of all matters pertaining to its own functions and operation." It will constitute an intrusion into the HRET's domain and a curtailment of the HRET's power to act **of its own accord** on its **own evaluation** of the evidentiary weight and effect of the result of the initial revision.

Libanan v. HRET[50] expressed the Court's recognition of the limitation of its own power *vis-à-vis* the extent of the authority vested by the Constitution on the HRET as sole judge of election contests involving its members. The Court acknowledged that it could not restrict, diminish or affect the HRET's authority with respect to the latter's exercise of its constitutional mandate. Overturning the HRET's exercise of its power under Rule 88 will not only emasculate its authority but will also arrogate unto this Court that body's purely discretionary function.

Finally, it is hornbook doctrine that jurisdiction, once acquired, is not lost at the instance of the parties but continues until the case is terminated.[51] Thus, in *Robles v. HRET*,[52] the Court ruled:

> **The mere filing of the motion to withdraw protest on the remaining uncontested precincts, without any action on the part of respondent tribunal, does not by itself divest the tribunal of its jurisdiction over the case**. Jurisdiction, once acquired, is not lost upon the instance of the parties but continues until the case is terminated. We agree with respondent House of Representatives Electoral Tribunal when it held:
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> > We cannot agree with Protestee's contention that Protestant's 'Motion to Withdraw Protest on Unrevised Precincts' effectively

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[50] *Supra* note 37.

[51] *Jimenez v. Nazareno*, G.R. No. L-37933, 15 April 1988, 160 SCRA 1.

[52] *Supra* note 39.

with drew the precincts referred to therein from the protest even before the Tribunal has acted thereon. **Certainly, the Tribunal retains the authority to grant or deny the Motion, and the withdrawal becomes effective only when the Motion is granted. To hold otherwise would permit a party to deprive the Tribunal of jurisdiction already acquired**.

We hold therefore that this Tribunal retains the power and the authority to grant or deny Protestant's Motion to Withdraw, if only to insure that the Tribunal retains sufficient authority to see to it that the will of the electorate is ascertained.

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Where the court has jurisdiction over the subject matter, its orders upon all questions pertaining to the cause are orders within its jurisdiction, and however erroneous they may be, they cannot be corrected by *certiorari*. **This rule more appropriately applies to respondent HRET whose independence as a constitutional body has time and again been upheld by Us in many cases**. As explained in the case of *Lazatin v. The House of Representatives Electoral Tribunal and Timbol*, G.R. No. 84297, December 8, 1988, thus:

The use of the word 'sole' emphasizes the exclusive character of the jurisdiction conferred [*Angara v. Electoral Commission*, *supra*, at 162]. The exercise of the Power by the Electoral Commission under the 1935 Constitution has been described as `intended to be complete and unimpaired as if it had remained originally in the legislature' [*Id*. at 175]. Earlier, this grant of power to the legislature was characterized by Justice Malcolm as 'full, clear and complete' [*Veloso v. Board of Canvassers of Leyte and Samar*, 39 Phil. 886 (1919)]. Under the amended 1935 Constitution, the power was unqualifiedly reposed upon the Electoral Tribunal [*Suanes v. Chief Accountant of the Senate*, 81 Phil. 818 (1948)] and it remained as full, clear and complete as that previously granted the legislature and the Electoral Commission [*Lachica v. Yap*, G.R. No. L-25379, September 25, 1968, 25 SCRA 140]. The same may be said with regard to the jurisdiction of the Electoral Tribunals under the 1987 Constitution. Thus, 'judicial review of decisions or final resolutions of the House Electoral Tribunal is (thus) possible only in the exercise of this Court's so-called extraordinary jurisdiction, . . . upon a determination that the tribunal's decision or resolution was rendered without or in

> excess of its jurisdiction, or with grave abuse of discretion or, paraphrasing Morrera, upon a clear showing of such arbitrary and improvident use by the Tribunal of its power as constitutes a denial of due process of law, or upon a demonstration of a very clear unmitigated ERROR, manifestly constituting such a GRAVE ABUSE OF DISCRETION that there has to be a remedy for such abuse.[53] (emphasis supplied)

Petitioner's argument will in effect deprive the HRET of the jurisdiction it has already acquired. It will also hold the HRET hostage to the whim or caprice of the parties before it. If the HRET is the independent body that it truly is and if it is to effectively carry out its constitutional mandate, the situation urged by petitioner should not be allowed.

DISCRETION OF HRET TO USE ITS OWN FUNDS IN REVISION PROCEEDINGS

When jurisdiction is conferred by law on a court or tribunal, that court or tribunal, unless otherwise provided by law, is deemed to have the authority to employ all writs, processes and other means to make its power effective.[54] Where a general power is conferred or duty enjoined, every particular power necessary for the exercise of one or the performance of the other is also conferred.[55] Since the HRET possessed the authority to *motu proprio* continue a revision of ballots, it also had the wherewithal to carry it out. It thus ordered the disbursement of its own funds for the revision of the ballots in the remaining counter-protested precincts. We hark back to Rule 7 of the HRET Rules which provides that the HRET has exclusive control, direction and supervision of its functions. The HRET's order was but one aspect of its power.

Moreover, Rule 8 of the HRET Rules provides:

> RULE 8. *Express and Implied Powers*. — The Tribunal shall have and exercise all such powers as are vested in it by the Constitution

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[53] *Id.* (citations omitted), pp. 784-786.

[54] *Suanes v. Chief Accountant*, 81 Phil. 818 (1948).

[55] *Angara v. Electoral Commission*, *supra* note 43.

or by law, and **such other powers as are necessary or incidental to the accomplishment of its purposes and functions** as set forth in the Constitution or as may be provided by law. (emphasis supplied)

Certainly, the HRET's order that its own funds be used for the revision of the ballots from the 75% counter-protested precincts was an exercise of a power necessary or incidental to the accomplishment of its primary function as sole judge of election protest cases involving its members.

Petitioner contends that, even if the HRET could lawfully order the continuation of the revision, RA 9498 did not authorize the Tribunal to use its own funds for the purpose. This belief is questionable on three grounds.

First, if petitioner hypothetically admits that the HRET has the power to order the continuation of the revision of the 75% remaining counter-protested precincts, then he should also necessarily concede that there is nothing to prevent the HRET from using its own funds to carry out such objective. Otherwise, the existence of such power on the part of the HRET becomes useless and meaningless.

Second, petitioner has a very restrictive view of RA 9498. He conveniently fails to mention that Section 1, Chapter 1 of RA 9498 provides that the HRET has an allotted budget for the "Adjudication of Electoral Contests Involving Members of the House of Representatives."[56] The provision is general and encompassing enough to authorize the use of the HRET's funds for the revision of ballots, whether in a protest or counter-protest. Being allowed by law, the use of HRET funds for the revision of the remaining 75% counter-protested precincts was not illegal, much less violative of Article 220 of the Revised Penal Code.

To reiterate, the law (particularly RA 9498) itself has appropriated funds for adjudicating election contests in the HRET. As an independent constitutional body, and having received the proper appropriation for that purpose, the HRET had wide discretion in the disbursement and allocation of such funds.

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[56] In particular, the amount of ₱49,727,000 was appropriated for this purpose.

Third, even assuming that RA 9498 did not expressly authorize the HRET to use its own funds for the adjudication of a protest or counter-protest, **it had the inherent power to suspend its own rules**[57] and disburse its funds for any lawful purpose it deemed best. This is specially significant in election contests such as this where what is at stake is the vital public interest in determining the true will of the electorate. In any event, nothing prevented the HRET from ordering any of the parties to make the additional required deposit(s) to cover costs, as respondent in fact manifested in the HRET.[58] Petitioner himself admits in his pleadings that private respondent filed a

> Formal Manifestation with the respondent HRET informing respondent HRET that he [was] willing to make the added cash deposit to shoulder the costs and expenses for the revision of [the] counter-protested precincts.[59]

Such disbursement could not be deemed a giving of unwarranted benefit, advantage or preference to a party since the benefit would actually redound to the electorate whose true will must be determined. Suffrage is a matter of public, not private, interest. The Court declared in *Aruelo, Jr. v. Court of Appeals*[60] that "[o]ver and above the desire of the candidates to win, is the deep public interest to determine the true choice of the people."[61] Thus, in an election protest, any benefit to a party would simply be incidental.

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[57] This power is a necessary incident of the power of the electoral tribunals to create their own rules. (*See* II Records of the Constitutional Commission 87-88.)

[58] In the memorandum (p. 22), filed by private respondent in this Court, he mentioned his manifestation in the HRET that **"he is willing to shoulder the expenses of the revision of the remaining unrevised precincts."**

[59] Petition, p. 13. *Rollo*, p. 15. Petitioner made a similar statement in his memorandum (p. 18):

> …[REYES] filed his…*Formal Manifestation* with the Respondent HRET declaring that, even as PROTESTANT, he was more than willing [to] shoulder the costs and remit the added cash deposits for the revision of [petitioner's] protested precincts…

[60] G.R. No. 107852, 20 October 1993, 227 SCRA 311.

[61] *Id.*

Moreover, the action of the HRET was permitted by the HRET Rules. Rule 33 of the HRET Rules provides:

> RULE 33. *Effect of Failure to Make Cash Deposit.* — If a party fails to make the cash deposits or additional cash deposits herein provided within the prescribed time limit, the Tribunal may dismiss the protest, counter-protest, or petition for *quo warranto*, or **take such action as it may deem equitable under the premises**. (emphasis supplied)

All told, it should be borne in mind that the present petition is a petition for *certiorari* under Rule 65 of the Rules of Court. It alleges that the HRET committed grave abuse of discretion amounting to lack or excess of jurisdiction when it promulgated Resolution No. 08-353 dated November 27, 2008. But what is "grave abuse of discretion?" It is such capricious and whimsical exercise of judgment which is tantamount to lack of jurisdiction. Ordinary abuse of discretion is insufficient. The abuse of discretion must be grave, that is, the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility. It must be so patent and gross as to amount to evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of the law. In other words, for a petition for *certiorari* to prosper, there must be a clear showing of caprice and arbitrariness in the exercise of discretion. There is also grave abuse of discretion when there is a contravention of the Constitution, the law or existing jurisprudence.[62] Using the foregoing as yardstick, the Court finds that petitioner miserably failed to discharge the *onus probandi* imposed on him.

In sum, the supremacy of the Constitution serves as the safety mechanism that will ensure the faithful performance by this Court of its role as guardian of the fundamental law. Awareness of the proper scope of its power of judicial review in cases involving the HRET, an independent body with a specific constitutional mandate, behooves the Court to stay its hands in matters involving the exercise of discretion by that body, except in clear cases of grave abuse of discretion.

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[62] *Perez v. Court of Appeals*, G.R. No. 162580, 27 January 2006, 480 SCRA 411, 416.

A FINAL WORD

We are not declaring any winner here. We do not have the authority to do so. We are merely remanding the case to the HRET so that revision proceedings may promptly continue, precisely to determine the true will of the electorate in the 2nd legislative district of Taguig City for the 2007-2010 congressional term.

Indeed, considering the paramount need to dispel the uncertainty now beclouding the choice of the electorate and the lifting of the *status quo ante* order on June 16, 2009, the revision proceedings shall resume immediately and the electoral case resolved without delay.

WHEREFORE, the petition is hereby *DISMISSED* and Resolution No. 08-353 dated November 27, 2008 of the House of Representatives Electoral Tribunal *AFFIRMED*.

Costs against petitioner.

SO ORDERED.

Puno, C.J., Chico-Nazario, Velasco, Jr., Leonardo-de Castro, Brion, and *Peralta, JJ.,* concur.

Quisumbing, J., dissents.

Carpio, and *Bersamin, JJ.,* join the dissent of *J.* Quisumbing.

Nachura, J., see separate opinion.

Ynares-Santiago, J., no part, Chair of HRET.

Carpio Morales, J., no part, member of the HRET at the time the assailed Resolution was issued.

DISSENTING OPINION

QUISUMBING, *J.*:

I regret I have to register my dissent in this case. The decision gives the HRET unbridled discretion to proceed with the revision of ballots even if the protestant failed to show that the results of the initial revision reasonably affected the officially proclaimed

results, in direct contravention of the parameters and guidelines that the HRET itself has set. I elucidate, thus:

Assailed via Petition for *Certiorari* and Prohibition with prayer for a Temporary Restraining Order (TRO)[1] is Resolution No. 08-353[2] of the House of Representatives Electoral Tribunal (HRET) dated November 27, 2008 in HRET Case No. 07-027. The HRET denied petitioner Henry "Jun" Dueñas, Jr.'s Urgent Motion to Withdraw/Abandon the Remaining Seventy-Five Percent Counter-Protested Precincts and reiterated its Order[3] dated October 21, 2008 directing the Secretary of the Tribunal to conduct revision of ballots in the 75% counter-protested precincts beginning December 2008. The HRET additionally recalled its other Order,[4] likewise dated October 21, 2008, directing protestee Dueñas to augment his cash deposit in the amount of three hundred twenty thousand pesos (₱320,000.00) to cover the expenses for the said revision, and instead ordered that the said expenses be taken from the available funds of the Tribunal.

The factual antecedents are as follows:

Petitioner Henry "Jun" Dueñas, Jr. and private respondent Angelito "Jett" P. Reyes were candidates for the position of Congressman in the 2nd Legislative District of Taguig City during the May 14, 2007 synchronized national and local elections. After the canvass of the votes on May 23, 2007, Dueñas, who garnered a total of 28,564 votes,[5] was proclaimed winner by the District Board of Canvassers over Reyes who only garnered a total of 27,107 votes.[6]

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[1] *Rollo*, pp. 3-46.

[2] *Id.* at 50-56.

[3] *Id.* at 180-183.

[4] *Id.* at 184.

[5] *Id.* at 68.

[6] *Id.* at 131.

On June 4, 2007, Reyes filed an Election Protest *Ad Cautelam*[7] before the HRET, alleging that insidious and well-orchestrated electoral frauds and anomalies were committed in various forms in 170 of the 732 precincts in the 2nd Legislative District of Taguig City on the day of the elections, during the counting, and during the canvass of the election returns which resulted in the systematic reduction of the actual votes obtained by him and in the corresponding increase in the votes obtained by Dueñas. Reyes asked for the revision/recount of the ballots and other election documents in 170 precincts[8] so that the true and real mandate of the electorate may be ascertained.[9]

On June 25, 2007, Dueñas filed his Answer with Counter-Protest.[10] Dueñas denied the charges in the protest and countered that if there indeed had been electoral frauds and anomalies during the conduct of the elections, the same were perpetrated to favor Reyes.[11] Dueñas counter-protested the results of the elections in 560[12] precincts where he claimed that several ballots were deliberately misread, miscounted and misappreciated resulting in the illegal reduction of votes in his favor.[13]

After the issues were joined, the HRET ordered the collection and retrieval of all ballot boxes and other election paraphernalia involved in the protest and counter-protest to be brought to the HRET for custody.

On July 12, 2007, the HRET issued an Order setting the date of the Preliminary Conference on July 26, 2007,[14] during which Dueñas and Reyes agreed, among others, that all of the

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[7] *Id.* at 57-66.

[8] *Id.* at 108-111.

[9] *Id.* at 61-63.

[10] *Id.* at 113-128.

[11] *Id.* at 118.

[12] *Id.* at 131. The Preliminary Conference Order shows, however, that the counter-protested precincts number 562.

[13] *Id.* at 120-125.

[14] *Id.* at 11.

protested precincts would be revised without need of designation of pilot precincts by Reyes pursuant to Rule 88 of the 2004 HRET Rules, since the total number of the protested precincts was less than 50% of the total number of the precincts in the legislative district.[15]

On August 30, 2007, the HRET issued an Order,[16] which directed the revision of ballots starting September 18, 2007.

Reception of evidence for the parties followed upon the completion of the revision of ballots in 100% of the protested precincts and 25% of the counter-protested precincts. After the filing of the parties' respective memoranda, the case was submitted for resolution.

On September 25, 2008, the HRET issued an Order directing the continuation of the revision and appreciation of the remaining counter-protested precincts. The Order reads:

> It appearing that the Tribunal cannot determine the true will of the electorate from the initial revision and appreciation of the 100% protested precincts and 25% counter-protested precincts and in view of the discovery of fake/spurious ballots in some of the protested and counter-protested precincts, the Tribunal pursuant to Rule 88 of the 2004 Rules of the House of Representatives Electoral Tribunal and Section 17, Article VI of the Constitution, **DIRECTS** the continuation of the revision and appreciation of the remaining counter-protested precincts.
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> SO ORDERED.[17]

Not agreeing with the HRET's Order of September 25, 2008, Dueñas moved for the reconsideration of the same.[18] However, the HRET denied his motion in its Order dated October 21, 2008 where the Tribunal decreed:

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[15] *Id.* at 131.

[16] *Id.* at 136-137.

[17] *Id.* at 167.

[18] *Id.* at 168-177.

WHEREFORE, protestee's *Motion for Reconsideration of the Order* of the Tribunal dated September 25, 2008 is **DENIED**. The Secretary of the Tribunal is **AUTHORIZED** to **CONDUCT** the revision of ballots in the remaining seventy-five percent (75%) counter-protested precincts involved in the instant case.[19]

On even date, the Tribunal issued another Order which directed Dueñas to augment his cash deposit, which would be used to cover the expenses of the revision of ballots in the remaining 75% counter-protested precincts. The order reads:

WHEREFORE, protestee is **DIRECTED** to **AUGMENT** his cash deposit in the amount of three hundred twenty thousand pesos (₱320,000.00) within a non-extendible period of ten (10) days from notice hereof.

SO ORDERED.[20]

On October 27, 2008, Dueñas filed his Urgent Motion to Withdraw/Abandon the Remaining Seventy-Five Percent Counter-Protested Precincts.[21] Essentially, Dueñas contended that Reyes failed to prove his case through his own evidence in the designated protested precincts. Thus, as a matter of course, the protest must be dismissed, for it is axiomatic that the protestant must rely on and stand by his own protested precincts and should not be allowed to depend on the results of the precincts that he has not protested.[22] Dueñas also maintained that being himself a protestant in his own designated counter-protested precincts, he had the prerogative of withdrawing and/or abandoning the remaining 75% counter-protested precincts, as what he was doing in this case.[23] Dueñas averred that the results of the physical count were practically the same as the officially proclaimed results, thereby showing that the revision of ballots did not

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[19] *Id.* at 183.

[20] *Id.* at 184.

[21] *Id.* at 185-199.

[22] *Id.* at 186.

[23] *Id.* at 187.

alter the results of the elections in the 2nd Legislative District of Taguig City.[24] As such, he manifested that there was no need to continue with the revision of the remaining 75% counter-protested precincts.[25]

In his Comment/Opposition[26] filed on November 3, 2008, Reyes contended that Dueñas' allegations in his urgent motion were bereft of merit and merely dilatory. He averred that Dueñas' failure to prove his allegations of election irregularities and anomalies coupled with his failure to make a reservation during the Preliminary Conference that he would withdraw/abandon his counter-protest if the protestant failed to prove his cause of action were enough reasons not to allow him to withdraw/abandon his counter-protest, especially so when the Tribunal had found compelling reasons for its continuance. Reyes further contended that the withdrawal of the remaining unrevised precincts was highly suspect, a mere afterthought, since Dueñas decided on the same only after his motion for reconsideration of the September 25, 2008 HRET Order was denied. Contrary to the view of Dueñas, the withdrawal/abandonment and suspension of the revision of ballots lay within the exclusive prerogative and wise discretion of the Tribunal; hence, neither of the parties to an election protest may claim any vested right therefor, Reyes added.[27]

On November 27, 2008, the HRET issued its assailed Resolution No. 08-353, which (1) denied Dueñas' urgent motion, (2) reiterated its October 21, 2008 Order directing the continuation of the revision of ballots in the remaining 75% counter-protested precincts, and (3) recalled its other Order, also dated October 21, 2008, which required Dueñas to augment his cash deposit. The HRET instead ordered that the needed funds for the revision be shouldered by the Tribunal.

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[24] *Id.* at 190-193.

[25] *Id.* at 193.

[26] *Id.* at 200-205.

[27] *Id.* at 200-202.

The HRET held that pursuant to Rule 88 of the 2004 HRET Rules and settled jurisprudence, the Tribunal has the discretion to either dismiss the protest or counter-protest, or to continue with the revision if necessitated by reasonable and sufficient grounds affecting the validity of the election, with the end in view of ascertaining the true choice of the electorate. The mere filing of a motion to withdraw/abandon the unrevised precincts, therefore, does not automatically divest it of its jurisdiction over the same. Moreover, the Tribunal ruled that its task of determining the true will of the electorate is not confined to the examination of the contested ballots. Under its plenary power, it can *motu proprio* review the validity of every ballot involved in a protest or counter-protest, and the same cannot be frustrated by the mere expedient of filing a motion to withdraw/abandon the remaining counter-protested precincts. Having ruled with finality that the Tribunal could not determine the true will of the electorate of Taguig City from the initial revision of the 100% protested precincts and the 25% counter-protested precincts, it had no other recourse but to continue the revision and appreciation of all the remaining 75% counter-protested precincts.[28]

Hence, the present petition where Dueñas raised the following issues for our resolution:

I.

WHETHER RESPONDENT HRET CAN FORCE/COMPEL THE REVISION OF A PROTESTEE'S COUNTER-PROTESTED PRECINCTS, EVEN AS THE PROTESTANT HAS FAILED TO PROVE HIS CAUSE IN THE MAIN PROTEST AND AFTER REVISION OF ALL [100%] OF HIS PROTESTED PRECINCTS; AND DESPITE THE FACT THAT THE PROTESTEE/PETITIONER DUEÑAS HAS MANIFESTED HIS DESIRE, AND FORMALLY MOVED, TO WITHDRAW AND ABANDON HIS VERY OWN REMAINING COUNTER-PROTESTED PRECINCTS.

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[28] *Id.* at 53-55.

II.

WHETHER THE RESPONDENT HRET, IN FORCING THE REVISION OF THE **UNDESIRED** COUNTER-PROTEST, CAN LEGITIMATELY BURDEN ITSELF WITH THE FINANCIAL OBLIGATION OF SHOULDERING THE COSTS AND EXPENSES OF THE SAID UNWANTED REVISION, IN THE PROCESS, BY DISBURSING **PUBLIC FUNDS** TO PURSUE AN EXERCISE THAT IS CLEARLY INTENDED TO SOLELY BENEFIT PROTESTANT/ PRIVATE RESPONDENT REYES, A PRIVATE PARTY.[29]

The core issue for our determination is whether the HRET gravely abused its discretion, amounting to lack or excess of jurisdiction, in issuing the assailed resolution.

Dueñas argued in the main that the protestant in an election protest, Reyes in this case, was the party burdened and obligated to prove his cause. Failing to do so, his protest must not be unduly prolonged but must be immediately dismissed. HRET's declaration of its failure to ascertain the true will of the electorate after the revision of 100% of the protested precincts had been completed clearly demonstrated that Reyes failed in his bid. Thus, the Tribunal gravely abused its discretion when it ordered the continuation of the revision of ballots in the remaining unrevised precincts, as its acts amounted to giving Reyes the underserved chance to prevail by assisting him in speculatively searching for a basis and evidence to prove his case, effectively taking the cudgels for him, and thereby compromising its impartiality and independence. He also averred that Reyes' failure to prove his contentions and the concomitant withdrawal of the counter-protest made the continued revision irrelevant and unnecessary, insisting that he has the right to withdraw his protest. Additionally, Dueñas argued that a counter-protest was designed to protect and advance the interest of the protestee; hence, Reyes could not expect to derive any benefit therefrom. This reason, he urged, further justified the allowance of the withdrawal of the counter-protest.[30]

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[29] *Id.* at 13-14.

[30] *Id.* at 18-21, 32-36.

Dueñas also labeled as grave abuse of discretion, the Tribunal's act of assuming the burden of the costs of the revision. He argued that the funds of the Tribunal should not be used for the benefit of a private party, especially so when its only objective was to speculate whether *"the failed protestant can win,"* and also because such amounted to illegal and unconstitutional disbursement of public funds, proscribed under Article VI, Section 29 (1)[31] of the Constitution.[32]

Dueñas added that the discretion extended to the Tribunal pursuant to Rule 88 of the 2004 HRET Rules on whether to continue with the revision may be exercised only when the results of the initial revision showed that the same reasonably affected the officially-proclaimed results of the contested election. According to him, the Tribunal never made any determination that the results of the revision showed Reyes to have made substantial recoveries in support of his cause. Rather, its first order which directed the continuation of the revision was premised on its failure to determine the true will of the electorate and its discovery of fake/spurious ballots. He further contended that in any event, the alleged fake/spurious ballots were discovered in only 2 out of the total 170 protested precincts and in only 2 out of the 140 pilot counter-protested precincts. The total number of alleged fake/spurious ballots was only 75, or a little over five percent (5%) of his 1,457 lead votes; hence, it could not reasonably be inferred to have affected the officially proclaimed results. The fake/spurious ballots could not be made the basis for the continuation of the revision of ballots.[33]

Furthermore, Dueñas maintained that the difference in the results of the physical count of ballots and the results reflected in the election returns was inconsequential. As the table[34] herein

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[31] SEC. 29. (1) No money shall be paid out of the Treasury except in pursuance of an appropriation made by law.

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[32] *Rollo*, pp. 14-18.

[33] *Id.* at 21-29.

[34] *Id.* at 24-25.

below will show, he argued that no substantial change in the votes of the parties occurred after the revision. In fact, he stated, it even worked against Reyes, since the results of the physical count yielded lower votes for the latter. Thus:

PROTEST PROPER (100%; 170 Precincts):

BARANGAY	**Election Returns**		**Physical Count**	
	Reyes	*Dueñas*	*Reyes*	*Dueñas*
Bagong Tanyag	1,399	2,484	1,394	2,459
Maharlika Village	170	315	154	350
Signal Village	711	1,139	703	1,129
Upper Bicutan	1,605	2,691	1,590	2,668
Western Bicutan	1,245	1,963	1,234	1,951
TOTAL	**5,130**	**8,592**	**5,075**	**8,557**

COUNTER-PROTEST (25%; 140 Precincts):

BARANGAY	**Election Returns**		**Physical Count**	
	Reyes	*Dueñas*	*Reyes*	*Dueñas*
Maharlika Village	363	149	334	185
Signal Village	3,595	2,260	3,578	2,240
Western Bicutan	3,900	2,058	3,868	2,033
TOTAL	**7,858**	**4,467**	**7,780**	**4,458**

On December 16, 2008, the Court issued a status *quo ante* order[35] requiring the parties to observe the status *quo* prevailing before the filing of the petition. The Court also required the respondents to comment on the petition.[36]

In his Comment,[37] Reyes countered that no grave abuse of discretion may be attributed to the Tribunal in issuing its assailed

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[35] *Id.* at 215-216.

[36] *Id.* at 213-214.

[37] *Id.* at 255-278.

resolution. He contended that the HRET had every right to order the continuation of the revision of ballots after its discovery of fake/spurious ballots in favor of Dueñas. Its pronouncement that it could not determine the true will of the electorate, in fact, centers on this discovery. Thus, its constitutional mandate dictated that it ferret out the truth by completing the said revision. The Tribunal did not intend to favor him.[38]

Reyes also argued that Rule 88 of the 2004 HRET Rules gave the Tribunal the discretion to either dismiss the counter-protest or continue with the revision based on the outcome of the initial revision and appreciation proceedings and initial evidence presented by the parties. The mere filing of a motion to withdraw the protest on the remaining unrevised precincts did not divest the HRET of its jurisdiction over the electoral protest.[39]

Furthermore, the Tribunal may use its available funds to shoulder the cost of revision, as this was merely an incident to its discretion under the said Rule and its plenary powers under the Constitution. To hold otherwise would render its mandated functions meaningless and nugatory.[40]

The Tribunal, for its part, insisted in its Comment[41] that it did not commit any grave abuse of discretion. It belied the claim of Dueñas that there existed no legitimate reason to proceed with the revision of the remaining 75% counter-protested precincts. Like Reyes, it argued that the discovery of fake/spurious ballots created serious doubts on the sanctity of the ballots subject matter of the protest and counter-protest. Thus, it had no other choice but to open the ballot boxes in the counter-protested precincts and continue with its revision in order to ascertain and determine the true will of the electorate. Moreover, it posited that the discretion accorded to it by the Rules gave it

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[38] *Id.* at 256-258, 270.

[39] *Id.* at 263-267.

[40] *Id.* at 272.

[41] *Id.* at 288-318.

the imprimatur to order the continuation of the revision if based on its independent evaluation of the results of the initial revision, the same affected the officially proclaimed results of the contested election. Since the discovery of fake/spurious ballots, to its mind, had a bearing on the true results of the election, the Tribunal submitted that it was justified in issuing said order.[42]

The Tribunal also pointed out that contrary to the belief of Dueñas, the withdrawal of the revision of ballots was not a vested right of any party, as it must succumb to the higher dictates of public interest—that of determining the true choice of the people. And this determination cannot be made to depend upon the desire of any party, but is vested solely upon the discretion of the HRET as the "sole judge" of all contests relating to the elections, returns, and qualifications of members of the House of Representatives. Moreover, it averred that under its plenary powers, it could *motu proprio* review the validity of every ballot involved in a protest or counter-protest.[43]

The Tribunal further claimed that Dueñas also had no reason to worry or to object to its disbursement of its funds for the continuation of revision, since the Tribunal had the allotted budget for the same under paragraph I, (C.1) of Republic Act No. 9498,[44] or the General Appropriations Act for Fiscal Year 2008.[45]

For a petition for *certiorari* to prosper, it is incumbent upon the petitioner to show that caprice and arbitrariness characterized the act of the court or agency whose exercise of discretion is being assailed. This is because grave abuse of discretion is the capricious and whimsical exercise of judgment that amounts to lack or excess of jurisdiction. It contemplates

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[42] *Id.* at 301-306.

[43] *Id.* at 306-307.

[44] AN ACT APPROPRIATING FUNDS FOR THE OPERATION OF THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES FROM JANUARY ONE TO DECEMBER THIRTY-ONE, TWO THOUSAND AND EIGHT, AND FOR OTHER PURPOSES, begun on July 23, 2007.

[45] *Id.* at 312.

a situation where the power is exercised in an arbitrary and despotic manner by reason of passion or personal hostility—so patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform the duty enjoined by, or to act at all in contemplation of law. Grave abuse of discretion arises when a lower court or tribunal violates the Constitution, the law or existing jurisprudence.[46]

Crucial to our determination of whether grave abuse of discretion tainted the issuance of the assailed resolution of the Tribunal is Rule 88 of the 2004 HRET Rules. Said rule provides:

RULE 88. ***Pilot Precincts; Initial Revision***.— Any provision of these Rules to the contrary notwithstanding, as soon as the issues in any contest before the Tribunal have been joined, it may direct and require the protestant and counter-protestant, ***in case the protest or counter-protest involves more than 50% of the total number of precincts in the district***, to state and designate in writing within a fixed period at most twenty-five (25%) percent of the total number of precincts involved in the protest or counter-protest, as the case may be, which said party deems as best exemplifying or demonstrating the electoral irregularities or frauds pleaded by him; and the revision of the ballots and/or reception of evidence shall begin with such pilot precincts designated. Upon the termination of such initial revision and/or reception of evidence, ***which presentation of evidence should not exceed ten (10) days***, and based upon what reasonably appears therefrom as affecting or not the officially proclaimed results of the contested election, the Tribunal may ***direct motu proprio the continuation of the revision of ballots in the remaining contested precincts, or dismiss the protest, or the counter-protest, without further proceedings.*** (Emphasis supplied.)

Rule 88 clearly vested the Tribunal the discretion to either direct the continuation of the revision of ballots in the remaining contested precincts or dismiss the protest or counter-protest. However, it is also explicit in the Rules that the exercise of this

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[46] *Cabrera v. Commission on Elections*, G.R. No. 182084, October 6, 2008; pp. 4-5. *Fernandez v. Commission on Elections*, G.R. No. 171821, October 9, 2006, 504 SCRA 116, 119; *Perez v. Court of Appeals*, G.R. No. 162580, January 27, 2006, 480 SCRA 411, 416.

discretion is not unbridled, but one that must be exercised within the parameters set by the Rules.

Under the said Rule, if the protest or counter-protest involves more than 50% of the total number of precincts in the district, the Tribunal may direct the protestant or counter-protestant to choose the precincts questioned by him in his protest or counter-protest that best exemplify or demonstrate the electoral irregularities or frauds pleaded by him, but in no case shall the selected precincts be more than 25% of the total number of precincts involved in the protest or counter-protest. The revision of ballots shall begin initially with said pilot precincts. If the protest or counter-protest involves less than 50% of the total number of precincts in the district, then the entire ballots involved in the protest or counter-protest shall be revised. The Rules provides further that the Tribunal may *motu proprio* direct the continuation of the revision or dismiss the protest or counter-protest if the results of the initial revision reasonably show that the same affected the officially-proclaimed results of the contested election. In other words, the Tribunal can *motu proprio* dismiss the protest or counter-protest if the results of the *initial* revision show that such revision cannot possibly change the results of the contested election; otherwise, the revision of the ballots in the remaining contested precincts will continue.

All things carefully considered and viewed in their proper perspective, it is my considered view that the Tribunal acted with grave abuse of discretion in issuing the assailed Resolution.

In the case at bar, respondents invoked the discretion granted to the Tribunal under Rule 88 to direct the continuation of the revision of ballots in the remaining 75% counter-protested precincts. As I have stated, the Rules had set guidelines for the exercise of this discretion. At the risk of being redundant, I emphasize that the ballots in the entire protested precincts had been revised. Thus, there had been not only an initial revision of ballots therein, but a total revision. Hence, with more reason that the results thereof must show that Reyes garnered significantly higher votes. However, there was no categorical pronouncement as to this. Instead, the Tribunal issued a vague Order wherein

it directed the continuation of the revision of ballots in the remaining 75% counter-protested precincts, because it could not determine the true will of the electorate from the initial revision and appreciation of the 100% protested precincts and 25% counter-protested precincts and in view of the discovery of fake/spurious ballots. The justification given for the continuation of the revision is premised on the discovery of fake/spurious ballots, which according to the respondents created serious doubts as to who really won in the election.[47] The records show, however, that the fake/spurious ballots that surfaced were inconsequential. Reyes claimed that 87[48] fake/spurious ballots were uncovered after the revision of 100% of the protested precincts and 25% of the counter-protested precincts, while Dueñas said there were only 75. No matter what the number, we do not see how such can affect the result of the contested election. As admitted by the parties in the preliminary conference, Dueñas enjoys a lead of 1,457 votes.[49] Eighty-seven votes are but a fraction of Dueñas' lead margin. What can be gleaned from the foregoing is that respondents are only speculating that a sufficient number of fake/spurious ballots will be discovered in the remaining 75% counter-protested precincts and that these fake/spurious ballots will overturn the result of the election. Thus, it was a grave abuse of discretion for the Tribunal to order the continuation of the said revision based on pure conjecture.

It is conceded that the mere act of filing a motion to withdraw or abandon a counter-protest does not automatically divest the Tribunal of its jurisdiction over the case. To have it any other way will frustrate the intent of the Rules to accord the Tribunal the right to proceed with the case or dismiss the same if the evidence obtaining in the case warrants. However, to repeat, such discretion may not be exercised wantonly and in reckless disregard of the limitations set by the Rules.

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[47] *Id.* at 268-270, 303-306.

[48] *Id.* at 165.

[49] *Id.* at 131.

What is apparent is the desire of Reyes for the revision to continue in the hope that the results therefrom would redound to his benefit, under the pretense that the paramount interest of the electorate to know the true winner prevails over technicalities.[50] Ultimately, what Reyes is trying to do is underhandedly change the theory of his case by banking on the results of the revision of ballots in the remaining 75% counter-protested precincts. This cannot be allowed.

At the outset, Reyes seemed confident that the revision of ballots in the 170 precincts he protested will guarantee his win. Seeing that the revision thereof did not give him the results he was expecting, he veered away from his original theory, and this time impugned the elections in the precincts not involved in his protest by claiming that revision of ballots must be brought to completion in order that the people's choice may be ascertained. Allowing Reyes to rely on the results of the precincts not included in his protest to establish his case is tantamount to allowing him to substantially amend his protest by broadening its scope at this very late date which is not allowed under Rule 28[51] of the 2004 HRET Rules. As the clear import of what Reyes intended to do was violative of the Rules, the Tribunal should not have acquiesced to the same by ordering the continuation of the revision.

The rule in an election protest is that the protestant or counter-protestant must stand or fall upon the issues he had raised in his original or amended pleading filed prior to the lapse of the statutory period for the filing of the protest or counter-protest.[52]

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[50] *Id.* at 261.

[51] RULE 28. *Amendments; Limitations.*— After the expiration of the period for the filing of the protest, counter-protest or petition for *quo warranto*, substantial amendments which broaden the scope of the action or introduce an additional cause or causes of action shall not be allowed. Any amendment in matters of form may be allowed at any stage of the proceedings.

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[52] *Batul v. Bayron*, G.R. Nos. 157687 and 158959, February 26, 2004, 424 SCRA 26, 33; *Trinidad v. Commission on Elections*, G.R. No. 134657, December 15, 1999, 320 SCRA 836, 841; *Arroyo v. House of Representatives Electoral Tribunal*, G.R. No. 118597, July 14, 1995, 246 SCRA 384, 402; *Ticao v. Nañawa*, No. L-17890, August 30, 1962, 5 SCRA 946, 950.

Thus, Reyes is bound by the issue that he essentially raised in his election protest; that is, the revision of ballots in the 170 precincts involved in his protest will reveal the massive fraud that transpired during the election and will confirm his victory. Besides, it is difficult to comprehend why Reyes did not include in his protest the precincts he now questions, albeit impliedly, if from the very start he was convinced that the election therein was marred by electoral fraud. What can be inferred from his act is that he did not attribute any irregularity or fraud therein and accepts the results of the counting as is, but had to change his stance later on as a last-ditch effort to prove his case.

While it is true that an election contest is impressed with public interest, such that the correct expression of the will of the electorate must be ascertained without regard to technicalities, this noble principle, however, must not be used as a subterfuge to hide the real intent of a party to prove his case through unacceptable means. For it is also the policy of the law that election contests should be decided promptly, such that title to public elective office be not left long under cloud[53] for the obvious reason that the term of the contested office grows shorter with the passing of each day.[54]

Having said that the Tribunal gravely abused its discretion in ordering the continuation of the revision of ballots in the remaining 75% counter-protested precincts, it follows that the Tribunal had no authority to use its own funds to cover the expenses of the said revision. Even assuming that under the circumstances it could lawfully order the continuation of the revision, still nowhere in Rep. Act No. 9498 does it state that the Tribunal may use its own funds for the revision. The ₱49,727,000 allotted budget of the Tribunal for the adjudication of electoral contests involving members of the House of Representatives was never intended by Rep. Act No. 9498 to cover expenses for the revision

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[53] *Gementiza v. Commission on Elections*, G.R. No. 140884, March 6, 2001, 353 SCRA 724, 731, citing *Estrada v. Sto. Domingo*, No. L-30570, July 29, 1969, 28 SCRA 890, 904.

[54] *Velez v. Varela, etc. and Florido*, 93 Phil. 282, 284 (1953); *Almeda v. Silvosa and Ramolete, etc.*, 100 Phil. 844, 849 (1957).

of ballots involved in any electoral contest. The said amount is intended to be used for personal services and maintenance and other operating expenses.[55] As succinctly stated in Section 1 of Rep. Act No. 9498, the funds are appropriated for the operation of the government and, therefore, not for any other purpose.[56]

It will be a different situation, however, if the protestant was able to reasonably demonstrate, based on the results of the revision of ballots in the precincts he protested, that he stood a good chance of winning, and then the counter-protestant refused to pay for the costs of the continuation of the revision of the counter-protested precincts yet to be revised for the sole purpose of preventing the protestant from confirming his victory. In this scenario, I submit that nothing prevents the HRET from relaxing or suspending its Rules. Sadly, such is not the situation in this case. To repeat, the protestant has not shown that he has any chance of winning.

Accordingly, I vote to grant the petition.

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[55] C.1 of Rep. Act No. 9498

C.1 HOUSE ELECTORAL TRIBUNAL

For general administration and support, and operations, as indicated hereunder…₱ 80,841,000

New Appropriations, by Program/Project

	Current_Operating_Expenditures			
	Personal Services	Maintenance and other Operating Expenses	Capital Outlays	Total
A. PROGRAMS				
x x x	x x x			x x x
II. Operations				
a. Adjudication of Electoral Contests involving Members of the House of Representatives	30,182,000	19,545,000		49,727,000
x x x	x x x			x x x

[56] Section 1. Appropriation of Funds. The following sums, or so much thereof as may be necessary, are hereby appropriated out of any funds in the National Treasury of the Philippines not otherwise appropriated, for the operation of the Government of the Republic of the Philippines from January one to December thirty-one, two thousand and eight, except where otherwise specifically provided herein.

SEPARATE DISSENTING OPINION

NACHURA, *J.*:

Albeit I concur with the majority that the House of Representative Electoral Tribunal (HRET) is vested by the Constitution with ample discretionary power in the resolution of contests relating to the election, returns and qualifications of the Members of the House.[1] I cannot agree that the HRET may utilize its own funds—public funds—to cover the expenses in the revision of the remaining 75% counter-protested precincts.

If such were done, then the HRET would violate Article 220[2] of the Revised Penal Code, and even risk likely prosecution under Section 3(e)[3] of Republic Act No. 3019 as amended, or

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[1] Article VI. Section 17 of the Constitution provides:

Section 17. The Senate and the House of Representatives shall each have an Electoral Tribunal which **shall be the sole judge of all contests relating to the election, returns, and qualifications of their respective Members**. Each Electoral Tribunal shall be composed of nine Members, three of whom shall be Justices of the Supreme Court to be designated by the Chief Justice, and the remaining six shall be Members of the Senate or the House of Representatives, as the case may be, who shall be chosen on the basis of proportional representation from the political parties and the parties or organizations registered under the party-list system represented therein. The Senior Justice in the Electoral Tribunal shall be its Chairman. [Emphasis supplied]

[2] Article 220 of the Revised Penal Code provides:

Art. 220. *Illegal use of public funds or property*.—Any public officer who shall apply any public funds or property under his administration to any public use other than that for which such funds or property were appropriated by law or ordinance shall suffer the penalty of *prision correccional* in its minimum period or a fine ranging from one-half to the total value of the sum misapplied, if by reason of such misapplication, any damage or embarrassment shall have resulted to the public service. In either case, the offender shall suffer the penalty of temporary special disqualification.

[3] The provision reads:

SEC. 3. *Corrupt Practices of Public Officers*. — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

the Anti-Graft and Corrupt Practices Act, by causing undue injury to the Government and giving a party an unwarranted benefit, advantage of preference in the discharge of their judicial functions through manifest partiality.

If on the other hand the HRET eventually were to order respondent Reyes (the protestant) to shoulder the expenses of revision, then the same would constitute a violation of the 2004 Rules of the HRET,[4] established law and jurisprudence. It would be equivalent to allowing the protestant to amend his protest by broadening its scope, or permitting him to file a separate protest on the remaining 75% counter-protested precincts, after the expiry of the jurisdictional period of filing election protests.

For the foregoing reasons, I vote to **GRANT** the petition.

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(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

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[4] Adopted on April 1, 2004.

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