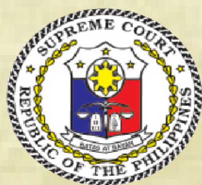

PHILIPPINE REPORTS

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REPORTS OF CASES

DETERMINED IN THE

SUPREME COURT

OF THE

PHILIPPINES

FROM

JULY 22, 2009 TO JULY 30, 2009

SUPREME COURT
MANILA
2013

Prepared
by

The Office of the Reporter
Supreme Court
Manila
2013

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

EN BANC

[A.C. No. 7199. July 22, 2009]
(Formerly CBD 04-1386)

FOODSPHERE, INC., *complainant, vs.* **ATTY. MELANIO L. MAURICIO, JR.,** *respondent.*

SYLLABUS

1. **LEGAL ETHICS; ATTORNEYS; EVERY LAWYER MUST ACT AND COMPORT HIMSELF IN A MANNER THAT PROMOTES PUBLIC CONFIDENCE IN THE INTEGRITY OF THE LEGAL PROFESSION. —** The Court, once again, takes this occasion to emphasize the necessity for every lawyer to act and comport himself in a manner that promotes public confidence in the integrity of the legal profession, which confidence may be eroded by the irresponsible and improper conduct of a member of the bar. By the above-recited acts, respondent violated Rule 1.01 of the Code of Professional Responsibility which mandates lawyers to refrain from engaging in unlawful, dishonest, immoral or deceitful conduct. For, as the IBP found, he engaged in deceitful conduct by, *inter alia,* taking advantage of the complaint against CDO to advance his interest – to obtain funds for his *BATAS* Foundation and seek sponsorships and advertisements for the tabloids and his television program.
2. **ID.; ID.; CODE OF PROFESSIONAL RESPONSIBILITY; RULE 13.02 THEREOF; RESPONDENT'S CONTINUED ATTACKS AGAINST THE COMPLAINANT AND ITS**

PRODUCTS DESPITE THE PENDENCY OF THE CIVIL CASE AGAINST HIM AND THE COURT'S STATUS QUO ORDER, CONSTITUTE A VIOLATION THEREOF. — He also violated Rule 13.02 of the Code of Professional Responsibility, which mandates: A lawyer shall not make public statements in the media regarding a pending case tending to arouse public opinion for or against a party. For despite the pendency of the civil case against him and the issuance of a status *quo* order restraining/enjoining further publishing, televising and broadcasting of any matter relative to the complaint of CDO, respondent continued with his attacks against complainant and its products. At the same time, respondent violated Canon 1 also of the Code of Professional Responsibility, which mandates lawyers to "uphold the Constitution, obey the laws of the land and promote respect for law and legal processes." For he defied said status *quo* order, despite his (respondent's) oath as a member of the legal profession to "obey the laws as well as the legal orders of the duly constituted authorities."

3. ID.; ID.; ID.; CANON 8 AND RULE 8.01 THEREOF; A LAWYER SHOULD REFRAIN FROM USING ABUSIVE, OFFENSIVE OR IMPROPER LANGUAGE IN HIS PROFESSIONAL DEALINGS; CASE AT BAR. — Further, respondent violated Canon 8 and Rule 8.01 of the Code of Professional Responsibility which mandate, *viz*: CANON 8 - A lawyer shall conduct himself with courtesy, fairness and candor toward his professional colleagues, and shall avoid harassing tactics against opposing counsel. Rule 8.01 – A lawyer shall not, in his professional dealings, use language which is abusive, offensive or otherwise improper, by using intemperate language. *Apropos* is the following reminder in *Saberon v. Larong*: To be sure, the adversarial nature of our legal system has tempted members of the bar to use strong language in pursuit of their duty to advance the interests of their clients. However, while a lawyer is entitled to present his case with vigor and courage, such enthusiasm does not justify the use of offensive and abusive language. Language abounds with countless possibilities for one to be emphatic but respectful, convincing but not derogatory, illuminating but not offensive. On many occasions, the Court has reminded members of the Bar to abstain from all offensive personality and to advance no fact prejudicial to the honor and reputation of a party or witness, unless required by the justice of the cause with which he is charged. In keeping with the dignity

of the legal profession, a lawyer's language even in his pleadings must be dignified.

4. ID.; ID.; ID.; PENALTY OF SUSPENSION FOR THREE YEARS FROM THE PRACTICE OF LAW IMPOSED UPON THE RESPONDENT FOR VIOLATION OF THE LAWYER'S OATH AND BREACH OF THE LEGAL PROFESSION. — By failing to live up to his oath and to comply with the exacting standards of the legal profession, respondent also violated Canon 7 of the Code of Professional Responsibility, which directs a lawyer to "at all times uphold the integrity and the dignity of the legal profession." The power of the media to form or influence public opinion cannot be underestimated. In *Dalisay v. Mauricio, Jr.,* the therein complainant engaged therein-herein respondent's services as "she was impressed by the pro-poor and pro-justice advocacy of respondent, a media personality," only to later find out that after he demanded and the therein complainant paid an exorbitant fee, no action was taken nor any pleadings prepared by him. Respondent was suspended for six months. On reading the articles respondent published, not to mention listening to him over the radio and watching him on television, it cannot be gainsaid that the same could, to a certain extent, have affected the sales of complainant. xxx To the Court, suspension of respondent from the practice of law for three years is, in the premises, sufficient.

APPEARANCES OF COUNSEL

Mauricio Law Office for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

Foodsphere, Inc. (complainant), a corporation engaged in the business of meat processing and manufacture and distribution of canned goods and grocery products under the brand name "CDO," filed a Verified Complaint[1] for disbarment before the Commission on Bar Discipline (CBD) of the Integrated Bar of the Philippines (IBP) against Atty. Melanio L. Mauricio, Jr.,

[1] *Rollo* (Vol. I of the CBD *rollo*), pp. 1-21.

popularly known as "Batas Mauricio" (respondent), a writer/ columnist of tabloids including *Balitang Patas BATAS, Bagong TIKTIK, TORO* and *HATAW!,* and a host of a television program *KAKAMPI MO ANG BATAS* telecast over UNTV and of a radio program *Double B-BATAS NG BAYAN* aired over DZBB, for (1) grossly immoral conduct; (2) violation of lawyer's oath and (3) disrespect to the courts and to investigating prosecutors.

The facts that spawned the filing of the complaint are as follows:

On June 22, 2004, a certain Alberto Cordero (Cordero) purportedly bought from a grocery in Valenzuela City canned goods including a can of CDO Liver spread. On June 27, 2004, as Cordero and his relatives were eating bread with the CDO Liver spread, they found the spread to be sour and soon discovered a colony of worms inside the can.

Cordero's wife thus filed a complaint with the Bureau of Food and Drug Administration (BFAD). Laboratory examination confirmed the presence of parasites in the Liver spread.

Pursuant to Joint DTI-DOH-DA Administrative Order No. 1, Series of 1993, the BFAD conducted a conciliation hearing on July 27, 2004 during which the spouses Cordero demanded ₱150,000 as damages from complainant. Complainant refused to heed the demand, however, as being in contravention of company policy and, in any event, "outrageous."

Complainant instead offered to return actual medical and incidental expenses incurred by the Corderos as long as they were supported by receipts, but the offer was turned down. And the Corderos threatened to bring the matter to the attention of the media.

Complainant was later required by the BFAD to file its Answer to the complaint. In the meantime or on August 6, 2004, respondent sent complainant via fax a copy of the front page of the would-be August 10-16, 2004 issue of the tabloid *Balitang Patas BATAS,* Vol. 1, No. 12[2] which complainant found to contain articles maligning,

[2] Annex "B" of the complaint, *id.* at 23.

discrediting and imputing vices and defects to it and its products. Respondent threatened to publish the articles unless complainant gave in to the ₱150,000 demand of the Corderos. Complainant thereupon reiterated its counter-offer earlier conveyed to the Corderos, but respondent turned it down.

Respondent later proposed to settle the matter for ₱50,000, ₱15,000 of which would go to the Corderos and ₱35,000 to his *BATAS* Foundation. And respondent directed complainant to place paid advertisements in the tabloids and television program.

The Corderos eventually forged a *KASUNDUAN*[3] seeking the withdrawal of their complaint before the BFAD. The BFAD thus dismissed the complaint.[4] Respondent, who affixed his signature to the *KASUNDUAN* as a witness, later wrote in one of his articles/columns in a tabloid that he prepared the document.

On August 11, 2004, respondent sent complainant an Advertising Contract[5] asking complainant to advertise in the tabloid *Balitang Patas BATAS* for its next 24 weekly issues at ₱15,000 per issue or a total amount of ₱360,000, and a Program Profile[6] of the television program *KAKAMPI MO ANG BATAS* also asking complainant to place spot advertisements with the following

---

[3] Annexes "C" and "C-1", *id.* at 24-25.

[4] Annex "F", *id* at 29. The Order reads:

Before us is a "Kasunduan" dated 10 August 2004 duly signed by the parties praying that the above-entitled case be dismissed with prejudice on the ground that they have agreed to settle their differences amicably.

The Joint DTI-DOH-DA Administrative Order No. 1 s. 1993, the "Rules and Regulations Implementing the provisions of Chapter III[,] Title V of RA 7394, otherwise known as the Consumer Act of the Philippines" provides for the encouragement of both parties to settle the case amicably. (Rule III, Section 1, C.1)

The agreement of the parties is not contrary to law, morals, good customs, public order and policy.

PRESCINDING FROM THE FOREGOING, the above-captioned case is hereby DISMISSED.

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[5] Annex "D", *id.* at 26.

[6] Annexes "E" and "E-1", *id.* at 27-28.

rate cards: (a) spot buy 15-second TVC at ₱4,000; (b) spot buy 30-second TVC at ₱7,700; and (c) season buy [13 episodes, 26 spots] of 30-second TVC for ₱130,000.

As a sign of goodwill, complainant offered to buy three full-page advertisements in the tabloid amounting to ₱45,000 at ₱15,000 per advertisement, and three spots of 30-second TVC in the television program at ₱7,700 each or a total of ₱23,100. Acting on complainant's offer, respondent relayed to it that he and his Executive Producer were disappointed with the offer and threatened to proceed with the publication of the articles/columns.[7]

On August 28, 2004, respondent, in his radio program Double B- *BATAS NG BAYAN* at radio station DZBB, announced the holding of a supposed contest sponsored by said program, which announcement was transcribed as follows:

> *"OK, at meron akong pa-contest, total magpapasko na o ha, meron pa-contest si Batas Mauricio ang Batas ng Bayan. Ito yung ating pa-contest, hulaan ninyo, tatawag kayo sa telepono, 433-7549 at 433-7553. Ang mga premyo babanggitin po natin sa susunod pero ito muna ang contest, o, '**aling liver spread ang may uod**?' Yan kita ninyo yan, ayan malalaman ninyo yan. Pagka-nahulaan yan ah, at sasagot kayo sa akin, **aling liver spread ang may uod at anong companya ang gumagawa nyan?** Itawag po ninyo sa 433-7549 st 433-7553. Open po an[g] contest na ito sa lahat ng ating tagapakinig. Pipiliin natin ang mananalo, kung tama ang inyong sagot. **Ang tanong, aling liver spread sa Pilipinas an[g] may uod?***[8] (Emphasis and italics in the original; underscoring supplied)

And respondent wrote in his columns in the tabloids articles which put complainant in bad light. Thus, in the August 31-September 6, 2004 issue of *Balitang Patas BATAS*, he wrote an article captioned "*KADIRI ANG CDO LIVER SPREAD*!" In another article, he wrote *"IBA PANG PRODUKTO NG CDO SILIPIN!"*[9] which appeared in the same publication in its September 7-13,

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[7] *Id.* at 7.

[8] *Id.* at 8.

[9] Annex "G-1", *id.* at 32-33.

2004 issue. And still in the same publication, its September 14-20, 2004 issue, he wrote another article entitled "*DAPAT BANG PIGILIN ANG CDO*."[10]

Respondent continued his *tirade* against complainant in his column *LAGING HANDA* published in another *tabloid*, *BAGONG TIKTIK,* with the following articles:[11] (a) *"Uod sa liver spread," Setyembre 6, 2004 (Taon 7, Blg.276);*[12] (b) *"Uod, itinanggi ng CDO," Setyembre 7, 2004 (Taon 7, Blg.277);*[13] (c) *"Pagpapatigil sa CDO," Setyembre 8, 2004 (Taon 7, Blg.278);*[14] (d) *"Uod sa liver spread kumpirmado," Setyembre 9, 2004 (Taon 7, Blg.279)*;[15] (e) *"Salaysay ng nakakain ng uod," Setyembre 10, 2004 (Taon 7, Blg.280);*[16] (f) *"Kaso VS. CDO itinuloy," Setyembre 11, 2004 (Taon 7, Blg.281);*[17] (g) "*Kasong Kidnapping laban sa CDO guards," Setyembre 14, 2004 (Taon 7, Blg.284);*[18] (h) *"Brutalidad ng CDO guards," Setyembre 15, 2004 (Taon 7, Blg.285);*[19] (i) *"CDO guards pinababanatan sa PNP," Setyembre 17, 2004 (Taon 7, Blg.287);*[20] (j) *"May uod na CDO liver spread sa Puregold binili," Setyembre 18, 2004 (Taon 7, Blg.288);*[21] (k) *"Desperado na ang CDO," Setyembre 20, 2004 (Taon 7, Blg.290);*[22] (l) *"Atty. Rufus Rodriguez pumadrino sa CDO," Setyembre 21, 2004 (Taon*

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[10] Annex "G-2", *id.* at 34-35.

[11] Attached to the complaint as Annexes "H-series".

[12] *Rollo* (Vol. I of the CBD *rollo*), p. 37.

[13] *Id.* at 38.

[14] Inadvertently not attached to the Annexes "H-series".

[15] *Rollo* (Vol. I of the CBD *rollo*), at 39.

[16] *Id.* at 40.

[17] *Id.* at 41.

[18] *Id.* at 42.

[19] *Id.* at 43.

[20] *Id.* at 44.

[21] *Id.* at 45.

[22] *Id.* at 46.

7,Blg. 291);[23] (m) *"Kasunduan ng CDO at Pamilya Cordero," Setyembre 22, 2004 (Taon 7,Blg. 292);*[24] (n) *"Bakit nagbayad ng ₱50 libo ang CDO," Setyembre 23, 2004 (Taon 7,Blg. 293).*[25]

In his September 8, 2004 column *"Anggulo ng Batas"* published in *Hataw!*, respondent wrote an article *"Reaksyon pa sa uod ng CDO Liver Spread."*[26]

And respondent, in several episodes in September 2004 of his television program *Kakampi Mo ang Batas* aired over UNTV, repeatedly complained of what complainant claimed to be the "same baseless and malicious allegations/issues" against it.[27]

Complainant thus filed criminal complaints against respondent and several others for Libel and Threatening to Publish Libel under Articles 353 and 356 of the Revised Penal Code before the Office of the City Prosecutor of Quezon City and Valenzuela City. The complaints were pending at the time of the filing of the present administrative complaint.[28]

In the criminal complaints pending before the Office of the City Prosecutor of Valenzuela City, docketed as I.S. Nos. V-04-2917-2933, respondent filed his *Entry of Appearance with Highly Urgent Motion to Elevate These Cases to the Department of Justice,*[29] alleging:

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2.N. The question here is this: What gives, Honorable (???) Prosecutors of the Office of the City Prosecutor of Valenzuela City?

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[23] *Id.* at 47.

[24] *Id.* at 48.

[25] Not attached but is supposedly included in the Annexes "H-series" of the complaint.

[26] *Rollo* (Vol. I of the CBD *rollo*), p. 49.

[27] *Id.* at 10. The copies of the complaint-affidavits are attached as Annexes "J", "J-1", and "J-2".

[28] *Ibid.*

[29] *Id.* at 121-125.

x x x x x x x x x

2.R. Can an ordinary person like Villarez simply be tossed around, waiting for miracles to happen?

2.S. Why? How much miracle is needed to happen here before this Office would ever act on his complaint?

x x x x x x x x x

8. With a City Prosecutor acting the way he did in the case filed by Villarez, and with an investigating prosecutor virtually kowtowing to the wishes of his boss, the Chief Prosecutor, can Respondents expect justice to be meted to them?

9. With utmost due respect, Respondents have reason to believe that justice would elude them in this Office of the City Prosecutor of Valenzuela City, not because of the injustice of their cause, but, more importantly, because of the injustice of the system;

10. Couple all of these with reports that many a government office in Valenzuela City had been the willing recipient of too many generosities in the past of the Complainant, and also with reports that a top official of the City had campaigned for his much coveted position in the past distributing products of the Complainant, what would one expect the Respondents to think?

11. Of course, not to be lost sight of here is the attitude and behavior displayed even by mere staff and underlings of this Office to people who dare complain against the Complainant in their respective turfs. Perhaps, top officials of this Office should investigate and ask their associates and relatives incognito to file, even if on a *pakunwari* basis only, complaints against the Complainant, and they would surely be given the same rough and insulting treatment that Respondent Villarez got when he filed his kidnapping charge here;[30]

And in a Motion to Dismiss [the case] for Lack of Jurisdiction[31] which respondent filed, as counsel for his therein co-respondents-staffers of the newspaper *Hataw!*, before the Office of the City Prosecutor of Valenzuela City, respondent alleged:

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[30] *Id.* at 122-124.

[31] *Id.* at 126-128.

x x x   x x x   x x x

5. If the Complainant or its lawyer **merely used even a little of whatever is inside their thick skulls,** they would have clearly deduced that this Office has no jurisdiction over this action.[32] (Emphasis supplied)

x x x   x x x   x x x

Meanwhile, on October 26, 2004, complainant filed a civil case against respondent and several others, docketed as Civil Case No. 249-V-04,[33] before the Regional Trial Court, Valenzuela City and raffled to Branch 75 thereof.

The pending cases against him and the issuance of a status *quo* order notwithstanding, respondent continued to publish articles against complainant[34] and to malign complainant through his television shows.

Acting on the present administrative complaint, the Investigating Commissioner of the Integrated Bar of the Philippines (IBP) came up with the following findings in his October 5, 2005 Report and Recommendation:[35]

I.

x x x   x x x   x x x

<u>In Civil Case No. 249-V-04 entitled *"Foodsphere, Inc. vs. Atty. [Melanio] Mauricio, et al."*, the Order dated 10 December 2004 (Annex O of the Complaint) was issued by Presiding Judge Dionisio C. Sison</u> which in part reads:

> "Anent the plaintiff's prayer for the issuance of a temporary restraining order included in the instant plaintiff's motion, this Court, inasmuch as the defendants failed to appear in court or

[32] *Id.* at 126.

[33] The complaint was for "libel" but a reading of the complaint shows that it was a complaint for damages. Annex "L", *id.* at 129-164.

[34] Respondent wrote and publicized: *"Buwelta sa CDO"* (October 2004); *"Child Abuse Kontra CDO"* (November 2-8, 2004).

[35] *Rollo* (Vol. III of CBD *rollo*), pp. 37-41.

file an opposition thereto, is constrained to GRANT the said plaintiff's prater (sic), as it is GRANTED, in order to maintain STATUS QUO, and that all the defendants, their agents, representatives or any person acting for and in behalf are hereby restrained/enjoined from further publishing, televising and/or broadcasting any matter subject of the Complaint in the instant case more specifically the imputation of vices and/or defects on plaintiff and its products."

Complainant alleged that the above-quoted Order was served on respondent by the Branch Sheriff on 13 December 2004. Respondent has not denied the issuance of the Order dated 10 December 2004 or his receipt of a copy thereof on 13 December 2004.

Despite his receipt of the Order dated 10 December 2004, and the clear directive therein addressed to him to desists [*sic*] from "further publishing, televising and/or broadcasting any matter subject of the Complaint in the instant case more specifically the imputation of vices and/or defects on plaintiff and its products", respondent in clear defiance of this Order came out with articles on the prohibited subject matter in his column "Atty. Batas", 2004 in the December 16 and 17, 2004 issues of the tabloid "Balitang Bayan –Toro" (Annexes Q and Q-1 of the Complaint).

The above actuations of respondent are also in violation of Rule 13.03 of the Canon of Professional Responsibility which reads: "A lawyer shall not make public statements in the media regarding a pending case tending to arouse public opinion for or against a party".

II.

x x x x x x x x x

In I.S. No. V.04-2917-2933, then pending before the Office of the City Prosecutor of Valenzuela City, respondent filed his "Entry of Appearance with Highly Urgent Motion to Elevate These Cases To the Department of Justice". In said pleading, respondent made the following statements:

x x x x x x x x x

The above language employed by respondent undoubtedly casts aspersions on the integrity of the Office of the City Prosecutor and all the Prosecutors connected with said Office. Respondent clearly assailed the impartiality and fairness of the said Office in handling cases filed before it and did not even design to submit any evidence

to substantiate said wild allegations. The use by respondent of the above-quoted language in his pleadings is manifestly violative of Canon 11 of the Code of Professional Responsibility which provides: "A lawyer [s]hall [o]bserve and [m]aintain [t]he [re]spect [d]ue [t]o [t]he [c]ourts [a]nd [t]o [j]udicial [o]fficers [a]nd [s]hould [i]nsist [o]n [s]imilar [c]onduct [b]y [o]thers."

III.

The "Kasunduan" entered into by the Spouses Cordero and herein complainant (Annex C of the Complaint) was admittedly prepared, witnessed and signed by herein respondent. …

x x x x x x x x x

In its Order dated 16 August 2004, the Bureau of Food and Drugs recognized that the said "Kasunduan" was not contrary to law, morals, good customs, public order and policy, and this accordingly dismissed the complaint filed by the Spouses Cordero against herein complainant.

However, even after the execution of the "Kasunduan" and the consequent dismissal of the complaint of his clients against herein complainant, respondent inexplicably launched a media offensive intended to disparage and put to ridicule herein complainant. On record are the numerous articles of respondent published in 3 tabloids commencing from 31 August to 17 December 2004 (Annexes G to Q-1). As already above-stated, respondent continued to come out with these articles against complainant in his tabloid columns despite a temporary restraining order issued against him expressly prohibiting such actions. Respondent did not deny that he indeed wrote said articles and submitted them for publication in the tabloids.

Respondent claims that he was prompted by his sense of public service, that is, to expose the defects of complainant's products to the consuming public. Complainant claims that there is a baser motive to the actions of respondent. Complainant avers that respondent retaliated for complainant's failure to give in to respondent's "request" that complainant advertise in the tabloids and television programs of respondent. Complainant's explanation is more credible. Nevertheless, whatever the true motive of respondent for his barrage of articles against complainant does not detract from the fact that respondent consciously violated the spirit behind the "Kasunduan" which he himself prepared and signed and submitted to the BFAD for approval. Respondent was less than forthright when he prepared said "Kasunduan" and then turned around and proceeded to lambaste

complainant for what was supposedly already settled in said agreement. Complainant would have been better of with the BFAD case proceeding as it could have defended itself against the charges of the Spouses Cordero. Complainant was helpless against the attacks of respondent, a media personality. The actuations of respondent constituted, to say the least, deceitful conduct contemplated under Rule 1.01 of Canon 1 of the Code of Professional Responsibility.[36] (Underscoring supplied)

The IBP Board of Governors, by Resolution No. XVIII-2006-114 dated March 20, 2006, adopted the findings and recommendation of the Investigating Commissioner to suspend respondent from the practice of law for two years.

The Court finds the findings/evaluation of the IBP well-taken.

The Court, once again, takes this occasion to emphasize the necessity for every lawyer to act and comport himself in a manner that promotes public confidence in the integrity of the legal profession,[37] which confidence may be eroded by the irresponsible and improper conduct of a member of the bar.

By the above-recited acts, respondent violated Rule 1.01 of the Code of Professional Responsibility which mandates lawyers to refrain from engaging in unlawful, dishonest, immoral or deceitful conduct. For, as the IBP found, he engaged in deceitful conduct by, *inter alia,* taking advantage of the complaint against CDO to advance his interest – to obtain funds for his *BATAS* Foundation and seek sponsorships and advertisements for the tabloids and his television program.

He also violated Rule 13.02 of the Code of Professional Responsibility, which mandates:

> A lawyer shall not make public statements in the media regarding a pending case tending to arouse public opinion for or against a party.

For despite the pendency of the civil case against him and the issuance of a status *quo* order restraining/enjoining further

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

[37] *Catu v. Rellosa*, A.C. No. 5738, February 19, 2008, 546 SCRA 209, 221.

publishing, televising and broadcasting of any matter relative to the complaint of CDO, respondent continued with his attacks against complainant and its products. At the same time, respondent violated Canon 1 also of the Code of Professional Responsibility, which mandates lawyers to "uphold the Constitution, obey the laws of the land and promote respect for law and legal processes." For he defied said status *quo* order, despite his (respondent's) oath as a member of the legal profession to "obey the laws as well as the legal orders of the duly constituted authorities".

Further, respondent violated Canon 8 and Rule 8.01 of the Code of Professional Responsibility which mandate, *viz*:

> CANON 8 - A lawyer shall conduct himself with courtesy, fairness and candor toward his professional colleagues, and shall avoid harassing tactics against opposing counsel.
>
> Rule 8.01 – A lawyer shall not, in his professional dealings, use language which is abusive, offensive or otherwise improper,

by using intemperate language.

Apropos is the following reminder in *Saberon v. Larong*:[38]

> To be sure, the adversarial nature of our legal system has tempted members of the bar to use strong language in pursuit of their duty to advance the interests of their clients.
>
> However, while a lawyer is entitled to present his case with vigor and courage, such enthusiasm does not justify the use of offensive and abusive language. Language abounds with countless possibilities for one to be emphatic but respectful, convincing but not derogatory, illuminating but not offensive.
>
> On many occasions, the Court has reminded members of the Bar to abstain from all offensive personality and to advance no fact prejudicial to the honor and reputation of a party or witness, unless required by the justice of the cause with which he is charged. In keeping with the dignity of the legal profession, a lawyer's language even in his pleadings must be dignified.[39] (Underscoring supplied)

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[38] A.C. No. 6567, April 16, 2008, 551 SCRA 359.

[39] *Id.* at 368.

By failing to live up to his oath and to comply with the exacting standards of the legal profession, respondent also violated Canon 7 of the Code of Professional Responsibility, which directs a lawyer to "at all times uphold the integrity and the dignity of the legal profession."[40]

The power of the media to form or influence public opinion cannot be underestimated. In *Dalisay v. Mauricio, Jr.,*[41] the therein complainant engaged therein-herein respondent's services as "she was impressed by the pro-poor and pro-justice advocacy of respondent, a media personality,"[42] only to later find out that after he demanded and the therein complainant paid an exorbitant fee, no action was taken nor any pleadings prepared by him. Respondent was suspended for six months.

On reading the articles respondent published, not to mention listening to him over the radio and watching him on television, it cannot be gainsaid that the same could, to a certain extent, have affected the sales of complainant.

Back to *Dalisay*, this Court, in denying therein-herein respondent's motion for reconsideration, took note of the fact that respondent was motivated by vindictiveness when he filed falsification charges against the therein complainant.[43]

To the Court, suspension of respondent from the practice of law for three years is, in the premises, sufficient.

WHEREFORE, Atty. Melanio Mauricio is, for violation of the lawyer's oath and breach of ethics of the legal profession as embodied in the Code of Professional Responsibility, *SUSPENDED* from the practice of law for three years effective upon his receipt of this Decision. He is *WARNED* that a repetition of the same or similar acts will be dealt with more severely.

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[40] *Vide Catu v. Rellosa*, *supra* note 37 at 220.

[41] A.C. No. 5655, April 22, 2005, 456 SCRA 508.

[42] *Id.* at 509.

[43] A.C. No. 5655, January 23, 2006, 479 SCRA 307, 318.

Let a copy of this Decision be attached to his personal record and copies furnished the Integrated Bar of the Philippines and the Office of the Court Administrator for dissemination to all courts.

SO ORDERED.

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

Quisumbing and *Velasco, Jr., JJ.,* no part - close relationship to a party.

Chico-Nazario, no part.

THIRD DIVISION

[G.R. No. 147957. July 22, 2009]

PRIVATIZATION AND MANAGEMENT OFFICE, *petitioner, vs.* **LEGASPI TOWERS 300, INC.,** *respondent.*

SYLLABUS

1. CIVIL LAW; EASEMENTS OR SERVITUDES; STATUTORY BASIS; SOURCES OF EASEMENTS. — An easement or servitude is a "real right constituted on another's property, corporeal and immovable, by virtue of which the owner of the same has to abstain from doing or to allow somebody else to do something on his property for the benefit of another thing or person." The statutory basis of this right is Article 613 of the Civil Code, which provides: Art. 613. An easement or servitude is an encumbrance imposed upon an immovable for the benefit of another immovable belonging to a different owner. The immovable in favor of which the easement is established is called the dominant estate; that which is subject thereto, the servient estate. There are two sources of easements: by

law or by the will of the owners. Article 619 of the Civil Code states: Art. 619. Easements are established either by law or by the will of the owners. The former are called legal and the latter voluntary easements. In the present case, neither type of easement was constituted over the subject property.

2. **ID.; ID.; ID.; ARTICLE 613 OF THE CIVIL CODE DOES NOT APPLY WHERE NO TRUE EASEMENT WAS CONSTITUTED OR EXISTED.—** In its allegations, respondent claims that Caruff constituted a voluntary easement when it constructed the generating set and sump pumps over the disputed portion of the subject property for its benefit. However, it should be noted that when the appurtenances were constructed on the subject property, the lands where the condominium was being erected and the subject property where the generating set and sump pumps were constructed belonged to Caruff. Therefore, Article 613 of the Civil Code does not apply, since no true easement was constituted or existed, because both properties were owned by Caruff.

3. **ID.; ID.; WHEN THE OWNER OF TWO PROPERTIES ALIENATES ONE OF THEM AND AN APPARENT SIGN OF EASEMENT EXISTS BETWEEN THE TWO ESTATES, ENTITLEMENT TO IT CONTINUES, UNLESS THERE IS A CONTRARY AGREEMENT, OR THE INDICATION THAT THE EASEMENT EXISTS IS REMOVED BEFORE THE EXECUTION OF THE DEED. —** Also, Article 624 of the Civil Code is controlling, as it contemplates a situation where there exists an apparent sign of easement between two estates established or maintained by the owner of both. The law provides: Art. 624. The existence of an apparent sign of easement between two estates, established or maintained by the owner of both, shall be considered, should either of them be alienated, as a title in order that the easement may continue actively and passively, unless, *at the time the ownership of the two estates is divided, the contrary should be provided in the title of conveyance of either of them*, or the sign aforesaid should be removed before the execution of the deed. This provision shall also apply in case of the division of a thing owned in common by two or more persons. From the foregoing, it can be inferred that when the owner of two properties alienates one of them and an apparent sign of easement exists between the two estates, entitlement to it continues, unless there is a

contrary agreement, or the indication that the easement exists is removed before the execution of the deed. In relation thereto, the Compromise Agreement, as approved by the court, clearly states, among other things, that: x x x

4. **ID.; COMPROMISES; COMPROMISE AGREEMENT; WHEN TERMS OF THE AGREEMENT ARE CLEAR AND EXPLICIT THAT THEY DO NOT JUSTIFY AN ATTEMPT TO READ INTO IT ANY ALLEGED INTENTION OF THE PARTIES, THE SAME ARE TO BE UNDERSTOOD LITERALLY, JUST AS THEY APPEAR ON THE FACE OF THE CONTRACT. —** Thus, when the subject property was assigned to the National Government thru the APT, no easement arose or was voluntarily created from the transfer of ownership, considering that the parties, more particularly, Caruff, pledged that it was assigning, transferring, and conveying the subject property in favor of the National Government thru the APT "free from any and all liens and encumbrances." Compromise agreements are contracts, whereby the parties undertake reciprocal obligations to resolve their differences, thus, avoiding litigation, or put an end to one already commenced. As a contract, when the terms of the agreement are clear and explicit that they do not justify an attempt to read into it any alleged intention of the parties; the terms are to be understood literally, just as they appear on the face of the contract. Considering that Caruff never intended to transfer the subject property to PMO, burdened by the generating set and sump pumps, respondent should remove them from the subject property.

5. **ID.; HUMAN RELATIONS; UNJUST ENRICHMENT; PRINCIPLE; APPLIED TO CASE AT BAR. —** As regards PMO's claim for rent, respondent has been enjoying the use of the subject property for free from the time the rights over the property were transferred and conveyed by Caruff to the National Government. We have held that "[t]here is unjust enrichment when a person unjustly retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity and good conscience." Article 22 of the Civil Code provides that "[e]very person who, through an act or performance by another, or any other means, acquires or comes into possession of something at the expense of the latter, without just or legal ground, shall return the same to him." The principle of unjust

enrichment under Article 22 of the Civil Code requires two conditions: (1) that a person is benefited without a valid basis or justification, and (2) that such benefit is derived at another's expense or damage. In the present case, there is no dispute as to who owns the subject property and as to the fact that the National Government has been deprived of the use thereof for almost two decades. Thus, it is but just and proper that respondent should pay reasonable rent for the portion of the subject property occupied by the generating set and sump pumps, from the time respondent deprived the lawful owner of the use thereof up to the present. To rule otherwise would be unjust enrichment on the part of respondent at the expense of the Government. From the records, APT/PMO submitted, as part of its evidence, a letter dated June 18, 1992, wherein it fixed the monthly rental fee per square meter of the entire property at ₱56.25, or ₱1.81 per square meter per day. Hence, respondent should pay the National Government reasonable rent in the amount of ₱56.25 per square meter per month, to be reckoned from August 28, 1989 up to the time when the generating set and sump pumps are completely removed therefrom.

APPEARANCES OF COUNSEL

Reginald I. Bacolor for petitioner.
Gimenez Law Offices for respondent.

D E C I S I O N

PERALTA, *J*.:

This is a petition for review on *certiorari* seeking to annul and set aside the Decision[1] dated February 16, 2001, of the Court of Appeals (CA) in CA-G.R. CV No. 48984, affirming the Decision of the Regional Trial Court (RTC).

The factual and procedural antecedents are as follows:

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[1] Penned by Associate Justice Oswaldo D. Agcaoili, with Associate Justices Cancio C. Garcia (now a retired member of this Court) and Elvi John S. Asuncion, concurring; *rollo*, pp. 41-48.

Caruff Development Corporation owned several parcels of land along the stretch of Roxas Boulevard, Manila. Among them were contiguous lots covered by Transfer Certificate of Title (TCT) Nos. 120311, 120312, 120313, and 127649 (now TCT No. 200760).

Sometime in December 1975, Caruff obtained a loan from the Philippine National Bank (PNB) to finance the construction of a 21-storey condominium along Roxas Boulevard.[2] The loan accommodation was secured by a real estate mortgage over three (3) parcels of land covered by TCT Nos. 120311, 120312, and 120313,[3] where Caruff planned to erect the condominium.

In 1979, Caruff started constructing a multi-storey building on the mortgaged parcels of land. Along with the other appurtenances of the building constructed by Caruff, it built a powerhouse (generating set) and two sump pumps in the adjacent lot covered by TCT No. 127649 (now TCT No. 200760).

After the completion of the condominium project, it was constituted pursuant to the Condominium Act (Republic Act No. 4726), as the Legaspi Towers 300, Inc.

However, for Caruff's failure to pay its loan with PNB, the latter foreclosed the mortgage and acquired some of the properties of Caruff at the sheriff's auction sale held on January 30, 1985.[4]

Thereafter, Proclamation No. 50[5] was issued. It was aimed to promote privatization "for the prompt disposition of the large number of non-performing assets of the government financial institutions, and certain government-owned and controlled corporations, which have been found unnecessary or inappropriate for the government sector to maintain." It also provided for the creation of the Asset Privatization Trust (APT).

[2] *Id.* at 18.

[3] Records, pp. 133-134.

[4] *Id.* at 134.

[5] Proclaiming and Launching a Program for the Expeditious Disposition and Privatization of Certain Government Corporations and/or the Assets Thereof, and Creating the Committee on Privatization and the Asset Privatization Trust; 82 O.G. No. 51, pp. 5954-5966.

By virtue of Administrative Order No. 14 and the Deed of Transfer executed by PNB, the National Government, thru the APT, became the assignee and transferee of all its rights and titles to and interests in its receivables with Caruff, including the properties it acquired from the foreclosure of Caruff's mortgage.

Meanwhile, Caruff filed a case against PNB before the RTC of Manila, Branch 2, whereby Caruff sought the nullification of PNB's foreclosure of its properties.[6] The case was docketed as Civil Case No. 85-29512.

A Compromise Agreement[7] dated August 31, 1988 was later entered into by Caruff, PNB, and the National Government thru APT. The parties agreed, among other things, that Caruff would transfer and convey in favor of the National Government, thru the APT, the lot covered by TCT No. 127649 (now TCT No. 200760), where it built the generating set and sump pumps.

On September 9, 1988, the RTC rendered a Decision approving the Compromise Agreement executed and submitted by the parties. The dispositive portion of said Decision reads:

> x x x and finding the foregoing compromise agreement to be well-taken, the Court hereby approves the same and renders judgment in accordance with the terms and conditions set forth [sic] therein and enjoins the parties to comply strictly therewith.
>
> SO ORDERED.[8]

Thus, by virtue of the Decision, the subject property was among those properties that were conveyed by Caruff to PNB and the National Government thru APT.

On July 5, 1989, respondent filed a case for Declaration of the existence of an easement before the RTC of Manila, docketed as Spec. Proc. No. 89-49563. Respondent alleged that the act of Caruff of constructing the powerhouse and sump pumps on its property constituted a voluntary easement in favor of the

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[6] *Rollo*, p. 20.

[7] Records, pp. 46-51.

[8] *Id.* at 135-136.

respondent. It prayed, among other things, that judgment be rendered declaring the existence of an easement over the portion of the property covered by TCT No. 127649 (now TCT No. 200760) that was being occupied by the powerhouse and the sump pumps in its favor, and that the Register of Deeds of Manila annotate the easement at the back of said certificate of title.[9]

In its Answer with Counterclaim and Cross-claim,[10] APT alleged that respondent had no cause of action against it, because it was but a mere transferee of the land. It acquired absolute ownership thereof by virtue of the Compromise Agreement in Civil Case No. 85-2952, free from any liens and/or encumbrances. It was not a privy to any transaction or agreement entered into by and between Caruff, respondent, and the bank. It further alleged that the continued use of the subject property by respondent and the condominium owners without its consent was an encroachment upon its rights as absolute owner and for which it should be properly compensated.

On January 12, 1995, after trial on the merits, the RTC rendered a Decision[11] declaring the existence of an easement over the portion of the land covered by TCT No. 127649 (TCT No. 200760), the decretal portion of which reads:

> WHEREFORE, judgment is hereby rendered in favor of the petitioner and against the respondents hereby declaring the existence of an easement over the portion of land covered by TCT No. 200760 (previously No. 127649) occupied at present [by the] powerhouse and sump pumps nos. 1 and 2 only, of Legaspi Towers 300, in favor of Legaspi Towers 300, Incorporated. The Register of Deeds of Manila is, likewise, hereby directed to annotate this easement at the back of the said certificate of title. The counterclaim and cross-claim are dismissed accordingly.
>
> SO ORDERED.

Aggrieved, APT sought recourse before the CA in CA-G.R. CV No. 48984.

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[9] *Rollo*, p. 42.

[10] Records, pp. 155-161.

[11] *Id.* at 334-336.

Subsequently, the term of existence of APT expired and, pursuant to Section 2, Article III of Executive Order No. 323, the powers, functions, duties and responsibilities of APT, as well as all the properties, real or personal assets, equipments and records held by it and its obligations and liabilities that were incurred, was transferred to petitioner Privatization and Management Office (PMO). Thus, the PMO substituted APT in its appeal.

On February 16, 2001, finding no reversible error on the part of the RTC, the CA rendered a Decision[12] affirming the decision appealed from. PMO filed a Motion for Reconsideration, but it was denied in the Resolution[13] dated May 3, 2001.

Hence, the present petition assigning the following errors:

I

THE PUBLIC RESPONDENT COURT OF APPEALS ERRED IN AFFIRMING THE DECISION OF THE COURT *A QUO* IN FINDING THAT [THE] PRESENCE OF THE GENERATOR SET (GENERATING SET) AND SUMP PUMPS CONSTITUES AN EASEMENT.

II

THE PUBLIC RESPONDENT COURT OF APPEALS ERRED IN AFFIRMING THE DECISION OF THE COURT *A QUO* IN DECLARING THE EXISTENCE OF AN EASEMENT OVER THE PORTION OF LAND COVERED BY TCT NO. [200760] OCCUPIED BY THE GENERATOR SET AND SUMP PUMPS NOS. 1 AND 2, PURSUANT TO ARTICLE 688 OF THE CIVIL CODE.

III

THE PUBLIC RESPONDENT COURT OF APPEALS ERRED IN AFFIRMING THE DECISION OF THE COURT *A QUO* IN NOT REQUIRING THE RESPONDENT-PETITIONER TO PAY ANY COMPENSATION TO PETITIONER, THE OWNER OF THE LAND, FOR THE USE OF ITS PROPERTY.[14]

Petitioner argues that the presence of the generator set and sump pumps does not constitute an easement. They are mere

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[12] *Supra* note 1.

[13] *Rollo*, p. 50.

[14] *Id.* at 22.

improvements and/or appurtenances complementing the condominium complex, which has not attained the character of immovability. They were placed on the subject property as accessories or improvements for the general use and comfort of the occupants of the condominium complex.

Petitioner maintains that, as the generator set and sump pumps are improvements of the condominium, the same should have been removed after Caruff undertook to deliver the subject property free from any liens and encumbrances by virtue of the Decision of the RTC in Civil Case No. 85-29512 approving the parties' Compromise Agreement. It adds that, in alienating the property in favor of APT/PMO, Caruff could not have intended to include as encumbrance the voluntary easement.

Petitioner posits that respondent failed to present any evidence to prove the existence of the necessary requisites for the establishment of an easement. There is no concrete evidence to show that Caruff had a clear and unequivocal intention to establish the placing of the generator set and sump pumps on the subject property as an easement in favor of respondent.

Lastly, petitioner contends that respondent is a "squatter" for having encroached on the former's property without its consent and without paying any rent or indemnity. Petitioner submits that respondent's presence on the subject property is an encroachment on ownership and, thus, cannot be properly considered an easement. It adds that an easement merely produces a limitation on ownership, but the general right of ownership of the servient tenement must not be impaired so as to amount to a taking of property. When the benefit being imposed is so great as to impair usefulness of the servient estate, it would amount to a cancellation of the rights of the latter.

Petitioner insists that, for having unjustly enriched itself at the expense of the National Government and for encroaching on the latter's rights as the absolute owner, respondent should rightfully compensate the National Government for the use of the subject property which dates back to August 28, 1989 up to the present.

For its part, respondent argues that it was the intention of Caruff to have a voluntary easement in the subject property and for it to remain as such even after the property was subsequently assigned to APT. It was Caruff who constructed the generating set and sump pumps on its adjacent property for the use and benefit of the condominium adjoining it. Also, the manner in which the sump pumps were installed is permanent in nature, since their removal and transfer to another location would render the same worthless and would cut off the supply of electricity and water to the condominium and its owners.

Respondent maintains that petitioner cannot assume that Caruff intended to renounce the voluntary easement over the subject property by virtue of the Compromise Agreement, since such defense can only be presented by Caruff and not the petitioner. It added that petitioner had actual notice of the presence of the generating set and sump pumps when they were negotiating with Caruff regarding the compromise agreement and at the time the subject property was transferred to petitioner. Also, petitioner cannot claim the payment of rent, considering that there was no written demand for respondent to pay rent or indemnity.

Respondent submits that the mandate of petitioner to privatize or dispose of the non-performing assets transferred to it does not conflict with the issue of the declaration of the easement over the subject property, considering that petitioner is not prevented from privatizing the same despite the presence of the voluntary easement.

The petition is meritorious.

An easement or servitude is "a real right constituted on another's property, corporeal and immovable, by virtue of which the owner of the same has to abstain from doing or to allow somebody else to do something on his property for the benefit of another thing or person."[15] The statutory basis of this right is Article 613 of the Civil Code, which provides:

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[15] *Valdez v. Tabisura*, G.R. No. 175510, July 28, 2008, 560 SCRA 332, 337-338, citing *3 Sanchez Roman* 572.

Art. 613. An easement or servitude is an encumbrance imposed upon an immovable for the benefit of another immovable belonging to a different owner.

The immovable in favor of which the easement is established is called the dominant estate; that which is subject thereto, the servient estate.

There are two sources of easements: by law or by the will of the owners. Article 619 of the Civil Code states:

Art. 619. Easements are established either by law or by the will of the owners. The former are called legal and the latter voluntary easements.

In the present case, neither type of easement was constituted over the subject property.

In its allegations, respondent claims that Caruff constituted a voluntary easement when it constructed the generating set and sump pumps over the disputed portion of the subject property for its benefit. However, it should be noted that when the appurtenances were constructed on the subject property, the lands where the condominium was being erected and the subject property where the generating set and sump pumps were constructed belonged to Caruff. Therefore, Article 613 of the Civil Code does not apply, since no true easement was constituted or existed, because both properties were owned by Caruff.

Also, Article 624 of the Civil Code is controlling, as it contemplates a situation where there exists an apparent sign of easement between two estates established or maintained by the owner of both. The law provides:

Art. 624. The existence of an apparent sign of easement between two estates, established or maintained by the owner of both, shall be considered, should either of them be alienated, as a title in order that the easement may continue actively and passively, unless, *at the time the ownership of the two estates is divided, the contrary should be provided in the title of conveyance of either of them*, or the sign aforesaid should be removed before the execution of

the deed. This provision shall also apply in case of the division of a thing owned in common by two or more persons.[16]

From the foregoing, it can be inferred that when the owner of two properties alienates one of them and an apparent sign of easement exists between the two estates, entitlement to it continues, unless there is a contrary agreement, or the indication that the easement exists is removed before the execution of the deed.

In relation thereto, the Compromise Agreement, as approved by the court, clearly states, among other things, that:

x x x x x x x x x

2.0 That in consideration of the covenants hereunder stipulated, plaintiff [Caruff] Development Corporation (CDC), hereby terminates the instant case against defendants Philippine National Bank (PNB) and the National Government/APT, and hereby:

2.1 Assigns, transfers and conveys in favor of defendant National government thru APT, CDC's rights, title and interest in the Maytubig property, situated at the back of the Legaspi Towers 300 Condominium, consisting of seven (7) contiguous lots with an aggregate area of 1,504.90 square meters, covered by the following Transfer Certificate of Title, viz: TCT No. 23663 – Pasay City Registry; TCT No. 142497 – Metro Manila 1 Registry; TCT No. 142141 – Metro Manila 1 Registry; **TCT No. 127649 – Metro Manila 1 Registry**; x x x; **all titles, free from any and all liens and encumbrances**, to be delivered, and the necessary papers and documents to be turned over/executed to effect transfer in favor of the National Government/APT, upon approval of this Compromise Agreement;

x x x x x x x x x.[17]

Thus, when the subject property was assigned to the National Government thru the APT, no easement arose or was voluntarily created from the transfer of ownership, considering that the parties, more particularly, Caruff, pledged that it was assigning, transferring, and conveying the subject property in favor of the

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[16] Emphasis ours.

[17] Records, p. 133. (Emphasis ours.)

National Government thru the APT "free from any and all liens and encumbrances."

Compromise agreements are contracts, whereby the parties undertake reciprocal obligations to resolve their differences, thus, avoiding litigation, or put an end to one already commenced.[18] As a contract, when the terms of the agreement are clear and explicit that they do not justify an attempt to read into it any alleged intention of the parties; the terms are to be understood literally, just as they appear on the face of the contract.[19] Considering that Caruff never intended to transfer the subject property to PMO, burdened by the generating set and sump pumps, respondent should remove them from the subject property.

As regards PMO's claim for rent, respondent has been enjoying the use of the subject property for free from the time the rights over the property were transferred and conveyed by Caruff to the National Government.

We have held that "[t]here is unjust enrichment when a person unjustly retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity and good conscience." Article 22 of the Civil Code provides that "[e]very person who, through an act or performance by another, or any other means, acquires or comes into possession of something at the expense of the latter, without just or legal ground, shall return the same to him." The principle of unjust enrichment under Article 22 of the Civil Code requires two conditions: (1) that a person is benefited without a valid basis or justification, and (2) that such benefit is derived at another's expense or damage.[20]

In the present case, there is no dispute as to who owns the subject property and as to the fact that the National Government

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[18] *Alonzo v. San Juan*, G.R. No. 137549, February 11, 2005, 451 SCRA 45, 58-59.

[19] *First Fil-Sin Lending Corporation v. Padillo*, G.R. No. 160533, January 12, 2005, 448 SCRA 71, 76.

[20] *Car Cool Philippines, Inc. v. Ushio Realty and Development Corporation*, G.R. No. 138088, January 23, 2006, 479 SCRA 404, 412-413.

has been deprived of the use thereof for almost two decades. Thus, it is but just and proper that respondent should pay reasonable rent for the portion of the subject property occupied by the generating set and sump pumps, from the time respondent deprived the lawful owner of the use thereof up to the present. To rule otherwise would be unjust enrichment on the part of respondent at the expense of the Government.

From the records, APT/PMO submitted, as part of its evidence, a letter[21] dated June 18, 1992, wherein it fixed the monthly rental fee per square meter of the entire property at ₱56.25, or ₱1.81 per square meter per day. Hence, respondent should pay the National Government reasonable rent in the amount of ₱56.25 per square meter per month, to be reckoned from August 28, 1989 up to the time when the generating set and sump pumps are completely removed therefrom.

WHEREFORE, premises considered, the Decision of the Regional Trial Court in Spec. Proc. No. 89-49563 dated January 12, 1995, and the Decision and Resolution of the Court of Appeals in CA-G.R. CV No. 48984 dated February 16, 2001 and May 3, 2001, respectively, are *REVERSED and SET ASIDE.*

Legaspi Towers 300, Inc. is *DIRECTED* to *REMOVE* the generating set and sump pumps 1 and 2 from the property covered by TCT No. 200760 and to *PAY* reasonable rent at the rate of ₱56.25 per square meter/per month from August 28, 1989 until the same are completely removed.

SO ORDERED.

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

[21] Records, pp. 299-300.

THIRD DIVISION

[G.R. No. 164560. July 22, 2009]

ANA DE GUIA SAN PEDRO and ALEJO DOPEÑO, *petitioners, vs.* **HON. FATIMA G. ASDALA, in her capacity as the Presiding Judge of the Regional Trial Court of Quezon City, Branch 87; HON. MANUEL TARO, in his capacity as the Presiding Judge of the Metropolitan Trial Court of Quezon City, Branch 42; and the HEIRS OF SPOUSES APOLONIO V. DIONISIO and VALERIANA DIONISIO (namely, ALLAN GEORGE R. DIONISIO and ELEANOR R. DIONISIO, herein represented by ALLAN GEORGE R. DIONISIO),** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; WHERE APPEAL IS AVAILABLE, *CERTIORARI* WILL NOT PROSPER, EVEN IF THE GROUND THEREFOR IS GRAVE ABUSE OF DISCRETION. —** The settled rule is that appeals from judgments or final orders or resolutions of the CA should be by a verified petition for review on *certiorari*, as provided for under Rule 45 of the Revised Rules of Civil Procedure. Thus, in *Pasiona, Jr. v. Court of Appeals,* the Court expounded as follows: The aggrieved party is proscribed from assailing a decision or final order of the CA via Rule 65, because such recourse is proper only if the party has no plain, speedy and adequate remedy in the course of law. In this case, **petitioner had an adequate remedy, namely, a petition for review on *certiorari* under Rule 45 of the Rules of Court. A petition for review on *certiorari*, not a special civil action for *certiorari* was, therefore, the correct remedy.** x x x Settled is the rule that where appeal is available to the aggrieved party, the special civil action for *certiorari* will not be entertained – remedies of appeal and *certiorari* are mutually exclusive, not alternative or successive. **Hence, *certiorari* is not and cannot be a substitute for a lost appeal,** especially if one's own negligence or error in one's choice of remedy occasioned such loss or lapse. One of the requisites of *certiorari* is that there be no available

appeal or any plain, speedy and adequate remedy. **Where an appeal was available, as in this case, *certiorari* will not prosper, even if the ground therefor is grave abuse of discretion.** Petitioner's resort to this Court by Petition for *Certiorari* was a fatal procedural error, and the instant petition must, therefore, fail. For the very same reason given above, the CA, therefore, acted properly when it dismissed the petition for *certiorari* outright, on the ground that petitioners should have resorted to the remedy of appeal instead of *certiorari*. Verily, the present Petition for *Certiorari* should not have been given due course at all. Moreover, since the period for petitioners to file a petition for review on *certiorari* had lapsed by the time the instant petition was filed, the assailed CA Resolutions have attained finality.

2. **ID.; COURTS; METROPOLITAN TRIAL COURT; JURISDICTION THEREOF OVER ACTIONS INVOLVING TITLE TO OR POSSESSION OF REAL PROPERTY OR ANY INTEREST THEREIN; CASE AT BAR. —** Nevertheless, just to put the matter to rest, the Court reiterates the ruling in *Heirs of Valeriano S. Concha, Sr. v. Spouses Lumocso,* to wit: In a number of cases, we have held that actions for reconveyance of or for cancellation of title to or to quiet title over real property are actions that fall under the classification of cases that involve "title to, or possession of, real property, or any interest therein." x x x x x x Thus, under the old law, there was no substantial effect on jurisdiction whether a case is one, the subject matter of which was incapable of pecuniary estimation, under Section 19(1) of B.P. 129, or one involving title to property under Section 19(2). The distinction between the two classes became crucial with the amendment introduced by R.A. No. 7691 in 1994, which expanded the exclusive original jurisdiction of the first level courts to include "all civil actions which involve title to, or possession of, real property, or any interest therein **where the assessed value of the property or interest therein does not exceed Twenty thousand pesos (₱20,000.00) or, in civil actions in Metro Manila, where such assessed value does not exceed Fifty thousand pesos (₱50,000.00) exclusive of interest, damages of whatever kind, attorney's fees, litigation expenses and costs." Thus, under the present law, original jurisdiction over cases the subject matter of which involves "title to, possession of, real property or any interest therein" under Section 19(2) of B.P. 129 is divided**

between the first and second level courts, with the assessed value of the real property involved as the benchmark. This amendment was introduced to "unclog the overloaded dockets of the RTCs which would result in the speedier administration of justice." Clearly, the RTC and the CA ruled correctly that the MeTC had jurisdiction over private respondents' complaint for *Accion Reivindicatoria*.

APPEARANCES OF COUNSEL

M.A. Aguinaldo & Associates for petitioners.
Camacho and Associates for private respondent.

D E C I S I O N

PERALTA, *J*.:

This resolves the petition for *certiorari* under Rule 65 of the Rules of Court, praying that the Resolutions[1] of the Court of Appeals (CA) dated September 15, 2003 and June 1, 2004, respectively, in CA-G.R. SP No. 78978, be reversed and set aside.

The antecedent facts are as follows.

Sometime in July 2001, private respondents, heirs of spouses Apolonio and Valeriana Dionisio, filed with the Metropolitan Trial Court (MeTC) of Quezon City, Branch 42, a Complaint[2] against herein petitioners and Wood Crest Residents Association, Inc., for *Accion Reivindicatoria*, Quieting of Title and Damages, with Prayer for Preliminary Mandatory Injunction. Private respondents alleged that subject property located in Batasan Hills, Quezon City, with an assessed value of ₱32,100.00, was titled in the name of spouses Apolonio and Valeriana Dionisio; but petitioners, with malice and evident bad faith, claimed that they were the owners of a parcel of land that encompasses and

[1] Penned by Associate Justice Delilah Vidallon-Magtolis, with Associate Justices Jose L. Sabio, Jr. and Hakim S. Abdulwahid, concurring; *rollo*, pp. 27 & 29.

[2] *Rollo*, pp. 37-48.

covers subject property. Private respondents had allegedly been prevented from entering, possessing and using subject property. It was further alleged in the Complaint that petitioners' Transfer Certificate of Title over their alleged property was spurious. Private respondents then prayed that they be declared the sole and absolute owners of the subject property; that petitioners be ordered to surrender possession of subject property to them; that petitioners and Wood Crest and/or its members be ordered to pay actual and moral damages, and attorney's fees.

Petitioners, for their part, filed a Motion to Dismiss[3] said complaint on the ground that the MeTC had no jurisdiction over the subject matter of the action, as the subject of litigation was incapable of pecuniary estimation.

The MeTC then issued an Order[4] dated July 4, 2002 denying the motion to dismiss, ruling that, under *Batas Pambansa* (B.P.) *Blg.* 129, as amended, the MeTC had exclusive original jurisdiction over actions involving title to or possession of real property of small value.

Petitioners' Motion for Reconsideration of said Order dated July 4, 2002 was denied.

Petitioners assailed the aforementioned Order by filing a petition for *certiorari* with the Regional Trial Court (RTC) of Quezon City, Branch 87. However, in its Decision[5] dated March 10, 2003, the RTC dismissed the petition, finding no grave abuse of discretion on the part of the MeTC Presiding Judge. The RTC sustained the MeTC ruling, stating that, in accordance with Section 33(3) of Republic Act (R.A.) No. 7691, amending B.P. Blg. 129, the MeTC had jurisdiction over the complaint for *Accion Reivindicatoria,* as it involves recovery of ownership and possession of real property located in Quezon City, with an assessed value not exceeding ₱50,000.00. A Motion for Reconsideration[6] of the Decision was filed by petitioners, but was denied in an Order[7] dated July 3, 2003.

[3] *Id.* at 78-84.

[4] *Id.* at 99-100.

[5] Penned by Judge Fatima Gonzales-Asdala; *id.* at 194-195.

[6] *Rollo*, pp. 196-199.

[7] *Id.* at 255.

Petitioners then filed with the Court of Appeals another petition for *certiorari,* insisting that both the MeTC and RTC acted with grave abuse of discretion amounting to lack or excess of jurisdiction by not ordering the dismissal of the complaint for *Accion Reivindicatoria,* for lack of jurisdiction over the same. In the assailed CA Resolution dated September 15, 2003, the CA dismissed the petition outright, holding that *certiorari* was not available to petitioners as they should have availed themselves of the remedy of appeal. Petitioners' motion for reconsideration of the resolution of dismissal was denied per Resolution[8] dated June 1, 2004.

Thus, petitioners filed the instant petition and, in support thereof, they allege that:

THE HONORABLE COURT OF APPEALS ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN (SIC) EXCESS OF JURISDICTION IN DENYING THE PETITION FOR *CERTIORARI* AND FOR FAILURE TO RESOLVE THE ISSUE RAISED IN THE *CERTIORARI* REGARDING THE JURISDICTION OF THE METROPOLITAN TRIAL COURT TO TAKE COGNIZANCE OF A CASE OF *ACCION REINVINDICATORIA* (sic).

THE HONORABLE PUBLIC RESPONDENT FATIMA GONZALES-ASDALA, AS PRESIDING JUDGE OF RTC BRANCH 87, QUEZON CITY, ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF (SIC) JURISDICTION IN DISMISSING THE PETITION FOR *CERTIORARI* AND IN RESOLVING THAT A CASE OF *ACCION REINVINDICATORIA* (sic) IS WITHIN THE JURISDICTION OF THE METROPOLITAN TRIAL COURT.

THE HONORABLE PUBLIC RESPONDENT MANUEL TARO AS PRESIDING JUDGE MeTC, BRANCH 42, QUEZON CITY, ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN (SIC) EXCESS OF JURISDICTION IN SO TAKING COGNIZANCE OF THE COMPLAINT FOR *ACCION REINVINDICATORIA* (sic) IN CIVIL CASE NO. 27434 ENTITLED, *"HEIRS OF SPS. APOLONIO V. DIONISIO AND VALERIANA DIONISIO, ETC. VS. ANA DE GUIA SAN PEDRO, ET AL."*[9]

[8] *Id.* at 29.

[9] *Id.* at 14-15.

The present Petition for *Certiorari* is doomed and should not have been entertained from the very beginning.

The settled rule is that appeals from judgments or final orders or resolutions of the CA should be by a verified petition for review on *certiorari*, as provided for under Rule 45 of the Revised Rules of Civil Procedure. Thus, in *Pasiona, Jr. v. Court of Appeals,*[10] the Court expounded as follows:

> The aggrieved party is proscribed from assailing a decision or final order of the CA via Rule 65, because such recourse is proper only if the party has no plain, speedy and adequate remedy in the course of law. In this case, **petitioner had an adequate remedy, namely, a petition for review on *certiorari* under Rule 45 of the Rules of Court. A petition for review on *certiorari*, not a special civil action for *certiorari* was, therefore, the correct remedy**.
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> Settled is the rule that where appeal is available to the aggrieved party, the special civil action for *certiorari* will not be entertained – remedies of appeal and *certiorari* are mutually exclusive, not alternative or successive. **Hence, *certiorari* is not and cannot be a substitute for a lost appeal,** especially if one's own negligence or error in one's choice of remedy occasioned such loss or lapse. One of the requisites of *certiorari* is that there be no available appeal or any plain, speedy and adequate remedy. **Where an appeal was available, as in this case, *certiorari* will not prosper, even if the ground therefor is grave abuse of discretion**. Petitioner's resort to this Court by Petition for *Certiorari* was a fatal procedural error, and the instant petition must, therefore, fail.[11]

For the very same reason given above, the CA, therefore, acted properly when it dismissed the petition for *certiorari* outright, on the ground that petitioners should have resorted to the remedy of appeal instead of *certiorari*. Verily, the present Petition for *Certiorari* should not have been given due course at all.

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[10] G.R. No. 165471, July 21, 2008, 559 SCRA 137, citing *Iloilo La Filipina Uycongco Corporation v. Court of Appeals*, 539 SCRA 178, (2007).

[11] *Id.* at 151-142. (Emphasis and underscoring supplied).

Moreover, since the period for petitioners to file a petition for review on *certiorari* had lapsed by the time the instant petition was filed, the assailed CA Resolutions have attained finality.

Nevertheless, just to put the matter to rest, the Court reiterates the ruling in *Heirs of Valeriano S. Concha, Sr. v. Spouses Lumocso,*[12] to wit:

> In a number of cases, we have held that actions for reconveyance of or for cancellation of title to or to quiet title over real property are actions that fall under the classification of cases that involve "title to, or possession of, real property, or any interest therein."
>
> x x x x x x x x x
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> x x x Thus, under the old law, there was no substantial effect on jurisdiction whether a case is one, the subject matter of which was incapable of pecuniary estimation, under Section 19(1) of B.P. 129, or one involving title to property under Section 19(2). The distinction between the two classes became crucial with the amendment introduced by R.A. No. 7691 in 1994, which expanded the exclusive original jurisdiction of the first level courts to include "all civil actions which involve title to, or possession of, real property, or any interest therein **where the assessed value of the property or interest therein does not exceed Twenty thousand pesos (₱20,000.00) or, in civil actions in Metro Manila, where such assessed value does not exceed Fifty thousand pesos (₱50,000.00) exclusive of interest, damages of whatever kind, attorney's fees, litigation expenses and costs.**" Thus, **under the present law, original jurisdiction over cases the subject matter of which involves "title to, possession of, real property or any interest therein" under Section 19(2) of B.P. 129 is divided between the first and second level courts, with the assessed value of the real property involved as the benchmark.** This amendment was introduced to "unclog the overloaded dockets of the RTCs which would result in the speedier administration of justice."[13]

Clearly, the RTC and the CA ruled correctly that the MeTC had jurisdiction over private respondents' complaint for *Accion Reivindicatoria*.

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[12] G.R. No. 158121, December 21, 2007, 540 SCRA 1.

[13] *Id.* at 16-18. (Emphasis supplied).

IN VIEW OF THE FOREGOING, the petition is *DISMISSED* for utter lack of merit. The Resolutions of the Court of Appeals in CA-G.R. SP No. 78978, dated September 15, 2003 and June 1, 2004, are *AFFIRMED*.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 164800. July 22, 2009]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **ESTATE OF ALFONSO LIM, SR., ALFONSO LIM, JR., TEODORO Q. PENA, FERDINAND E. MARCOS (now deceased and Represented by his Estate/Heirs), IMELDA R. MARCOS, TAGGAT INDUSTRIES, INC., PAMPLONA REDWOOD VENEER, INC., SOUTHERN PLYWOOD, WESTERN CAGAYAN LUMBER, ACME PLYWOOD, VETERAN WOODWORK, INC., SIERRA MADRE WOOD INDUSTRIES, INC., and TROPICAL PHILIPPINES WOOD INDUSTRIES, INC.,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; PROVISIONAL REMEDIES; ATTACHMENT; PRELIMINARY ATTACHMENT; NATURE.** — Attachment is an ancillary remedy applied for not for its own sake but to enable the attaching party to realize upon relief sought and expected to be granted in the main or principal action; it is a measure auxiliary or incidental to the main action. As such, it is available during the pendency of the action which may be resorted to by a litigant to preserve and protect certain

rights and interests therein pending rendition, and for purposes of the *ultimate effects,* of a final judgment in the case. As a corollary proposition, an order granting an application for a writ of preliminary attachment cannot, owing to the incidental or auxiliary nature of such order, be the subject of an appeal independently of the main action.

2. **ID.; ID.; ID.; GROUNDS FOR THE ISSUANCE OF THE WRIT. —** The instant case is one of those mentioned in Sec. 1, Rule 57 of the Rules, specifically the section's paragraph "d," wherein a writ of preliminary attachment may be issued. It provides: SECTION 1. *Grounds upon which attachment may issue.*— A plaintiff or any proper party may, at the commencement of the action or at any time thereafter, have the property of the adverse party attached as security for the satisfaction of any judgment that may be recovered in the following cases: x x x (d) In an action against a party who has been guilty of fraud in contracting the debt or incurring the obligation upon which the action is brought, or in concealing or disposing of the property for the taking, detention or conversion of which the action is brought; For a writ of attachment to issue under the above-quoted rule, the applicant must sufficiently show the factual circumstances of the alleged fraud.

3. **ID.; ID.; ID.; ID.; TERM "FRAUD," EXPLAINED; COMMISSION OF FRAUD BY THE RESPONDENTS SUFFICIENTLY PROVED IN CASE AT BAR. —** Fraud may be defined as the voluntary execution of a wrongful act, or a willful omission, knowing and intending the effects which naturally and necessarily arise from such act or omission. In its general sense, fraud is deemed to comprise anything calculated to deceive, including all acts and omissions and concealment involving a breach of legal or equitable duty, trust, or confidence justly reposed, resulting in damage to another, or by which an undue and unconscientious advantage is taken of another. Fraud is also described as embracing all multifarious means which human ingenuity can device, and which are resorted to by one individual to secure an advantage over another by false suggestions or by suppression of truth and includes all surprise, trick, cunning, dissembling, and any unfair way by which another is cheated. Fraudulent, on the other hand, connotes intentionally wrongful, dishonest, or unfair. In the case at bar, the Republic has, to us, sufficiently discharged

the burden of demonstrating the commission of fraud committed by respondents Lims as a condition *sine qua non* for the issuance of a writ of preliminary attachment. The main supporting proving document is the Republic's Exhibit "B" which the Sandiganbayan unqualifiedly admitted in evidence. And the fraud or fraudulent scheme principally came in the form of Lim, Sr. holding and/or operating logging concessions which far exceeded the allowable area prescribed under the 1973 Constitution.

4. **POLITICAL LAW; CONSTITUTIONAL LAW; 1973 CONSTITUTION, SECTION 11 OF ARTICLE XIV; LEASE OR CONCESSION OF TIMBER OR FOREST RESOURCES, CONSTITUTIONAL LIMITATIONS; RATIONALE. —** Sec. 11 of Article XIV of the governing 1973 Constitution states that *"no private corporation or association may hold by lease, concession, license, or permit, timber or forest lands and other timber or forest resources in excess of one hundred thousand hectares."* Complementing this provision was Chapter I, No. 3(e) of Forestry Administrative Order (FAO) No. 11 prohibiting any individual, corporation, partnership, or association from acquiring a timber license or license agreement covering an area in excess of 100,000 hectares. Likewise, Chapter I, No. 3(d) of FAO No. 11 states that no individual corporation, partnership, or association who is already a holder of an ordinary timber license or license agreement nor any member of the family, incorporator, director, stockholder, or member of such individual, corporation, partnership, or association shall be allowed to acquire a new timber license or license agreement or any interest or participation in it. The constitutional and statutory limitations on allowable area leases and concessions were obviously meant to prevent the concentration of large tracts of public land in the hands of a single individual. But as the Office of the Solicitor General aptly observed, citing the Maceda decision: *"For one Filipino out of 55 million to own, operate or in one form [or] another be financially interested in more than 600,000 hectares out of a total forest land of 14 million hectares is certainly unfair, unacceptable and unconstitutional by any standard."*

5. **ID.; ID.; ID.; ID.; AVAILMENT AND ENJOYMENT OF LOGGING CONCESSIONS GROSSLY IN EXCESS OF CONSTITUTIONAL LIMITS AMOUNT TO A VOLUNTARY EXECUTION OF A WRONGFUL ACT. —** Lim, Sr., as earlier

stated, had been holding/operating/managing several timber concessions through the seven (7) logging companies for an aggregate area of 533,880 hectares. xxx The Maceda decision stressed that Lim, Sr. had one share each in the three corporations, namely: (1) Acme Plywood and Veneer Co., Inc. (ACME); (2) Western Cagayan Lumber Co., Inc. (WESTERN); and (3) Southern Plywood Corporation (SPC). These corporations, the decision added, likewise violated the Constitution considering that Lim, Sr. had control over them as owner-founder. To cover the constitutional violation, Lim, Jr. was used as a front and made to appear as President of the mentioned three corporations. There can be no quibbling that MNR correctly revoked/canceled all the timber concessions of Lim, Sr., namely: TLA No. 071 (TAGGAT), TLA No. 074 (PAMPLONA), TLA No. 321 (SPC), TLA No. 073 (WESTERN), and TLA No. 075 (ACME). As it were, the TLAs of TAGGAT and PAMPLONA each exceeded the 100,000-hectare threshold prescribed by the 1973 Constitution. Initially, the execution and granting of those timber license agreements were already tainted with fraud. The Lims resorted to their close connection with the Marcoses for the approval of the timber license agreements and the Lims were given access effectively to a total 633,880 hectares in violation of the 1973 Constitution and FAO No. 11. Indeed, the Lims' availment and enjoyment of logging concessions grossly in excess of constitutional limits amount to a voluntary execution of a wrongful act, if not a serious breach of legal duty. By their acts, the Lims veritably defrauded and cheated the Filipino people––the ultimate beneficiaries of the country's natural resources.

6. **REMEDIAL LAW; CRIMINAL PROCEDURE; DEMURRER TO EVIDENCE; DEFINED; EFFECT OF DENIAL OF DEMURRER TO EVIDENCE. —** The evidence that clearly supports the issuance of a writ of preliminary attachment sought by Republic is already on record before the Sandiganbayan. As a matter of fact, the anti-graft court already ruled and considered that the evidence so far presented by the Republic had been sufficient to support a finding that respondents had committed illegal and fraudulent acts against the Republic and the Filipino people. This was the tenor of the Sandiganbayan's resolution denying the respondents' demurrer to evidence. A demurrer to evidence is defined as "an objection by one of the parties in an action, to the effect that the evidence which his

adversary produced is insufficient in point of law, whether true or not, to make out a case or sustain the issue." The party demurring challenges the sufficiency of the whole evidence to sustain a verdict. In passing upon the sufficiency of the evidence raised in a demurrer, the court is merely required to ascertain whether there is competent or sufficient proof to sustain the indictment or to support a verdict of guilt. And when the court denies the demurrer, the defendant has to present countervailing evidence against the evidence adduced by the plaintiff. In the case at bar, when the Sandiganbayan denied respondents' demurrer to evidence, it in effect ruled that the evidence presented by the prosecution is, absent a countervailing evidence, *prima facie* sufficient to support an adverse verdict against them for amassing illegal wealth.

7. **ID.; PROVISIONAL REMEDIES; PRELIMINARY ATTACHMENT; SANDIGANBAYAN'S DENIAL OF THE MOTION FOR A WRIT OF PRELIMINARY ATTACHMENT, WITHOUT CONSIDERING THE EVIDENCE PRESENTED, CONSTITUTES GRAVE AND PATENT ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION. —** Given the foregoing pronouncement from the Sandiganbayan, the Court is completely at a loss to understand the graft court's denial of the Republic's plea for the ancillary remedy of preliminary attachment. The wrongful act––the fraud perpetuated by Lim Sr. and/or his corporations on the Republic––is written over or easily deducible from the adverted Maceda decision and **Exhibit "E"**. While fraud cannot be presumed, it need not be proved by direct evidence and it can well be inferred from attendant circumstances. Withal, we cannot but agree with the Republic's contention that the Sandiganbayan's denial of its motion for a writ of preliminary attachment constitutes grave and patent abuse of discretion amounting to lack or excess of jurisdiction.

8. **ID.; ID.; ID.; ISSUANCE OF THE WRIT OF PRELIMINARY ATTACHMENT WARRANTED IN CASE AT BAR; ATTACHMENT IS A MERE PROVISIONAL REMEDY TO ENSURE THE SAFETY AND PRESERVATION OF THE THING ATTACHED UNTIL THE PLAINTIFF CAN, BY APPROPRIATE PROCEEDINGS, OBTAIN A JUDGMENT AND HAVE SUCH PROPERTY APPLIED TO ITS SATISFACTION. —** A scrutiny of the above-quoted July 17,

2003 Resolution readily shows that the Sandiganbayan indeed considered the evidence presented and offered by the Republic, specifically **Exhibits "B"** and **"E"** which convincingly show the finding that respondents' acts were tainted with fraud in the acquisition of the logging concessions due to their close association with the Marcoses. It is incongruous, therefore, for the Sandiganbayan to deny the writ of preliminary attachment when the pieces of evidence on record which it used and based its findings and conclusions in denying the demurrer to evidence were the same ones which demonstrate the propriety of the writ of preliminary attachment. Clearly, the Republic has complied with and satisfied the legal obligation to show the specific acts constitutive of the alleged fraud committed by respondents. The denial of the prayed writ, thus, evidently constitutes grave abuse of discretion on the part of Sandiganbayan. After all, "attachment is a mere provisional remedy to ensure the safety and preservation of the thing attached until the plaintiff can, by appropriate proceedings, obtain a judgment and have such property applied to its satisfaction." Indeed, the properties of respondents sought to be subjected to the ancillary writ of preliminary attachment are not only in danger of being lost but should be placed under *custodia legis* to answer for any liabilities that may be adjudged against them in the instant case.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.

Robert Sison for Imelda R. Marcos.

Eupemio Law Offices for Southern Plywood Western Cagayan Lumber, Inc., *et al.*

Suarez & Narvasa Law Office for Estate of Alfonso D. Lim, Taggat Industries, *et al.*

Alexander L. Lacson for Atty. Teodoro Q. Pena.

D E C I S I O N

VELASCO, JR., *J.*:

In this Petition for *Certiorari* under Rule 65, the Republic of the Philippines assails and seeks to nullify the Resolution[1] dated March 28, 2003 of the Sandiganbayan, as effectively reiterated in another resolution of June 18, 2004, which denied petitioner's motion for the issuance of a writ of preliminary attachment in Civil Case No. 0030, entitled *Republic v. Alfonso Lim, et al.*,[2] a suit to recover ill-gotten or unexplained wealth.

The Facts

On October 2, 1991, in Civil Case No. 0030, the Republic, represented by the Presidential Commission on Good Government (PCGG), filed before the Sandiganbayan, Second Division, an Amended Complaint for reconveyance, reversion, accounting, restitution, and damages. In it, the Republic averred that Alfonso Lim, Sr. (now deceased) and Alfonso Lim, Jr., acting by themselves and/or in unlawful collusion with Ferdinand E. Marcos and Imelda R. Marcos, and taking undue advantage of their relationship, influence, and connection with the latter, embarked upon devices and stratagems to unjustly enrich themselves at the expense of the Republic and the Filipino people. Among other acts, the Lims were alleged to have:

(a) actively solicited and obtained, upon the personal behest of [the Marcoses], with the active collaboration of Teodoro Q. Peña, who was then Minister of Natural Resources, additional timber concession in favor of Taggat Industries, Inc. (TAGGAT) and Pamplona Redwood Veneer, Inc. (PAMPLONA), corporations beneficially held and controlled

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[1] Penned by Associate Justice Godofredo L. Legaspi and concurred in by Associate Justices Sandoval and Victorino.

[2] Specifically, the amended complaint named as defendants, apart from Lim, Sr., the following: Lim, Jr., Teodoro Q. Pena, Ferdinand E. Marcos (now deceased and represented by his Estate/Heirs), Imelda R. Marcos, Taggat Industries, Inc., Pamplona Redwood Veneer, Inc., Southern Plywood, Western Cagayan Lumber, Acme Plywood, Veteran Woodwork, Inc., Sierra Madre Wood Industries, Inc., and Tropical Philippines Wood Industries, Inc.

by Alfonso Lim and Alfonso Lim, Jr., which, in addition to other areas already awarded to TAGGAT and PAMPLONA, resulted in their concession holdings in excess of the allowable limits prescribed under Section 11, Article XIV of the 1973 Constitution;

(b) actively solicited and obtained, upon the personal behest of [the Marcoses], a management contract in favor of TAGGAT to operate and manage the logging concessions of Veterans Woodwork, Inc. (VETERANS), Sierra Madre Wood Industries, Inc. (SIERRA MADRE), and Tropical Philippines Wood Industries, Inc. (TROPICAL) over and above the objections of VETERANS;

(c) obtained a permit to cut down a certain number of Narra and Amaciga trees, and, on the very same day, was likewise given an authorization by Ferdinand E. Marcos to export the same, in violation of existing ban against cutting and export of the aforesaid trees;

(d) obtained, in favor of PAMPLONA, a syndicated loan in the amount of millions of US dollars from a consortium of international banks, secured by the guarantee of the National Investment and Development Corporation (NIDC), a subsidiary of the Philippine National Bank; and in view of the default by PAMPLONA in the payment of its principal and/or interest amortizations, the loan was converted, under the debt rescheduling arrangement between Republic and its foreign creditor banks, into a public sector obligation of Republic, to the grave and irreparable damage of the Republic and the Filipino people.

The Republic also alleged that the foregoing acts, singly or collectively, constituted grave and gross abuse of official position and authority, flagrant breach of public trust and fiduciary obligations, brazen abuse of right and power, unjust enrichment, and violation of the Constitution and laws of the Republic to the grave and irreparable damage to it and its citizens.

As its main prayer, the Republic asked for the reconveyance of all funds and property impressed with constructive trust in favor of the Republic and the Filipino people, "as well as funds and other property acquired with [respondents'] abuse of right

and power and through unjust enrichment, including but not limited to the properties listed in Annex "A" of the Complaint together with the accruing income or increment from date of acquisition until final judgment."

The properties listed in the said Annex "A"[3] consist––besides the Lims' assets sequestered in accordance wth Executive Order Nos. 1 and 2, Series of 1986––of the assets and other properties of Lim, Sr., as follows:

1. a parcel of land with TCT No. 2981 (Lot A), located at Barrio Birinayan, Talisay, Batangas;
2. a parcel of raw land with TCT No. 11750 (Lot 8-C-53) located at Muzon, San Isidro, Angono, Rizal;
3. a parcel of raw land with TCT No. 11749 (Lot 8-C-51) located at Muzon, San Isidro, Angono, Rizal;
4. a parcel of land with TCT No. 11728 (Lot 8-C-9) located at Muzon, San Isidro, Angono, Rizal;
5. a parcel of land with TCT No. 11732 (Lot 8-C-17) located at Muzon, San Isidro, Angono, Rizal;
6. a parcel of agricultural land with TCT No. 11728 (Lot 8-C-9) located at Muzon, San Isidro, Angono, Rizal;
7. a parcel of agricultural land with TCT No. 11727 (Lot 8-C-7) located at Muzon, San Isidro, Angono, Rizal;
8. a parcel of residential land with TCT No. 315 located at Maharlika, Tagaytay City;
9. a parcel of agricultural/residential land with TCT No. 157570 located at Berinayan, Laurel, Batangas;
10. a parcel of land and building in the name of SIERRA MADRE as reported by Task Force SEAFRONT, Nov. 20, 1986;
11. a parcel of land and building in the name of PAMPLONA as reported by Task Force SEAFRONT, November 20, 1986;
12. Contigous (sic) [13] parcels of land located at Claveria, Cagayan in the name of TAGGAT Industries, Inc. as reported by Task Force SEAFRONT, November 7, 1987:

[3] *Rollo*, pp. 71-74.

x x x x x x x x x

13. a parcel of agricultural land in the name of TAGGAT with OCT No. O-1108 (S) Lot No. 1195;

14. a parcel of commercial land in the name of TAGGAT with TCT No. 78732 located at Romualdez Street, Paco, Manila;

15. buildings and improvements in the name of TAGGAT erected on OCT No. 0-1104, 0-11017, 0-1109;

16. buildings in the name of TAGGAT erected on TCT No. 78732; Paco, Manila.

[**OTHER PROPERTIES**]

A. Shares of Stocks in:

1. Taggat Industries, Inc. (TAGGAT)	1350, Romualdez Street, Paco, Manila
2. Pamplona Redwood Veneer, Inc. (PAMPLONA)	1350, Romualdez Street, Paco, Manila
3. Sierra Madre Wood Industries, Inc. (SIERRA MADRE)	79 Doña Hemady corner 13th St., New Manila, Quezon City
4. Veterans Woodworks, Inc. (VETERANS)	79 Doña Hemady corner 13th St., New Manila, Quezon City
5. Southern Plywood Corporation (SPC)	5th Floor Jardine Davies Bldg., 222 Sen. J. Puyat Avenue, Makati, Metro Manila
6. Western Cagayan Lumber (WCL)	Jardine Davies Building, 222 Sen. J. Puyat Avenue, Makati, Metro Manila

B. Property, Plant and Equipment

x x x x x x x x x

C. Aircraft [2 units]

x x x x x x x x x

D. Current Assets [as reported]

x x x x x x x x x

E. Investments and Other Assets

1. Due from affiliated companies, TAGGAT, as reported

2.Investment in Stocks, TAGGAT, as reported

3.Deferred Charges and Other Assets, TAGGAT, as reported

F. Bank Accounts

1. PAMPLONA Accounts

a. The Consolidated Bank and Trust Co.

b. Equitable Banking Corporation

2. TAGGAT Acccounts

a. The Consolidated Bank and Trust Co.

b. Philippine National Bank

c. Equitable Banking Corporation

d. Philippine Banking Corporation

e. Allied Banking Corporation

G. Other

1. Frozen Bank Accounts and Other Assets of Alfonso Lim, Sr., Alfonso Lim, Jr. and Lawrence Lim

Meanwhile, Lim, Sr. passed away. On June 22, 1998, his estate filed a motion to lift the sequestration[4] over certain real properties[5] contending that the PCGG impleaded him owing to his alleged association with former Pres. Marcos. The estate would add, however, that Lim, Sr. secured title over almost all of his real properties thus sequestered way back in 1948, long before the Marcoses came to power.

To the motion to lift, the Republic interposed an opposition, alleging that the sequestered lots and titles stand as security for

[4] *Id.* at 75-77.

[5] The Estate of Alfonso Sr. moved for the lifting of sequestration over lands covered by TCT Nos. 11727, 11728, 11732, 11748, 11749, and 11750 issued on December 15, 1948 by the Register of Deeds of Rizal, and TCT No. 315 issued on November 25, 1948 issued by Register of Deeds of Tagaytay City in the name of Lim, Sr.

the satisfaction of any judgment the Republic may obtain against the estate of Lim, Sr., his family, or his group of companies.

By Resolution[6] dated March 17, 2001, the Sandiganbayan lifted the sequestration order in question on the strength of the following pertinent premises, to wit:

> The sequestration of some of the real properties of movant-defendant [estate of Lim, Sr.] is a remedial measure resorted to in order to preserve these properties along with others alleged to have taken illegally x x x, and "in order to prevent the same from disappearance, destruction, loss or dissipation and/or to foil acts that may render moot and academic the efforts to recover the aforesaid alleged "ill-gotten wealth." However, the pertinent provisions of Executive Order Nos. 1, 2 and 14 are explicit in saying that the properties that are supposed to be "sequestered" are those x x x amassed during the regime of the deposed President Ferdinand E. Marcos and not before or later thereto. x x x

In time, the Republic sought but was later denied reconsideration of the sequestration-lifting resolution of the Sandiganbayan.[7]

Meanwhile, after presenting its evidence in the main case, the Republic filed its Formal Offer of Evidence dated October 8, 2001.[8] On December 5, 2001, the Sandiganbayan issued a terse order admitting all the documentary exhibits of the Republic consisting of **Exhibits "A"** to **"G"**, inclusive of their submarkings.[9]

The following incidents/events then transpired:

(1) Sometime in January 2002, the estate of Lim, Sr., Ruthie Lim, and two others, as defendants *a quo*, filed a Demurrer to Evidence[10] dated January 14, 2002, on the ground of either

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[6] *Rollo*, pp. 98-103.

[7] *Id.* at 104-108.

[8] *Id.* at 109-113.

[9] *Id.* at 188.

[10] *Id.* at 189-195.

irrelevancy or immateriality of the Republic's evidence. As argued, the same evidence did not prove or disprove that the demurring defendants, on their own or in concert with the Marcoses, amassed ill-gotten wealth. Lim, Jr. later filed a Manifestation[11] adopting the demurrer to evidence of the estate of Lim, Sr., et al.

(2) On July 4, 2002, the Sandiganbayan denied the Republic's motion for reconsideration of the graft court's resolution lifting the sequestration order.[12]

(3) In an obvious bid to counter the effects of the lifting of the sequestration, the Republic, on September 9, 2002, filed a Motion for the Issuance of a Writ of Preliminary Attachment[13] against respondents in the amount of its claim. The Republic alleged that respondents Lims "were guilty of fraud in incurring various legal obligations which the present action has been brought," by "taking undue advantage of their relationship, influence and connection with the [Marcoses]" to unjustly enriched themselves to the prejudice of the Republic.

Except for one, all the other respondents belonging to the Lim group filed their respective comment or opposition to the Republic's motion for a writ of attachment.

(4) On March 28, 2003, the Sandiganbayan, stating that bare allegations of the commission of fraud by respondents in incurring the aforesaid obligations are not sufficient for the granting of the writ of preliminary attachment, denied, via a Resolution,[14] the corresponding motion.

In due time, the Republic interposed a motion seeking reconsideration of the Sandiganbayan's March 28, 2003 denial action.[15]

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[11] *Id.* at 196-198.

[12] *Id.* at 206-208.

[13] *Id.* at 209-214.

[14] *Id.* at 35-41.

[15] *Id.* at 42-43.

(5) By Resolution dated **July 17, 2003**, the Sandiganbayan denied respondents' demurrer to evidence.[16]

Forthwith, the estate of Lim, Sr., Taggat Industries, Inc. (TAGGAT), and Pamplona Redwood Veneer, Inc. (PAMPLONA), followed later by Lim, Jr., respectfully moved for reconsideration of the July 17, 2003 Resolution.

(6) On June 18, 2004, the Sandiganbayan resolved to affirm the denial of the respondents' demurrer to evidence. It also denied in its March 28, 2003 resolution the Republic's motion for the issuance of a writ of preliminary attachment.[17]

Hence, this recourse is before us.

The Issues

The two interrelated issues petitioner Republic tenders boils down to: whether the Sandiganbayan, in the light of the denial of respondents' demurrer to evidence, acted with grave abuse of discretion amounting to lack or excess of jurisdiction in not considering that the evidence already on record support the issuance of a writ or preliminary attachment.

The Republic contends that the pieces of evidence offered before and admitted by the Sandiganbayan provide sufficient basis for the issuance of a writ of preliminary attachment. Thus, the graft court, as the Republic argues, committed grave abuse of discretion amounting to excess of jurisdiction in denying the writ of preliminary injunction by not considering the evidence already on record and in ruling contrary to its findings and conclusions when it denied respondents' demurrer to evidence.

Respondents, on the other hand, reiterate their position on the absence of evidence of fraud, as required under Section 1(d), Rule 57 of the Rules of Court, which would justify the issuance of the desired writ. In this regard, they reproduced what the Sandiganbayan said in its March 28, 2003 resolution on the matter of fraud, thus: "These are general averments devoid of

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[16] *Id.* at 230-233.

[17] *Id.* at 44-51.

the particulars of time, persons, etc., in support of the serious allegation that [respondents] are guilty of fraud in incurring these alleged legal obligation. Bare allegations that [respondents] have been guilty of fraud in incurring the aforesaid obligations are not sufficient for the granting of the writ of attachment."[18]

The Court's Ruling

An assiduous review of the antecedent facts and factual findings and conclusions of the Sandiganbayan relative to the denial of demurrer to evidence and the writ of preliminary injunction compels this Court to grant the instant petition.

Nature of Preliminary Attachment

Attachment is an ancillary remedy applied for not for its own sake but to enable the attaching party to realize upon relief sought and expected to be granted in the main or principal action;[19] it is a measure auxiliary or incidental to the main action. As such, it is available during the pendency of the action which may be resorted to by a litigant to preserve and protect certain rights and interests therein pending rendition, and for purposes of the **ultimate effects**, of a final judgment in the case. As a corollary proposition, an order granting an application for a writ of preliminary attachment cannot, owing to the incidental or auxiliary nature of such order, be the subject of an appeal independently of the main action.[20]

The instant case is one of those mentioned in Sec. 1, Rule 57 of the Rules, specifically the section's paragraph "d", wherein a writ of preliminary attachment may be issued. It provides:

SECTION 1. *Grounds upon which attachment may issue*.—A plaintiff or any proper party may, at the commencement of the action

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[18] *Id.* at 39.

[19] *BAC Manufacturing and Sales Corporation v. Court of Appeals*, G.R. No. 96784, August 2, 1991, 200 SCRA 130, 139; citing *Sievert v. CA*, No. 84034, December 22, 1988, 168 SCRA 692.

[20] 1 Regalado, *REMEDIAL LAW COMPENDIUM* 606 (7th ed.).

or at any time thereafter, have the property of the adverse party attached as security for the satisfaction of any judgment that may be recovered in the following cases:

x x x x x x x x x

(d) In an action against a party who has been guilty of fraud in contracting the debt or incurring the obligation upon which the action is brought, or in concealing or disposing of the property for the taking, detention or conversion of which the action is brought;

For a writ of attachment to issue under the above-quoted rule, the applicant must sufficiently show the factual circumstances of the alleged fraud.

Fraud may be defined as the voluntary execution of a wrongful act, or a willful omission, knowing and intending the effects which naturally and necessarily arise from such act or omission.[21] In its general sense, fraud is deemed to comprise anything calculated to deceive, including all acts and omissions and concealment involving a breach of legal or equitable duty, trust, or confidence justly reposed, resulting in damage to another, or by which an undue and unconscientious advantage is taken of another.[22] Fraud is also described as embracing all multifarious means which human ingenuity can device, and which are resorted to by one individual to secure an advantage over another by false suggestions or by suppression of truth and includes all surprise, trick, cunning, dissembling, and any unfair way by which another is cheated.[23] Fraudulent, on the other hand, connotes intentionally wrongful, dishonest, or unfair.[24]

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[21] *Legaspi Oil Co., Inc. v. Court of Appeals*, G.R. No. 96505, July 1, 1993, 224 SCRA 213, 216.

[22] *Garcia v. People*, G. R. No. 144785, September 11, 2003, 410 SCRA 582, 589; *Commissioner of Internal Revenue v. CA*, G.R. No. 119322, June 4, 1996, 257 SCRA 200.

[23] *People v. Balasa*, G.R. No. 106357, September 3, 1998, 295 SCRA 49, 71-72; citing *Alleje v. CA*, G.R. No. 107152, January 25, 1995, 240 SCRA 495.

[24] Clapp, *DICTIONARY OF THE LAW* 194.

In the case at bar, the Republic has, to us, sufficiently discharged the burden of demonstrating the commission of fraud committed by respondents Lims as a condition *sine qua non* for the issuance of a writ of preliminary attachment. The main supporting proving document is the Republic's **Exhibit "B"** which the Sandiganbayan unqualifiedly admitted in evidence. And the fraud or fraudulent scheme principally came in the form of Lim, Sr. holding and/or operating logging concessions which far exceeded the allowable area prescribed under the 1973 Constitution.

A cursory evaluation of the Republic's **Exhibit "B"**—the Decision dated November 20, 1986 of then Minister Ernesto M. Maceda of the Ministry of Natural Resources (MNR)[25] in an unnumbered MNR case entitled *IN RE: VIOLATIONS OF VETERANS WOODWORKS, INC. AND ALFONSO LIM, SR. AND TAGGAT INDUSTRIES, INC.*, canceling the logging concessions[26] enjoyed by the Lim Group—yields the following undisputed relevant data:

(1) Lim, Sr., through the seven (7) respondent corporations, had been holding/operating/managing several timber concessions with a total area of 533,880 hectares, more or less, which was far in excess of the 100,000 hectares allowed in the 1973 Constitution;[27]

(2) Since a wide expanse of forest lands were in between the different Lim concessions, the Lims had effectively access to a total of 633,880 hectares of forests; and

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[25] Now the Department of Environment and Natural Resources.

[26] In part the cancellation decision reads: All the timber concessions of Alfonso Lim, Sr., namely: TLA No. 071 (Taggat Industries, Inc.), TLA No. 074 (Pamplona Redwood Veneer Co., Inc.); TLA No. 321 (Southern Plywood Corp.); and TLA No. 073 (Western Cagayan Lumber, Inc.) and TLA No. 075 (Acme Plywood & Veneer Co., Inc.) are hereby ordered REVOKED/ CANCELLED, and the areas respectively covered thereby be reverted to the mass of public forest. The District Foresters or the WIDA area Managers concerned, as the case may be, are hereby directed to conduct inventories of the logs cut prior to these cancellation orders and to cause the removal of logging equipments from the production areas of the licensee within thirty (30) days from date hereof.

[27] Art. XIV, Sec. 11 of the 1973 Constitution provides that "[N]o private corporation or association may hold by lease, concession, license or permit,

(3) Other violation of the constitutional prohibition applies also to three (3) corporations (Acme Plywood Co., Inc., Western Cagayan Lumber Co., Inc., and Southern Plywood Corporation).

As is made abundantly clear in the aforesaid Maceda decision, the MNR revoked or canceled the concessions or timber license agreements (TLAs) of Lim, Sr. on the principal ground that the timber award was made in utter violation of the Constitutional limitations on the granting of logging concessions.[28] The same decision also indicated that Lim, Sr.'s "influence, power and strong connection with the past [*i.e.,* Marcos] dispensation"[29] explained his receipt of special privileges and concessions unfettered by constitutional constraints. So influential was Lim, Sr. that he and TAGGAT and sister companies received certain timber-related benefits without the knowledge, let alone approval, of MNR.[30] Lim, Sr. doubtless utilized to the hilt his closeness to the Marcoses to amass what may *prima facie* be considered as illegal wealth.

Scheme to Circumvent Constitutional Prohibition

Sec. 11 of Article XIV of the governing 1973 Constitution states that "**no private corporation or association may hold by lease, concession, license, or permit, timber or forest lands and other timber or forest resources in excess of one hundred thousand hectares**." Complementing this provision was Chapter I, No. 3(e) of Forestry Administrative Order (FAO) No. 11 prohibiting any individual, corporation, partnership, or association from acquiring a timber license or license agreement covering an area in excess of 100,000 hectares. Likewise, Chapter I, No. 3(d) of FAO No. 11 states that no individual corporation, partnership, or association who is already a holder of an ordinary timber license or license agreement nor any member of the family,

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timber or forest lands and other timber or forest resources in excess of one hundred hectares."

[28] The canceled TLAs were those pertaining to TAGGAT, PAMPLONA, Southern Plywood Corp., Western Cagayan Lumber, Inc., and Acme Plywood & Veneer Co., Inc.

[29] *Rollo*, p. 163.

[30] *Id.* at 153.

incorporator, director, stockholder, or member of such individual, corporation, partnership, or association shall be allowed to acquire a new timber license or license agreement or any interest or participation in it.

The constitutional and statutory limitations on allowable area leases and concessions were obviously meant to prevent the concentration of large tracts of public land in the hands of a single individual. But as the Office of the Solicitor General aptly observed, citing the Maceda decision: "**For one Filipino out of 55 million to own, operate or in one form [or] another be financially interested in more than 600,000 hectares out of a total forest land of 14 million hectares is certainly unfair, unacceptable and unconstitutional by any standard**."[31]

Lim, Sr., as earlier stated, had been holding/operating/managing several timber concessions through the seven (7) logging companies for an aggregate area of 533,880 hectares, as follows:

Name of Corporation	TLA No.	Concession Area
(1) Taggat Industries, Inc.	071	107,845 has.
(2) Pamplona Redwood Veneer Co., Inc.	074	118,315 has.
(3) Southern Plywood Corp. (one share)	321	71,300 has.
(4) Western Cagayan Lumber Co., Inc. (one share)	073	69,675 has.
(5) Acme Plywood & Veneer Co,, Inc. (one share)	075	84,525 has.
(6) Veterans Woodworks, Inc.		63,179 has.
(7) Sierra Madre Wood Ind., Inc.	345	19,050 has.
	TOTAL	533,880 has.

The Maceda decision stressed that Lim, Sr. had one share each in the three corporations, namely: (1) Acme Plywood and Veneer Co., Inc. (ACME); (2) Western Cagayan Lumber Co., Inc. (WESTERN); and (3) Southern Plywood Corporation (SPC). These corporations, the decision added, likewise violated the

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[31] *Id.* at 18-19.

Constitution considering that Lim, Sr. had control over them as owner-founder. To cover the constitutional violation, Lim, Jr. was used as a front and made to appear as President of the mentioned three corporations.[32]

There can be no quibbling that MNR correctly revoked/canceled all the timber concessions of Lim, Sr., namely: TLA No. 071 (TAGGAT), TLA No. 074 (PAMPLONA), TLA No. 321 (SPC), TLA No. 073 (WESTERN), and TLA No. 075 (ACME). As it were, the TLAs of TAGGAT and PAMPLONA each exceeded the 100,000-hectare threshold prescribed by the 1973 Constitution. Initially, the execution and granting of those timber license agreements were already tainted with fraud. The Lims resorted to their close connection with the Marcoses for the approval of the timber license agreements and the Lims were given access effectively to a total 633,880 hectares in violation of the 1973 Constitution and FAO No. 11.

Indeed, the Lims' availment and enjoyment of logging concessions grossly in excess of constitutional limits amount to a voluntary execution of a wrongful act, if not a serious breach of legal duty. By their acts, the Lims veritably defrauded and cheated the Filipino people—the ultimate beneficiaries of the country's natural resources.

Denial of Demurrer to Evidence Indicative of the Commission of Fraudulent Acts

The evidence that clearly supports the issuance of a writ of preliminary attachment sought by Republic is already on record before the Sandiganbayan. As a matter of fact, the anti-graft court already ruled and considered that the evidence so far presented by the Republic had been sufficient to support a finding that respondents had committed illegal and fraudulent acts against the Republic and the Filipino people. This was the tenor of the Sandiganbayan's resolution denying the respondents' demurrer to evidence.

A demurrer to evidence is defined as "an objection by one of the parties in an action, to the effect that the evidence which his

[32] *Id.* at 161.

adversary produced is insufficient in point of law, whether true or not, to make out a case or sustain the issue."[33] The party demurring challenges the sufficiency of the whole evidence to sustain a verdict.[34] In passing upon the sufficiency of the evidence raised in a demurrer, the court is merely required to ascertain whether there is competent or sufficient proof to sustain the indictment or to support a verdict of guilt.[35] And when the court denies the demurrer, the defendant has to present countervailing evidence against the evidence adduced by the plaintiff.[36]

In the case at bar, when the Sandiganbayan denied respondents' demurrer to evidence, it in effect ruled that the evidence presented by the prosecution is, absent a countervailing evidence, *prima facie* sufficient to support an adverse verdict against them for amassing illegal wealth. The Sandiganbayan, in its underlying resolution of July 17, 2003 denying the demurrer, wrote:

> The Demurrer is denied.
>
> To support the charges, plaintiff introduced, among others, **Exhibit "B"**, a decision dated November 20, 1986 by then DENR Secretary Ernesto Maceda which, after hearing, revoked or cancelled the respective Timber License Agreements (TLAs) of defendants Alfonso Lim, Sr., Taggat Industries, Inc., Pamplona Redwood Veneer, [*etc.*] after an investigation found that the same entities held timber concessions in excess of what was allowed by the Constitution. The same decision likewise made certain findings of facts that x x x Lim, Sr. enjoyed close association with former President Ferdinand E. Marcos as a consequence of which the latter granted x x x Lim, Sr. special privileges and concessions in gross violation of the Constitution. In addition, **Exhibit "E"** indicates that x x x Taggat Industries, chiefly owned by defendant Lim Sr., using his close

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[33] *Rivera v. People*, G.R. No. 163996, June 9, 2005, 460 SCRA 85, 91; citing *Gutib v. Court of Appeals*, G.R. No. 131209, August 13, 1999, 312 SCRA 365, 371.

[34] *Id.*; citing *Ong v. People*, G.R. No. 140904, October 9, 2000, 342 SCRA 372, 383.

[35] *Id.*; citing *Choa v. Choa*, G.R. No. 143376, November 26, 2002, 392 SCRA 641, 648.

[36] Rules of Court, Rule 33, Section 1.

association with then President Marcos, acquired and controlled three (3) other logging firms, namely Veteran Woodworks, Inc., Tropical Philippine Wood Industries, Inc., and Sierra Madre Wood Industries, Inc. x x x. This resulted to the acquisition of defendant Lim Sr. of excessive number of timber concessions.

Given the circumstances, this Court cannot simply brush aside the foregoing considering that what the defendants-movants proffer are mere blanket denial of the charges. In demurrer to evidence, the party demurring challenges the sufficiency of the whole evidence to sustain a verdict. The court, in passing upon the sufficiency of the evidence raised in a demurrer, is merely required to ascertain whether there is competent or sufficient evidence to sustain the indictment. Applying the said ruling in the instant case, there exists *prima facie* evidence on record x x x to support or sustain the charges against the defendants-movants. There is therefore a further need on the part of the defendants-movants to submit the proof to the contrary other than their mere simple disclaimer.[37]

Sandiganbayan Did Not Consider Evidence in Denying Attachment

Given the foregoing pronouncement from the Sandiganbayan, the Court is completely at a loss to understand the graft court's denial of the Republic's plea for the ancillary remedy of preliminary attachment. The wrongful act—the fraud perpetuated by Lim Sr. and/or his corporations on the Republic—is written over or easily deducible from the adverted Maceda decision and **Exhibit "E".** While fraud cannot be presumed, it need not be proved by direct evidence and it can well be inferred from attendant circumstances.[38] Withal, we cannot but agree with the Republic's contention that the Sandiganbayan's denial of its motion for a writ of preliminary attachment constitutes grave and patent abuse of discretion amounting to lack or excess of jurisdiction.

A scrutiny of the above-quoted July 17, 2003 Resolution readily shows that the Sandiganbayan indeed considered the evidence presented and offered by the Republic, specifically

[37] *Rollo*, pp. 232-233.

[38] *Godinez v. Alano*, A.M. No. RTJ-98-1409, February 18, 1999, 303 SCRA 259, 271.

Exhibits "B" and **"E"** which convincingly show the finding that respondents' acts were tainted with fraud in the acquisition of the logging concessions due to their close association with the Marcoses.

It is incongruous, therefore, for the Sandiganbayan to deny the writ of preliminary attachment when the pieces of evidence on record which it used and based its findings and conclusions in denying the demurrer to evidence were the same ones which demonstrate the propriety of the writ of preliminary attachment. Clearly, the Republic has complied with and satisfied the legal obligation to show the specific acts constitutive of the alleged fraud committed by respondents. The denial of the prayed writ, thus, evidently constitutes grave abuse of discretion on the part of Sandiganbayan. After all, "attachment is a mere provisional remedy to ensure the safety and preservation of the thing attached until the plaintiff can, by appropriate proceedings, obtain a judgment and have such property applied to its satisfaction."[39] Indeed, the properties of respondents sought to be subjected to the ancillary writ of preliminary attachment are not only in danger of being lost but should be placed under *custodia legis* to answer for any liabilities that may be adjudged against them in the instant case.

WHEREFORE, the Sandiganbayan Resolutions dated March 28, 2003 and June 18, 2004 are hereby *REVERSED* and *SET ASIDE.* Accordingly, the 2nd Division of Sandiganbayan is hereby *DIRECTED* to *ISSUE* the Writ of Preliminary Attachment prayed for by the Republic. No costs.

SO ORDERED.

Ynares-Santiago (Chairperson), Carpio,[*] *Nachura,* and *Peralta, JJ.,* concur.

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[39] *Sta. Ines Melale Forest Products Corp. v. Macaraig, Jr.*, G.R. Nos. 80849 & 81114, December 2, 1998, 299 SCRA 491, 515 as cited in *Chuidian v. Sandiganbayan*, G.R. No. 139941, January 19, 2001, 349 SCRA 745, 763.

[*] Additional member as per July 13, 2009 raffle.

EN BANC

[G.R. No. 171655. July 22, 2009]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **PABLO L. ESTACIO, JR. and MARITESS ANG,** *appellants.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE SUPREME COURT NEED NOT PASS UPON THE FINDINGS OF FACT OF THE TRIAL COURT, ESPECIALLY IF THEY HAVE BEEN AFFIRMED BY THE APPELLATE COURT. —** Findings of fact of the trial court, its calibration of the testimonies of witnesses, and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings are accorded high respect, if not conclusive effect, by this Court because of the trial court's unique advantage in observing and monitoring at close range the demeanor, deportment, and conduct of the witnesses as they testify. This Court need not thus pass upon the findings of fact of the trial court, especially if they have been affirmed on appeal by the appellate court, as in the present case. Nevertheless, the Court combed through the records of the case and found no ground to merit a reversal of appellants' conviction.

2. **CRIMINAL LAW; SPECIAL COMPLEX CRIMES; EACH OF THE COMPONENT OFFENSES MUST BE PROVEN WITH THE SAME PRECISION THAT WOULD BE NECESSARY IF THEY WERE MADE THE SUBJECT OF SEPARATE COMPLAINTS. —** The Court finds, however, that the offense of which appellants were convicted was erroneously designated. Appellants were eventually charged with and convicted of the special complex crime of kidnapping with murder, defined in the last paragraph of Article 267 of the Revised Penal Code. In a special complex crime, the prosecution must prove each of the component offenses with the same precision that would be necessary if they were made the subject of separate complaints.

3. **ID.; MURDER; WHERE THE TAKING OF THE VICTIM WAS INCIDENTAL TO THE BASIC PURPOSE TO KILL, THE**

CRIME IS ONLY MURDER; CASE AT BAR. — In the case at bar, kidnapping was not sufficiently proven. Although appellants bound and gagged Chua and transported him to Bulacan against his will, they did these acts to facilitate his killing, not because they intended to detain or confine him. As soon as they arrived at the *locus criminis,* appellants wasted no time in killing him. That appellants' intention from the beginning was to kill the victim is confirmed by the conversation which Sumipo heard in the car in which Maritess said that a knife would be used to kill him so that it would not create noise. The *subsequent* demand for ransom was an afterthought which did not qualify appellants' prior acts as kidnapping. *People v. Padica* instructs: We have consistently held that where the taking of the victim was incidental to the basic purpose to kill, the crime is only murder, and this is true even if, before the killing but for purposes thereof, the victim was taken from one place to another. Thus, where the evident purpose of taking the victims was to kill them, and from the acts of the accused it cannot be inferred that the latter's purpose was actually to detain or deprive the victims of their liberty, the subsequent killing of the victims constitute the crime of murder, hence the crime of kidnapping does not exist and cannot be considered as a component felony to produce the complex crime of kidnapping with murder. In fact, as we held in the aforecited case of *Masilang, et. al.*, although the accused had planned to kidnap the victim for ransom but they first killed him and it was only later that they demanded and obtained the money, such demand for ransom did not convert the crime into kidnapping since no detention or deprivation of liberty was involved, hence the crime committed was only murder. x x x The crime committed was thus plain Murder. The killing was qualified by treachery. The victim was gagged, bound, and taken from Quezon City to an isolated place in Bulacan against his will to prevent him from defending himself and to facilitate the killing.

4. **ID.; ID.; IMPOSABLE PENALTY. —** This Court's finding that the offense committed is Murder notwithstanding, the resulting penalty is the same. Under Article 248 of the Revised Penal Code, murder shall be punished by *reclusion perpetua* to death. The use of a motor vehicle, having been alleged in the Information and proven, can be appreciated as a generic aggravating circumstance. There being one generic aggravating circumstance,

the resulting penalty is death. In view, however, of the enactment of Republic Act No. 9346 on June 24, 2006 prohibiting the imposition of death penalty, the penalty is reduced to *reclusion perpetua,* without eligibility for parole.

5. **REMEDIAL LAW; CRIMINAL PROCEDURE; TRIAL; DISCHARGE OF AN ACCUSED AS A STATE WITNESS; CONDITIONS; ESTABLISHED IN CASE AT BAR. —** Respecting the assigned error in discharging Sumipo as a state witness, the same does not lie. The conditions for the discharge of an accused as a state witness are as follows: (a) There is absolute necessity for the testimony of the accused whose discharge is requested; (b) There is no other direct evidence available for the proper prosecution of the offense committed, except the testimony of said accused; (c) The testimony of said accused can be substantially corroborated in its material points; (d) Said accused does not appear to be the most guilty; and (e) Said accused has not at any time been convicted of any offense involving moral turpitude. These conditions were established by the prosecution.

6. **ID.; ID.; ID.; ID.; ERROR IN THE DISCHARGE OF THE ACCUSED AS A STATE WITNESS WILL NOT AFFECT THE COMPETENCY AND QUALITY OF HIS TESTIMONY. —** Even assuming *arguendo* that the discharge of Sumipo as a state witness was erroneous, such error would not affect the competency and quality of his testimony.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for accused-appellants.
Florimond C. Rous for Pablo Estacio, Jr.

D E C I S I O N

CARPIO MORALES, *J.*:

Appellant Maritess Ang (Maritess) was charged before the Regional Trial Court (RTC) of Quezon City with kidnapping for ransom, allegedly committed as follows:

That on or about the 10th of October 1995, in Quezon City, Philippines, the above-named accused conspiring together, confederating with two (2) other persons whose true names, identities and whereabouts have not as yet been ascertained and mutually helping one another did then and there, willfully, unlawfully and feloniously kidnap one CHARLIE CHUA, a businessman, from the Casa Leonisa Bar located at Examiner Street, Quezon City and brought him to an unknown place and detained him up to the present for the purpose of extorting ransom money in the amount of ₱15,000,000.00, Philippine Currency, thereby depriving him of his liberty from October 10, 1995 up to the present, to the damage and prejudice of said offended party.[1]

The Information was subsequently amended to implead the other appellant, Pablo Estacio, Jr. (Estacio), and to change the charge from kidnapping for ransom to *kidnapping with murder*. The accusatory portion of the Amended Information reads:

That on or about the 11th day of October, 1995, in Quezon City, Philippipnes (sic), the above-named accused, conspiring, confederating with another person whose true name and identity has not as yet been ascertained and mutually helping one another, did then and there, willfully, unlawfully and feloniously kidnap one CHARLIE MANCILLAN CHUA, a businessman, with the use of motor vehicle from Casa Leonisa Bar located at Examiner Street, Quezon City and brought him to BRGY. STO. CRISTO, San Jose, del Monte, Bulacan and thereafter with intent to kill, qualified by evident premeditation, did, then and there, willfully, unlawfully and feloniously repeatedly stab said CHARLIE MANCILLAN CHUA on the different parts of his body with the use of [a] fan knife, thereby inflicting upon him serious and mortal wounds, which were the direct and immediate cause of his death, to the damage and prejudice of the heirs of said Charlie Mancillan Chua.[2] (Underscoring in the original.)

Still later, the Information was further amended to additionally implead one Hildo Sumipo (Sumipo)[3] who was, however, subsequently discharged as state witness.[4]

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[1] Information, records, p. 1.

[2] *Id.* at 49.

[3] *Id.* at 52.

[4] *Id.* at 167.

The evidence for the prosecution presents the following version of events:[5]

At around 10:00 in the evening of October 10, 1995, Maritess, together with Estacio and Sumipo, arrived at *Casa Leonisa*, a bar-restaurant at Examiner Street, Quezon City where the three of them would meet with Charlie Mancilla Chua (the victim). Maritess had earlier told Sumipo that she would settle her debt to the victim and then "*deretsong dukot na rin x x x kay Charlie [the victim].*"[6] Sumipo assumed, however, that Maritess was just joking.

After the victim arrived past midnight and talked to Maritess for a short while, the group boarded his car, Maritess taking the seat beside the victim who was driving, as Estacio and Sumipo took the backseat.

Not long after, Estacio pulled out a gun and ordered the victim to pull the car over. As the victim complied, Estacio, with a gun pointed at him, pulled him to the backseat as Maritess transferred to the backseat, sat beside the victim, tied the victim's hands behind his back, and placed tape on his mouth. Estacio then directed Sumipo to take over the wheels as he did.[7]

While Sumipo tried to dissuade appellants from pursuing their plan, they replied that they would kill the victim so that he would not take revenge.[8] Thereupon, the victim told Maritess, "*bakit mo nagawa sa akin ito sa kabila ng lahat?,*" to which she replied, "*Bayad na ako sa utang ko sa iyo ngayon.*"

On Estacio's instruction, Sumipo drove towards San Jose del Monte, Bulacan and on reaching a secluded place, Estacio

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[5] *Vide* TSN, September 24, 1996, pp. 2-75, September 30, 1996, pp.2-59; TSN, October 8, 1996, pp. 2-84; TSN, October 14, 1996, pp. 2-56; October 22, 1996, pp. 3-34; TSN, November 4, 1996, pp. 2-47; TSN, November 7, 1996, pp. 3-91; TSN, November 11, 1996, pp.3-27; TSN, December 4, 1996, pp. 2-32; TSN, January 15, 1997, pp.3-81; TSN, February 24, 1997, pp. 3-77; TSN, March 5, 1997, pp. 3-45; TSN, April 14, 1997, pp. 2-35; TSN, May 5, 1997, pp. 2-30; RTC records, pp. 171-241, 243.

[6] TSN, January 15, 1997, p. 12.

[7] TSN, Jan. 15, 1997, p. 25.

[8] *Id.* at 26-29.

ordered Sumipo to stop the car as he did. Maritess and Estacio then brought the victim to a grassy place. Estacio with bloodied hands later resurfaced.

The three then headed towards Malinta, Valenzuela, Bulacan. On the way, Estacio and Maritess talked about how they killed the victim, Estacio telling Maritess, *"Honey, wala na tayong problema dahil siguradong patay na si Charlie sa dami ng saksak na nakuha niya*."

On Estacio's and Maritess' directive, Sumipo stopped by a drug store where Maritess bought alcohol to clean their hands. Along the way, Maritess and Estacio threw out the victim's attaché case. Maritess later told Estacio "Honey, *sana hindi muna natin pinatay si Charlie para makahingi pa tayo ng pera sa mga magulang [niya]*."

The three later abandoned the car in Malinta.

The following morning, Estacio went to the residence of Sumipo where he called up by telephone the victim's mother and demanded a ₱15,000,000 ransom. The mother replied, however, that she could not afford that amount.

In the afternoon of the same day, Maritess and Estacio went to Sumipo's residence again where Estacio again called up the victim's mother, this time lowering the ransom demand to ₱10,000,000 which she still found to be too steep. Sumipo expressed his misgivings about future calls, as they might get caught, but Estacio and Maritess assured him that that call would be the last.

The group then went to Greenhills where Estacio still again called up the victim's mother, still lowering the ransom demand to ₱5,000,000, ₱1,000,000 of which should be advanced. The victim's mother having agreed to the demand, Maritess and Estacio directed her to place the money in a garbage can near Pizza Hut in Greenhills at 11:30 in the evening. Estacio and Sumipo later proceeded to Pizza Hut, and as they were seated there, a patrol car passed by, drawing them to leave and part ways.

Sumipo soon learned that Maritess and Estacio sold Chua's gun, watch, and necklace from the proceeds of which he was given ₱7,000.

On May 16, 1996, Sumipo surrendered to the National Bureau of Investigation. On May 23, 1996, Estacio surrendered to the police. The police then informed the victim's mother that Estacio had admitted having killed her son, and that he offered to accompany them to the crime scene.

The police, accompanied by the victim's mother and Estacio, went to the crime scene and recovered the remains of the victim who was identified by his mother by the clothes attached to his bones. The victim's dentist found his teeth to match his dental record.

Sumipo explained in an affidavit,[9] which he identified in open court,[10] that Maritess got angry with the victim after he lent money to her husband, one Robert Ong,[11] enabling him to leave the country without her knowledge, while Estacio was jealous of the victim with whom Maritess had a relationship.[12]

In his affidavit[13] which he identified in open court, Estacio claimed that a quarrel broke out in the car between the victim and Maritess about a debt to the victim; that he tried to pacify the two, but the victim got angry at him, prompting him to point a fan knife at his neck; and that he then asked Sumipo to drive the car up to Barangay Sto. Cristo, San Jose del Monte, Bulacan where he dragged the victim away from the car and accidentally stabbed him.

When asked on cross-examination why the stabbing was accidental, Estacio replied that he and Maritess originally planned to leave the victim in Bulacan, but since there was talk of the victim getting back at them, he "got confused and so it happened."[14]

Maritess for her part denied[15] having conspired with Estacio. She claimed that while on board the car, the victim took issue

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[9] Records, pp. 237-240.

[10] TSN, January 15, 1997, pp. 61-62.

[11] TSN, Oct. 13, 1997, p. 93.

[12] Records, p. 237.

[13] Exhibit "AA", *supra* note 9.

[14] TSN, July 16, 1997, p. 10.

[15] *Vide* TSN, October 13, 1997, pp. 3-146.

with her "friendship" with Estacio, whom he insulted. Incensed, Estacio grabbed the victim by the collar, prompting the victim to pull out a gun from under the driver's seat which he aimed at Estacio.

Continuing, Maritess claimed that she tried to pacify the quarreling men; that the car stopped at San Jose del Monte and the three men alighted; that Sumipo returned to the car and was later followed by Estacio who said "*Masama raw ang nangyari,*"[16] he adding that he did not intend to stab the victim.

Branch 219 of the Quezon City RTC found both Estacio and Maritess guilty of "kidnapping on the occasion of which the victim was killed," disposing as follows:

WHEREFORE, finding accused Pablo Estacio, Jr. and Maritess Ang guilty beyond reasonable doubt of the crime of <u>kidnapping on the occasion of which the victim was killed</u>, the court hereby sentences each of them to suffer the maximum penalty of **Death**; to jointly and severally pay the heirs of Charlie Chua the amount of <u>₱200,000.00, as actual damages</u>, and <u>₱1,000,000.00, as moral damages</u>; and to pay the costs.

SO ORDERED.[17] (Emphasis and underscoring supplied)

The case was forwarded to this Court for automatic review.[18] However, the Court referred it to the Court of Appeals for intermediate review following *People v. Mateo*.[19]

Estacio faulted the trial court for:

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x x x FINDING THAT THE GUILT OF HEREIN ACCUSED-APPELLANT FOR THE CRIME CHARGED WAS PROVEN BEYOND REASONABLE DOUBT.

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[16] *Id.* at 54.

[17] Records, p. 402.

[18] *Rollo*, p. 1.

[19] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640, 656. <u>*Vide*</u> *rollo*, p. 2.

II

x x x CONVICTING HEREIN ACCUSED-APPELLANT OF THE CRIME CHARGED **DESPITE FAILURE OF THE PROSECUTION TO PROVE THE INDISPENSABLE ELEMENTS OF DETENTION AND "LOCK UP"**.[20] (Emphasis and underscoring supplied)

As for Maritess, she faulted the trial court for:

A. x x x Discharging Sumipo as State Witness and in Relying on His Testimony for the Conviction of Appellant Ang.[21]

x x x x x x x x x

B. x x x Finding That There was Kidnapping with Murder and That Appellant Ang is Guilty Thereof.

C. x x x Not Concluding that the Crime Committed was Plain Homicide, and That Accused Estacio is Solely Responsible Therefor.[22] (Emphasis and underscoring in the original)

By Decision[23] of May 12, 2005, the Court of Appeals affirmed, with modification, the trial court's decision, disposing as follows:

WHEREFORE, in view of all the foregoing, the decision of the Regional Trial Court of Quezon City in Criminal Case No. Q-95-63818 finding accused-appellants Maritess Ang and Pablo Estacio, Jr. guilty beyond reasonable doubt of the crime of kidnapping with murder and sentencing them to each suffer the penalty of **DEATH**, is AFFIRMED with MODIFICATION. Accused-appellants are ordered to pay, jointly and severally, the heirs of the deceased the amounts of ₱50,000.00 as civil indemnity; ₱25,000.00 as exemplary damages and ₱500,000.00 as moral damages.

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[20] CA *rollo*, pp. 161-162.

[21] *Id.* at 54.

[22] *Id.* at 56.

[23] Penned by Court opf Appeals Associate Justice Eliezer R. de los Santos, with the concurrence of Associate Justices Eugenio S. Labitoria and Arturo D. Brion. CA *rollo*, pp. 225-246.

In view of the death penalty imposed, let the entire records of this case be forwarded to the Honorable Supreme Court for further review.

SO ORDERED.[24] (Emphasis and underscoring supplied)

Appellants manifested before this Court that supplemental pleadings would not be necessary, all relevant matters having already been taken up.[25]

Findings of fact of the trial court, its calibration of the testimonies of witnesses, and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings are accorded high respect, if not conclusive effect, by this Court because of the trial court's unique advantage in observing and monitoring at close range the demeanor, deportment, and conduct of the witnesses as they testify.[26] This Court need not thus pass upon the findings of fact of the trial court, especially if they have been affirmed on appeal by the appellate court, as in the present case.[27] Nevertheless, the Court combed through the records of the case and found no ground to merit a reversal of appellants' conviction.

The Court finds, however, that the offense of which appellants were convicted was erroneously designated.

Appellants were eventually charged with and convicted of the special complex crime of kidnapping with murder, defined in the last paragraph of Article 267 of the Revised Penal Code. In a special complex crime, the prosecution must prove each of the component offenses with the same precision that would be necessary if they were made the subject of separate complaints.[28]

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[24] CA *rollo*, pp. 245-246.

[25] *Rollo*, pp. 26-27.

[26] *Vide Nombrefia v. People*, G.R. No. 157919, January 30, 2007, 513 SCRA 369, 376-377.

[27] *First Corporation v. Former Sixth Division of the Court of Appeals,* G.R. No. 171989, July 4, 2007, 526 SCRA 564, 575.

[28] *People v. Larrañaga*, G.R. Nos. 138874-75, February 3, 2004, 421 SCRA 530, 580.

In the case at bar, kidnapping was not sufficiently proven. Although appellants bound and gagged Chua and transported him to Bulacan against his will, they did these acts to facilitate his killing, not because they intended to detain or confine him. As soon as they arrived at the *locus criminis,* appellants wasted no time in killing him. That appellants' intention from the beginning was to kill the victim is confirmed by the conversation which Sumipo heard in the car in which Maritess said that a knife would be used to kill him so that it would not create noise.[29] The *subsequent* demand for ransom was an afterthought which did not qualify appellants' prior acts as kidnapping.

People v. Padica[30] instructs:

> We have consistently held that where the taking of the victim was incidental to the basic purpose to kill, the crime is only murder, and this is true even if, before the killing but for purposes thereof, the victim was taken from one place to another. Thus, where the evident purpose of taking the victims was to kill them, and from the acts of the accused it cannot be inferred that the latter's purpose was actually to detain or deprive the victims of their liberty, the subsequent killing of the victims constitute the crime of murder, hence the crime of kidnapping does not exist and cannot be considered as a component felony to produce the complex crime of kidnapping with murder. In fact, as we held in the aforecited case of *Masilang, et al.*, although the accused had planned to kidnap the victim for ransom but they first killed him and it was only later that they demanded and obtained the money, such demand for ransom did not convert the crime into kidnapping since no detention or deprivation of liberty was involved, hence the crime committed was only murder.
>
> That from the beginning of their criminal venture appellant and his brothers intended to kill the victim can be readily deduced from the manner by which they swiftly and cold-bloodedly snuffed out his life once they reached the isolated sugarcane plantation in Calamba, Laguna. Furthermore, there was no evidence whatsoever to show or from which it can be inferred that from the outset the killers of the victim intended to exchange his freedom for ransom money. On the contrary, the demand for ransom appears to have

[29] TSN, February 24, 1997, pp. 70-71.

[30] G.R. No. 102645, April 7, 1993, 221 SCRA 362.

arisen and was consequently made as an afterthought, as it was relayed to the victim's family very much later that afternoon after a sufficient interval for consultation and deliberation among the felons who had killed the victim around five hours earlier.

x x x The fact alone that ransom money is demanded would not *per se* qualify the act of preventing the liberty of movement of the victim into the crime of kidnapping, unless the victim is actually restrained or deprived of his liberty for some appreciable period of time or that such restraint was the basic intent of the accused. Absent such determinant intent and duration of restraint, the mere curtailment of freedom of movement would at most constitute coercion.[31] (Underscoring supplied)

The crime committed was thus plain Murder. The killing was qualified by treachery. The victim was gagged, bound, and taken from Quezon City to an isolated place in Bulacan against his will to prevent him from defending himself and to facilitate the killing.

This Court's finding that the offense committed is Murder notwithstanding, the resulting penalty is the same. Under Article 248 of the Revised Penal Code, murder shall be punished by *reclusion perpetua* to death. The use of a motor vehicle, having been alleged in the Information and proven, can be appreciated as a generic aggravating circumstance. There being one generic aggravating circumstance, the resulting penalty is death. In view, however, of the enactment of Republic Act No. 9346 on June 24, 2006 prohibiting the imposition of death penalty, the penalty is reduced to *reclusion perpetua,* without eligibility for parole.

Respecting the assigned error in discharging Sumipo as a state witness, the same does not lie.

The conditions for the discharge of an accused as a state witness are as follows:

(a) There is absolute necessity for the testimony of the accused whose discharge is requested;

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[31] *Id.* at 371-372.

(b) There is no other direct evidence available for the proper prosecution of the offense committed, except the testimony of said accused;

(c) The testimony of said accused can be substantially corroborated in its material points;

(d) Said accused does not appear to be the most guilty; and

(e) Said accused has not at any time been convicted of any offense involving moral turpitude.[32]

These conditions were established by the prosecution. Sumipo was the only person other than appellants who had personal knowledge of the acts for which they were being prosecuted. Only he could positively identify appellants as the perpetrators of the crime. He does not appear to be the most guilty. He did not participate in planning the commission of the crime. He in fact at first thought that Maritess was joking when she said, "*Diretsong dukot na rin kay Charlie*." He tried to dissuade appellants from pursuing their plan. He did not participate in the actual stabbing. And he tried to extricate himself from the attempts to extract ransom from the victim's family.

Sumipo's testimony was corroborated on material points. The victim's mother testified regarding the demands for ransom.[33] Cesar Moscoso, an employee of *Casa Leonisa*, testified to seeing the victim, Estacio, and Maritess at the bar-restaurant on the day and at the time in question.[34] Henry Hong, the victim's cousin who arrived at Pizza Hut, Greenhills ahead of the victim's brother during the scheduled delivery of the ransom, testified to seeing Estacio there with companions.[35] And the victim's skeletal remains were <u>found at the scene of the crime **upon Estacio's information** **and direction**</u>.

And there is no proof that Sumipo had, at any time, been convicted of a crime involving moral turpitude.

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[32] RULES OF COURT, Rule 119, Section 17.

[33] TSN, September 30, 1996, pp. 5-18.

[34] TSN, October 14, 1996, pp. 6-56.

[35] TSN, November 7, 1996, pp. 3-24.

Even assuming *arguendo* that the discharge of Sumipo as a state witness was erroneous, such error would not affect the competency and quality of his testimony.[36]

Finally, the Court brushes aside Maritess' disclaimer of participation in killing the victim. It was she who bound the hands and gagged the victim. When Estacio, in Maritess' company, brought the victim to the scene of the crime and thereafter returned to the car, her and Estacio's hands were bloodied.

Parenthetically, prosecution witness Arlene Francisco, Maritess' friend who visited her in prison, testified that Maritess admitted having killed Chua.[37] And the prosecution presented letters from Maritess to Estacio, written from prison, where she admitted the deed.[38]

WHEREFORE, the Decision of the Court of Appeals of May 12, 2005 is *AFFIRMED* with *MODIFICATION*. The Court finds appellants Maritess Ang and Pablo Estacio, Jr. guilty beyond reasonable doubt of Murder, with the generic aggravating circumstance of use of motor vehicle. And in view of the enactment of Republic Act No. 9346 on June 24, 2006, the penalty is reduced to *reclusion perpetua* without eligibility for parole.

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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[36] *Vide People v. de Guzman*, G.R. No. 118670, February 22, 2000, 326 SCRA 131, 141.

[37] TSN, September 24, 1996, p. 14.

[38] Exhibit "N -4", (transcript), pp. 209-210. Original: Exhibit "C-5", records, p. 185.

THIRD DIVISION

[G.R. No. 171842. July 22, 2009]

GLORIA S. DY, *petitioner, vs.* **MANDY COMMODITIES CO., INC.,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; FORUM SHOPPING; WHEN IT EXISTS. —** Forum shopping is a deplorable practice of litigants consisting of resorting to two different *fora* for the purpose of obtaining the same relief, to increase the chances of obtaining a favorable judgment. What is pivotal to the determination of whether forum shopping exists or not is the vexation caused to the courts and the party-litigants by a person who asks appellate courts and/or administrative entities to rule on the same related causes and/or to grant the same or substantially the same relief, in the process creating the possibility of conflicting decisions by the different courts or *fora* upon the same issues.

2. **ID.; ID.; ID.; ID.; RATIONALE FOR THE RULE AGAINST FORUM SHOPPING; EFFECT OF NON-COMPLIANCE WITH THE REQUIREMENTS. —** The grave evil sought to be avoided by the rule against forum shopping is the rendition by two competent tribunals of two separate and contradictory decisions. Unscrupulous party litigants, taking advantage of a variety of competent tribunals, may repeatedly try their luck in several different *fora* until a favorable result is reached. To avoid the resultant confusion, this Court adheres strictly to the rules against forum shopping, and any violation of these rules results in the dismissal of a case. To stamp out this abominable practice, which seriously impairs the efficient administration of justice, this Court promulgated Administrative Circulars No. 28-91 and No. 04-94, which are now embodied as Section 5, Rule 7 of the Rules of Court.xxx Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading, but shall be a cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification of or non-compliance with

any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be a ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions.

3. ID.; ID.; ID.; ID.; ELEMENTS. — The test for determining the existence of forum shopping is whether the elements of *litis pendentia* are present, or whether a final judgment in one case amounts to *res judicata* in another. Thus, there is forum shopping when the following elements are present: (a) identity of parties, or at least such parties as represent the same interests in both actions; (b) identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; and (c) the identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration. Said requisites are also constitutive of the requisites for *auter action pendant* or *lis pendens*.

4. ID.; ID.; ID.; ID.; ID.; PRESENT IN CASE AT BAR. — In the instant case, the first element of forum shopping is present. The parties to CA-G.R. SP No. 86478 and Petitioner's Unlawful Detainer Case are the same. As to the second element, it must be stressed that in ejectment cases, either in unlawful detainer or in forcible entry cases, the only issue to be resolved is the question of who is entitled to the physical or material possession of the premises or possession *de facto*. Thus, these are summary proceedings intended to provide an expeditious means of protecting actual possession or right of possession of property. Title is not involved; that is why it is a special civil action with a special procedure. Here, the rights asserted in both cases are also identical, namely, the right of possession over the subject property. In fact, in the Unlawful Detainer case, petitioner's cause of action was based on her alleged superior right over the property in question as a lessee thereof, pursuant to the provisional permit from the LMB, as against respondent's allegedly expired sub-lease contract with the National Government. This is the very same assertion of petitioner and the contentious fact involved in CA-G.R. SP No. 86478 (Respondent's Forcible Entry Case). As the issues

in both cases refer singularly to the right of material possession over the disputed property, then an adjudication in Repondent's Forcible Entry Case constitutes an adjudication of Petitioner's Unlawful Detainer Case, such that the latter court would be bound thereby and could not render a contrary ruling on the very same issue.

5. **ID.; ID.; ID.; ID.; DISMISSAL OF BOTH CASES WARRANTED ONCE THERE IS A FINDING OF FORUM SHOPPING; RATIONALE FOR THE TWIN DISMISSAL .—** Once there is a finding of forum shopping, the penalty is summary dismissal not only of the petition pending before this Court, but also of the other case that is pending in a lower court. This is so because twin dismissal is a punitive measure to those who trifle with the orderly administration of justice. In *Buan v. Lopez, Jr.,* petitioners therein instituted before the Court a special civil action for prohibition and, almost a month earlier, another special civil action for "prohibition with preliminary injunction" before the RTC Manila. Finding petitioners guilty of forum shopping, the Court dismissed not only the action before it, but also the special civil action still pending before the RTC, *viz*: Indeed, the petitioners in both actions x x x have incurred not only the sanction of dismissal of their case before this Court in accordance with Rule 16 of the Rules of Court, but also **punitive measure of dismissal of both their actions, that in this Court and that in Regional Trial Court** as well. Also, in *First Philippine International Bank v. Court of Appeals*, an action for specific performance became the subject of a petition for review before the Court. While said case was pending, a second one — denominated as a derivative suit and involving the same parties, causes of action and reliefs — was filed before the RTC Makati. The Court therein dismissed the petition before it and the derivative suit that was pending before the RTC Makati, thus: [F]inding the existence of forum-shopping x x x, the only sanction now is the **dismissal of both cases** x x x. Taking our cue from these cases, the Court of Appeals' action of dismissing petitioner's appeal relative to Respondent's Forcible Entry Case and Petitioner's Unlawful Detainer Case is, therefore, warranted.

6. **ID.; SPECIAL CIVIL ACTIONS; FORCIBLE ENTRY; BASIC INQUIRY CENTERS ON WHO HAS THE PRIOR POSSESSION *DE FACTO*. —** There is forcible entry or

desahucio when one is deprived of physical possession of land or building by means of force, intimidation, threat, strategy or stealth. The basic inquiry centers on who has the prior possession *de facto*. In filing forcible entry cases, the law tells us that two allegations are mandatory for the municipal court to acquire jurisdiction: first, the plaintiff must allege prior physical possession of the property; and second, he must also allege that he was deprived of his possession by any of the means provided for in Section 1, Rule 70 of the Rules of Court, *i.e.*, by force, intimidation, threat, strategy or stealth. It is also settled that in the resolution of such cases, what is important is determining who is entitled to the physical possession of the property. Thus, the plaintiff must prove that he was in prior physical possession of the premises until he was deprived thereof by the defendant. Indeed, any of the parties who can prove prior possession *de facto* may recover the possession even from the owner himself, since such cases proceed independently of any claim of ownership, and the plaintiff needs merely to prove prior possession *de facto* and undue deprivation thereof.

7. **ID.; ID.; ID.; ID.; CASE AT BAR. —** In the case under consideration, the Court of Appeals found that respondent as sub-lessee of the PNB was acting within its prerogatives as possessor when it filed the forcible entry suit against petitioner. From 1994 until the controversy arose, respondent was in peaceful possession of the property in question. The Court of Appeals even pointed out that even when the LMB gained possession of the property on 29 August 2003, respondent was allowed to continue business within the premises. In contrast, petitioner's possession was predicated on the provisional permit issued to her by LMB and the 28 August 2003 Order of the Pasay City RTC in the PNB Injunction Case. It must be noted that the said order directing the take over of the disputed property was declared void by the Court of Appeals, even when it denied the propriety of the issuance of a TRO in the PNB Injunction Case. The said ruling of the Court of Appeals was in turn affirmed in the 10 November 2004 and 2 February 2005 Resolutions in G.R. No. 164786. Considering that the possession of petitioner was declared void, and bearing in mind that the validity of petitioner's provisional permit to occupy the property is yet to be settled in the PNB Injunction Case, still pending in the Pasay City RTC, petitioner's occupation

thereof is without legal authority. Simply put, petitioner has no right to occupy the property. In contrast, respondent's right to occupy it remains intact, since the records of the case are barren of any indication that the National Government or the PNB made a formal demand on the respondent to vacate said property. The way things stand, respondent, whose prior possession over the property remains intact, has the better right over it. Thus, when it filed the instant forcible entry case against petitioner who forcibly took possession thereof on 7 November 2003, respondent was just exercising its right.

APPEARANCES OF COUNSEL

R.P. Nograles Law Office for petitioner.
DJ Mendoza Law Office for respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

This Petition for Review on *Certiorari* filed by petitioner Gloria S. Dy seeks to reverse and set aside the 15 September 2005 Decision[1] of the Court of Appeals in CA-G.R. SP No. 86478 dismissing petitioner's appeal on the ground of forum shopping and its Resolution[2] dated 3 March 2006, denying the petitioner's motion for reconsideration.

This case has its origin in the contract entered into by the National Government with the Philippine National Bank (PNB) on 9 June 1978, wherein the former leased in favor of the latter the 21,727-square meter government-owned land located at Numancia Street, corner Urbiztondo, Binondo, Manila. The lease was good for 25 years which commenced on 1 August 1978 and was to expire on 31 July 2003, renewable for the same period upon agreement of both parties.

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[1] Penned by Associate Justice Rebecca de Guia-Salvador with Associate Justices Conrado M. Vasquez, Jr. and Aurora Santiago-Lagman, concurring. *Rollo,* pp.13-34.

[2] *Rollo*, pp. 35-39.

On 17 October 1994, PNB sublet a portion of the subject land consisting of 8,530.16 square meters to respondent Mandy Commodities Co., Inc. (Mandy Commodities), for a period corresponding to PNB's contract with the National Government. Respondent constructed on the subleased portion a two-storey warehouse which was leased out to its tenants.

When the expiration of the subject lease contract was approaching, then Department of Environment and Natural Resources (DENR) Secretary Heherson Alvarez (Secretary Alvarez), on behalf of the government, issued a Memorandum Order dated 6 May 2002 initially approving the renewal of PNB's lease for another 25 years. In another Memorandum dated 6 August 2002, Secretary Alvarez, however, recalled the earlier 6 May 2002 Memorandum and revoked the renewal of the said lease contract for the purpose of clarifying the terms thereof and re-evaluating the role, qualifications and capability of the subject realty's sub-lessees. Later, in a Final Endorsement dated 29 November 2002, Secretary Alvarez had a change of heart and approved the renewal of the lease in favor of PNB and included respondent as one of the sub-lessees. This Final Endorsement, though, did not last long as the then new DENR Secretary, Elisea Gozun, issued a Memorandum dated 27 May 2003, withdrawing the lease contract with PNB and, consequently calling off the sub-lease contract with the respondent.

Since the subject lease was about to expire, the Land Management Bureau (LMB), on behalf of the National Government, in a letter dated 25 July 2003, informed PNB that a take over team was created to effect repossession of the subject property and requested the PNB to turn it over to the DENR upon the termination of the lease contract.

On 30 July 2003, in order to avert the eventual take over, PNB commenced a complaint for Injunction (PNB Injunction Case) with prayer for the issuance of a Temporary Restraining Order (TRO) or Writ of Preliminary Injunction and damages docketed as Civil Case No. 03-0368-CFM before the Regional Trial Court (RTC) of Pasay, Branch 118. The PNB alleged that the contract of lease between it and the National Government had already been renewed by virtue of the 29 November 2002 Final

Endorsement of then Secretary Alvarez; hence, PNB's possession of the disputed property must be respected by the LMB. The PNB Injunction Case prompted Secretary Gozun to issue a Memorandum dated 31 July 2003 directing the LMB to observe the *status quo* until further advice from her office or from the Pasay RTC.

In an Order dated 28 August 2003, the Pasay RTC in the PNB Injunction Case denied PNB's application for TRO and/ or Writ of Preliminary Injunction. The Pasay RTC also ordered the LMB to secure and take over the subject land. PNB questioned this order before the Court of Appeals in CA-G.R. SP No. 78980. Although the 28 August 2003 Order of the Pasay RTC had yet to be decided by the Court of Appeals, the LMB was able to implement said order and gain possession of the subject property on 29 August 2003.

On 18 September 2003, the Court of Appeals, in the PNB Injunction Case, nullified the said RTC Order and granted PNB's application for TRO.

Since the LMB had already taken possession of the questioned property, thereby rendering the 18 September 2003 TRO issued by the Court of Appeals moot, the LMB sought the legal advice of the Office of the Solicitor General (OSG). In its Opinion dated 23 September 2003, the OSG opined, among other things, that the TRO issued by the Court of Appeals against it was indeed moot, and that provisional permits for occupancy of the same property could be issued to qualified applicants, subject to the outcome of the main PNB Injunction Case involving the property before the RTC.

In a letter dated 6 October 2003, PNB demanded the pull-out of the guards posted by the LMB in the premises of the property. This demand letter was ignored by the LMB on the strength of the Solicitor General's opinion.

In the meantime, banking on the same OSG opinion, LMB granted petitioner Gloria Dy a provisional permit to occupy the subject realty. Equipped with the provisional permit from the LMB, petitioner was able to enter and install her own guards in

the premises of the property on 10 October 2003. Petitioner also posted notices announcing that all the tenants therein should secure from her an authorization to enter the same.

On 15 October 2003, respondent Mandy Commodities, being the sub-lessee, reacted to petitioner's intrusion on the subject property by filing a complaint for Damages with prayer for injunction (Respondent's Injunction Case) and TRO docketed as Civil Case No. 03108128 before the Manila RTC, Branch 25. On 21 October 2003, through the aid of its own security personnel, respondent regained possession of the same property.

Meanwhile, in the PNB Injunction Case, the Court of Appeals in its 30 October 2003 Decision, affirmed the 28 August 2003 Order of the Pasay RTC denying PNB's application for TRO on the ground that PNB failed to establish its right to the disputed property. Although the Court of Appeals affirmed the 28 August 2003 Order of the Pasay RTC, it nonetheless declared void the take over order, since the subject matter of the PNB Injunction Case was limited to whether the grant of the provisional remedy of TRO was warranted or not; hence, the RTC Pasay went beyond the matter submitted for adjudication when it ordered the take over of the property. The Court of Appeals went on by declaring that the take over by LMB of the property was void, and that any action affecting PNB and its lease was also condemned as lacking any legal basis, since such order to take over amounted to a disposition of the main case of injunction. PNB elevated this adverse decision to this Court, which case was docketed as G.R. No. 164786.

On 7 November 2003, petitioner was able to wrest from respondent possession of the property in question.

On 4 December 2003, respondent commenced the instant case with the Metropolitan Trial Court (MeTC) of Manila, Branch 20, for Forcible Entry (Respondent's Forcible Entry Case), with prayer for mandatory injunction, docketed as Civil Case No. 176953-CV.

On 6 April 2004, in Respondent's Forcible Entry Case, the MeTC Manila ruled against respondent, opining that, by virtue of the expiration of PNB's lease contract, respondent lost its

right to possess said property. Concomitantly, as respondent's right thereto was intertwined with that of PNB, the same right also vanished.

Respondent appealed to the RTC Manila, Branch 30, for the dismissal of its forcible entry complaint.

On 12 July 2004, the RTC Manila, in Respondent's Forcible Entry Case, reversed the MeTC decision and ordered petitioner to vacate the subject property. It ruled that despite the take over by the LMB, respondent was allowed to continue its business and possession of the disputed landholding. Hence, it was respondent who had prior, actual and physical possession of the property and had a better right over it. This favorable decision prompted respondent to file a motion for immediate execution which was granted by the RTC Manila and, accordingly, a Writ of Execution dated 7 September 2004 was issued in favor of the respondent. Conversely, petitioner's motion for reconsideration of the RTC decision was denied. Undaunted, petitioner elevated the case to the Court of Appeals, where it was docketed as CA-G.R. SP No. 86478.

Meanwhile, the OSG filed an Omnibus Motion seeking intervention in Respondent's Forcible Entry Case, as well as the admission of its motion for reconsideration-in-intervention of the RTC decision and opposition-in-intervention to respondent's motion for immediate execution. The RTC Manila denied the Omnibus Motion filed by the OSG. This adverse ruling was questioned by the OSG before the Court of Appeals, where it was docketed as CA-G.R. SP No. 86307 (OSG *Certiorari*).

On 8 November 2004, petitioner moved for the consolidation of CA-G.R. SP No. 86307 and CA-G.R. SP No. 86478, a motion that was granted by the Court of Appeals, subject to the conformity of the *ponente* in the former case.

On 21 April 2005, the OSG *Certiorari* (CA-G.R. SP No. 86307) was dismissed by the Court of Appeals upon a motion filed by respondent. The Court of Appeals said that the OSG should address its motion to intervene in CA-G.R. SP No. 86478. No further action was taken by the OSG in CA-G.R. SP No. 86307.

In the meantime, on 15 May 2005, without waiting for the result of Respondent's Forcible Entry Case (CA-G.R. SP No. 86478) pending before the Court of Appeals, petitioner filed an Unlawful Detainer case (Petitioner's Unlawful Detainer Case) against respondent before the MeTC Manila, Branch 15, where it was docketed as Civil Case No. 00000004-CV. In her complaint, petitioner made use of the same facts as in CA-G.R. SP No. 86478.

On account of the foregoing fact, respondent moved for the dismissal of CA-G.R. SP No. 86478 on the ground of forum shopping. Calling the Court of Appeals' attention to the 10 November 2004 and 2 February 2005 Resolutions of this Court in G.R. No. 164786 (PNB's Injunction Case) denying PNB's application for TRO, petitioner opposed the motion to dismiss on the ground that, among other things, her Unlawful Detainer Case was now premised on the settled termination of PNB's contract of lease with the National Government as implied by said Resolutions.

In a Decision dated 15 September 2005, the Court of Appeals dismissed CA-G.R. SP No. 86478 on the ground of forum shopping and for lack of merit. The Court of Appeals stated that petitioner's filing of the Unlawful Detainer Case during the pendency of the Respondent's Forcible Entry Case (CA-G.R. SP No. 86478) in the Court of Appeals constituted forum shopping. The dispositive portion thereof reads:

> WHEREFORE, the petition is DISMISSED on account of forum shopping and for lack of merit.[3]

On 6 October 2005, petitioner filed a Motion for Reconsideration. For its part, respondent filed an *Urgent Motion to Include in the Decision an Order Dismissing the Case Simultaneously Commenced by the Petitioner Together with the Instant Petition*. The Court of Appeals was also apprised that petitioner's Unlawful Detainer Case had already been decided by the MeTC Manila in petitioner's favor and was now pending appeal before the Manila RTC, Branch 9.

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[3] *Id.* at 33.

In its 3 March 2006 Resolution, the Court of Appeals denied petitioner's motion for reconsideration. The Court of Appeals, on the other hand, granted respondent's urgent motion to dismiss Petitioner's Unlawful Detainer Case, which is now on appeal before the RTC Manila.

Hence, the instant petition.

Petitioner maintains that she did not commit forum shopping, since there is no identity of the cause of action or of the issue between Respondent's Forcible Entry Case and Petitioner's Unlawful Detainer Case.

The petition is not meritorious.

Forum shopping is a deplorable practice of litigants consisting of resorting to two different *fora* for the purpose of obtaining the same relief, to increase the chances of obtaining a favorable judgment.[4] What is pivotal to the determination of whether forum shopping exists or not is the vexation caused to the courts and the party-litigants by a person who asks appellate courts and/or administrative entities to rule on the same related causes and/ or to grant the same or substantially the same relief, in the process creating the possibility of conflicting decisions by the different courts or *fora* upon the same issues.[5]

The grave evil sought to be avoided by the rule against forum shopping is the rendition by two competent tribunals of two separate and contradictory decisions. Unscrupulous party litigants, taking advantage of a variety of competent tribunals, may repeatedly try their luck in several different *fora* until a favorable result is reached. To avoid the resultant confusion, this Court adheres strictly to the rules against forum shopping, and any violation of these rules results in the dismissal of a case. To stamp out this abominable practice, which seriously impairs the efficient administration of justice, this Court promulgated Administrative Circulars No. 28-91 and No. 04-94, which are

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[4] *Collantes v. Court of Appeals*, G.R. No. 169604, 6 March 2007, 517 SCRA 561, 568.

[5] *Id.*

now embodied as Section 5, Rule 7 of the Rules of Court, which reads:

> SEC. 5. *Certification against forum shopping*. — The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) 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 (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading, but shall be a cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification of or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be a ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions.

The test for determining the existence of forum shopping is whether the elements of *litis pendentia* are present, or whether a final judgment in one case amounts to *res judicata* in another. Thus, there is forum shopping when the following elements are present: (a) identity of parties, or at least such parties as represent the same interests in both actions; (b) identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; and (c) the identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the

action under consideration. Said requisites are also constitutive of the requisites for *auter action pendant* or *lis pendens*.

In the instant case, the first element of forum shopping is present. The parties to CA-G.R. SP No. 86478 and Petitioner's Unlawful Detainer Case are the same. As to the second element, it must be stressed that in ejectment cases, either in unlawful detainer or in forcible entry cases, the only issue to be resolved is the question of who is entitled to the physical or material possession of the premises or possession *de facto*.[6] Thus, these are summary proceedings intended to provide an expeditious means of protecting actual possession or right of possession of property. Title is not involved; that is why it is a special civil action with a special procedure.[7] Here, the rights asserted in both cases are also identical, namely, the right of possession over the subject property. In fact, in the Unlawful Detainer case, petitioner's cause of action was based on her alleged superior right over the property in question as a lessee thereof, pursuant to the provisional permit from the LMB, as against respondent's allegedly expired sub-lease contract with the National Government.[8] This is the very same assertion of petitioner and the contentious fact involved in CA-G.R. SP No. 86478 (Respondent's Forcible Entry Case). As the issues in both cases refer singularly to the right of material possession over the disputed property, then an adjudication in Repondent's Forcible Entry Case constitutes an adjudication of Petitioner's Unlawful Detainer Case, such that the latter court would be bound thereby and could not render a contrary ruling on the very same issue.

Petitioner insists that, assuming *arguendo* he is guilty of forum shopping, the Court of Appeals should have only dismissed CA-G.R. SP No. 86478 (Respondent's Forcible Entry Case) and allowed Petitioner's Unlawful Detainer Case be decided first by the MeTC.

Petitioner's argument is inaccurate.

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[6] *University Physicians Services, Inc. v. Court of Appeals*, G.R. No. 100424, 13 June 1994, 233 SCRA 86, 89.

[7] *Id.*

[8] *Rollo*, p. 458.

Once there is a finding of forum shopping, the penalty is summary dismissal not only of the petition pending before this Court, but also of the other case that is pending in a lower court. This is so because twin dismissal is a punitive measure to those who trifle with the orderly administration of justice.

In *Buan v. Lopez, Jr.,*[9] petitioners therein instituted before the Court a special civil action for prohibition and, almost a month earlier, another special civil action for "prohibition with preliminary injunction" before the RTC Manila. Finding petitioners guilty of forum shopping, the Court dismissed not only the action before it, but also the special civil action still pending before the RTC, *viz*:

> Indeed, the petitioners in both actions x x x have incurred not only the sanction of dismissal of their case before this Court in accordance with Rule 16 of the Rules of Court, but also **punitive measure of dismissal of both their actions, that in this Court and that in Regional Trial Court** as well.[10]

Also, in *First Philippine International Bank v. Court of Appeals*,[11] an action for specific performance became the subject of a petition for review before the Court. While said case was pending, a second one — denominated as a derivative suit and involving the same parties, causes of action and reliefs — was filed before the RTC Makati. The Court therein dismissed the petition before it and the derivative suit that was pending before the RTC Makati, thus:

> [F]inding the existence of forum-shopping x x x, the only sanction now is the **dismissal of both cases** x x x.[12]

Taking our cue from these cases, the Court of Appeals' action of dismissing petitioner's appeal relative to Respondent's Forcible Entry Case and Petitioner's Unlawful Detainer Case is, therefore, warranted.

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[9] 229 Phil. 65 (1986).

[10] *Id.* at 70.

[11] 322 Phil. 280 (1996).

[12] *Id.* at 313-314.

Moreover, even as we pass upon the merit of the instant case, we find that the Court of Appeals did not err in dismissing the same.

There is forcible entry or *desahucio* when one is deprived of physical possession of land or building by means of force, intimidation, threat, strategy or stealth.[13] The basic inquiry centers on who has the prior possession *de facto*. In filing forcible entry cases, the law tells us that two allegations are mandatory for the municipal court to acquire jurisdiction: first, the plaintiff must allege prior physical possession of the property; and second, he must also allege that he was deprived of his possession by any of the means provided for in Section 1, Rule 70 of the Rules of Court, *i.e.*, by force, intimidation, threat, strategy or stealth. It is also settled that in the resolution of such cases, what is important is determining who is entitled to the physical possession of the property. Thus, the plaintiff must prove that he was in prior physical possession of the premises until he was deprived thereof by the defendant. Indeed, any of the parties who can prove prior possession *de facto* may recover the possession even from the owner himself, since such cases proceed independently of any claim of ownership, and the plaintiff needs merely to prove prior possession *de facto* and undue deprivation thereof.

In the case under consideration, the Court of Appeals found that respondent as sub-lessee of the PNB was acting within its prerogatives as possessor when it filed the forcible entry suit against petitioner. From 1994 until the controversy arose, respondent was in peaceful possession of the property in question. The Court of Appeals even pointed out that even when the LMB gained possession of the property on 29 August 2003, respondent was allowed to continue business within the premises. In contrast, petitioner's possession was predicated on the provisional permit issued to her by LMB and the 28 August 2003 Order of the Pasay City RTC in the PNB Injunction Case. It must be noted that the said order directing the take over of the disputed property was declared void by the Court of Appeals, even when it denied

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[13] *Bañes v. Lutheran Church in the Philippines*, G.R. No. 142308, 15 November 2005, 475 SCRA 13, 34.

the propriety of the issuance of a TRO in the PNB Injunction Case. The said ruling of the Court of Appeals was in turn affirmed in the 10 November 2004 and 2 February 2005 Resolutions in G.R. No. 164786. Considering that the possession of petitioner was declared void, and bearing in mind that the validity of petitioner's provisional permit to occupy the property is yet to be settled in the PNB Injunction Case, still pending in the Pasay City RTC, petitioner's occupation thereof is without legal authority. Simply put, petitioner has no right to occupy the property. In contrast, respondent's right to occupy it remains intact, since the records of the case are barren of any indication that the National Government or the PNB made a formal demand on the respondent to vacate said property. The way things stand, respondent, whose prior possession over the property remains intact, has the better right over it. Thus, when it filed the instant forcible entry case against petitioner who forcibly took possession thereof on 7 November 2003, respondent was just exercising its right.

In sum, this Court defers to the findings of the Court of Appeals, there being no cogent reason to veer away from such findings.

WHEREFORE, premises considered, the instant petition is *DENIED*. The Decision of the Court of Appeals dated 15 September 2005 and its Resolution dated 3 March 2006 dismissing petitioner's appeal of the adverse resolution against her in Respondent's Forcible Entry Case (CA-G.R. No. 86478) and Petitioner's Unlawful Detainer Case (Civil Case No. 00000004-CV) in the MeTC Manila, Branch 15, are hereby *AFFIRMED.* Costs against petitioner.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 181235. July 22, 2009]

BANCO DE ORO-EPCI, INC. (formerly Equitable PCI Bank), *petitioner, vs.* **JOHN TANSIPEK,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; EFFECT OF FAILURE TO PLEAD; REMEDY OF A PARTY WHO HAS BEEN DECLARED IN DEFAULT. —** To recapitulate, upon being declared in default, respondent Tansipek filed a Motion for Reconsideration of the Default Order. Upon denial thereof, Tansipek filed a Petition for *Certiorari* with the Court of Appeals, which was dismissed for failure to attach the assailed Orders. Respondent Tansipek's Motion for Reconsideration with the Court of Appeals was denied for having been filed out of time. Respondent Tansipek did not appeal said denial to this Court. Respondent Tansipek's remedy against the Order of Default was erroneous from the very beginning. Respondent Tansipek should have filed a Motion to Lift Order of Default, and not a Motion for Reconsideration, pursuant to Section 3(b), Rule 9 of the Rules of Court x x x A Motion to Lift Order of Default is different from an ordinary motion in that the Motion should be verified; and must show fraud, accident, mistake or excusable neglect, and meritorious defenses. The allegations of (1) fraud, accident, mistake or excusable neglect, and (2) of meritorious defenses must concur. x x x It is important to note that a party declared in default – respondent Tansipek in this case – is not barred from appealing from the judgment on the main case, whether or not he had previously filed a Motion to Set Aside Order of Default, and regardless of the result of the latter and the appeals therefrom. However, the appeal should be based on the Decision's being contrary to law or the evidence already presented, and not on the alleged invalidity of the default order.

2. **ID.; ID.; JUDGMENTS; DOCTRINE OF THE LAW OF THE CASE, APPLIED. —** Assuming for the sake of argument, however, that respondent Tansipek's Motion for Reconsideration may be treated as a Motion to Lift Order of Default, his Petition for *Certiorari* on the denial thereof has

already been dismissed with finality by the Court of Appeals. Respondent Tansipek did not appeal said ruling of the Court of Appeals to this Court. The dismissal of the Petition for *Certiorari* assailing the denial of respondent Tansipek's Motion constitutes a bar to the retrial of the same issue of default under the doctrine of the law of the case. The issue of the propriety of the Order of Default had already been adjudicated in Tansipek's Petition for *Certiorari* with the Court of Appeals. As such, this issue cannot be readjudicated in Tansipek's appeal of the Decision of the RTC on the main case. Once a decision attains finality, it becomes the law of the case, whether or not said decision is erroneous. Having been rendered by a court of competent jurisdiction acting within its authority, the judgment may no longer be altered even at the risk of legal infirmities and errors it may contain. Respondent Tansipek counters that the doctrine of the law of the case is not applicable, inasmuch as a Petition for *Certiorari* is not an appeal. Respondent Tansipek further argues that the Doctrine of the Law of the Case applies only when the appellate court renders a decision on the merits, and not when such appeal was denied due to technicalities. We are not persuaded. x x x There is no substantial distinction between an appeal and a Petition for *Certiorari* when it comes to the application of the Doctrine of the Law of the Case. The doctrine is founded on the policy of ending litigation. The doctrine is necessary to enable the appellate court to perform its duties satisfactorily and efficiently, which would be impossible if a question once considered and decided by it were to be litigated anew in the same case upon any and every subsequent appeal. Likewise, to say that the Doctrine of the Law of the Case applies only when the appellate court renders a decision on the merits would be putting a premium on the fault or negligence of the party losing the previous appeal. In the case at bar, respondent Tansipek would be awarded (1) for his failure to attach the necessary requirements to his Petition for *Certiorari* with the Court of Appeals; (2) for his failure to file a Motion for Reconsideration in time; and (3) for his failure to appeal the Decision of the Court of Appeals with this Court. The absurdity of such a situation is clearly apparent.

APPEARANCES OF COUNSEL

Balane Tamase Alampay Law Office for petitioner.
Antonio T. Yatco for respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

Before Us is a Petition for Review on *Certiorari* assailing the Decision[1] of the Court of Appeals in CA-G.R. CV No. 69130 dated 18 August 2006 and the Resolution of the same court dated 9 January 2008.

The facts of the case are as follows:

J. O. Construction, Inc. (JOCI), a domestic corporation engaged in the construction business in Cebu City, filed a complaint against Philippine Commercial and Industrial Bank (PCIB) in the Regional Trial Court (RTC) of Makati City docketed as Civil Case No. 97-508. The Complaint alleges that JOCI entered into a contract with Duty Free Philippines, Inc. for the construction of a Duty Free Shop in Mandaue City. As actual construction went on, progress billings were made. Payments were received by JOCI directly or through herein respondent John Tansipek, its authorized collector. Payments received by respondent Tansipek were initially remitted to JOCI. However, payment through PNB Check No. 0000302572 in the amount of ₱4,050,136.51 was not turned over to JOCI. Instead, respondent Tansipek endorsed said check and deposited the same to his account in PCIB, Wilson Branch, Wilson Street, Greenhills, San Juan, Metro Manila. PCIB allowed the said deposit, despite the fact that the check was crossed for the deposit to payee's account only, and despite the alleged lack of authority of respondent Tansipek to endorse said check. PCIB refused to pay JOCI the full amount of the check despite demands

[1] Penned by Associate Justice Arcangelita M. Romilla-Lontok with Associate Justices Roberto A. Barrios and Mario L. Guariña III, concurring. *Rollo,* pp. 7-14.

made by the latter. JOCI prayed for the payment of the amount of the check (₱4,050,136.51), ₱500,000.00 in attorney's fees, ₱100,000.00 in expenses, ₱50,000.00 for costs of suit, and ₱500,000.00 in exemplary damages.

PCIB filed a Motion to Dismiss the Complaint on the grounds that (1) an indispensable party was not impleaded, and (2) therein plaintiff JOCI had no cause of action against PCIB. The RTC denied PCIB's Motion to Dismiss.

PCIB filed its answer alleging as defenses that (1) JOCI had clothed Tansipek with authority to act as its agent, and was therefore estopped from denying the same; (2) JOCI had no cause of action against PCIB ; (3) failure to implead Tansipek rendered the proceedings taken after the filing of the complaint void; (4) PCIB's act of accepting the deposit was fully justified by established bank practices; (5) JOCI's claim was barred by laches; and (6) the damages alleged by JOCI were hypothetical and speculative. PCIB incorporated in said Answer its counterclaims for exemplary damages in the amount of ₱400,000.00, and litigation expenses and attorney's fees in the amount of ₱400,000.00.

PCIB likewise moved for leave for the court to admit the former's third-party complaint against respondent Tansipek. The third-party complaint alleged that respondent Tansipek was a depositor at its Wilson Branch, San Juan, Metro Manila, where he maintained Account No. 5703-03538-3 in his name and/or that of his wife, Anita. Respondent Tansipek had presented to PCIB a signed copy of the Minutes of the meeting of the Board of Directors of JOCI stating the resolution that –

> Checks payable to J.O. Construction, Inc. may be deposited to Account No. 5703-03538-3 under the name of John and/or Anita Tansipek, maintained at PCIB, Wilson Branch.[2]

Respondent Tansipek had also presented a copy of the Articles of Incorporation of JOCI showing that he and his wife, Anita, were incorporators of JOCI, with Anita as Treasurer. In the

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[2] *Rollo*, p. 9.

third-party complaint, PCIB prayed for subrogation and payment of attorney's fees in the sum of ₱400,000.00.

PCIB filed a Motion to Admit Amended Third-Party Complaint. The amendment consisted in the correction of the caption, so that PCIB appeared as Third-Party Plaintiff and Tansipek as Third-Party Defendant.

Upon Motion, respondent Tansipek was granted time to file his Answer to the Third-Party Complaint. He was, however, declared in default for failure to do so. The Motion to Reconsider the Default Order was denied.

Respondent Tansipek filed a Petition for *Certiorari* with the Court of Appeals assailing the Default Order and the denial of the Motion for Reconsideration. The Petition was docketed as CA-G.R. SP No. 47727. On 29 May 1998, the Court of Appeals dismissed the Petition for failure to attach the assailed Orders. On 28 September 1998, the Court of Appeals denied respondent Tansipek's Motion for Reconsideration for having been filed out of time.

Pre-trial on the main case ensued, wherein JOCI and PCIB limited the issues as follows:

1. Whether or not the defendant bank erred in allowing the deposit of Check No. 0302572 (Exh. "A") in the amount of ₱4,050,136.51 drawn in favor of plaintiff JO Construction, Inc. in John Tansipek's account when such check was crossed and clearly marked for payee's account only.

2. Whether the alleged board resolution and the articles of Incorporation are genuine and a valid defense against plaintiff's effort to collect the amount of ₱4,050,136.51.

On 14 July 2000, the RTC promulgated its Decision in Civil Case No. 97-508, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered in favor of the plaintiff [JOCI] and against the defendant bank [PCIB] ordering the latter to pay to the plaintiff the sum of ₱4,050,136.51 with interest at the

rate of twelve percent (12%) per annum from the filing of this complaint until fully paid plus costs of suit. The other damages claimed by the plaintiff are denied for being speculative.

On the third party complaint, third-party defendant John Tansipek is ordered to pay the third-party plaintiff Philippine Commercial and Industrial Bank all amounts said defendant/third-party plaintiff shall have to pay to the plaintiff on account of this case.[3]

Respondent Tansipek appealed the Decision to the Court of Appeals. The case was docketed as CA-G.R. CV No. 69130. Respondent Tansipek assigned the following alleged errors:

a) The trial court's decision upholding the order of default and the consequent *ex-parte* reception of appellee's evidence was anchored on erroneous and baseless conclusion that:

1) The original reglementary period to plead has already expired.

2) The ten day extended period to answer has likewise expired.

3) There is no need to pass upon a second motion to plead much less, any need for a new motion for extended period to plead.

b) The trial court erred in utterly depriving the appellant of his day in court and in depriving constitutional, substantive and procedural due process premised solely on pure and simple technicality which never existed and are imaginary and illusory.

c) The trial court erred in ordering the third-party defendant-appellant John Tansipek to pay the third party plaintiff-appellee PCIBank all amounts said bank shall have to pay to the plaintiff-appellee by way of subrogation since appellant if allowed to litigate in the trial court, would have obtained a favorable judgment as he has good, valid and meritorious defenses.[4]

On 18 August 2006, the Court of Appeals issued the assailed Decision finding that it was an error for the trial court to have acted on PCIB's motion to declare respondent Tansipek in default. The Court of Appeals thus remanded the case to the RTC for further proceedings, to wit:

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[3] CA *rollo,* p. 60.

[4] *Rollo,* p. 11.

WHEREFORE, premises considered, the appeal is GRANTED. The decision relative to the third party complaint is REVERSED and SET ASIDE. The case is ordered REMANDED to the trial court for further proceedings on the third party complaint.[5]

The Court of Appeals denied the Motion for Reconsideration of PCIB in a Resolution dated 9 January 2008.

Petitioner Banco de Oro-EPCI, Inc., as successor-in-interest to PCIB, filed the instant Petition for Review on *Certiorari*, assailing the above Decision and Resolution of the Court of Appeals, and laying down a lone issue for this Court's consideration:

WHETHER OR NOT THE COURT OF APPEALS CAN REVERSE ITS DECISION HANDED DOWN EIGHT YEARS BEFORE.[6]

To recapitulate, upon being declared in default, respondent Tansipek filed a Motion for Reconsideration of the Default Order. Upon denial thereof, Tansipek filed a Petition for *Certiorari* with the Court of Appeals, which was dismissed for failure to attach the assailed Orders. Respondent Tansipek's Motion for Reconsideration with the Court of Appeals was denied for having been filed out of time. Respondent Tansipek did not appeal said denial to this Court.

Respondent Tansipek's remedy against the Order of Default was erroneous from the very beginning. Respondent Tansipek should have filed a Motion to Lift Order of Default, and not a Motion for Reconsideration, pursuant to Section 3(b), Rule 9 of the Rules of Court:

(b) *Relief from order of default.*—A party declared in default may at any time after notice thereof and before judgment file a motion under oath to set aside the order of default upon proper showing that his failure to answer was due to fraud, accident, mistake or excusable negligence and that he has a meritorious defense. In such case, the order of default may be set aside on such terms and conditions as the judge may impose in the interest of justice.

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[5] *Id.* at 14.

[6] *Id.* at 28.

A Motion to Lift Order of Default is different from an ordinary motion in that the Motion should be verified; and must show fraud, accident, mistake or excusable neglect, and meritorious defenses.[7] The allegations of (1) fraud, accident, mistake or excusable neglect, and (2) of meritorious defenses must concur.[8]

Assuming for the sake of argument, however, that respondent Tansipek's Motion for Reconsideration may be treated as a Motion to Lift Order of Default, his Petition for *Certiorari* on the denial thereof has already been dismissed with finality by the Court of Appeals. Respondent Tansipek did not appeal said ruling of the Court of Appeals to this Court. The dismissal of the Petition for *Certiorari* assailing the denial of respondent Tansipek's Motion constitutes a bar to the retrial of the same issue of default under the doctrine of the law of the case.

In *People v. Pinuila*,[9] we held that:

"Law of the case" has been defined as the opinion delivered on a former appeal. More specifically, it means that whatever is once irrevocably established as the controlling legal rule of decision between the same parties in the same case continues to be the law of the case, whether correct on general principles or not, so long as the facts on which such decision was predicated continue to be the facts of the case before the court.

It may be stated as a rule of general application that, **where the evidence on a second or succeeding appeal is substantially the same as that on the first or preceding appeal, all matters, questions, points, or issues adjudicated on the prior appeal are the law of the case on all subsequent appeals and will not be considered or readjudicated therein.**

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As a general rule a decision on a prior appeal of the same case is held to be the law of the case whether that decision is right or

[7] *Montinola, Jr. v. Republic Planters Bank*, G.R. No. 66183, 4 May 1988, 161 SCRA 45, 54.

[8] *Barraza v. Campos, Jr.*, G.R. No. 50437, 28 February 1983, 120 SCRA 881, 888.

[9] 103 Phil. 992, 999 (1958).

wrong, the remedy of the party deeming himself aggrieved being to seek a rehearing.

Questions necessarily involved in the decision on a former appeal will be regarded as the law of the case on a subsequent appeal, although the questions are not expressly treated in the opinion of the court, as the presumption is that all the facts in the case bearing on the point decided have received due consideration whether all or none of them are mentioned in the opinion. (Emphasis supplied.)

The issue of the propriety of the Order of Default had already been adjudicated in Tansipek's Petition for *Certiorari* with the Court of Appeals. As such, this issue cannot be readjudicated in Tansipek's appeal of the Decision of the RTC on the main case. Once a decision attains finality, it becomes the law of the case, whether or not said decision is erroneous.[10] Having been rendered by a court of competent jurisdiction acting within its authority, the judgment may no longer be altered even at the risk of legal infirmities and errors it may contain.[11]

Respondent Tansipek counters that the doctrine of the law of the case is not applicable, inasmuch as a Petition for *Certiorari* is not an appeal. Respondent Tansipek further argues that the Doctrine of the Law of the Case applies only when the appellate court renders a decision on the merits, and not when such appeal was denied due to technicalities.

We are not persuaded.

In *Buenviaje v. Court of Appeals*,[12] therein respondent Cottonway Marketing Corporation filed a Petition for *Certiorari* with this Court assailing the Decision of the National Labor Relations Commission (NLRC) ordering, *inter alia*, the reinstatement of therein petitioners and the payment of backwages from the time their salaries were withheld up to the time of actual reinstatement. The Petition for *Certiorari* was dismissed

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[10] *Enriquez v. Court of Appeals*, G.R. No. 83720, 4 October 1991, 202 SCRA 487, 492.

[11] *San Juan v. Cuento*, G.R. No. L-45063, 15 April 1988, 160 SCRA 277, 284.

[12] 440 Phil. 84 (2002).

by this Court. The subsequent Motion for Reconsideration was likewise denied. However, the Labor Arbiter then issued an Order limiting the amount of backwages that was due to petitioners. The NLRC reversed this Order, but the Court of Appeals reinstated the same. This Court, applying the Doctrine of the Law of the Case, held:

> **The decision of the NLRC dated March 26, 1996 has become final and executory upon the dismissal by this Court of Cottonway's petition for *certiorari* assailing said decision and the denial of its motion for reconsideration.** Said judgment may no longer be disturbed or modified by any court or tribunal. It is a fundamental rule that when a judgment becomes final and executory, it becomes immutable and unalterable, and any amendment or alteration which substantially affects a final and executory judgment is void, including the entire proceedings held for that purpose. Once a judgment becomes final and executory, the prevailing party can have it executed as a matter of right, and the issuance of a writ of execution becomes a ministerial duty of the court. **A decision that has attained finality becomes the law of the case regardless of any claim that it is erroneous.** The writ of execution must therefore conform to the judgment to be executed and adhere strictly to the very essential particulars.[13] (Emphases supplied.)

Furthermore, there is no substantial distinction between an appeal and a Petition for *Certiorari* when it comes to the application of the Doctrine of the Law of the Case. The doctrine is founded on the policy of ending litigation. The doctrine is necessary to enable the appellate court to perform its duties satisfactorily and efficiently, which would be impossible if a question once considered and decided by it were to be litigated anew in the same case upon any and every subsequent appeal.[14]

Likewise, to say that the Doctrine of the Law of the Case applies only when the appellate court renders a decision on the merits would be putting a premium on the fault or negligence of the party losing the previous appeal. In the case at bar, respondent Tansipek would be awarded (1) for his failure to attach the

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[13] *Id.* at 93-94.

[14] *People v. Pinuila*, *supra* note 9.

necessary requirements to his Petition for *Certiorari* with the Court of Appeals; (2) for his failure to file a Motion for Reconsideration in time; and (3) for his failure to appeal the Decision of the Court of Appeals with this Court. The absurdity of such a situation is clearly apparent.

It is important to note that a party declared in default – respondent Tansipek in this case – is not barred from appealing from the judgment on the main case, whether or not he had previously filed a Motion to Set Aside Order of Default, and regardless of the result of the latter and the appeals therefrom. However, the appeal should be based on the Decision's being contrary to law or the evidence already presented, and not on the alleged invalidity of the default order.[15]

WHEREFORE, the Decision of the Court of Appeals in CA-G.R. CV No. 69130 dated 18 August 2006 and the Resolution of the same court dated 9 January 2008 are hereby *REVERSED* and *SET ASIDE.* The Decision of the Regional Trial Court of Makati City in Civil Case No. 97-508 dated 14 July 2000 is hereby *REINSTATED.* No pronouncement as to costs.

SO ORDERED.

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

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[15] See *Lina v. Court of Appeals*, 220 Phil. 311, 317 (1985); *Cerezo v. Tuazon*, 469 Phil. 1020, 1036-1037 (2004).

THIRD DIVISION

[G.R. No. 183105. July 22, 2009]

ERNA CASALS, AIMEE GRACE CASALS, RUPERT BARRY CASALS, IRENE PAMELA CASALS and APRIL VIDA CASALS, *petitioners, vs.* **TAYUD GOLF AND COUNTRY CLUB, INC., ANTONIO OSMEÑA, PROVINCIAL ASSESSOR OF THE PROVINCE OF CEBU and THE REGISTER OF DEEDS OF THE PROVINCE OF CEBU,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; INDISPENSABLE PARTY; NATURE AND DEFINITION, REITERATED. —** This Court, in the recent case of *Regner v. Logarta, et al.,* thoroughly discussed the nature and definition of an indispensable party, thus: Rule 3, Section 7 of the Rules of Court, defines indispensable parties as parties-in-interest without whom there can be no final determination of an action. As such, they must be joined either as plaintiffs or as defendants. The general rule with reference to the making of parties in a civil action requires, of course, the joinder of all necessary parties where possible, and the joinder of all indispensable parties under any and all conditions, their presence being a *sine qua non* for the exercise of judicial power. It is precisely "when an indispensable party is not before the court [that] the action should be dismissed." The absence of an indispensable party renders all subsequent actions of the court null and void for want of authority to act, not only as to the absent parties but even as to those present. x x x An indispensable party has been defined as follows: An indispensable party is a party who has such an interest in the controversy or subject matter that a final adjudication cannot be made, in his absence, without injuring or affecting that interest, a party who has not only an interest in the subject matter of the controversy, but also has an interest of such nature that a final decree cannot be made without affecting his interest or leaving the controversy in such a condition that its final determination may be wholly inconsistent with equity and good conscience. It has also been

considered that an indispensable party is a person in whose absence there cannot be a determination between the parties already before the court which is effective, complete, or equitable. Further, an indispensable party is one who must be included in an action before it may properly go forward. A person is not an indispensable party, however, if his interest in the controversy or subject matter is separable from the interest of the other parties, so that it will not necessarily be directly or injuriously affected by a decree which does complete justice between them. Also, a person is not an indispensable party if his presence would merely permit complete relief between him and those already parties to the action, or if he has no interest in the subject matter of the action. It is not a sufficient reason to declare a person to be an indispensable party that his presence will avoid multiple litigation.

2. **ID.; ID.; ID.; A PARTY WHO IS A REGISTERED OWNER OF SOME OF THE PROPERTIES INVOLVED IN A CASE IS AN INDISPENSABLE PARTY. —** [T]he CA correctly concluded, based on its findings of fact earlier mentioned, that being the registered owner of at least 27 properties included in the Affidavit of Quitclaim and Waiver, respondent Tayud Golf had a direct interest in the original action. Based on the above premise, the CA correctly ruled that respondent Tayud Golf was an indispensable party to the original action. However, petitioners claim otherwise. Again, they claim that the parcels of land included in the assailed Orders and Writ are distinct and separate from those claimed by respondent Tayud Golf. What the petitioners fail to state, in simple terms, is that the assailed Orders and Writ would not have come into fruition if not for their original complaint, which sought to nullify the Affidavit of Quitclaim and Waiver. As discussed earlier, the properties of respondent Tayud Golf were included in the same Affidavit of Quitclaim and Waiver; hence, its interest in the said properties will surely be affected by the outcome of the case. Again, this Court reiterates that an indispensable party is one who has such an interest in the controversy or subject matter that a final adjudication cannot be made in his absence without injuring or affecting that interest. As such, it is apparent that respondent Tayud Golf is indeed an indispensable party.

3. **ID.; COURTS; COURT OF APPEALS; HAS JURISDICTION TO ACT UPON A PETITION FOR ANNULMENT OF**

JUDGMENTS OR FINAL ORDERS OF THE REGIONAL TRIAL COURTS. — [P]etitioners are questioning the jurisdiction of the CA in resolving the Petition for Annulment filed by respondent Tayud Golf. The CA acted on the said petition based on its jurisdiction conferred by law, specifically Rule 47 of the Rules of Civil Procedure, x x x By virtue of the above law, the CA had jurisdiction to act upon the Petition for Annulment filed by respondent Tayud Golf. The said petition, sufficient in form and substance, left the CA with no other recourse but to act upon it. The well-settled rule is that the nature of an action/petition is determined by the material allegations it contains, irrespective of whether the petitioner is entitled to the reliefs prayed for therein. A close reading of the petition filed by respondent Tayud Golf distinctly indicates that the grounds relied upon were based on extrinsic fraud and lack of jurisdiction.

4. **ID.; ID.; JUDGMENTS; *RES JUDICATA*; REQUISITES, NOT PRESENT. —** Under the rule of *res judicata*, also known as "bar by prior judgment," a final judgment or order on the merits, rendered by a Court having jurisdiction over the subject matter and of the parties, is conclusive in a subsequent case between the same parties and their successors-in-interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity. The requisites essential for the application of the principle are: (1) there must be a final judgment or order; (2) said judgment or order must be on the merits; (3) the court rendering the same must have jurisdiction over the subject matter and the parties; and (4) there must be, between the two cases, identity of parties, identity of subject matter, and identity of causes of action. The principle of *res judicata* is not applicable to the questioned decision of the CA, as it lacks some essential elements. *Apollo* was dismissed by the CA not on its merits but on technicality.

APPEARANCES OF COUNSEL

Muntuerto Miel Duyongco Law Offices for petitioners.

Dennis R. Gascon for Antonio Osmeña.

Palma Ybañes & Teleron Law Offices for Tayud Golf and Country Club, Inc.

DECISION

PERALTA, *J.*:

This is a Petition for Review[1] on *Certiorari* under Rule 45 which seeks to reverse and set aside the Decision[2] dated February 13, 2008 of the Court of Appeals (CA) in CA-G.R. SP No. 02601.

The factual and procedural antecedents are the following:

After Robert Casals' death on December 12, 1988, his heirs, herein petitioners, namely, his widow, Erna A. Casals, his children, Aimee Grace, Rupert Barry, Irene Pamela and April Vida tried to locate all the properties of the deceased for the settlement of the estate and partition of properties. In their search for the said properties, they approached respondent Antonio Osmeña who at first, denied having copies of any deed of sale, tax declarations or other documents relative to any properties owned and acquired by the decedent. However, on June 14, 2001, respondent Osmeña testified under oath and in the presence of petitioners Erna Casals, Rupert Barry Casals and Aimee Grace Casals that he became the sole owner of all parcels of land that the late Casals jointly owned with him and Inocentes Ouano, by virtue of an Affidavit of Waiver and Quitclaim[3] dated March 20, 1987, that the deceased and Ouano executed in Osmeña's favor. As a result of that, petitioners went to the Provincial Assessor and the Register of Deeds of the Province of Cebu to verify the claim of respondent Osmeña. They found out that respondent Osmeña was indeed trying to transfer ownership of the said land co-owned by the same respondent, the late Casals and Ouano through the use of the Affidavit of Quitclaim and Waiver.[4]

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[1] *Rollo*, pp. 11-55.

[2] Penned by Associate Justice Francisco P. Acosta, with Associate Justices Pampio A. Abarintos and Amy C. Lazaro-Javier, concurring; *rollo,* pp. 61-87.

[3] *Rollo*, pp. 405-410.

[4] Complaint dated August 12, 2001; *rollo*, pp. 388-389.

The Affidavit states, in part:

That WE, Inocentes M. Ouano and Robert C. Casals, both of legal ages, Filipinos, both married and residing at Banilad, Cebu City and Casals Village, Mabolo, Cebu City, respectively, after having been duly sworn in accordance with law hereby depose and say:

1. That we were the organizers, including Antonio V. Osmeña, of Apollo Homes and Investment Corporation, a registered corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines;

2. That we were the vendees of the following lots, areas and their corresponding Tax Declarations, T.C.T. and O.C.T. situated at Tayud, Lilo-an project, on golf site with the total areas of 346,593.50 square meters, more or less, subdivision area in Tayud, Lilo-an, with the total area of 636,726 square meters, more or less, including the subdivision area of Tayud, Consolacion, Cebu, with the total area of 48,488 square meters, more or less, and all other real properties belonging to the aforesaid corporation as to wit:

x x x x x x x x x

3. That WE hereby CONVEY, WAIVE, FORGO, all our rights, interests and participation of the herein above-described properties in favor of our co-organizer, ANTONIO V. OSMEÑA, likewise of legal age, married, Filipino and resident of Cebu City, Philippines;

4. That WE hereby quit and waive our ownership of the above-mentioned parcels of land in favor of the said ANTONIO V. OSMEÑA and hereby quit and waive all causes of action regarding said parcels of land in favor of ANTONIO V. OSMEÑA and assigns from this date as originally arranged and agreed.

The above-mentioned affidavit was allegedly used by respondent Osmeña to transfer ownership of certain parcels of land to his name and, as a consequence, tax declarations were issued. Out of those properties covered by the waiver and quitclaim, four (4) parcels, namely, Lots 881, 627, 628 and 638, were developed by respondent Osmeña as a memorial park; six (6) parcels, which were consolidated and denominated as Lots 1051 and 954, were sold to Tri-Plus Holdings Corporation and Euclid Po as payor; and one (1) parcel, Lot 1340, was sold to the spouses Warlito and Carolina de Jesus.[5]

[5] CA Decision dated February 13, 2008, *rollo*, p. 64.

On August 17, 2001, herein petitioners filed a case for declaration of nullity, conveyance, quieting of title, recovery of ownership, accounting and damages against Antonio V. Osmeña, Euclid Po, Tri-Plus Holdings Corporation, Spouses Warlito and Carolina de Jesus, and the Provincial Assessor of Cebu before Branch 56 of the Regional Trial Court (RTC) of Mandaue City, docketed as Civil Case No. MAN-4150.[6]

Petitioners enumerated the following in their prayer:

WHEREFORE, it is most respectfully prayed that:

1. Before trial, an Order be made appointing a Receiver to take possession of the properties subject matter of this case during the pendency of this action, upon filing of an obligation by plaintiffs in such sum as this court may deem sufficient;

1.1. Order the Receiver to make an accounting of all the fruits or proceeds of the parcels of land under litigation for the protection of the Plaintiffs;

2. And after trial, Judgment be made against the Defendants and in favor of the Plaintiffs:

2.1. ON THE FIRST CAUSE OF ACTION:

2.1.1. Declaring the Affidavit of Quitclaim and Waiver as null and void and without any legal effect to convey title;

2.2. ON THE SECOND CAUSE OF ACTION:

2.2.1. Declaring the Plaintiffs as owners to the extent of one-half of the following seventy-three (73) parcels of land: Lots Nos. 1110; 928; 628; 638; 812; 700; 854; 634; 635; 636; 637; 715; 308; 1040; 869; 870; 969; 909; 311; 1072; 1032; 893; 1019; 979; 1096; 957; 974; 1015; 1011; 1070; 866; 1128; 981; 825; 1118; 1111; 1033; 629; 706; 315; 838; 310-A; 841; 887; 1087; 1014; 811; 313; 1005; 1021; 1079; 1119; 1084; 1120; 989; 1041; 1034; 975; 1003; 1038; 1039; 954; 1078; 1076; 1135; 1125; 985; and 901, and such other lands that may be discovered later, including all the fruits and improvements found thereon;

2.2.2. Cancelling all the Tax Declarations of the subject parcels of land issued under the name of Defendant Osmeña and Ordering

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[6] *Id.* at 62.

the defendant Assessor to do the cancellation and the issuance of the new tax declarations to reflect Plaintiff's ownership of one-half portion;

2.2.3. Removing the cloud of doubt on the title and ownership of the Plaintiffs of the subject parcels of land;

2.3. <u>ON THE THIRD CAUSE OF ACTION:</u>

2.3.1. Declaring the Plaintiffs as owners to the extent of one-third of the following forty two (42) parcels of land: Lot Nos. 671; 632; 1075; 1043; 1044; 1134; 1136; 972; 947; 802; 310; 1071; 809; 568; 987; 1093; 1026; 1006; 1047; 1018; 1102; 990; 988; 946; 1094; 1138; 1012; 1127; 1028; 306; 805; 1101; 1099; 1103; 1121; 1122; 987; 1093; 1113; 1077; 1357 and 867, and such other parcels of land that may be discovered later, including all the fruits and improvements found thereon;

2.3.2. Cancelling all the Tax Declarations of the subject parcels of land issued under the name of Defendant Osmeña and Ordering the defendant Assessor to do the cancellation and the issuance of the new tax declarations to reflect Plaintiff's ownership of one-third portion;

2.3.3. Removing the cloud of doubt on the title and ownership of the Plaintiffs of the subject parcels of land;

2.6. <u>ON THE FOURTH CAUSE OF ACTION:</u>

2.6.1. Annulling the Deed of Sale in favor of Defendant Po and Tri-Plus to the extent of one-half of Lot Nos. 1051 and 954 which rightfully belongs to the plaintiffs;

2.6.2. Granting the Plaintiffs the right to redeem the other half of Lot Nos. 1051 and 954, representing the share of defendant Osmeña;

2.7. <u>ON THE FIFTH CAUSE OF ACTION:</u>

2.7.1. Declaring Plaintiffs as owners of one-half portion of Lot Nos. 811; 627 and 628;

2.7.2. Declaring Defendant Osmeña to have acted in bad faith claiming total ownership by virtue of [the] sale of Lot Nos. 811; 627 and 628 and in fraudulently depriving Plaintiffs of their rights of ownership of the land [and] the fruits thereof;

2.7.3. Ordering the accounting of the proceeds of the sale or fruits of lot nos. 811; 627 and 628 subject of the development into a memorial plot known as Calero Memorial Estates and to order Defendant Osmeña to deliver to the Plaintiffs all the fruits and proceeds of Lot Nos. 811, 627 and 628, with legal interest computed from the time it was appropriated by defendant Osmeña up to the time the fruits or proceeds are delivered to the Plaintiffs;

2.7.4. Removing the cloud of doubt of the Plaintiff's title of Lot Nos. 811, 627 and 628;

2.8. <u>ON THE SIXTH CAUSE OF ACTION:</u>

2.8.1. Annulling the Deed of Sale in favor of Defendant DE JESUS to the extent of one-half of Lot No. 1340;

2.8.2. Granting the Plaintiffs the right to redeem the other half of Lot No. 1340, by way of pre-emption from Defendants DE JESUS;

2.9. <u>ON THE SEVENTH CAUSE OF ACTION:</u>

2.9.1 Removing the cloud of doubt on the Plaintiff's title over Lot Nos. 1057, 1200 and 627 by declaring the Affidavit of Quitclaim and Waiver as null and void and without any legal effect to transfer or convey title to defendant Osmeña;

3. <u>ON THE [EIGHTH] CAUSE OF ACTION:</u>

3.1 Ordering the Defendant Osmeña to pay Plaintiffs actual damages representing the fruits of the land, as well as the value of the land that had been illegally disposed of, at such amount as this Honorable Court may determine on the basis of the accounting or the report of the receiver;

4. <u>ON THE NINTH CAUSE OF ACTION:</u>

4.1 Ordering the Defendant Osmeña to pay Plaintiff, the sum of TWO MILLION PESOS as moral damages;

5. <u>ON THE TENTH CAUSE OF ACTION:</u>

5.1. Ordering the Defendant Osmeña to pay Plaintiffs the sum of ONE MILLION PESOS as exemplary damages;

6. <u>ON THE ELEVENTH CAUSE OF ACTION:</u>

6.1 Ordering the Defendant Osmeña to pay Plaintiffs attorney's fees in such sum as this Honorable Court may fix or in an amount not less than ₱500,000.00;

Plaintiffs pray for other reliefs and remedies consistent with law and equity.[7]

On June 24, 2002, the RTC approved in its Order,[8] a compromise agreement entered into by petitioners and respondent Osmeña, the pertinent portions of which read:

It was agreed, after discussion of the issues and matters involved as follows:

1. That the area involved in this case is One Hundred (100) hectares, more or less. Of this area, Thirty-Four (34) hectares have been designated as Tayud Golf and Country Club. It was recognized by the Plaintiff that Erna Casals is entitled to one-third (1/3) or one-half (½) of the area involved depending on the Absolute Deed of Sale, considering that her participation is limited only to where Robert Casal's participation clearly shows. The parties have agreed to set aside the determination of the actual participation and/or ownership, until after an inventory shall have been conducted. Of the balance, Twenty-Eight (28) hectares have been involved and/or alloted to the Calero Memorial Estate Park. Of this, Plaintiff Erna Casals is entitled to One-Third (1/3) more or less of the area, or nine point three (9.3) hectares more or less from this area, from which is to be deducted what has been used as road right of way, kiosk and other similar allocations.

Of the balance of Thirty-Eight (38) hectares, Plaintiff Erna Casals, is again entitled to one-third (1/3) or twelve point, six more or less, which will be turned over by the Defendant Osmeña after inventory to Erna Casals.

Considering that most, if not all, of the properties involved in the Calero Memorial Park, have already been converted into Certificate of Ownership, Defendant will turn over to the Plaintiff such number of certificate of ownership equal to the area she is entitled to.

For the purpose of clarifying the matter involved, Joseph Pilas, in conference with the counsels, and such other people as maybe necessary will conduct an inventory of the entire one hundred (100) hectares, more or less.

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[7] Complaint dated August 12, 2001, *rollo*, pp. 396-399.

[8] *Rollo*, pp. 277-278.

This Agreement, which for the moment serves as preliminary amicable settlement of this case, is signed by the parties and counsels before this Court, this 24th day of June, 2002. (See separate yellow pad sheet indicating the signatures of the parties and counsels)

It was agreed that once a final compromise agreement has already been made, then the parties will execute Affidavit of Desistance and/or withdraw any or all cases already filed against each other, and that said final amicable settlement will preclude any further litigation between the parties on the lots involved.

Parties have also agreed that, in instances where it becomes necessary, they will jointly take legal steps to recover the property which have to be resolved from third parties.

Inventory is to be completed on or before July 19, 2002.

Petitioners, on November 19, 2002, filed a Motion for Separate Partial Judgment[9] stating that the One Hundred Seventy-Six (176) parcels of land mentioned in the same motion, together with the fruits and improvements thereon could already be awarded to the parties under the terms of the settlement agreement spelled out in the trial court's Order dated June 24, 2002. They further prayed that they be declared owners of one-half (½) share of one hundred (100) parcels of land, which were acquired by the late Casals and respondent Osmeña as shown in their respective deeds of sale; and one-third (1/3) share of seventy-six (76) parcels of land acquired by the late Casals, respondent Osmeña and Ouano, as also shown in their respective deeds of sale.

The RTC, in its Order[10] dated December 9, 2002, granted the above-mentioned motion, stating that:

The Court finds the Motion for Separate Partial Judgment meritorious and so, accordingly, GRANTS the same as prayed for with the modification that Lot Nos. 1051, 954 and 1340 are not included in this Order.

Accordingly, the [Register] of Deeds of the Province of Cebu is hereby ordered to immediately implement this Order in accordance with the Motion.

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[9] *Id.* at 844-867.

[10] *Id.* at 383.

SO ORDERED.

Thereafter, on March 17, 2003, petitioners filed a Motion for Execution[11] with the RTC, which granted it in an Order[12] dated March 21, 2003, thus:

> Per Order dated December 9, 2002, the Court issued an Order granting the Motion for Separate Partial Judgment. Finding the same meritorious, with qualification that Lot Nos. 1051, 954 and 1340 be not included in that Order.
>
> The parties in this case, through counsel, were duly furnished copies of the aforesaid Order particularly counsel for the Defendants Atty. Nilo Balorio on February 19, 2003. Atty. Francis Zosa also appeared and received a copy of the Order per returned (sic) dated February 5, 2003.
>
> Despite receipt of the aforementioned Order, no Motion for Reconsideration, or any other pleading, had been filed by the Defendant. Neither has the Order been brought up on appeal or other appellate procedure, despite the lapse of time from receipt of the Order by counsels, with said Order not being questioned or otherwise sought to be amended, in any manner, whatsoever. The said judgment or Order has, therefore, become final.
>
> Accordingly, the Motion for Execution being meritorious, is granted. Let execution issue on the Order of December 9, 2002.
>
> Atty. Anastacio Muntuerto, Jr. is notified in open court.
>
> Notify Attys. Francis Zosa, Nilo Balorio and Climaco Camiso, Jr.
>
> SO ORDERED.

Consequently, a Writ of Partial Execution[13] was issued on April 3, 2003, which was later implemented by the Office of the Provincial Assessor of Cebu and the Register of Deeds of the Province of Cebu.

As stated by petitioners in the present petition, before the writ of partial execution was issued, Apollo Homes and Investment

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[11] *Id.* at 868-873.

[12] *Id.* at 384.

[13] *Id.* at 385-386.

Corporation, on March 20, 2003, filed a Motion for Intervention, which was denied by the RTC on July 4, 2003, as well as the subsequent motion for reconsideration. Thereafter, Apollo Homes filed its Motion for Leave to File Reinstatement of Intervention, which the RTC granted in its Order dated December 27, 2006.[14]

On December 6, 2005, Apollo Homes and Investment Corporation filed with the CA a Petition for Annulment[15] of the RTC Orders dated June 24, 2002, December 9, 2002, and March 21, 2003, the Writ of Partial Execution dated April 3, 2003, and all tax declarations issued pursuant thereto, which was subsequently dismissed[16] by the CA on January 26, 2006. Thereafter, an Entry of Judgment[17] was issued.

Petitioners and respondent Osmeña entered into a Final Compromise Agreement[18] in September 2006. Afterwards, petitioners filed with the RTC a Motion for Judgment Based on the Compromise Agreements[19] dated October 4, 2006, attaching thereto the compromise agreements entered into by petitioners, respondent Osmeña and the Spouses De Jesus, the resolution of which is still pending.

Due to the above circumstances, respondent Tayud Golf filed with the CA a Petition for Annulment of Final Orders[20] dated March 23, 2007, seeking to nullify the Order dated December 9, 2002 granting the Motion for Separate Judgment, the Order dated March 21, 2003 granting the Motion for Execution of Partial Judgment and the Writ of Partial Execution dated April 3, 2003, on the grounds that the said Orders and Writ were obtained through extrinsic fraud and that there was lack of jurisdiction over the person of respondent Tayud Golf, which was never impleaded as a defendant in the civil case.

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[14] *Id.* at 22-23.

[15] *Id.* at 336-342.

[16] *Id.* at 345-346.

[17] *Id.* at 349.

[18] *Id.* at 1019.

[19] *Id.* at 1030.

[20] *Id.* at 358-381.

In its Decision[21] dated February 13, 2008, the CA found the petition of respondent Tayud Golf meritorious, the dispositive portion of which reads:

WHEREFORE, the instant petition is GRANTED. The following orders and writ issued by Branch 56 of the Regional Trial Court, Mandaue City, in Civil Case No. MAN-4150 are ALL declared NULL and VOID for lack of jurisdiction:

1. Order dated December 9, 2002, granting the Motion for Separate Partial Judgment;

2. Order dated March 21, 2003, granting the Motion for Execution of the partial judgment; and

3. Writ of Partial Execution dated April 3, 2003.

The Provincial Assessor of the Province of Cebu is hereby ordered to cancel the tax declarations it issued pursuant to the Writ of Partial Execution dated April 3, 2006 and to reinstate the tax declarations canceled pursuant to said writ.

Let the case be REMANDED for further proceedings to Branch 56 of the Regional Trial Court, Mandaue City, and the latter to issue an order to implead as party-defendant Tayud Golf and Country Club, Inc. being an indispensable party to the case.

SO ORDERED.

Subsequently, a Motion for Reconsideration was filed by herein petitioners, but was denied by the CA in its Resolution[22] dated May 29, 2008.

Hence, the present petition by petitioners Casals.

Petitioners list the following grounds for the allowance of their petition:

I. THE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR IN ITS FACTUAL FINDING, WHICH IS CONTRARY TO THE EVIDENCE AND/OR COMMITTED MISAPPREHENSION OF FACT WHEN IT FOUND THAT MERE INCLUSION OF THE ONE HUNDRED EIGHT (108) PARCELS OF LAND THAT RESPONDENT

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[21] *Supra* note 2.

[22] *Rollo,* pp. 90-92.

TAYUD GOLF CLAIMED UNDER THE DEED OF ASSIGNMENT IN THE AFFIDAVIT OF QUITCLAIM AND WAIVER RENDERS THE TRIAL COURT WITHOUT ANY JURISDICTION TO ISSUE THE ASSAILED ORDERS.

II. THE COURT OF APPEALS HAS DECIDED A QUESTION OF SUBSTANCE DECLARING RESPONDENT TAYUD GOLF AS AN INDISPENSABLE PARTY WHICH IS NOT IN ACCORD WITH LAW OR WITH THE APPLICABLE DECISIONS OF THE SUPREME COURT.

III. THE COURT OF APPEALS HAS SO FAR DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS WHEN IT GAVE DUE COURSE TO THE PETITION WHICH DID NOT ASSAIL THE ORDER DATED JUNE 24, 2002 UPON WHICH THE ASSAILED ORDERS DATED 9 DECEMBER 2000; 21 MARCH 2003 AND THE WRIT OF EXECUTION WERE ALL BASED, AS TO CALL AN EXERCISE OF SUPERVISION FROM THIS HONORABLE COURT.

IV. THE COURT OF APPEALS HAS SO FAR DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS WHEN IT GAVE DUE COURSE TO THE PETITION WHICH VIOLATED RULE 47 OF THE RULES OF COURT, THE SAME HAVING BEEN FILED WITHOUT IMPLEADING EUCLID PO, TRI-PLUS HOLDINGS, SPOUSES WARLITO AND CAROLINA DE JESUS, THE OTHER DEFENDANTS IN CIVIL COMPLAINT (MAN 4150) WHO ARE INDISPENSABLE PARTIES TO THE PETITION FOR ANNULMENT.

V. THE COURT OF APPEALS HAS DECIDED A QUESTION OF SUBSTANCE NOT IN ACCORD WITH LAW OR WITH THE APPLICABLE DECISIONS OF THE SUPREME COURT IN DECLARING THE REGIONAL TRIAL COURT, MANDAUE CITY AS WITHOUT JURISDICTION TO ISSUE THE ORDER DATED DECEMBER 9, 2002; THE ORDER DATED MARCH 21, 2003 AND THE WRIT OF PARTIAL EXECUTION DATED APRIL 3, 2003;

VI. THE COURT OF APPEALS ERRED IN DECLARING THE ORDER DATED 9 DECEMBER 2002, THE ORDER DATED 21 MARCH 2003 AND THE WRIT OF PARTIAL EXECUTION AS NULL AND VOID IN ITS ENTIRETY WHEN SEVEN (7) PARCELS OF LAND, OUT OF THE ONE HUNDRED EIGHT (108) PARCELS OF LAND CLAIMED BY RESPONDENT TAYUD GOLF UNDER THE

DEED OF ASSIGNMENT ARE DISTINCT, DIVISIBLE AND SEPARABLE FROM THE ONE HUNDRED TWENTY-TWO (122) PARCELS OF LAND SUBJECT OF THE COMPLAINT OR FROM THE ONE HUNDRED SEVENTY-SIX (176) PARCELS OF LAND SUBJECT OF RESPONDENT OSMEÑA'S INVENTORY AND PETITIONER'S MOTION FOR SEPARATE JUDGMENT.

VII. THE COURT OF APPEALS FAILED TO TAKE JUDICIAL NOTICE OF ITS PRIOR FINAL RESOLUTION IN THE CASE ENTITLED "*APOLLO HOMES INVESTMENT CORPORATION, ET AL V. ERNA CASALS, ET AL.*, CA.-G.R. NO. 1286, WHICH BARRED THE RESPONDENT OSMEÑA, APOLLO HOMES AND INOCENTES OUANO FROM ANNULING AND CANCELLING THE TAX DECLARATIONS ALREADY ISSUED UNDER THE JOINT NAMES OF RESPONDENT OSMEÑA AND CASALS; THE ORDER DATED JUNE 24, 2002 AND ALL THE ORDERS ASSAILED BY THE RESPONDENT TAYUD GOLF AND THIS FINAL RESOLUTION CANNOT BE CIRCUMVENTED OR COLLATERALLY ATTACKED BY THE QUESTIONED DECISION OF THE COURT OF APPEALS, WHICH ORDERED THE CANCELLATION OF THE SAME TAX DECLARATIONS.[23]

According to petitioners, in respondent Tayud Golf's petition for annulment of the final orders, it was stated that petitioners were adjudged to be co-owners of, among others, one hundred eight (108) parcels of land, which were actually owned by respondent Tayud Golf; however, the Order dated 9 December 2002 did not adjudge petitioners as the co-owners of the said parcel of lands. They added that, out of the one hundred seventy-six (176) parcels of land prayed for in the motion for separate partial judgment, only seven were included in the motion; and, out of the one hundred seventy-three (173) parcels of land granted by the RTC, only six (6) were claimed by respondent Tayud Golf and not one of the tax declarations of the said six parcels of land was canceled and transferred to the joint names of Osmeña and petitioners by reason of the implementation of the writ of execution. Such facts, as argued by petitioners, were misapprehended by the CA when it ruled that respondent Tayud Golf was an indispensable party to the complaint.

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[23] *Id.* at 27-28.

Petitioners also posit that the CA's conclusion that respondent Tayud Golf was an indispensable party is contrary to law[24] and jurisprudence.[25] According to them, by the very definition of a real party-in-interest, respondent Tayud Golf cannot qualify as such due to the following reasons:

1. Respondent Tayud Golf has neither any claim in the parcels of land subject of the petitioner's deeds of sale, tax declarations and titles which are ADVERSE to that of the petitioners, nor has the respondent performed any act or omission that violates the legal right of the petitioners with respect to the petitioners' land in litigation.

2. Respondent Tayud Golf is not also necessary to a complete determination or settlement of the questions involved in the petitioner's complaint.

3. Tayud Golf's claim of ownership of the 108 parcels of land (by virtue of the Deed of Assignment executed by Apollo Homes) is not affected by having the Affidavit of Waiver and Quitclaim annulled.

4. The interest of respondent Tayud Golf in the one hundred eight (108) parcels of land is distinct, divisible and separate from the one hundred twenty two (122) parcels of land involved in the litigation between the petitioners and respondent Osmeña and co-defendants Euclid Po, Tri-Plus Holdings, Inc. and Spouses Warlito and Carolina de Jesus.

5. No damage or prejudice is caused to respondent Tayud Golf as a result of the implementation of the assailed Orders.

Petitioners further argue that the failure of respondent Tayud Golf to include the other defendants namely: Euclid Po, Tri-Plus Holdings, Inc. and the Spouses De Jesus as party-respondents in the petition for annulment renders respondent Tayud Golf's petition fatally defective and the assailed Decision of the CA null and void.

Petitioners also claim that the assailed Orders and Writ of Execution was not inimical; nor did it have any adverse effect

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[24] Rules of Court, Rule 3, Sec. 2.

[25] Petitioners cited the following cases: *Imelda Relucio v. Angelina Mejia Lopez*, 373 SCRA 584 (2002) and *Gan Hock v. CA*, 197 SCRA 231 (1991).

on the claim of ownership of respondent Tayud Golf. They cite *Republic v. Sandiganbayan,*[26] wherein this Court ruled that the failure to join an indispensable party does not divest the court of jurisdiction, since the rule regarding indispensable parties is founded on equitable considerations and is not jurisdictional and, thus, the court is not divested of its power to render a decision even in the absence of indispensable parties, though such judgment is not binding on the non-joined party.

Petitioners also point out that the CA ignored the separability and divisibility of the 6 lots from the 112 parcels of land that were transferred under the joint names of petitioners and respondent Osmeña, pursuant to the Order dated June 24, 2002 and the questioned Orders implementing it, when it decided to declare the assailed Orders as null and void in their entirety and ordered the Provincial Assessor to cancel the tax declarations pursuant to the Writ of Partial Execution dated April 3, 2006, and to reinstate the previous tax declarations under the sole name of respondent Antonio Osmeña.

Petitioners reasoned that the CA should have taken judicial notice of its Resolution dismissing the petition filed by Apollo Homes, Antonio Osmeña and Inocentes Ouano for the nullification of the Order dated June 24, 2002, including the assailed Orders implementing it, as well as the tax declarations that were issued pursuant to the writ of partial execution. As such, the Decision of the CA circumvented or collaterally attacked the validity of the final resolution against respondent Osmeña. In the same manner, petitioners argue that the CA failed to take judicial notice of the fact that Apollo Homes has judicially admitted co-ownership of the 112 parcels of land under the Deed of Assignment that it executed with respondent Osmeña and Inocentes Ouano on November 18, 2004.

Finally, the grounds for petitioners' application for a temporary restraining order and preliminary injunction are the following:

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[26] G.R. No. 152154, July 15, 2003, 406 SCRA 193, 269.

1. The petitioners have clear legal rights as co-owners of the 112 parcels of land under the tax declarations that were already issued under the joint names of co-respondent Osmeña and Heirs of Casals;

2. The questioned Decision directing the respondent Provincial Assessor to cancel the aforesaid tax declarations violate the petitioners' clear and legal rights of co-ownership over the 112 parcels of land;

3. Unless this Honorable Court issues the temporary restraining order, the respondent Provincial Assessor will carry out the questioned decision of the Court of Appeals and cancel the 112 tax declarations to the prejudice of the petitioners. Besides, the implementation of this Order will render futile whatever decision this Honorable Court will render in this case.

4. The petitioners are willing to put up a bond in an amount that this Honorable Court may fix to answer whatever damage that may be caused to the respondents should they be adjudged as not entitled to the injunctive relief.

Respondent Antonio Osmeña, in his Comment[27] dated September 19, 2008, argues that petitioners should not have raised questions of fact in the present petition, because under Section 1, Rule 5 of the Rules of Court, in petitions for review on *certiorari*, only questions of law shall be raised and be distinctly set forth. According to the respondent, the first three grounds raised by petitioners are questions of fact and must be stricken down. Respondent Osmeña adds that the CA correctly ruled that respondent Tayud Golf was an indispensable party because, based on the Order dated June 4, 2002, the interest of Tayud Golf in Civil Case No. MAN-4150 was not limited to only 6 parcels of land partially awarded in favor of petitioners as co-owned by them, but also include all the 108 parcels of land mentioned as Golf Course in said Order. As to the contention of petitioners that the CA had no jurisdiction to pass upon the validity of the Order dated June 24, 2002, of the trial court for failure of respondent Tayud Golf to assail the same, respondent Osmeña counters that the jurisdiction of a court over the subject matter of the action is a matter of law and may not be conferred

[27] *Rollo*, pp. 1237-1249.

by consent or agreement of the parties, and that an action for annulment of judgment or final order is within the jurisdiction of the CA pursuant to Section 47 of the 1997 Rules of Civil Procedure. Anent the contention of petitioners that respondent Tayud Golf violated Rule 47 for filing a petition — but without impleading Euclid Po, Tri-Plus Holdings, Inc., and spouses Warlito and Carolina de Jesus, who are indispensable parties to the petition for annulment — respondent Osmeña disputes such argument by stating that there was no necessity to include Euclid Po, Tri-Plus Holdings, Inc., and the Spouses De Jesus in the petition for annulment before the CA, as no unwarranted injury can befall them with their exclusion. It is further argued by respondent Osmeña that there is nothing in the records that would warrant a departure from the established general principle that the non-joinder of an indispensable party is a ground for annulment of judgment or final order under Rule 47 of the 1997 Rules of Civil Procedure. In the case[28] cited by petitioners, the one who raised the issue of non-joinder of indispensable parties was not the non-joined party, but Imelda Marcos, who was already a party to the case; hence, according to respondent Osmeña, the same case is not applicable to the present case. Lastly, respondent Osmeña posits that the principle of *res judicata* cannot be applied to the present case, because the elements of the same principle is not present.

Respondent Tayud Golf, in its Comment[29] dated September 29, 2008, contends that the petition filed by petitioners before this Court is fatally defective because of the latter's failure to comply with the requirements of the Rules relative to the filing of the said petition. The said defects are: there is an absence of authority to sign the Verification and Certification of Non-Forum Shopping, and the petition is not accompanied by a valid Affidavit of Service. Respondent Tayud Golf also claims that the special powers of attorney attached to the instant petition were both executed six years ago and that the authority granted therein primarily referred to the sale of properties, acts and

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[28] *Supra* note 26.

[29] *Rollo*, pp. 1251-1264.

transactions related thereto. Aside from the said defects, respondent Tayud Golf also argues that the petition raises questions of fact and not pure questions of law, as required under Rule 45 of the Rules of Court. According to respondent Tayud Golf, the first ground stated by petitioners is misleading, because the actionable document that they assail in their complaint before the trial court, the Affidavit of Quitclaim and Waiver purportedly executed by petitioners and Ouano in favor of respondent Osmeña, includes 106 of respondent Tayud Golf's lot; hence, the very complaint filed by petitioners already put into issue the ownership of the subject lots owned by respondent Tayud Golf, yet, petitioners did not implead respondent Tayud Golf as a party to the civil case. As an answer to the second argument, respondent Tayud Golf once again raises the issue that petitioners' argument is actually a question of fact. Respondent Tayud Golf further argues that petitioners' third argument is again misleading, as respondent Tayud Golf was not and has never been a party to the civil case; therefore, it is not bound by the Order dated June 24, 2002, which was the result of the agreements between petitioners and respondent Osmeña. As to the fourth argument of the petitioners, respondent Tayud Golf states that Euclid Po, Tri-Plus Holdings and the Spouses De Jesus do not have any interest in the final orders, as required for them to be considered indispensable parties insofar as the instant petition is concerned. Anent the fifth ground raised by petitioners, respondent Tayud Golf claims that petitioners' reliance on *Republic v. Sandiganbayan* is misleading, because the same case is inapplicable to the instant case. Finally, as to the sixth ground, respondent Tayud Golf opines that, if indeed petitioners were acting in good faith, they could have simply excluded respondent Tayud Golf's lots from the civil case.

Petitioners, in their Consolidated Reply[30] dated December 19, 2008, argue that per their compliance dated July 26, 2008, they have already cured whatever defects their petitions had by submitting affidavits of service of the motion for extension of time to file petition for review on *certiorari,* and the petition itself with properly

[30] *Id.* at 1289-1316.

accomplished jurats. As to the argument of respondent Tayud Golf that the special powers of attorney executed by petitioners April Vida Casals and Irene Casals Madarang are defective on the ground that they were executed six years ago and that the authority granted to petitioners' mother, Erna Casals, refers only to the sale of properties and acts and transactions related thereto, petitioners dismiss it as without any factual and legal basis. They contend that because the authority granted to petitioner Erna Casals did not only refer to the sale of the properties, but also to the filing of legal action/s for recovery of all properties on which they have interests as heirs of Robert Casals, including the authority to represent them during the pre-trial conference; to enter into a compromise or stipulation of facts, to sign all pleadings and certifications of non-forum shopping, and such other documents as may be necessary and proper to effect such authority. Petitioners also add that the Answer filed by petitioner Erna Casals, for and on behalf of co-petitioners April Vida Casals and Irene Pamela Casals, to respondent Tayud Golf's petition for annulment was authorized by the same special powers of attorney, which were not contested by respondent Tayud Golf — the petitioner in the original petition. Finally, petitioners reiterate the grounds they raised in the instant petition.

The present petition is unmeritorious.

As clearly deduced from the errors assigned by the petitioners, the core issue is whether or not respondent Tayud Golf is an indispensable party to the original action. All the other errors imputed are borne out of the CA's conclusion.

This Court, in the recent case of *Regner v. Logarta, et al.,*[31] thoroughly discussed the nature and definition of an indispensable party, thus:

Rule 3, Section 7 of the Rules of Court, defines indispensable parties as parties-in-interest without whom there can be no final determination of an action. As such, they must be joined either as plaintiffs or as defendants. The general rule with reference to the making of parties in a civil action requires, of course, the joinder of all necessary parties where possible,

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[31] G. R. No. 168747, October 19, 2007, 537 SCRA 289-292.

and the joinder of all indispensable parties under any and all conditions, their presence being a *sine qua non* for the exercise of judicial power.[32] It is precisely "when an indispensable party is not before the court [that] the action should be dismissed."[33] The absence of an indispensable party renders all subsequent actions of the court null and void for want of authority to act, not only as to the absent parties but even as to those present.[34]

As we ruled in *Alberto v. Mananghala*:[35]

> In an action for recovery of property against a person who purchased it from another who, in turn, acquired it from others by the same means or by donation or otherwise, the predecessors of defendants are indispensable parties if the transfers, if not voided, may bind plaintiff. (*Garcia vs. Reyes*, 17 Phil. 127.) In the latter case, this Court held:
>
> In order to bring this suit duly to a close, it is imperative to determine the only question raised in connection with the pending appeal, to wit, whether all the persons who intervened in the matter of the transfers and donation herein referred to, are or are not necessary parties to this suit, since it is asked in the complaint that the said transfers and donation be declared null and void – an indispensable declaration for the purpose, in a proper case, of concluding the plaintiff to be the sole owner of the house in dispute.
>
> If such a declaration of annulment can directly affect the persons who made and who were concerned in the said transfers, nothing could be more proper and just than to hear them in the litigation, as parties interested in maintaining the validity of those transactions, and therefore, whatever be the nature of the judgment rendered, Francisco Reyes, Dolores Carvajal, Alfredo Chicote, Vicente Miranda, and Rafael Sierra, besides the said minors, must be included in the case as defendants. (*Garcia vs. Reyes*, 17 Phil., 130-131.)

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[32] *Borlasa v. Polistico*, 47 Phil. 345, 347 (1925).

[33] *People v. Hon. Rodriguez*, 106 Phil. 325, 327 (1959).

[34] *Alabang Development Corporation v. Valenzuela*, 201 Phil. 727, 742 (1982); *Director of Lands v. Court of Appeals*, 181 Phil. 432, 440 (1979); *Lim Tanhu v. Ramolete*, G.R. No. L-40098, August 29, 1975, 66 SCRA 425, 448.

[35] 89 Phil. 188, 191-192 (1951).

x x x x x x x x x

An indispensable party has been defined as follows:

> An indispensable party is a party who has such an interest in the controversy or subject matter that a final adjudication cannot be made, in his absence, without injuring or affecting that interest, a party who has not only an interest in the subject matter of the controversy, but also has an interest of such nature that a final decree cannot be made without affecting his interest or leaving the controversy in such a condition that its final determination may be wholly inconsistent with equity and good conscience. It has also been considered that an indispensable party is a person in whose absence there cannot be a determination between the parties already before the court which is effective, complete, or equitable. Further, an indispensable party is one who must be included in an action before it may properly go forward.
>
> A person is not an indispensable party, however, if his interest in the controversy or subject matter is separable from the interest of the other parties, so that it will not necessarily be directly or injuriously affected by a decree which does complete justice between them. Also, a person is not an indispensable party if his presence would merely permit complete relief between him and those already parties to the action, or if he has no interest in the subject matter of the action. It is not a sufficient reason to declare a person to be an indispensable party that his presence will avoid multiple litigation.[36]

In *Servicewide Specialists, Incorporated v. Court of Appeals*,[37] this Court held that no final determination of a case could be made if an indispensable party is not legally present therein:

> An indispensable party is one whose interest will be affected by the court's action in the litigation, and without whom no final determination of the case can be had. The party's interest in the subject matter of the suit and in the relief sought are so inextricably intertwined with the other parties that his legal presence as a party to the proceeding is an absolute necessity.

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[36] *Arcelona v. Court of Appeals*, 345 Phil. 250, 269-270 (1997).

[37] 321 Phil. 427, 434 (1995).

In his absence there cannot be a resolution of the dispute of the parties before the court which is effective, complete, or equitable.

The rationale for treating all the co-owners of a property as indispensable parties in a suit involving the co-owned property is explained in *Arcelona v. Court of Appeals*:[38]

> As held by the Supreme Court, were the courts to permit an action in ejectment to be maintained by a person having merely an undivided interest in any given tract of land, a judgment in favor of the defendants would not be conclusive as against the other co-owners not parties to the suit, and thus, the defendant in possession of the property might be harassed by as many succeeding actions of ejectment, as there might be co-owners of the title asserted against him. The purpose of this provision was to prevent multiplicity of suits by requiring the person asserting a right against the defendant to include with him, either as co-plaintiffs or as co-defendants, all persons standing in the same position, so that the whole matter in dispute may be determined once and for all in one litigation.

The CA, in finding Tayud Golf as an indispensable party, made the following observations:

Petitioner's claim of ownership over the one hundred eight (108) parcels of land is based on a Deed of Assignment executed by Apollo Homes in favor of the former. After judiciously going through the petition and the appended documents, We noted that out of the one hundred eight (108) properties:

> 1. One hundred six (106) parcels were included in the Affidavit of Quitclaim and Waiver purportedly executed by Casals and Ouano in favor of Osmeña, which the heirs of Casals are assailing in the instant case;
>
> 2. Seven (7) parcels, namely, Lots 787, 1051, 1154, 1157, 1167, 1189 and 1276, were included in the Motion for Separate Partial Judgment filed by the heirs of Casals, which was granted

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[38] 345 Phil. 268-269 (1997), citing Moran, *Comments on the Rules of Court*, Vol. 1 (1970 ed.), pp. 182-83, and *Palarca v. Baguisi*, 38 Phil. 177, 180-181 (1918). See also *Pobre v. Blanco*, 17 Phil. 156, 158-159 (1910); *Araneta v. Montelibano*, 14 Phil. 117, 123-124 (1909).

by the trial court per the first assailed order, with the exclusion of Lot 1051, and in the Writ of Partial Execution;

3. Twenty-seven (27) parcels were already issued certificates of title under the name of petitioner as early as 1993, to wit:

Lot No.	Title No.	Date Registered	Area (sq m.)
1) 1231	TCT TP-6417	April 21, 1993	765
2) 1242	TCT TP-6416	April 21, 1993	1,774
3) 792	TCT TP- 4717	January 12, 1995	11,573
4) 1048	TCT TP-4716	January 12, 1995	3,493
5) 1197	TCT TP-4719	January 12, 1995	1,563
6) 1243	TCT TP- 4718	January 12, 1995	1,358
7) 1275	TCT TP-4714	January 12, 1995	4,392
8) 1149	OCT 1282	December 16, 1996	3,717
9) 1150	OCT 1281	December 16, 1996	906
10) 1152	OCT 1280	December 16, 1996	389
11) 1153	OCT 1278	December 16, 1996	1,727
12) 1154	OCT 1279	December 16, 1996	1,338
13) 1157	OCT 1284	December 16, 1996	1,209
14) 1158	OCT 1283	December 16, 1996	1,379
15) 1069	TCT TP-12881	April 2, 1997	5,948
16) 1148	TCT TP-12882	April 2, 1997	2,046
17) 1177	TCT TP-12883	April 2, 1997	1,688
18) 782	OCT 1870	May 6, 2004	2,034
19) 783	OCT 1871	May 6, 2004	1,153
20) 790	OCT 1872	May 6, 2004	2,038
21) 794	OCT 1873	May 6, 2004	4,220
22) 1055	OCT 1874	May 6, 2004	4,156
23) 1241	OCT 1875	May 6, 2004	7,816
24) 1245	OCT 1876	May 6, 2004	2,132
25) 1246	OCT 1877	May 6, 2004	2,973
26) 1261	OCT 1879	May 6, 2004	3,702
27) 1352	OCT 1880	May 6, 2004	6,395

The aforecited ten (10) original certificates of title issued on May 6, 2004 were pursuant to a decision dated April 26, 1996 in Land Registration Case No. N-407;

4. Seven (7) parcels, namely, Lots 1195, 1196, 1198, 1232, 1234, 1267, and 1269, the subject matter in petitioner's application for land registration, which was granted on May 31, 2006 per this Court's decision in CA G.R. CV No. 71113, are still pending issuance of certificates of title;

5. Seventy-four (74) parcels were issued tax declarations under the name of petitioner; and

6. Petitioner has been paying the real estate taxes thereof as evidenced by various tax clearances issued on March 13, 2007 covering seventy-nine (79) properties, and their respective real estate tax receipts.

Evidently, petitioner is encompassed within the definition of an indispensable party. Being the **registered owner of at least twenty-seven (27) properties included in the Affidavit of Quitclaim and Waiver, not to mention the other seven (7) properties, which are pending issuance of certificates of title by virtue of this Court's decision dated May 31, 2006, and the other properties, which were declared for taxation purposes under its name**, petitioner definitely has such a direct interest in the controversy or subject matter of the instant case.[39]

However, petitioners dispute the factual findings of the CA. Respondent Tayud Golf, in its Comment dated September 29, 2008, questioned the mode of appeal resorted to by the petitioners. The former claims that under Rule 45, Section 1, which the latter avail themselves of, only questions of law and not of facts must be raised. The Rule states:

SECTION 1. *Filing of petition with Supreme Court.* — A party desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition shall raise only questions of law which must be distinctly set forth.

The above Rule is with certain exceptions as set forth in previous decisions of this Court. As mentioned in *Cosmos Bottling Corporation v. Nagrama, Jr.*:[40]

The Court, however, may determine the factual milieu of cases or controversies under specific circumstances, as follows:

[39] *Id.* at 75-77.

[40] G.R. No. 164403, March 4, 2008, 547 SCRA 571, 585, citing *Reyes v. Court of Appeals (Ninth Division),* 258 SCRA 651, 659 (1996) and *Floro v. Llenado,* 244 SCRA 713 (1995). (Emphasis supplied.)

(1) when the inference made is manifestly mistaken, absurd or impossible;

(2) when there is a grave abuse of discretion;

(3) when the finding is 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 the Court of Appeals are contrary to those of the trial court;

(8) when the findings of fact are conclusions without citation of specific evidence on which they are based;

(9) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion; and

(10) 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.

A close reading of the assigned errors imputed by petitioners to the CA categorically shows that they are questioning the latter's judgment on the ground of misapprehension of facts. Therefore, this Court, based on the fourth exception above-cited, may resolve the errors enumerated by petitioners in the present petition.

Briefly, petitioners claim that the CA erred in finding that:

1. Mere inclusion of the 108 parcels of land that respondent Tayud Golf claimed under the deed of assignment in the affidavit of quitclaim and waiver renders the RTC without any jurisdiction to issue the assailed orders;

2. Respondent Tayud Golf is an indispensable party;

3. Petition can be given due course;

4. RTC was without jurisdiction to issue the assailed orders and writ; and

5. The Orders dated December 9, 2002 and March 21, 2003 and the writ of partial execution is null and void in their entirety.

Petitioners claim as their first assigned error that the finding of the CA that mere inclusion of the 108 parcels of land that respondent Tayud Golf claimed under the deed of assignment in the Affidavit of Quitclaim and Waiver renders the RTC without any jurisdiction to issue the orders. They aver that this inclusion was borne out of the CA's reliance on the contention of respondent Tayud Golf in its Petition for Annulment of the Final Orders[41] that petitioners were adjudged to be the co-owners of, among others, one hundred eight (108) parcels of land which are actually owned by respondent Tayud Golf. According to petitioners, such reliance is erroneous, because the Order dated December 9, 2002 did not adjudge them as the co-owners of 108 parcels of land being claimed by respondent Tayud Golf. In fact, as stated by petitioners, out of the 176 parcels of land prayed for in the motion for separate partial judgment, only 7 were included in the said motion; and out of the 173 parcels of land granted by the RTC in its assailed Order dated December 9, 2002, only 6 were claimed by respondent Tayud Golf, and not one of the tax declarations of the said 6 parcels of land was canceled and transferred to the joint names of Osmeña and petitioners by reason of the implementation of the writ of execution.

A close examination of the CA's decision and the basis of its conclusions render the above argument of petitioners without any merit. All of the findings of the CA were based on documents, the contents of which are undisputed. In stating that respondent Tayud Golf had a claim of ownership over 108 parcels of land, the CA had as its basis the Deed of Assignment executed by Apollo Homes in favor of the same respondent. In finding that out of the 108 parcels of land being claimed by respondent Tayud Golf, 106 parcels were included in the Affidavit of Quitclaim and Waiver, the CA based such conclusion on the very same

[41] *Rollo,* pp. 358-381.

Affidavit of Quitclaim and Waiver. In its determination that 7 parcels of land being claimed by respondent Tayud Golf were included in the Motion for Separate Judgment filed by petitioners, which was eventually granted by the RTC in its first assailed Order and in the Writ of Partial Execution, the CA referred to the said Motion, Order and Writ. In finding that 27 parcels of land were registered under the name of respondent Tayud Golf, the CA took into consideration the certified true copies of Transfer Certificates of Title (TCTs) and Original Certificates of Title (OCTs) submitted by the same respondent. All other facts similar or pertaining to those earlier mentioned have been correctly appreciated by the CA and were properly cited.

It must be noted that the original action was initiated by petitioners through their complaint before the RTC regarding the Affidavit of Quitclaim and Waiver executed by the deceased Casals and Ouano in favor of respondent Osmeña; and, as shown in the same affidavit, 106 parcels of land are either owned or being claimed by respondent Tayud Golf. Therefore, the CA correctly concluded, based on its findings of fact earlier mentioned, that being the registered owner of at least 27 properties included in the Affidavit of Quitclaim and Waiver, respondent Tayud Golf had a direct interest in the original action.

Based on the above premise, the CA correctly ruled that respondent Tayud Golf was an indispensable party to the original action. However, petitioners claim otherwise. Again, they claim that the parcels of land included in the assailed Orders and Writ are distinct and separate from those claimed by respondent Tayud Golf. What the petitioners fail to state, in simple terms, is that the assailed Orders and Writ would not have come into fruition if not for their original complaint, which sought to nullify the Affidavit of Quitclaim and Waiver. As discussed earlier, the properties of respondent Tayud Golf were included in the same Affidavit of Quitclaim and Waiver; hence, its interest in the said properties will surely be affected by the outcome of the case. Again, this Court reiterates that an indispensable party is one who has such an interest in the controversy or subject matter that a final adjudication cannot be made in his absence

without injuring or affecting that interest.[42] As such, it is apparent that respondent Tayud Golf is indeed an indispensable party.

Anent the contention of petitioners that the petition for annulment filed by respondent Tayud Golf with the CA should not have been acted upon by the latter, because the former did not assail the Order dated June 24, 2002,which contained the settlement agreement of the parties; and the other defendants in the original action - Euclid Po, Tri-Plus Holdings and the Spouses De Jesus - were not impleaded. In short, petitioners are questioning the jurisdiction of the CA in resolving the Petition for Annulment filed by respondent Tayud Golf. The CA acted on the said petition based on its jurisdiction conferred by law, specifically Rule 47 of the Rules of Civil Procedure, which states that:

Section 1. *Coverage*. - This Rule shall govern the annulment by the Court of Appeals of judgments or final orders and resolutions in civil actions of Regional Trial Courts for which the ordinary remedies of new trial, appeal petition for relief or other appropriate remedies are no longer available through no fault of the petitioner.

Section 2. *Grounds for annulment*. - The annulment may be based only on the grounds of extrinsic fraud and lack of jurisdiction.

x x x x x x x x x

Section 4. *Filing and contents of petition*. - The action shall be commenced by filing a verified petition alleging therein with particularity the facts and the law relied upon for annulment, as well as those supporting the petitioner's good and substantial cause of action or defense, as the case may be.

By virtue of the above law, the CA had jurisdiction to act upon the Petition for Annulment filed by respondent Tayud Golf. The said petition, sufficient in form and substance, left the CA with no other recourse but to act upon it. The well-settled rule is that the nature of an action/petition is determined by the material allegations it contains, irrespective of whether the petitioner is entitled to the reliefs prayed for

[42] *Foster-Gallego v. Galang,* G.R. No. 130228, July 27, 2004, 435 SCRA 275, 292-293, citing *Metropolitan Bank & Trust Co. v. Alejo*, 417 Phil. 303 (2001).

therein.[43] A close reading of the petition filed by respondent Tayud Golf distinctly indicates that the grounds relied upon were based on extrinsic fraud and lack of jurisdiction. Furthermore, respondent Tayud Golf had no other recourse than to file the said petition.

The non-inclusion of Euclid Po, Tri-Plus Holdings, and the Spouses De Jesus is also of no importance, as the claim of respondent Tayud Golf does not involve their properties. Respondent Tayud Golf, in its petition for annulment did not include a claim of ownership over Lot Nos. 945, 1340 and 1051 in which Euclid Po, Tri-Plus Holdings, and the Spouses De Jesus are involved. Likewise, the failure to assail the Order dated June 24, 2002, which contained the settlement agreement of the parties, is of no significance and does not divest the CA of its jurisdiction to act on the Petition for Annulment. Respondent Tayud Golf, in its Comment, was right in stating that:

> x x x the Order dated June 24, 2002 was apparently the result of agreements between petitioners and Antonio Osmeña. Obviously, respondent Tayud is not bound by any "agreements," as it was never a party thereto. Under the *"res inter alios acta nocere non debet"* rule, respondent Tayud is not bound by any statements, acts or omissions of other parties.[44]

Things done between strangers ought not to injure those who are not parties to them.[45]

Petitioners also cited *Republic v. Sandiganbayan,*[46] wherein this Court ruled that the failure to join an indispensable party does not divest the court of jurisdiction. However, the said case is inapplicable. In the earlier ruling of this Court, the one

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[43] *Guiang v. Co,* G.R. No. 146996, July 30, 2004, 435 SCRA 556, 561-562, citing *Intestate Estate of Ty v. Court of Appeals,* 356 SCRA 661 (2001).

[44] *Rollo*, p. 1260.

[45] *Dynamic Signmaker Outdoor Advertising Services, Inc., et al. v. Potongan,* G.R. No. 156589, June 27, 2005, 461 SCRA 328, 340, citing *National Power Corporation v. NLRC,* 272 SCRA 704 (1997).

[46] *Supra* note 24.

who raised the issue of non-joinder of indispensable parties was also a party to the case whereas in the questioned decision of the CA, the one who sought to be joined was never made a party to the original action. Mrs. Imelda Marcos, a respondent to the case, claimed that foreign foundations should have been impleaded as they were indispensable parties without whom no complete determination of the issues could be made. In ruling against the argument of respondent Marcos, this Court said:

> The rulings of the Swiss court that the foundations, as formal owners, must be given an opportunity to participate in the proceedings hinged on the assumption that they owned a nominal share of the assets. But this was already refuted by no less than Mrs. Marcos herself. Thus, she cannot now argue that the ruling of the Sandiganbayan violated the conditions set by the Swiss court. The directive given by the Swiss court for the foundations to participate in the proceedings was for the purpose of protecting whatever nominal interest they might have had in the assets as formal owners. But inasmuch as the ownership was subsequently repudiated by Imelda Marcos, they could no longer be considered as indispensable parties and their participation in the proceedings became unnecessary.[47]

Finally, petitioners contend that the CA failed to take judicial notice of its prior final resolution in CA-G.R. SP No. 01286 entitled *Apollo Homes Investment Corporation, et al. v. Erna Casals, et al.,* which, according to them, would subject the present case to the rule on *res judicata*. In *Apollo*, the CA dismissed the Petition for the Annulment of the Partial Compromise Agreement dated June 24, 2002, the Order denying the Motion for Reconsideration dated July 4, 2003, the Order denying the Motion for Partial Judgment dated December 9, 2005 and the Partial Judgment and the Writ issued pursuant thereto. The argument of petitioners should be given scant consideration. Under the rule of *res judicata*, also known as "bar by prior judgment," a final judgment or order on the merits, rendered by a Court having jurisdiction over the subject matter and of the parties, is conclusive in a subsequent case

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[47] *Rollo*, pp. 270-271.

between the same parties and their successors-in-interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity. The requisites essential for the application of the principle are: (1) there must be a final judgment or order; (2) said judgment or order must be on the merits; (3) the court rendering the same must have jurisdiction over the subject matter and the parties; and (4) there must be, between the two cases, identity of parties, identity of subject matter, and identity of causes of action.[48]

The principle of *res judicata* is not applicable to the questioned decision of the CA, as it lacks some essential elements. *Apollo* was dismissed by the CA not on its merits but on technicality. As read from the CA Resolution[49] dated January 26, 2006, the following are the reasons for the dismissal of the petition:

> However, a brief examination of said Petition shows the following fatal infirmities:
>
> 1. petitioner failed to allege when did they receive the above-mentioned Orders;
>
> 2. the authority given by the petitioner Apollo Homes and Investment Corporation to Engr. Inocentes M. Ouano is a mere photocopy.
>
> 3. petitioner merely attached a plain copy of the Order dated June 24, 2002;
>
> 4. petitioner failed to attach Affidavits of witnesses or documents supporting their cause of action.

From the above disquisitions, it can be surmised that respondent Tayud Golf is indeed an indispensable party to the original case, and a final adjudication of the said case cannot be made in his absence without injuring or affecting his interest.

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[48] *Cruz v. Court of Appeals,* G.R. No. 164797, February 13, 2006, 482 SCRA 379, 388, citing *Firestone Ceramics v. Court of Appeals*, 372 Phil. 401, 404 (1999).

[49] *Rollo*, pp. 345-346.

WHEREFORE, the Petition for Review dated July 16, 2008 is *DENIED* for lack of merit. The Decision of the Court of Appeals, dated February 13, 2008 in CA-G.R. SP No. 02610, is *AFFIRMED in toto*.

SO ORDERED.

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

EN BANC

[G.R. No. 184586. July 22, 2009]

RAFAEL FLAUTA, JR., LUCRESIA ORDINARIO, NEMESIO GOSE, RICARDO BAJADE, JOSEPH ORAYLE, GIL BATILO, ROMULO HILARIO, BEVELYN ZAPANTA and GENOVIVA JEHODO, *petitioners, vs.* **THE COMMISSION ON ELECTIONS, Represented by its Chairman, Honorable JOSE A.R. MELO, The SPECIAL BOARD OF CANVASSERS of the Municipality of Ninoy Aquino, namely: JOSEPHINE MACAPAS, REGINALD ABAD, OLIVER ALAR and DANTE MANGANAAN,** *respondents.*

SYLLABUS

1. **POLITICAL LAW; CONSTITUTIONAL LAW; COMMISSION ON ELECTIONS; BROAD POWERS, DISCUSSED. —** In *O'hara v. Commission on Elections*, the Court reiterated the COMELEC's broad power, derived from our fundamental law, to enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum

and recall; its power of supervision and control over boards of election inspectors and boards of canvassers; the concomitant need to do everything in its power to secure a fair and honest canvass of the votes cast in the elections; the grant to it of broad and flexible powers to effectively perform its duties and to ensure free, orderly, honest, peaceful and credible elections; and its role as the guardian of the people's sacred right of suffrage. x x x In particular, the statutory power of supervision and control by the COMELEC over the boards of canvassers includes the power to revise or reverse the action of the boards, as well as to do what the boards should have done. Such power includes the authority to initiate *motu propio* such steps or actions as may be required pursuant to law, like reviewing the actions of the board; conducting an inquiry affecting the genuineness of election returns beyond the election records of the polling places involved; annulling canvass or proclamations based on incomplete returns or on incorrect or tampered returns; invalidating a canvass or proclamation made in an unauthorized meeting of the board of canvassers either because it lacked a quorum or because the board did not meet at all; or requiring the board to convene.

2. **ID.; ID.; ID.; COMELEC RULES OF PROCEDURE; A MOTION FOR RECONSIDERATION OF AN *EN BANC* RESOLUTION OF THE COMELEC IS NOT ALLOWED; EXCEPTION THERETO, APPLIED. —** [U]nder the COMELEC Rules of Procedure, a motion for reconsideration of an *en banc* resolution of the Commission is not allowed. However, an exception exists as when the case involves an election offense. x x x. In the instant case, Manganaan's motion for clarification /reconsideration alleged Bernan and Collantes' unauthorized removal of SOVs from the canvassing venue, as well as possible tampering/increasing/decreasing of votes. Under our election laws, any member of the board of election inspectors or board of canvassers who tampers, increases, or decreases the votes received by a candidate in any election or any member of the board who refuses, after proper verification and hearing, to credit the correct votes or deduct such tampered votes shall be guilty of an election offense. Likewise, any person who, through any act, means or device, violates the integrity of any official ballot or election returns before or after they are used in the election, and any public official who neglects

or fails to properly preserve or account for any ballot box, documents and forms received by him and kept under his custody shall be guilty of an election offense. As such, said allegations of commission of election offense did not make Manganaan's motion for clarification /reconsideration a prohibited pleading.

3. **ID.; ID.; ID.; CIRCUMSTANCES CALLING FOR THE EXERCISE OF COMELEC'S BROAD POWERS AND JURISDICTION; CASE AT BAR. —** Bernan and Collantes' sudden disappearance during the canvassing bringing with them a padlocked ballot box containing the SOVPs in question and their having resurfaced after seven days has been established; this is sufficient ground for the COMELEC to exercise its broad powers and jurisdiction, x x x Having decided to treat Manganaan's petition as one for correction of manifest errors, it was within the COMELEC's power, as enunciated in the *Alejandro* case, to *motu propio* conduct an inquiry into the matter – exercising as it does direct supervision and control over all boards of canvassers – and secure all documents and papers necessary for the proper resolution of the case. x x x The Statement of Votes (SOV) is a tabulation per precinct of the votes garnered by the candidates as reflected in the election returns. It is a vital component of the electoral process; it supports the Certificate of Canvass and is the basis for proclamation. Its preparation is an administrative function of the Board of Canvassers, a purely mechanical act the performance of which the COMELEC has *direct* control and supervision. x x x In the instant case, it was established that Bernan and Collantes took away with them SOVPs pertaining to 81 out of the 106 precincts of the municipality, or **SOVPs pertaining to more than 75% of the total number of voting precincts**. It was patent error to conduct a proclamation of supposed winning candidates following such highly anomalous circumstance. We agree with the COMELEC when it held that: Clearly, taking uncanvassed SOVPs away from the watch of those who have stake (sic) in the election is diametrically opposed to the poll body's thrust of holding honest and credible elections. Hence, it is of paramount importance that the subject SOVs be treated with extreme caution. It appears, however, that the SBOC did not accord such treatment to the SOVs. It proceeded to canvass the SOVPs without addressing the issue of the integrity of the SOVPs. Given the circumstances, the COMELEC properly conducted an examination of the SOVPs

in question which it found to contain glaring errors, such that entries and figures contained therein do not match those found in the Commission's official copy of the election returns in all covered precincts. These SOVPs were already patently suspect, and certainly could not have been the basis of a valid proclamation. Likewise, since Commissioner Brawner's May 23, 2007 Memorandum remained unheeded by the SBOC despite its clear mandate, it thus became imperative on the part of the COMELEC to perform such acts that would elicit the true will of the electorate, since its subordinates remained seemingly powerless or unwilling to act.

4. **ID.; ID.; ID.; COMELEC'S FACTUAL FINDINGS, CONCLUSIONS AND DECISION MAY NOT BE INTERFERED WITH BY THE COURT IN THE ABSENCE OF GRAVE ABUSE OF DISCRETION. —** We cannot fault the COMELEC for treating the case as one for correction of manifest errors. Given its broad powers, it may exercise its judgment as it sees fit, and we are wont to interfere therewith in the absence of grave abuse of its discretion. The appreciation of contested ballots and election documents involves a question of fact best left to the determination of the COMELEC, a specialized agency tasked with the supervision of elections all over the country. It is the constitutional commission vested with the exclusive original jurisdiction over election contests involving regional, provincial and city officials, as well as appellate jurisdiction over election protests involving elective municipal and *barangay* officials. Consequently, in the absence of grave abuse of discretion or any jurisdictional infirmity or error of law, the factual findings, conclusions, rulings and decisions rendered by the COMELEC on matters falling within its competence shall not be interfered with by this Court. Much less does the absence of a notice of hearing in Manganaan's motion convince us to grant the instant petition. Judging from the factual milieu, the COMELEC properly considered the lack of the notice of hearing as mere technicality, which we cannot put premium over and above the COMELEC's noble and paramount duty of determining the true will of the electorate.

APPEARANCES OF COUNSEL

Nena A. Santos and *Jose Ventura Aspiras* for petitioners.
Carlos L. Valdez and *Cirilo Y. Flores* for Dante Manganaan.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

The instant petition for *certiorari* and prohibition seeks to set aside the Resolution[1] of the Commission on Elections (COMELEC) *En Banc* dated September 25, 2008 in SPC Case No. 07-201, denying private respondent Dante Manganaan's petition to nullify Statements of Votes by Precinct (SOVP) Nos. 0000877, 0000878, 0000879 and 0000880, and instead treated the same as a petition to correct manifest errors found in said SOVPs.

Manganaan was a mayoralty candidate during the May 15, 2007 local elections for the municipality of Senator Ninoy Aquino in Sultan Kudarat. Petitioner Rafael Flauta, Jr. was proclaimed mayor of said municipality, while the other petitioners were proclaimed winning candidates for Vice Mayor and Members of the Sangguniang Bayan, respectively. The herein respondent Special Board of Canvassers (SBOC) was composed of Josephine Macapas, Chairman; Reginald Abad, Vice Chairman; and Oliver Alar, Secretary.

The facts, as found by the COMELEC *en banc*, are as follows:

Records disclose that on May 16, 2007, the canvassing proceedings of the said town was disrupted by explosions and gun fires (sic). During said interruption, Melicano Bernan and Julio Collantes, then chairman and secretary, respectively, of the Municipal Board of Canvassers sneaked out of the Sangguniang Bayan Hall and carted away completely filled up and tabulated Statements of Votes by Precinct (SOVP, for brevity) with serial numbers 0000877, 0000878, 0000879 and partially filled up SOVP No. 0000880. Said SOVPs cover eighty-one (81) of the one hundred and six (106) precincts of the municipality. The occurrence of this incident is supported by a May 17, 2007 certification issued by Police Inspector Pablito Silve Nasataya, Chief of Police

[1] *Rollo*, pp. 31-105.

of Sen. Ninoy Aquino which quoted the pertinent entries in the police blotter.

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An SBOC was constituted on May 21, 2007 composed of Election Officer Josephine J. Macapas as Chairman; Election Officer Oliver Y. Alar as Vice Chairman and Election Officer Reginald C. Abad as Secretary. The SBOC canvassed the remaining twenty-five (25) precincts but did not proclaim the winners due to the failure of Melicano Bernan and Julio Collantes to surrender the SOVPs they took with them.

(Manganaan), on May 23, 2007, wrote the Chairman and the Commissioners through Commissioner Romeo A. Brawner, Commissioner-in-Charge of Region XII requesting for the nullification of SOVP Nos. 0000877, 0000878 and 0000880 and page three (3) of SOVP No. 0000879 due to the aforesaid incidents. In response, Commissioner Brawner issued a Memorandum dated May 23, 2007 addressed to Atty. Paisal Diaz Tanjili, Provincial Election Supervisor of Sultan Kudarat which states:

> *"Due to the reports received pertaining to the disappearance of Melicano Bernan, the Chairman of the Board of Canvassers of the Municipality of Ninoy Aquino, Sultan Kudarat, and his possession of certain Statements of Votes, the following orders are hereby issued to preserve the integrity and credibility of the elections in the Municipality of Sen. Benigno Aquino:*
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> *a) SOV Nos. 0000877, 0000878 and 0000880 and page three (3) for the Local Municipal Positions of SOV No. 0000879 are NULLIFIED.*
>
> *b) The Special Board of Canvassers (SBOC) is DIRECTED to conduct a re-canvassing/re-tallying of all the Election Returns, except those for the 25 precincts which they had already previously canvassed. The re-canvassing/re-tallying shall be conducted in the Municipality of Senator Ninoy Aquino, Sultan Kudarat.*
>
> *c) The SBOC shall not make any proclamation prior to the completion of the re-canvassing/re-tallying procedure.*
>
> *For your compliance."*

Meanwhile, in the morning of the same day, the Office of the Provincial Election Supervisor (OPES) received a letter from Melicano Bernan and a sealed ballot box believed to be containing the missing SOVPs and the other missing documents. Uninformed of the order, the SBOC convened and proclaimed the winning candidates (petitioners).

On May 29, 2007, (Manganaan) filed this Petition to Annul Proclamation[2] against the proclaimed winning candidates (petitioners) for the positions of mayor, vice mayor and members of the Sangguniang Bayan of the municipality of Sen. Ninoy Aquino, province of Sultan Kudarat. He argues that (petitioners') proclamation is null and void since many of the SOVs used as bases for the said proclamation were declared null and void.

On June 28, 2007, the Commission *en banc* promulgated Resolution No. 8212[3] which listed the cases that will be heard by the Commission beyond June 30, 2007. The instant case was not among those listed.[4] (other entries in parentheses supplied)

After receipt of Commissioner Brawner's Memorandum, the SBOC sought clarification on the following: 1) status of the proclamation made; 2) whether the SBOC is duty bound to repeat the procedure and conduct a re-canvassing of the affected election returns; and 3) whether the SBOC can finally tabulate the votes gathered for provincial and national offices for the eventual preparation of the Certificate of Canvass of Votes.

On July 3, 2007, Manganaan filed a Motion for Clarification and/or Reconsideration[5] of Resolution No. 8212, which was set for hearing on September 18, 2007.

On August 30, 2007, petitioners filed their Opposition[6] to Manganaan's motion for clarification/reconsideration. On September 18, 2007, the scheduled hearing on the motion was held, after which the parties filed their respective memoranda.

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[2] *Id.* at 125-131.

[3] *Id.* at 132-149.

[4] *Id.* at 32-35.

[5] *Id.* at 150-154.

[6] *Id.* at 161-164.

On September 25, 2008, the COMELEC issued the assailed Resolution, the dispositive portion of which provides as follows:

WHEREFORE, premises considered, the Commission RESOLVED, as it hereby RESOLVES, to DENY the petition to nullify SOVP Nos. 0000877, 0000878, 0000879 and 0000880. Instead, the Commission treats the instant petition to be a petition to correct the manifest errors present in the said SOVPs.

The Special Municipal Board of Canvassers of the municipality of Sen. Ninoy Aquino is hereby DIRECTED to:

a) Reconvene to annul the proclamation of Rafael Flauta, Jr., Lucresia Ordinario, Nemesio Gose, Ricardo Bajade, Joseph Orayle, Gil Batilo, Emely Herezo-delos Santos, Romulo Hilario, Bevelyn Zapanta, Genoviva Jehodo as mayor, vice-mayor and members of the Sangguniang Bayan of Sen. Ninoy Aquino in Sultan Kudarat;

b) Reconvene to rectify the errors the former members of the Municipal Board of Canvassers committed in the copying of votes; and

c) Proclaim the winning candidates based on the corrected entries as detailed above;

Further, the Law Department of the Commission is likewise directed to conduct thorough investigation on the culpability of Melicano Bernan and Julio Collantes in making erroneous entries in the above-mentioned SOVPs.

Let a copy of the instant Resolution be furnished to the Municipal Local Government Operations Officer of the Department of Interior and Local Government (DILG) in the Municipality of Sen. Ninoy Aquino, Province of Sultan Kudarat.

SO ORDERED.[7]

Hence, the instant petition raising the following issues:

Whether or not the COMELEC committed grave abuse of discretion amounting to lack of or in excess of jurisdiction in taking cognizance of the Motion for Reconsideration of an *en banc* resolution which dismissed SPC Case No. 07-201;

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

Whether or not the COMELEC committed grave abuse of discretion amounting to lack of or in excess of jurisdiction in treating or converting the petition to annul proclamation or as a petition to correct manifest errors;

Whether or not a petition to correct manifest errors may be entertained after a proclamation has been made; and,

Whether or not petitioners' right to due process has been violated.

During the pendency of the instant petition or on January 12, 2009, the SBOC of the Municipality of Sen. Ninoy Aquino reconvened to annul the previous proclamation of petitioner Rafael Flauta, Jr.; rectified the alleged errors committed by the previous board of canvassers; and proclaimed respondent Manganaan as the duly elected mayor who then took his oath of office. Petitioner Flauta, Jr., on the other hand, filed on January 21, 2009 an election protest *ad cautelam* before the Regional Trial Court of Isulan, Sultan Kudarat.[8]

In view of these developments, Manganaan filed a Manifestation seeking dismissal of the instant petition on the ground that it has become moot.

Petitioners assert that the non-inclusion of SPC Case No. 07-201 in Resolution No. 8212 as among the cases that will be heard by the COMELEC beyond June 30, 2007 means that the same was considered dismissed; that the COMELEC had no jurisdiction to entertain Manganaan's motion for clarification/ reconsideration because the same is a prohibited pleading under the COMELEC Rules of Procedure; and that Manganaan's motion contained a mere general notification addressed to the COMELEC and not the proper notice of hearing, thus rendering the same a mere scrap of paper.

Petitioners likewise contend that the procedure adopted by the COMELEC in *motu propio* converting Manganaan's petition to annul proclamation into one for correction of manifest errors, is irregular and contrary to the rule since petitioners have already been proclaimed. Petitioners rely upon the rule that no petition

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[8] *Id.* at 246-249.

for correction of manifest errors may be entertained after the candidates have been proclaimed.[9]

In his Comment, Manganaan argues that the instant petition should be dismissed because the issues raised have become moot in view of his proclamation and oath taking as mayor of Sen. Ninoy Aquino town and the filing by petitioner Flauta of an election protest before the Regional Trial Court in Isulan, Sultan Kudarat.

The COMELEC maintains that the prevailing circumstances at the time warranted the suspension of its Rules as authorized under Section 4, Rule 1 of the Rules of Procedure;[10] thus, the treatment of Manganaan's petition to annul proclamation as one to correct manifest mistakes was proper. On the claim of denial of due process, the COMELEC asserts that petitioners were given the opportunity to ventilate their side in a hearing held on September 18, 2007, where the parties were allowed to submit their respective memoranda.

The petition is dismissed.

In *O'hara v. Commission on Elections*,[11] the Court reiterated the COMELEC's broad power, derived from our fundamental law, to enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum and recall; its power of supervision and control over boards of election inspectors and boards of canvassers; the concomitant need to do everything in its power to secure a fair and honest canvass of the votes cast in the elections; the grant to it of broad and flexible powers to effectively perform its duties and to ensure free, orderly, honest, peaceful and credible elections; and its role as the guardian

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[9] Citing Agpalo, *Comments on Omnibus Election Code*, 2004 Edition, p. 514.

[10] Which provides:

In the interest of justice and in order to obtain speedy disposition of all matters pending before the Commission, these rules or any portion thereof may be suspended by the Commission.

[11] G.R. Nos. 148941-42, March 12, 2002, 379 SCRA 247.

of the people's sacred right of suffrage. Citing *Benito v. Commission on Elections*,[12] the Court held that:

> Election contests involve public interest, and technicalities and procedural barriers must yield if they constitute an obstacle to the determination of the true will of the electorate in the choice of their elective officials. The Court frowns upon any interpretation of the law that would hinder in any way not only the free and intelligent casting of the votes in an election but also the correct ascertainment of the results.[13]

In particular, the statutory power of supervision and control by the COMELEC over the boards of canvassers includes the power to revise or reverse the action of the boards, as well as to do what the boards should have done. Such power includes the authority to initiate *motu propio* such steps or actions as may be required pursuant to law, like reviewing the actions of the board; conducting an inquiry affecting the genuineness of election returns beyond the election records of the polling places involved; annulling canvass or proclamations based on incomplete returns or on incorrect or tampered returns; invalidating a canvass or proclamation made in an unauthorized meeting of the board of canvassers either because it lacked a quorum or because the board did not meet at all; or requiring the board to convene.[14]

Indeed, under the COMELEC Rules of Procedure, a motion for reconsideration of an *en banc* resolution of the Commission is not allowed. However, an exception exists as when the case involves an election offense. Thus:

> Section 1. What Pleadings are not Allowed. – The following pleadings are not allowed:
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> x x x x x x x x x
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> d) motion for reconsideration of an *en banc* ruling, resolution, order or decision **except in election offense cases**;

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[12] G.R. No. 106053, August 17, 1994, 235 SCRA 436.

[13] *Id.* at 442.

[14] *Alejandro v. COMELEC*, G.R. No. 167101, January 31, 2006, 481 SCRA 427.

x x x x. (Emphasis supplied)

In the instant case, Manganaan's motion for clarification/ reconsideration alleged Bernan and Collantes' unauthorized removal of SOVs from the canvassing venue, as well as possible tampering/increasing/decreasing of votes. Under our election laws, any member of the board of election inspectors or board of canvassers who tampers, increases, or decreases the votes received by a candidate in any election or any member of the board who refuses, after proper verification and hearing, to credit the correct votes or deduct such tampered votes shall be guilty of an election offense.[15] Likewise, any person who, through any act, means or device, violates the integrity of any official ballot or election returns before or after they are used in the election,[16] and any public official who neglects or fails to properly preserve or account for any ballot box, documents and forms received by him and kept under his custody[17] shall be guilty of an election offense. As such, said allegations of commission of election offense did not make Manganaan's motion for clarification/reconsideration a prohibited pleading.

Bernan and Collantes' sudden disappearance during the canvassing bringing with them a padlocked ballot box containing the SOVPs in question and their having resurfaced after seven days has been established; this is sufficient ground for the COMELEC to exercise its broad powers and jurisdiction, and accordingly treat Manganaan's petition either as a complaint for the investigation and prosecution of an election offense, a petition to correct manifest errors found in the SOVPs, or a ground to declare a failure of elections.

Having decided to treat Manganaan's petition as one for correction of manifest errors, it was within the COMELEC's power, as enunciated in the *Alejandro*[18] case, to *motu propio*

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[15] Republic Act No. 6646 (The Electoral Reforms Law of 1987), Section 27 (b).

[16] B.P. Blg. 881, as amended, Sec. 261 (z) (21).

[17] *Id.*, Sec. 261 (z) (15).

[18] *Supra* note 14.

conduct an inquiry into the matter – exercising as it does direct supervision and control over all boards of canvassers – and secure all documents and papers necessary for the proper resolution of the case. The COMELEC found that:

In the instant case, the errors in the copying of the figures from the election returns to the SOVs are definitely evident to the understanding and it does not need further evidence to make it clearer. It does not involve the opening of ballot boxes, and appreciation of ballots.

Moreover, Section 35 of Resolution No. 7859 considers error in the copying of votes from the election returns to the SOVs of (sic) as manifest error. It states:

"SEC. 34. ***Manifest error****. – There is manifest error in the tabulation of tallying of the results during the canvassing where:*

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3) ***<u>There was a mistake in the copying of the figures from the election returns to SOV by precinct</u>*** *or from the Municipal/ City Certificates of canvass to the SOV by Municipality; or from the Provincial/City Certificate of Canvass to the SOV by province/city;*[19]

The Statement of Votes (SOV) is a tabulation per precinct of the votes garnered by the candidates as reflected in the election returns. It is a vital component of the electoral process; it supports the Certificate of Canvass and is the basis for proclamation. Its preparation is an administrative function of the Board of Canvassers, a purely mechanical act the performance of which the COMELEC has *direct* control and supervision.[20] In *Milla v. Balmores-Laxa*,[21] its significance was underscored, and the Court sustained the COMELEC's power to annul the proclamation of a winning candidate who had taken his oath

[19] *Rollo*, pp. 103-104.

[20] *Duremdes v. Commission on Elections*, G.R. Nos. 86362-63, October 27, 1989, 178 SCRA 746.

[21] G.R. No. 151216, July 18, 2003, 401 SCRA 679.

and assumed office due to an alleged error in the tabulation of the SOV, *viz*:

> The Statement of Votes forms the basis of the Certificate of Canvass and of the proclamation. Any error in the statement ultimately affects the validity of the proclamation.
>
> If a candidate's proclamation is based on a Statement of Votes which contains erroneous entries, it is null and void. It is no proclamation at all and the proclaimed candidate's assumption of office cannot deprive the COMELEC of the power to annul the proclamation.[22]

In *Duremdes v. Commission on Elections*,[23] this Court sustained the power of the COMELEC *en banc* to order a correction of the Statement of Votes to make it conform to the election returns. In *Castromayor v. Commission on Elections*,[24] we allowed this procedure even if the proclamation of a winning candidate has already been made. We also sustained a resolution of the COMELEC directing the MBOC to reconvene and conduct a new canvass of the election returns in order to rectify the errors it committed in tallying the votes for the vice-mayoralty race even after a proclamation had already been made.[25] This is because in election laws, the paramount interest lies in the determination of the true will of the electorate. Thus, we held:

> In any case, the COMELEC Second Division justified the reconvening of the MBC in this wise:
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>> On June 21, 2004, public respondent Election Officer Teresita B. Angangan, Chairman of the Board, submitted her answer. She admitted that there were indeed manifest errors committed by the Board in the preparation of the Statement of Votes but denied that "*dagdag-bawas* was done, practiced, perpetrated and repeated several times over by the Municipal Board of Canvassers." She maintained that there was no *dagdag-bawas* but a mere error in tabulation or tallying.

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[22] *Id.* at 684-685.

[23] *Supra* note 20.

[24] G.R. No. 120426, November 23, 1995, 250 SCRA 298.

[25] *Alejandro v. Commission on Elections*, *supra* note 14.

EO Angangan also submitted a table comparing the figures in the Election Returns and in the Statement of Votes in all 156 clustered precincts. In this table (Annex 1 of public respondent's Answer), she pointed out that based on the Election Returns, petitioner [private respondent herein] should have won the elections after garnering 11,401 votes as against the 11,152 votes for private respondent.

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There is no question that errors were committed regarding the copying of the results of the elections from the Election Returns to the Statement of Votes. Both the public and private respondent admitted that errors were indeed made. They just differ as to who will be the real winner if these errors are corrected. According to public respondent, petitioner won; private respondent maintains he would still have won even if the errors were corrected.

What is involved here is a simple problem of arithmetic. The Statement of Votes involved in this case does not match the entries made in the election returns.

It is thus imperative that a Municipal Board of Canvassers be immediately convened to correct with dispatch the errors committed in the tallying of votes.

The COMELEC *en banc* upheld the reconvening of the MBC, thus:

"The teaching of past experience is that every effort should be strained, every means should be explored, to ascertain the true returns with the end in view that upon the basis thereof, proclamation untainted by force, fraud, forgery, mistake and the like, may be made. It is true indeed that after proclamation, the losing candidate may yet have the remedy of an election protest. But that may not prove effective. A number of factors, such as the almost illimitable resources of lawyers and the delay that may be occasioned may well frustrate the ends of the protest. Victory may just be in sound, and not in substance." While it is true that as a general rule, the Board of Canvassers becomes *functus officio* after it has performed its last task, which is to proclaim the winning candidates, the Highest Tribunal had the opportunity to cite an exception to such general rule

in *Javier vs. COMELEC*, where it stated that "it may be conceded as a general proposition that when a Board of Canvassers has fully performed its duty and proclaimed the result of the election according to law and adjourned *sine die*, it may be deemed *functus officio* in the sense that the members of the board have no power voluntarily to reassemble and re-canvass the returns. But the foregoing pronouncement finds no application in this case where as already ruled, the canvass and proclamation were made in violation of the lawful order of the COMELEC.

Furthermore, where an election return has been amended by court order or the election return from a certain precinct has been wrongfully or erroneously excluded by the Board of Canvassers, We held that the COMELEC has the power to order a new canvass of the election returns even after a proclamation had already been made. The underlying theory therefore, it was said, is the ministerial duty of the Board of Canvassers to base the proclamation on the election returns of all the precincts of the municipality. Where the Board of Canvassers, as in this instance with knowledge that the return from one precinct is undoubtedly vitiated by clerical mistake, continued the canvass and proclaimed a winner based on the result of such canvass, the proclamation cannot be said to have been in faithful discharge of its ministerial duty under the law.

We find no grave abuse of discretion in the foregoing COMELEC pronouncements. There is no controversy that discrepancies exist in the statement of votes and that reflected in the questioned election returns. Considering that any error in the statement of votes would affect the proclamation made on the basis thereof, the resolution of the COMELEC directing the MBOC to reconvene to rectify the errors it committed in tallying the votes for the vice-mayoralty race in Alicia, Isabela should be upheld. Indeed, "above and beyond all, the determination of the true will of the electorate should be paramount. It is their voice, not ours or of anyone else, that must prevail. This, in essence, is the democracy we continue to hold sacred."[26]

In the instant case, it was established that Bernan and Collantes took away with them SOVPs pertaining to 81 out of the 106 precincts of the municipality, or **SOVPs pertaining to more than 75% of the**

[26] *Id.* at 448-450.

total number of voting precincts.[27] It was patent error to conduct a proclamation of supposed winning candidates following such highly anomalous circumstance. We agree with the COMELEC when it held that:

> Clearly, taking uncanvassed SOVPs away from the watch of those who have stake (sic) in the election is diametrically opposed to the poll body's thrust of holding honest and credible elections. Hence, it is of paramount importance that the subject SOVs be treated with extreme caution.
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> It appears, however, that the SBOC did not accord such treatment to the SOVs. It proceeded to canvass the SOVPs without addressing the issue of the integrity of the SOVPs.[28]

Given the circumstances, the COMELEC properly conducted an examination of the SOVPs in question which it found to contain glaring errors, such that entries and figures contained therein do not match those found in the Commission's official copy of the election returns in all covered precincts. These SOVPs were already **patently suspect**, and certainly could not have been the basis of a valid proclamation. Likewise, since Commissioner Brawner's May 23, 2007 Memorandum remained unheeded by the SBOC despite its clear mandate, it thus became imperative on the part of the COMELEC to perform such acts that would elicit the true will of the electorate, since its subordinates remained seemingly powerless or unwilling to act.

We cannot fault the COMELEC for treating the case as one for correction of manifest errors. Given its broad powers, it may exercise its judgment as it sees fit, and we are wont to interfere therewith in the absence of grave abuse of its discretion. The appreciation of contested ballots and election documents involves a question of fact best left to the determination of the COMELEC, a specialized agency tasked with the supervision of elections all over the country. It is the constitutional commission vested with the exclusive original jurisdiction over election contests involving regional, provincial

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[27] The parties do not dispute this official finding of the local police, as embodied in the Certification dated May 17, 2007 issued by Police Inspector Pablito Silve Nasataya, Chief of Police of Sen. Ninoy Aquino town.

[28] *Rollo*, p. 36.

and city officials, as well as appellate jurisdiction over election protests involving elective municipal and *barangay* officials. Consequently, in the absence of grave abuse of discretion or any jurisdictional infirmity or error of law, the factual findings, conclusions, rulings and decisions rendered by the COMELEC on matters falling within its competence shall not be interfered with by this Court.[29]

Much less does the absence of a notice of hearing in Manganaan's motion convince us to grant the instant petition. Judging from the factual milieu, the COMELEC properly considered the lack of the notice of hearing as mere technicality, which we cannot put premium over and above the COMELEC's noble and paramount duty of determining the true will of the electorate.

Finally, petitioners' protestations of failure to observe due process are unavailing. Given the facts, which remained undisputed, no further proof was required from them that could have counteracted the effects of the evidence already available. Petitioners could not have presented documentary and other evidence that was not already in the possession of the MBOC, the SBOC, or the COMELEC as the specialized constitutional agency exercising direct supervision and control over the MBOC or SBOC, and over all elections.

WHEREFORE, the petition is *DISMISSED.* The September 25, 2008 Resolution of the Commission *en banc* in SPC Case No. 07-201 is *AFFIRMED.*

SO ORDERED.

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

Brion, J., on official leave.

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[29] *Punzalan v. Commission on Elections*, G.R. No. 132435, April 27, 1998, 289 SCRA 702.

THIRD DIVISION

[G.R. No. 187152. July 22, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **TEODULO VILLANUEVA, JR.,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; SPECIAL COMPLEX CRIMES; ROBBERY WITH HOMICIDE; ELEMENTS; APPLICATION. —** [T]he essential elements of robbery with homicide, [are] (a) the taking of personal property with the use of violence or intimidation against a person; (b) the property belongs to another; (c) the taking is characterized by *animo lucrandi*; and (d) by reason of the robbery or on the occasion thereof, homicide (used in its generic sense) is committed. x x x. The accounts of the witnesses indicate that the accused went to the victims' residence with robbery in mind. The robbery took place between 7:00 and 7:30 in the morning on 6 December 2002. The victims were all still asleep at that time, while AAA was out buying bread in a nearby bakery. BBB was awakened from her sleep upon realizing that somebody was covering her face with a pillow, and pulling down her shorts and attempting to defile her. She resisted and shouted for help, resulting in her being stabbed by Joel Alog Reyes. The succeeding commotion ensued with her brothers also being stabbed, resulting in the death of CCC. Thereafter, BBB ran inside her brother's bedroom to shout for help, upon which the criminals left their residence. Their house was in disarray, and some personal belongings were missing. It is only but logical to conclude that the main purpose of the criminals was to rob the victims of their personal belongings. In committing the robbery, one of the criminals attempted to defile BBB, which triggered the commotions and resulted in the stabbing and death of CCC.

2. **REMEDIAL LAW; EVIDENCE; ALIBI; PHYSICAL IMPOSSIBILITY TO BE AT THE CRIME SCENE AT THE TIME OF COMMISSION, NOT A CASE OF.—** For alibi to prosper, it must strictly meet the requirements of time and place. It is not enough to prove that the accused was somewhere else when the crime was committed, but it must also be

demonstrated that it was physically impossible for him to have been at the crime scene at the time the crime was committed. In this case, the alibi of accused-appellant is not airtight. The distance between the house of accused-appellant and the house of the victims, where the crime occurred, can be negotiated in a few minutes' walk. Moreover, the crime happened between 7:00 and 7:30 in the morning. Accused-appellant claims to have been sleeping at his home in XXX at 7:30 in the morning of said day. The evidence reveals, however, that it was not physically impossible for accused-appellant to have been at the crime scene at the time the crime was committed considering that the distance (about 100 meters away) between accused-appellant's house and the crime scene could have been traversed in a span of a few minutes.

3. **ID.; ID.; CREDIBILITY OF WITNESSES; WHEN THE INCONSISTENCY, BETWEEN THE AFFIDAVIT AND THE TESTIMONY HAS BEEN SUFFICIENTLY EXPLAINED AND STANDS THE RIGOROUS TESTS OF DIRECT AND CROSS-EXAMINATION, SUCH WILL NOT DISCREDIT THE CREDIBILITY OF THE WITNESS. —** Although the general rule is that contradictions between a witness's statements in an affidavit and his testimony do not necessarily discredit him. Where the purported inconsistency concerns points of importance, the same cannot simply be ascribed to failure to remember, for which reason the witness's credibility becomes suspect. Corollary to this point, where any inconsistency has been sufficiently explained and stands the rigorous tests of direct and cross-examination, such will not discredit the credibility of the witness, as in this case. Judicial notice can be taken of the fact that testimonies given during trial are much more exact and elaborate than those stated in sworn statements. BBB explained that she was in a confused state of mind at the time her affidavit was taken, and that she was worried about the condition of her two brothers who were stabbed. It is also clear that her statement was taken right after the incident, when she was undergoing treatment for her stabbing. The alleged inconsistencies between the statements of DDD in his affidavit and those in court, however, are more imagined than real. In its maneuvering to engender doubt as to accused-appellant's presence at the crime scene, the defense harps on the fact that the witness never indicated in his affidavit that there were other male persons involved in the crime, as may be gleaned from

the following: Q You never mentioned to the police investigator investigating the case and taking your statement that there were many other male persons who participated in this crime, isn't it? A *Hindi po kasi gulong-gulo po ang isip ko noong panahon iyon*. This statement is in no way inconsistent with DDD's testimony in identifying accused-appellant as one of the perpetrators of the crime; such statement does not exclude him as an assailant. Moreover, the failure to include him as a suspect in the affidavit was explained in the witness' answer to the query, saying that he was in a confused state of mind at that time. The alleged inconsistency, if at all, does not detract from his credibility. That DDD saw accused-appellant at the crime scene is clear.

4. **ID.; ID.; ID.; FINALITY OF THE FACTUAL FINDINGS OF THE TRIAL COURT. —** [F]indings of the trial court on the credibility of witnesses deserve great weight, given the clear advantage of a trial judge in the appreciation of testimonial evidence. And when his findings have been affirmed by the Court of Appeals, these are generally binding and conclusive upon this Court. Significantly, accused-appellant has not imputed any ill motive to the prosecution witnesses for testifying against him. Absent any evidence to show a doubtful reason or an improper motive why a prosecution witness would testify against the accused or falsely implicate him in a crime, the said testimony is trustworthy and should be accorded full faith and credit.

5. **ID.; ID.; IDENTIFICATION OF THE ACCUSED; POSITIVE IDENTIFICATION PREVAILS OVER ALIBI AND DENIAL. —** [T]he defense of alibi must fail, especially in light of the fact that two of the prosecution witnesses, BBB and DDD, positively identified accused-appellant as one of the malefactors of the crime. Positive identification, where categorical and consistent and without any showing of ill motive on the part of the eyewitnesses testifying on the matter, prevails over alibi and denial. These defenses, if not substantiated by clear and convincing evidence, are negative and self-serving evidence undeserving of weight in law.

6. **ID.; ID.; CONSPIRACY; SUFFICIENTLY ESTABLISHED. —** As to accused-appellant's allegation that the prosecution failed to prove conspiracy, we find otherwise. Conspiracy may be inferred from the acts of the accused before, during and after

the commission of the crime suggesting concerted action and unity of purpose among them. For this purpose, overt acts of the accused may consist of active participation in the actual commission of the crime itself, or it may consist of moral assistance to his co-conspirators by being present at the time of the commission of the crime, or by exerting moral ascendancy over the other co-conspirators by moving them to execute or implement the conspiracy. Indeed, jurisprudence dictates that mere presence at the scene of the crime at the time of its commission is not, by itself, sufficient to establish conspiracy at the time of its commission, but it is enough that the malefactors acted in concert pursuant to the same objective. Conspiracy is predominantly a state of mind as it involves the meeting of the minds and intent of the malefactors. The existence of the assent of minds of the co-conspirators may be inferred from proof of facts and circumstances which, taken together, indicate that they are parts of the complete plan to commit the crime. Accused-appellant's presence inside the house of the victims does not appear to be a coincidence nor seems to be an innocent act. Being a stranger, he had no business in the house of the victims. To recall, one of the victims, BBB, testified to seeing him holding her younger brother before he was stabbed by co-accused Joel Alog Reyes. The other eyewitness, DDD, saw accused-appellant in the sala while everything was in disarray. The next instant, accused-appellant was no longer in the premises. In fact, even accused-appellant's behavior during and after the incident could hardly be described as innocent. If accused-appellant was not in conspiracy with the others in committing the robbery with homicide, he would not have fled the vicinity with the loot and leave the three minors knowing they were wounded and helpless from the stabbings. In fact, accused-appellant went straight home without giving any aid to the victims or calling for help for them. Since conspiracy was established, it matters not who among the accused actually shot and killed the victim. The concerted manner in which accused-apellant and his companions perpetrated the crime showed beyond reasonable doubt the presence of conspiracy.

7. ID.; ID.; ID.; LIABILITY OF CO-CONSPIRATORS. — When a homicide takes place by reason or on the occasion of the robbery, all those who took part shall be guilty of the special complex crime of robbery with homicide whether or not they

actually participated in the killing, unless there is proof that they had endeavored to prevent the killing. No proof was adduced that accused-appellant sought to avert the killing. Thus, regardless of the acts individually performed by accused-appellant and his co-accused, and applying the basic principle in conspiracy that the "act of one is the act of all," accused-appellant is guilty as a co-conspirator. Being co-conspirators, the criminal liabilities of the accused are one and the same.

8. **CRIMINAL LAW; SPECIAL COMPLEX CRIMES; ROBBERY WITH HOMICIDE; EFFECT OF THE PRESENCE OF TREACHERY IN THE COMMISSION THEREOF. —** Treachery, as correctly found by the trial court, attended the killing of the victim CCC. Article 14(16) of the Revised Penal Code provides that there is treachery when the offender commits any of the crimes against persons, employing means, methods or forms in the execution thereof that tend directly and specifically to insure its execution without risk to himself arising from the defense that the offended party might make. Anlayzing the events unfolding that day, the evidence on record points out that CCC was stabbed on his back and was unable to defend himself. The presence of *alevosia*, though, should not result in qualifying the offense to murder. The correct rule is that when it obtains in the special complex crime of robbery with homicide, treachery is to be regarded as a generic aggravating circumstance, robbery with homicide being a composite crime with its own definition and special penalty in the Revised Penal Code. The generic aggravating circumstance of treachery attending the killing of the victim qualifies the imposition of the death penalty on accused-appellant. However, in the case at bar, the imposable penalty for accused-appellant is still *reclusion perpetua*, in view of Republic Act 9346, enacted on 24 June 2006, prohibiting the death penalty.

9. **ID.; ID.; ID.; AWARD OF CIVIL INDEMNITY, MORAL AND EXEMPLARY DAMAGES, PROPER. —** As to the award of damages, we have held that if the robbery with homicide is perpetrated with any of the attending qualifying aggravating circumstances that require the imposition of the death penalty, the civil indemnity for the victim shall be ₱75,000.00. The existence of one aggravating circumstance merits the award of exemplary damages under Article 2230 of the New Civil Code. Thus, the award of exemplary damages to the heirs of

CCC is proper. Consistent with recent rulings of this Court, however, the award of exemplary damages is increased from ₱25,000.00 to ₱30,000.00. In line with prevailing jurisprudence and the testimony of AAA, we modify the award of moral damages and increase the award from ₱50,000.00 to ₱75,000.00.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

CHICO-NAZARIO, *J.*:

For Review under Rule 45 of the Revised Rules of Court is the Decision[1] dated 30 September 2008 of the Court of Appeals in CA-G.R. CR-HC No. 02540, entitled *People of the Philippines v. Teodulo Villanueva, Jr. y Declaro*, affirming the Decision[2] rendered by the Regional Trial Court (RTC) of Pasig City, Branch 159, in Criminal Case No. 124834-H (I.S. No. TGG 02-13384), finding accused-appellant Teodulo Villanueva, Jr. *y* Declaro guilty beyond reasonable doubt of the crime of Robbery with Homicide.

In an Amended Information[3] filed with Branch 159 of the Regional Trial Court of Pasig City, appellant Teodulo Villanueva, Jr. *y* Declaro, accused Joel "Alog" Reyes *alias* "Puppet," Russel San Marcos Pasangco *alias* "Ortego," and Kokak San Marcos Pasangco were charged with Robbery with Homicide under Article 294, paragraph 1, of the Revised Penal Code as amended by Section 9 of Republic Act No. 7659, in relation to Section 5(A and J) of Republic Act No. 8369.

The Information charging accused-appellant reads:

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[1] Penned by Associate Justice Bienvenido L. Reyes with Associate Justices Mariflor Punzalan Castillo and Apolinario D. Bruselas, Jr., concurring; *rollo,* pp. 2-9.

[2] Records, pp. 212-227.

[3] *Id.* at 48-50.

AMENDED INFORMATION

That on or about the 6th day of December 2002 in the Municipality of XXX, XXX, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, in conspiracy with one John Doe @ "Abet" whose true name, identity and present whereabout [sic] is still unknown, after effecting an unlawful entry into the dwelling of one AAA,[4] with the use of deadly bladed weapons, with intent to gain and by means of force, violence, and intimidation, did then and there willfully, unlawfully and feloniously take, rob and divest the following items to wit:

Four (4) Gold Necklaces
Three (3) Women's Gold Necklaces
Three (3) Men's Gold Bracelets
Three (3) Assorted Gold Rings

all valued at Php 82,000.00, all belonging to said AAA and one (1) 5210 cellphone worth Php 8,000.00 belonging to one BBB, all in the total amount of Php 90,000.00, to the damage and prejudice of the owners thereof in the aforementioned amount of Php 90,000.00;

That by reason and on the occasion of the Robbery, the above-named accused, in conspiracy with each other, with intent to kill and with the use of said deadly weapons, did then and there willfully, unlawfully and feloniously attack, assault and stab with said deadly weapons CCC, eleven (11) years of age, BBB, sixteen (16) years of age, and DDD, fifteen (15) years of age, all minors at the time of the commission of the offense, hitting them on the different parts of their bodies, thereby inflicting upon the victim CCC mortal stab wounds which directly caused his death; and serious physical injuries to victims BBB and DDD, thus, the accused performed all the acts of execution which would have caused their deaths as a consequence, but did not produce it by reason of causes independent of the will

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[4] AAA is the mother of the victims, BBB, CCC, and DDD, who were all minors at the time of the commission of the crime. In view of the legal mandate on the utmost confidentiality of proceedings involving violence against women and children set forth in Section 29 of Republic Act No. 7610, otherwise known as, Anti-Violence Against Women and Their Children Act of 2004; and Section 40 of A.M. No. 04-10-11-SC, known as, Rule on Violence Against Women and Their children effective November 15, 2004, the names of the minor victims should appear as "AAA," "BBB," "CCC," and so on. Addresses shall appear as "XXX" as in "No. XXX Street, XXX District, City of XXX."

of the accused, that is, due to the timely able medical assistance rendered to said BBB and DDD, which prevented their death, the said crimes having been attended by the qualifying circumstances of treachery, evident premeditation and superior strength, aggravated by the circumstances of unlawful entry and dwelling, to the damage and prejudice of the victims and their heirs;

That, further, by reason or on the occasion of the said Robbery, the above-named accused Joel Alog Reyes @ Puppet, in the presence and in conspiracy with his co-accused and of one another by means of force and intimidation and with lewd designs and intent to cause or gratify his sexual desire, abuse, humiliate and degrade BBB, sixteen (16) years of age, a minor, did then and there willfully, unlawfully and feloniously commit lascivious conduct, a form of sexual abuse, upon said BBB, by then and there, trying to remove her underwear, against her will and consent, thus constituting child abuse, which acts debase, degrade or demean her intrinsic worth and dignity as a human being, thus aggravating further the crime of robbery with homicide.[5]

At the arraignment on 10 February 2003, both accused-appellant and his co-accused Joel Alog Reyes appeared in court, duly assisted by counsel *de oficio*. After reading the Information in open court and translating the same into Tagalog, a dialect spoken and understood by the accused, and after having been apprised of the nature and consequences of the charge against them, accused-appellant pleaded NOT GUILTY. His co-accused Joel "Alog" Reyes pleaded GUILTY to the crime charged in the Information.[6] In view of the plea of guilty of accused Joel Alog Reyes and the finding that he was guilty beyond reasonable doubt of the crime of Robbery with Homicide, said accused-appellant was sentenced to suffer *reclusion perpetua* and ordered to pay the sum of Fifty Thousand (₱50,000.00) Pesos arising from the death of the victim, DDD.

The trial court issued a warrant of arrest against Kokak San Marcos and John Doe *alias* "Abet," and ordering the revival of the case against them upon arrest. Russel San Marcos Pasangco *alias* "Ortego," detained in the Bureau of Corrections in Muntinlupa since 28 June 2003, is now standing trial.

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[5] *Id.* at 48-50.

[6] *Id.* at 28.

Pre-trial conference was held and terminated on 6 May 2003, where the parties narrowed down the issues to:

(a) Whether or not the accused Teodulo Villanueva, Jr. in conspiracy with the accused Joel Alog [Reyes], who had been previously convicted, committed the acts constituting robbery with homicide in relation to Section 5 (a & j) of Republic Act No. 8369; and

(b) Whether or not the private complainant is entitled to damages.[7]

After pre-trial, trial on the merits ensued. The prosecution presented the following witnesses: BBB (17 years old), DDD (16 years old), Dr. Roberto Garcia (62 years old), Police Officer 2 Ehron Balauat (32 years old), Dr. Paul Ed dela Cruz Ortiz (35 years old, Medico-Legal Officer), and AAA (45 years old, mother of the victims). The Office of the Solicitor General summarized the version of the prosecution as follows:

Between the hours of 7:00 and 8:00 o'clock in the morning of 6 December 2002, AAA left their house at XXX St., XXX District, XXX City to buy bread at the nearby bakery. She left her children CCC (11 years old), BBB (16 years old) and DDD (15 years old), who were still sleeping.[8] At around the same time, accused Joel Alog Reyes *alias* "Puppet," accused-appellant Teodulo Villanueva and three other male companions entered AAA's house, taking several pieces of jewelry with them, to wit: (a) four gold necklaces; (b) three women's gold necklaces; (c) three men's gold bracelets; and (d) three assorted gold rings. The group also took a Nokia 5210 cellular phone belonging to BBB. The valuables amounted to ₱90,000.00. A few minutes thereafter, BBB, who was sleeping in the living room with her brother CCC, was awakened when she felt a pillow pressed upon her face. Afterwards, somebody pulled down her shorts. BBB resisted. She was then stabbed at the back three times. BBB forced herself to stand up and saw Joel in front of her. BBB also saw accused-appellant standing near their dining table.

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[7] *Id.* at 40.

[8] TSN, 17 May 2005, pp. 8, 20.

BBB shouted. Thereafter, BBB saw accused-appellant holding her brother CCC.[9] Upon hearing his sister's cries for help, DDD went out of his room to see what was happening. He saw CCC lying down bleeding with stab wounds. BBB then ran to DDD's room and opened the room's window and shouted for help. Meanwhile, DDD, who ran to the living room, was also stabbed by Joel Alog Reyes.[10] BBB's cries for help were heard by her Uncle Boy, who immediately went to their house. Her grandmother and mother also arrived a little later. CCC was initially brought to the Erlinda Hospital, but was transferred to Rizal Medical Hospital, where he expired. The siblings DDD and BBB were taken to the Cruz-Rabe Hospital, moved to the Rizal Provincial Hospital, and thereafter transferred to Medical City.

Both BBB and DDD were given medical assistance by Dr. Roberto Garcia, who found that BBB suffered four stab wounds: first, at the left side at her back; second, at the right side at her back; third, at her elbow; and fourth, at her left forearm. According to Dr. Garcia, without the timely medical attention, the wounds would have caused her to bleed profusely leading to her death.[11] With respect to DDD, Dr. Garcia found that he suffered two stab wounds: first, at the left side of his back; second, at his left thigh. Without timely medical attention, the same would have resulted in DDD's death due to bleeding.

Accused-appellant Teodulo Villanueva, Jr. denied the accusations against him, with the defense presenting him (24 years old), his co-accused Joel Alog Reyes, and Omar Villanueva (32 years old) as witnesses.

The defense witnesses narrated their version in this manner:

On 6 December 2002, around 7:30 o'clock in the morning, accused-appellant Teodulo Villanueva was at home sleeping when all of a sudden, his brother woke him up to tell him that their *barangay* officials wanted to see him. Accused-appellant was then invited to the *barangay* hall to answer some questions regarding

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[9] TSN, 11 August 2003, pp. 3-8.

[10] TSN, 16 December 2003, pp. 4-5.

[11] TSN, 1 March 2005, pp. 10-11.

the stabbing incident that occurred that morning. By 12:00 o'clock noon, he was sent home. After an hour, he was again invited to the *barangay* hall wherein his photographs were taken. He was thereafter brought to the municipal hall with another person for further investigation. Both were asked to sign a document, which purportedly evidenced their release. The next day, accused appellant was arrested while attending the wake of the victim of the stabbing incident. He was again taken to the municipal hall and incarcerated since then. Another suspect Joel Alog Reyes *alias* "Puppet" was brought to trial, during which he admitted to having committed the crime and stated that he was alone in committing said crime.[12]

On 15 June 2006, the trial court convicted[13] accused-appellant of Robbery with Homicide and sentenced him to suffer the penalty of *reclusion perpetua*, ruling in this wise:

> WHEREFORE, in view of the foregoing, this Court finds the accused Teodulo Villanueva, Jr. *y* Declaro guilty beyond reasonable doubt of the crime of robbery with homicide and the accused is hereby sentenced to suffer the penalty of *reclusion perpetua* and to further indemnify the heirs of CCC the amount of ₱75,000 as civil indemnity, ₱50,000 as moral damages and ₱25,000 as exemplary damages. He is further ordered to return to AAA the items he and his co-accused had stolen from her or in restitution, to pay the amount of ₱90,000 representing the total value of the stolen items as charged in the information.
>
> Let a warrant of arrest against Kokak San Marcos and John Doe *alias* "Abet" be issued. The case against them is hereby ARCHIVED to be revived upon their arrest. Upon the other hand, considering that Russel San Marcos Pasangco *alias* "Ortego" was already detained in the Bureau of Corrections, Muntinlupa City since June 28, 2003 as per certification issued by Juanito S. Leopando, PHD, Penal Superintendent IV dated January 17, 2006 the case against him is hereby REVIVED and ordered to re-raffle pursuant to A.M. No. 02-11-17-SC.[14]

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[12] TSN, 10 February 2006, pp. 4-8.

[13] Records, pp. 212-227.

[14] *Id.* at 227.

Accused-appellant filed a Notice of Appeal. In his appeal to the Court of Appeals, accused-appellant questioned the RTC conviction, claiming that the prosecution failed to establish his guilt as a conspirator beyond reasonable doubt. The defense argues that the inconsistencies in the testimonies of the victims BBB and of her brother DDD cast serious doubt on the credibility of their identification of accused-appellant.

On 30 September 2008, the Court of Appeals affirmed the RTC conviction, disposing as follows:

> WHEREFORE, in the light of the foregoing premises, the instant appeal is hereby DISMISSED.[15]

In his brief, accused-appellant ascribes to the trial court the lone error:

> THE TRIAL COURT GRAVELY ERRED IN PRONOUNCING THE GUILT OF THE ACCUSED-APPELLANT DESPITE THE FAILURE OF THE PROSECUTION TO ESTABLISH HIS GUILT AS A CONSPIRATOR BEYOND REASONABLE DOUBT.

The petition fails.

Accused-appellant is charged with Robbery with Homicide, defined and penalized under Article 294, paragraph 1 of the Revised Penal Code:

> Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:
>
> 1. the penalty of, from *reclusion perpetua* to death, when by reason or on occasion of the robbery, the crime of homicide shall have been committed;

Our criminal justice system takes the stand that the prosecution has the burden of proving the guilt of the accused beyond reasonable doubt. If the prosecution fails to discharge that burden, the accused need not present any evidence. From the foregoing, the prosecution must be able to establish the essential elements of robbery with homicide, to wit: (a) the taking of personal

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[15] CA *rollo,* p. 107.

property with the use of violence or intimidation against a person; (b) the property belongs to another; (c) the taking is characterized by *animo lucrandi*; and (d) by reason of the robbery or on the occasion thereof, homicide (used in its generic sense) is committed.[16]

The evidence on record shows that on 6 December 2002, at around 7:00 o'clock in the morning, Joel Alog Reyes, together with accused-appellant and other male companions, entered AAA's residence at xxx. BBB was awakened when she felt somebody covering her face with a pillow while her shorts were being pulled down. Upon resisting, she saw Joel Alog Reyes, who then stabbed her at the back. She stood up, shouted for help, and saw her brother CCC being held by accused-appellant. DDD, upon hearing his sister scream for help, went out of his room, but was then stabbed by Joel Alog Reyes. BBB went to her brother's room and shouted for help near the window. BBB's uncle and his companions arrived at the crime scene, but Joel Alog Reyes and the rest of his companions were already gone. The victims were robbed of the following: four gold necklaces; three women's gold necklaces; three men's gold bracelets; three assorted gold rings, all valued at ₱82,000.00; one Nokia 5210 cellphone worth ₱8,000.00, totaling ₱90,000.00.

The accounts of the witnesses indicate that the accused went to the victims' residence with robbery in mind. The robbery took place between 7:00 and 7:30 in the morning on 6 December 2002. The victims were all still asleep at that time, while AAA was out buying bread in a nearby bakery. BBB was awakened from her sleep upon realizing that somebody was covering her face with a pillow, and pulling down her shorts and attempting to defile her. She resisted and shouted for help, resulting in her being stabbed by Joel Alog Reyes. The succeeding commotion ensued with her brothers also being stabbed, resulting in the death of CCC. Thereafter, BBB ran inside her brother's bedroom to shout for help, upon which the criminals left their residence. Their house was in disarray, and some personal belongings were missing. It is only but logical to conclude that the main purpose

[16] *People v. Guimba*, 441 Phil. 362, 375 (2002).

of the criminals was to rob the victims of their personal belongings. In committing the robbery, one of the criminals attempted to defile BBB, which triggered the commotions and resulted in the stabbing and death of CCC.

Accused-appellant raises the defense of alibi and maintains the absence of conspiracy. He denies being at the scene of the crime and asserts that he was sleeping at home at the time the crime happened. He further claims that presence at the crime scene is, *per se*, not a sufficient indicium of conspiracy, unless proved to have been motivated by a common design.

For alibi to prosper, it must strictly meet the requirements of time and place. It is not enough to prove that the accused was somewhere else when the crime was committed, but it must also be demonstrated that it was physically impossible for him to have been at the crime scene at the time the crime was committed.[17] In this case, the alibi of accused-appellant is not airtight. The distance between the house of accused-appellant and the house of the victims, where the crime occurred, can be negotiated in a few minutes' walk. Moreover, the crime happened between 7:00 and 7:30 in the morning. Accused-appellant claims to have been sleeping at his home in XXX at 7:30 in the morning of said day. The evidence reveals, however, that it was not physically impossible for accused-appellant to have been at the crime scene at the time the crime was committed considering that the distance (about 100 meters away) between accused-appellant's house and the crime scene could have been traversed in a span of a few minutes.

Accused-appellant attempts to impugn the credibility of the prosecution witnesses by accusing them of inconsistencies in their testimonies in court *vis-a-vis* their statements in the affidavits. Casting doubt on the credibility of the witnesses, the defense alleges that the affidavits of the prosecution's two primary witnesses, BBB and DDD, point to the presence of only one assailant, who was already positively identified by BBB as Joel Alog Reyes.

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[17] *People v. Pagsanjan*, 442 Phil. 667, 686 (2002).

According to the defense, the court testimonies of BBB and DDD are inconsistent with their affidavits. In narrating the events, BBB testified:

Q Now, when you saw Joel Alog Reyes *alias* Puppet inside the Sala, what did you do, if you did anything?

A I shouted.

Q Aside from Joel Alog Reyes and your brother, was there any other person inside the Sala other than them?

A There was.

Q And what was he doing at that time?

A That person was standing near the dining table.

Q Was that the first time you saw that person you saw standing near the dining table?

A Yes, ma'am.

Q If you see him again, will you be able to identify him?

A Yes, ma'am.

Court Interpreter –

Witness pointing to a man on the right side of the courtroom, seated on the middle of the two other persons wearing yellow t-shirt with marking Levis Jeans, who answered by the name of Teodulo Villanueva.

Pros. Sagun –

Q What else did Joel Alog do with you, if he did anything?

A No more because when I shouted, my brother RJ came out of his room.

Q By the way, who stabbed you at the back?

A It was Puppet, ma'am.

Q And while you were being stabbed by Puppet, what was Teodulo Villanueva doing at that time?

A I do not know what was he doing because there was a pillow covered on my face. When I stood up, that is the only time I saw him.

Q And at that time you were not yet stabbed when you stood up and the pillow was removed from your face?

A I was already.

Court –

The pillow was already on your face, when you were stabbed?

A Even before I was stabbed, the pillow was already on my face.

Pros. Sagun –

Q You said that you shouted and your brother came into the Sala, right?

A Yes, ma'am.

Q What happened after that?

A I ran to the room.

Pros. Sagun –

Q And what did you do inside the room?

A I opened the window and begun shouting.

Q And after that, after you shouted, what happened?

A I saw my uncles coming to our house.

Q And can you tell us the name of your uncle who went to your house?

A Tito Boy and Mac-Mac, the spouse of my cousin.

Court –

What happened as you have said earlier your brother came out, what happened?

A He was also stabbed by Puppet.

Pros. Sagun –

Q And this Puppet is one of the accused here?

A Yes, ma'am.

Q After he was stabbed, what happened next?

A I did not know what happened anymore because I was already inside the room.

Q And you said that this Teodulo Villanueva was also at the place or at the room where you were stabbed, right?

A Yes, ma'am.

Q What was he doing when your brother was stabbed by Joel Reyes?

A He was holding one of my brothers.

Q What is the name of your brother?

A Jordan.

Q And this brother of yours held by Teodulo Villanueva is the one at the time with you before your other brother came into the room, right?

A No, ma'am, I was with him in the Sala.

Q And who was sleeping with you, right?

A Yes, ma'am.

Q And what happened to Jordan that was being held by Teodulo Villanueva, do you know what happened to him?

A I do not know what happened.

Q Because you were already at that time entered the room and shouted for help?

A Yes, ma'am.[18]

Atty. Lim –

From the time the pillow was removed on your face, how long did it take you to get inside the room of your younger brother DDD? How long or how fast?

A A minute.

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[18] TSN, 11 August 2003, pp. 5-8.

Q So, it took about one minute from the time you woke up knowing that there was somebody putting pillow or put a pillow on your face up to the time you enter the room and locked it, it took you about two minutes, more or less?

A *Siguro po.*

Q What do you mean by "*siguro*"?

A *Hindi ko naman po nao-orasan yun.*

Q But it could be approximately correct looking back?

A Yes, sir.

Q You lock the door and DDD and Jordan were left inside the sala?

A Yes, sir.

Q From the time you locked the door, you do not know what is happening?

A Yes, sir.

Q You don't know what happened to DDD and CCC?

A Yes, sir.

Atty. Lim –

Q You did not even see that they were stabbed, you only know that they were stabbed when you came out of the room and persons arriving thereat, is that correct?

A *Yes, sir.*

Q Could you please tell us, from the time you entered the room at about approximately what time did the first person to help you arrive in the house?

A I do not know, sir.

Q Who was the first person who arrived to give you help?

A I do not know, sir, who arrived first.

Q How long did you stay in the room before going out of the room?

A About two minutes, sir.

Q What happened when you went out after two minutes?

A I saw DDD, my *tita* and Mac-Mac.

Q A while ago you were asked by the Honorable Prosecutor regarding the fact of stabbing of DDD, your younger brother, you said that prior to your entering the room you said you saw Joel Alog stabbing him, isn't it?

A Yes, sir.

Atty. Lim –

Q But that is not correct, isn't it, because also upon my questioning, you said that you never saw the stabbing of DDD by Joel Alog, isn't it?[19]

Atty. Lim –

I think there was a hanging question, Your Honor.

Q "Q – A while ago you were asked by the Honorable Prosecutor regarding the fact of stabbing of DDD, your younger brother, you said that prior to your entering the room you said you saw Joel Along (sic) stabbing him, isn't it? Your answer was, "Yes, sir." "My question is but that is not correct, isn't it, because also upon my questioning, you said that you never saw the stabbing of DDD by Joel Alog, isn't it?"

A No, sir.

Q You also stated that you saw accused Teodulo Villanueva near the table merely standing there during the direct-examination, isn't it?

A Yes, sir.

Q But the truth of the matter Miss Witness is, it is also not the truth because Teodulo Villanueva was never in the place or was never in that house of yours where the incident allegedly happened on December 2002, isn't it?

Prosec. Yson —

Already answered, Your Honor.

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[19] TSN, 11 August 2003, pp. 15-17.

Court:

Already answered.

Atty. Lim —

I am confronting her with her testimony. To test her accuracy, Your Honor.

Court:

Already answered. She said that she was.

Atty. Lim —

That was on the direct-examination, Your Honor.

Prosec. Yson —

She answered again, yes.

Atty. Lim —

I never heard her answer.

Prosec. Yson —

It is on the record, she said yes.

A She was there, sir.

Atty. Lim –

Q Do you know that if you tell a lie and you are caught lying you could be prosecuted?

Court:

That was not necessary. She knows.

Atty. Lim –

I am trying to find out conclusively whether she knows.

Court:

There is no basis for such manifestation.

Atty. Lim –

Your Honor, my client's life at least forty years will be wasted. I do not see any reason why I could not ask that.

Court:

Because there is no basis for making such a statement. She has been answering all the questions. Answer the question.

A Yes, sir.[20]

BBB's statement in her affidavit states:

Tanong: May iba ka pa bang taong nakita sa loob ng bahay ninyo na hindi nakatira sa inyo ng mangyari ang nasabi mong insidente?

Sagot: Wala na po.[21]

The Court is aware of the general rule that if there is an inconsistency between the affidavit and the testimony of a witness, the latter should be given more weight since affidavits being taken *ex parte* are usually incomplete and inaccurate. The Court likewise subscribes to the doctrine that where the discrepancies are irreconcilable and unexplained and they dwell on material points, such inconsistencies necessarily discredit the veracity of the witness' claim.[22] Indeed, the certainty as to the presence of the accused in the crime scene and eyewitness identification are not just trivial matters but constitute vital evidence, which in most cases are determinative of the success or failure of the prosecution. The inconsistency concerned cannot simply be brushed aside. Although the general rule is that contradictions between a witness's statements in an affidavit and his testimony do not necessarily discredit him.Where the purported inconsistency concerns points of importance, the same cannot simply be ascribed to failure to remember, for which reason the witness's credibility becomes suspect.[23]

Corollary to this point, where any inconsistency has been sufficiently explained and stands the rigorous tests of direct

[20] TSN, 4 November 2003, pp. 2-4.

[21] Records. p. 15.

[22] *People v. Aniscal*, G.R. No. 103395, 22 November 1993, 228 SCRA 101, 112; *People v. Casim*, G.R. No. 93634, 2 September 1992, 213 SCRA 390, 396.

[23] *People v. Alvarado*, 312 Phil. 552, 563 (1995).

and cross-examination, such will not discredit the credibility of the witness, as in this case. Judicial notice can be taken of the fact that testimonies given during trial are much more exact and elaborate than those stated in sworn statements. When asked why she said "*wala na po*" to the question propounded above, BBB explained that she was in a confused state of mind at the time her affidavit was taken, and that she was worried about the condition of her two brothers who were stabbed. It is also clear that her statement was taken right after the incident, when she was undergoing treatment for her stabbing.

The alleged inconsistencies between the statements of DDD in his affidavit and those in court, however, are more imagined than real. In its maneuvering to engender doubt as to accused-appellant's presence at the crime scene, the defense harps on the fact that the witness never indicated in his affidavit that there were other male persons involved in the crime, as may be gleaned from the following:

> Q You never mentioned to the police investigator investigating the case and taking your statement that there were many other male persons who participated in this crime, isn't it?
>
> A *Hindi po kasi gulong-gulo po ang isip ko noong panahon iyon.*[24]

This statement is in no way inconsistent with DDD's testimony in identifying accused-appellant as one of the perpetrators of the crime; such statement does not exclude him as an assailant. Moreover, the failure to include him as a suspect in the affidavit was explained in the witness' answer to the query, saying that he was in a confused state of mind at that time. The alleged inconsistency, if at all, does not detract from his credibility. That DDD saw accused-appellant at the crime scene is clear.

Even if the testimony of BBB linking accused-appellant to the crime were to be disregarded, the testimony of a single witness, such as DDD, if found convincing and trustworthy by the trial court, is sufficient to support a finding of guilt beyond

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[24] TSN, 16 December 2003, pp. 18-19.

reasonable doubt. On this point, we see no reason to deviate from the trial court's observation that his testimony bore the attributes of truth and was delivered in a candid and straightforward manner, thus:

Q You mentioned Mr. Witness that there were male persons who suddenly left after you were stabbed by *alias* Puppet. Please look around the courtroom and tell us if you can recall any of those male persons whom you saw inside your house that morning and who left after you were stabbed by *alias* Puppet?

A There is, ma'am.

Q How many are they in the courtroom whom you can recognize?

A Only one, ma'am.

Q Can you please point to that person?

Interpreter:

Witness pointing to a person on the edge of the bench at the right side of this courtroom wearing yellow t-shirt, blue denim pants and black slippers who answered by the name of Villanueva, Teodulo.

Prosec. Paulino:

Let it be placed on record that the witness has identified in open court accused Teodulo Villanueva.

Q You said Mr. Witness that you recognized Teodulo Villanueva as one of the male persons whom you see inside your house that morning. Where was he when you saw him?

A I saw him in the living room or sala, ma'am.

Q Doing what Mr. Witness?

A I cannot recall, ma'am.

Q Can you please describe to us Mr. Witness the condition or the appearance of your living room that morning when you went out of the room, if you can recall?

A It was in disarray, ma'am.

Q And then you mentioned to me your siblings CCC, EEE and BBB. When you went out of your room, if you can recall, what was their condition and their appearance at that time Mr. Witness?

A When I went out of the room, as I have said, I saw CCC bloodied; my Ate BBB went inside my room; and Ate EEE was upstairs.

Q How did you know then Mr. Witness that Ate EEE was upstairs at that time?

A Because she sleeps upstairs, ma'am.

Q After these male persons left the house Mr. Witness, what happened?

A My uncle arrived.[25]

Finally, findings of the trial court on the credibility of witnesses deserve great weight, given the clear advantage of a trial judge in the appreciation of testimonial evidence. And when his findings have been affirmed by the Court of Appeals, these are generally binding and conclusive upon this Court.[26] Significantly, accused-appellant has not imputed any ill motive to the prosecution witnesses for testifying against him. Absent any evidence to show a doubtful reason or an improper motive why a prosecution witness would testify against the accused or falsely implicate him in a crime, the said testimony is trustworthy and should be accorded full faith and credit.

In sum, the defense of alibi must fail, especially in light of the fact that two of the prosecution witnesses, BBB and DDD, positively identified accused-appellant as one of the malefactors of the crime. Positive identification, where categorical and consistent and without any showing of ill motive on the part of

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[25] TSN, 16 December 2003, pp. 6-7.

[26] *Salvatierra, Sr. v. People*, 416 Phil. 544 (2001).

the eyewitnesses testifying on the matter, prevails over alibi and denial. These defenses, if not substantiated by clear and convincing evidence, are negative and self-serving evidence undeserving of weight in law.[27]

As to accused-appellant's allegation that the prosecution failed to prove conspiracy, we find otherwise. Conspiracy may be inferred from the acts of the accused before, during and after the commission of the crime suggesting concerted action and unity of purpose among them. For this purpose, overt acts of the accused may consist of active participation in the actual commission of the crime itself, or it may consist of moral assistance to his co-conspirators by being present at the time of the commission of the crime, or by exerting moral ascendancy over the other co-conspirators by moving them to execute or implement the conspiracy.

Indeed, jurisprudence dictates that mere presence at the scene of the crime at the time of its commission is not, by itself, sufficient to establish conspiracy at the time of its commission, but it is enough that the malefactors acted in concert pursuant to the same objective.[28] Conspiracy is predominantly a state of mind as it involves the meeting of the minds and intent of the malefactors. The existence of the assent of minds of the co-conspirators may be inferred from proof of facts and circumstances which, taken together, indicate that they are parts of the complete plan to commit the crime.

Accused-appellant's presence inside the house of the victims does not appear to be a coincidence nor seems to be an innocent act. Being a stranger, he had no business in the house of the victims. To recall, one of the victims, BBB, testified to seeing him holding her younger brother before he was stabbed by co-accused Joel Alog Reyes. The other eyewitness, DDD, saw accused-appellant in the sala while everything was in disarray. The next instant, accused-appellant was no longer in the premises. In fact, even accused-appellant's behavior during and after the

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[27] *People v. Arellano*, 390 Phil. 273, 286 (2000).

[28] *People v. Dural*, G.R. No. 84921, 8 June 1993, 223 SCRA 201, 209.

incident could hardly be described as innocent. If accused-appellant was not in conspiracy with the others in committing the robbery with homicide, he would not have fled the vicinity with the loot and leave the three minors knowing they were wounded and helpless from the stabbings. In fact, accused-appellant went straight home without giving any aid to the victims or calling for help for them.

Since conspiracy was established, it matters not who among the accused actually shot and killed the victim. The concerted manner in which accused-apellant and his companions perpetrated the crime showed beyond reasonable doubt the presence of conspiracy. When a homicide takes place by reason or on the occasion of the robbery, all those who took part shall be guilty of the special complex crime of robbery with homicide whether or not they actually participated in the killing, unless there is proof that they had endeavored to prevent the killing.[29] No proof was adduced that accused-appellant sought to avert the killing. Thus, regardless of the acts individually performed by accused-appellant and his co-accused, and applying the basic principle in conspiracy that the "act of one is the act of all," accused-appellant is guilty as a co-conspirator. Being co-conspirators, the criminal liabilities of the accused are one and the same.

The crime committed was Robbery with Homicide, a single indivisible crime punishable by Article 294, paragraph 1 of the Revised Penal Code. Under Article 294 of the Revised Penal Code, when homicide is committed by reason or on the occasion of the robbery, the penalty to be imposed is *reclusion perpetua* to death.

Treachery, as correctly found by the trial court, attended the killing of the victim CCC. Article 14(16) of the Revised Penal Code provides that there is treachery when the offender commits any of the crimes against persons, employing means, methods or forms in the execution thereof that tend directly and specifically to insure its execution without risk to himself arising from the defense that the offended party might make.

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[29] *People v. Reyes*, 369 Phil. 61, 80 (1999).

Analyzing the events unfolding that day, the evidence on record points out that CCC was stabbed on his back and was unable to defend himself. The presence of *alevosia*, though, should not result in qualifying the offense to murder. The correct rule is that when it obtains in the special complex crime of robbery with homicide, treachery is to be regarded as a generic aggravating circumstance, robbery with homicide being a composite crime with its own definition and special penalty in the Revised Penal Code. The generic aggravating circumstance of treachery attending the killing of the victim qualifies the imposition of the death penalty on accused-appellant.

However, in the case at bar, the imposable penalty for accused-appellant is still *reclusion perpetua*, in view of Republic Act 9346,[30] enacted on 24 June 2006, prohibiting the death penalty.

As to the award of damages, we have held that if the robbery with homicide is perpetrated with any of the attending qualifying aggravating circumstances that require the imposition of the death penalty, the civil indemnity for the victim shall be ₱75,000.00.[31] The existence of one aggravating circumstance merits the award of exemplary damages under Article 2230 of the New Civil Code.[32] Thus, the award of exemplary damages to the heirs of CCC is proper. Consistent with recent rulings of this Court, however, the award of exemplary damages is increased from ₱25,000.00 to ₱30,000.00. In line with prevailing jurisprudence and the testimony of AAA, we modify the award of moral damages and increase the award from ₱50,000.00 to ₱75,000.00. Furthermore, accused-appellant is ordered to return to AAA and BBB the subject items stolen from them; or, if the return is no longer possible, the total amount of ₱90,000.00, which is the equivalent value of all the items taken by accused-appellant and his co-accused.

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[30] An Act Prohibiting the Imposition of the Death Penalty in the Philippines.

[31] *People v. Sambrano*, 446 Phil. 145, 161 (2003).

[32] *People v. Cando*, 398 Phil. 225, 241 (2000).

WHEREFORE, premises considered, the appeal is hereby *DENIED* and the assailed Decision *AFFIRMED*, with the following modifications: (1) the award of exemplary damages is increased from ₱25,000.00 to ₱30,000.00; and (2) the award of moral damages is likewise increased from ₱50,000.00 to ₱75,000.00. No costs.

SO ORDERED.

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

EN BANC

[A.C. No. 7815. July 23, 2009]

DOLORES C. BELLEZA, *complainant, vs.* **ATTY. ALAN S. MACASA,** *respondent.*

SYLLABUS

1. **LEGAL ETHICS; ATTORNEYS; DISBARMENT; UNJUSTIFIED DISREGARD OF THE LAWFUL ORDERS OF THE COURT, A GROUND THEREFOR. —** Respondent was given more than enough opportunity to answer the charges against him. Yet, he showed indifference to the orders of the CBD for him to answer and refute the accusations of professional misconduct against him. In doing so, he failed to observe Rule 12.03 of the Code of Professional Responsibility x x x. Respondent also ignored the CBD's directive for him to file his position paper. His propensity to flout the orders of the CBD showed his lack of concern and disrespect for the proceedings of the CBD. He disregarded the oath he took when he was accepted to the legal profession "to obey the laws and the legal orders of the duly constituted legal authorities." He displayed insolence not only to the CBD but also to this Court

which is the source of the CBD's authority. Respondent's unjustified disregard of the lawful orders of the CBD was not only irresponsible but also constituted utter disrespect for the judiciary and his fellow lawyers. His conduct was unbecoming of a lawyer who is called upon to obey court orders and processes and is expected to stand foremost in complying with court directives as an officer of the court. Respondent should have known that the orders of the CBD (as the investigating arm of the Court in administrative cases against lawyers) were not mere requests but directives which should have been complied with promptly and completely.

2. ID.; ID.; ATTORNEY-CLIENT RELATIONSHIP; LAWYER'S DUTY TO SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE, EXPLAINED. — A lawyer who accepts the cause of a client commits to devote himself (particularly his time, knowledge, skills and effort) to such cause. He must be ever mindful of the trust and confidence reposed in him, constantly striving to be worthy thereof. Accordingly, he owes full devotion to the interest of his client, warm zeal in the maintenance and defense of his client's rights and the exertion of his utmost learning, skill and ability to ensure that nothing shall be taken or withheld from his client, save by the rules of law legally applied. A lawyer who accepts professional employment from a client undertakes to serve his client with competence and diligence. He must conscientiously perform his duty arising from such relationship. He must bear in mind that by accepting a retainer, he impliedly makes the following representations: that he possesses the requisite degree of learning, skill and ability other lawyers similarly situated possess; that he will exert his best judgment in the prosecution or defense of the litigation entrusted to him; that he will exercise reasonable care and diligence in the use of his skill and in the application of his knowledge to his client's cause; and that he will take all steps necessary to adequately safeguard his client's interest. x x x The right of an accused to counsel finds substance in the performance by the lawyer of his sworn duty of fidelity to his client. Tersely put, it means an effective, efficient and truly decisive legal assistance, not a simply perfunctory representation.

3. ID.; ID.; ID.; ID.; ABANDONMENT OF CLIENT'S CAUSE, COMMITTED. — In this case, after accepting the criminal

case against complainant's son and receiving his attorney's fees, respondent did nothing that could be considered as effective and efficient legal assistance. For all intents and purposes, respondent abandoned the cause of his client. Indeed, on account of respondent's continued inaction, complainant was compelled to seek the services of the Public Attorney's Office. Respondent's lackadaisical attitude towards the case of complainant's son was reprehensible. Not only did it prejudice complainant's son, it also deprived him of his constitutional right to counsel. Furthermore, in failing to use the amount entrusted to him for posting a bond to secure the provisional liberty of his client, respondent unduly impeded the latter's constitutional right to bail.

4. **ID.; ID.; DISBARMENT; FAILURE TO RETURN THE CLIENT'S MONEY GIVES RISE TO THE PRESUMPTION THAT COUNSEL HAS MISAPPROPRIATED IT FOR HIS OWN USE; CASE AT BAR. —** The fiduciary nature of the relationship between counsel and client imposes on a lawyer the duty to account for the money or property collected or received for or from the client. When a lawyer collects or receives money from his client for a particular purpose (such as for filing fees, registration fees, transportation and office expenses), he should promptly account to the client how the money was spent. If he does not use the money for its intended purpose, he must immediately return it to the client. His failure either to render an accounting or to return the money (if the intended purpose of the money does not materialize) constitutes a blatant disregard of Rule 16.01 of the Code of Professional Responsibility. Moreover, a lawyer has the duty to deliver his client's funds or properties as they fall due or upon demand. His failure to return the client's money upon demand gives rise to the presumption that he has misappropriated it for his own use to the prejudice of and in violation of the trust reposed in him by the client. It is a gross violation of general morality as well as of professional ethics; it impairs public confidence in the legal profession and deserves punishment. Indeed, it may border on the criminal as it may constitute a *prima facie* case of swindling or estafa. Respondent never denied receiving ₱18,000 from complainant for the purpose of posting a bond to secure the provisional liberty of her son. He never used the money for its intended purpose yet also never returned it to

the client. Worse, he unjustifiably refused to turn over the amount to complainant despite the latter's repeated demands.

5. **ID.; ID.; ATTORNEY-CLIENT RELATIONSHIP; A LAWYER WHO DOES NOT RENDER LEGAL SERVICE IS NOT ENTITLED TO ATTORNEY'S FEES.** — [R]espondent rendered no service that would have entitled him to the ₱30,000 attorney's fees. As a rule, the right of a lawyer to a reasonable compensation for his services is subject to two requisites: (1) the existence of an attorney-client relationship and (2) the rendition by the lawyer of services to the client. Thus, a lawyer who does not render legal services is not entitled to attorney's fees. Otherwise, not only would he be unjustly enriched at the expense of the client, he would also be rewarded for his negligence and irresponsibility.

6. **ID.; ID.; DISBARMENT; FAILURE TO UPHOLD THE INTEGRITY AND DIGNITY OF THE LEGAL PROFESSION IN DEALING WITH A CLIENT, A GROUND THEREFOR. —** For his failure to comply with the exacting ethical standards of the legal profession, respondent failed to obey Canon 7 of the Code of Professional Responsibility x x x. Indeed, a lawyer who fails to abide by the Canons and Rules of the Code of Professional Responsibility disrespects the said Code and everything that it stands for. In so doing, he disregards the ethics and disgraces the dignity of the legal profession. Lawyers should always live up to the ethical standards of the legal profession as embodied in the Code of Professional Responsibility. Public confidence in law and in lawyers may be eroded by the irresponsible and improper conduct of a member of the bar. Thus, every lawyer should act and comport himself in a manner that would promote public confidence in the integrity of the legal profession. Respondent was undeserving of the trust reposed in him. Instead of using the money for the bond of the complainant's son, he pocketed it. He failed to observe candor, fairness and loyalty in his dealings with his client. He failed to live up to his fiduciary duties. By keeping the money for himself despite his undertaking that he would facilitate the release of complainant's son, respondent showed lack of moral principles. His transgression showed him to be a swindler, a deceitful person and a shame to the legal profession.

RESOLUTION

***PER CURIAM*:**

This treats of the complaint for disbarment filed by complainant Dolores C. Belleza against respondent Atty. Alan S. Macasa for unprofessional and unethical conduct in connection with the handling of a criminal case involving complainant's son.

On November 10, 2004, complainant went to see respondent on referral of their mutual friend, Joe Chua. Complainant wanted to avail of respondent's legal services in connection with the case of her son, Francis John Belleza, who was arrested by policemen of Bacolod City earlier that day for alleged violation of Republic Act (RA) 9165.[1] Respondent agreed to handle the case for ₱30,000.

The following day, complainant made a partial payment of ₱15,000 to respondent thru their mutual friend Chua. On November 17, 2004, she gave him an additional ₱10,000. She paid the ₱5,000 balance on November 18, 2004. Both payments were also made thru Chua. On all three occasions, respondent did not issue any receipt.

On November 21, 2004, respondent received ₱18,000 from complainant for the purpose of posting a bond to secure the provisional liberty of her (complainant's) son. Again, respondent did not issue any receipt. When complainant went to the court the next day, she found out that respondent did not remit the amount to the court.

Complainant demanded the return of the ₱18,000 from respondent on several occasions but respondent ignored her. Moreover, respondent failed to act on the case of complainant's son and complainant was forced to avail of the services of the Public Attorney's Office for her son's defense.

Thereafter, complainant filed a verified complaint[2] for disbarment against respondent in the Negros Occidental chapter

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[1] Comprehensive Dangerous Drugs Act of 2002.

[2] *Rollo*, pp. 2-5.

of the Integrated Bar of the Philippines (IBP). Attached to the verified complaint was the affidavit[3] of Chua which read:

I, JOE CHUA, of legal age, Filipino and resident of Purok Sawmill, Brgy. Bata, Bacolod City, after having been sworn to in accordance with law, hereby depose and state:

1. That I am the one who introduce[d] Mrs. Dolores C. Belleza [to] Atty. Alan Macasa when she looked for a lawyer to help her son in the case that the latter is facing sometime [i]n [the] first week of November 2004;

2. That by reason of my mutual closeness to both of them, I am the one who facilitated the payment of Mrs. DOLORES C. BELLEZA to Atty. Alan Macasa;

3. That as far as I know, I received the following amount from Mrs. Dolores Belleza as payment for Atty. Alan Macasa:

Date	Amount
November 11, 2004	₱15,000.00
A week after	10,000.00
November 18, 2004	5,000.00

4. That the above-mentioned amounts which I supposed as Attorney's Fees were immediately forwarded by me to Atty. [Macasa];

5. That I am executing this affidavit in order to attest to the truth of all the foregoing statements.

x x x x x x x x x[4]

In a letter dated May 23, 2005,[5] the IBP Negros Occidental chapter transmitted the complaint to the IBP's Commission on Bar Discipline (CBD).[6]

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[3] Annex "A" of the Complaint. *Id.*, p. 6.

[4] *Id.*

[5] *Id.*, p. 1.

[6] The CBD docketed the complaint as CBD Case No. 05-1524.

In an order dated July 13, 2005,[7] the CBD required respondent to submit his answer within 15 days from receipt thereof. Respondent, in an urgent motion for extension of time to file an answer dated August 10, 2005,[8] simply brushed aside the complaint for being "baseless, groundless and malicious" without, however, offering any explanation. He also prayed that he be given until September 4, 2005 to submit his answer.

Respondent subsequently filed urgent motions[9] for second and third extensions of time praying to be given until November 4, 2005 to submit his answer. He never did.

When both parties failed to attend the mandatory conference on April 19, 2006, they were ordered to submit their respective position papers.[10]

In its report and recommendation dated October 2, 2007,[11] the CBD ruled that respondent failed to rebut the charges against him. He never answered the complaint despite several chances to do so.

The CBD found respondent guilty of violation of Rule 1.01 of the Code of Professional Responsibility which provides:

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

It also found him guilty of violation of Rules 16.01 and 16.02 of the Code of Professional Responsibility:

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[7] *Id.*, p. 8.

[8] *Id.*, pp. 9-10.

[9] Dated September 2, 2005 and October 4, 2005, respectively. *Id.*, pp. 16-17 and 21-22, respectively.

[10] Order dated April 19, 2006. *Id.*, p. 27.

Despite receipt by the parties of the order, no position paper was filed. Hence, the investigating commissioner resolved the case based on the pleadings and papers available to him.

[11] Prepared and signed by CBD Commissioner Salvador B. Hababag. *Id.*, pp. 32-36.

Rule 16.01 – A lawyer shall account for all money or property collected or received for or from the client.

Rule 16.02 – A lawyer shall keep the funds of each client separate and apart from his own and those others kept by him.

The CBD ruled that respondent lacked good moral character and that he was unfit and unworthy of the privileges conferred by law on him as a member of the bar. The CBD recommended a suspension of six months with a stern warning that repetition of similar acts would merit a more severe sanction. It also recommended that respondent be ordered to return to complainant the ₱18,000 intended for the provisional liberty of the complainant's son and the ₱30,000 attorney's fees.

The Board of Governors of the IBP adopted and approved the report and recommendation of the CBD with the modification that respondent be ordered to return to complainant only the amount of ₱30,000 which he received as attorney's fees.[12]

We affirm the CBD's finding of guilt as affirmed by the IBP Board of Governors but we modify the IBP's recommendation as to the liability of respondent.

RESPONDENT DISRESPECTED LEGAL PROCESSES

Respondent was given more than enough opportunity to answer the charges against him. Yet, he showed indifference to the orders of the CBD for him to answer and refute the accusations of professional misconduct against him. In doing so, he failed to observe Rule 12.03 of the Code of Professional Responsibility:

Rule 12.03 – A lawyer shall not, after obtaining extensions of time to file pleadings, memoranda or briefs, let the period lapse without submitting the same or offering an explanation for his failure to do so.

Respondent also ignored the CBD's directive for him to file his position paper. His propensity to flout the orders of the CBD showed his lack of concern and disrespect for the proceedings

[12] Resolution No. XVIII-2007-182 dated October 12, 2007.

of the CBD. He disregarded the oath he took when he was accepted to the legal profession "to obey the laws and the legal orders of the duly constituted legal authorities." He displayed insolence not only to the CBD but also to this Court which is the source of the CBD's authority.

Respondent's unjustified disregard of the lawful orders of the CBD was not only irresponsible but also constituted utter disrespect for the judiciary and his fellow lawyers.[13] His conduct was unbecoming of a lawyer who is called upon to obey court orders and processes and is expected to stand foremost in complying with court directives as an officer of the court.[14] Respondent should have known that the orders of the CBD (as the investigating arm of the Court in administrative cases against lawyers) were not mere requests but directives which should have been complied with promptly and completely.[15]

RESPONDENT GROSSLY NEGLECTED THE CAUSE OF HIS CLIENT

Respondent undertook to defend the criminal case against complainant's son. Such undertaking imposed upon him the following duties:

CANON 17 – A LAWYER OWES FIDELITY TO THE CAUSE OF HIS CLIENT AND HE SHALL BE MINDFUL OF THE TRUST AND CONFIDENCE REPOSED IN HIM.

CANON 18 – A LAWYER SHALL SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE.

x x x x x x x x x

Rule 18.03 – A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

x x x x x x x x x

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[13] *Sibulo v. Ilagan*, A.C. No. 4711, 25 November 2004, 486 Phil. 197 (2004).

[14] *Id.*

[15] *Id.*

CANON 19 – A LAWYER SHALL REPRESENT HIS CLIENT WITH ZEAL WITHIN THE BOUNDS OF THE LAW.

A lawyer who accepts the cause of a client commits to devote himself (particularly his time, knowledge, skills and effort) to such cause. He must be ever mindful of the trust and confidence reposed in him, constantly striving to be worthy thereof. Accordingly, he owes full devotion to the interest of his client, warm zeal in the maintenance and defense of his client's rights and the exertion of his utmost learning, skill and ability to ensure that nothing shall be taken or withheld from his client, save by the rules of law legally applied.[16]

A lawyer who accepts professional employment from a client undertakes to serve his client with competence and diligence.[17] He must conscientiously perform his duty arising from such relationship. He must bear in mind that by accepting a retainer, he impliedly makes the following representations: that he possesses the requisite degree of learning, skill and ability other lawyers similarly situated possess; that he will exert his best judgment in the prosecution or defense of the litigation entrusted to him; that he will exercise reasonable care and diligence in the use of his skill and in the application of his knowledge to his client's cause; and that he will take all steps necessary to adequately safeguard his client's interest.[18]

A lawyer's negligence in the discharge of his obligations arising from the relationship of counsel and client may cause delay in the administration of justice and prejudice the rights of a litigant, particularly his client. Thus, from the perspective of the ethics of the legal profession, a lawyer's lethargy in carrying out his duties to his client is both unprofessional and unethical.[19]

If his client's case is already pending in court, a lawyer must actively represent his client by promptly filing the necessary

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[16] *Edquibal v. Ferrer, Jr.,* A.C. No. 5687, 3 February 2005, 450 SCRA 406.

[17] *See* Canon 18 of the Code of Professional Responsibility.

[18] *Islas v. Platon*, 47 Phil. 162 (1924).

[19] See *Villaflores v. Limos*, A.C. No. 7504, 23 November 2007, 538 SCRA 140.

pleading or motion and assiduously attending the scheduled hearings. This is specially significant for a lawyer who represents an accused in a criminal case.

The accused is guaranteed the right to counsel under the Constitution.[20] However, this right can only be meaningful if the accused is accorded ample legal assistance by his lawyer:

... The right to counsel proceeds from the fundamental principle of due process which basically means that a person must be heard before being condemned. The due process requirement is a part of a person's basic rights; it is not a mere formality that may be dispensed with or performed perfunctorily.

The right to counsel must be more than just the presence of a lawyer in the courtroom or the mere propounding of standard questions and objections. The right to counsel means that the accused is amply accorded legal assistance extended by a counsel who commits himself to the cause for the defense and acts accordingly. The right assumes an active involvement by the lawyer in the proceedings, particularly at the trial of the case, his bearing constantly in mind of the basic rights of the accused, his being well-versed on the case, and his knowing the fundamental procedures, essential laws and existing jurisprudence.[21]

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[T]he right of an accused to counsel is beyond question a fundamental right. Without counsel, the right to a fair trial itself would be of little consequence, for it is through counsel that the accused secures his other rights. In other words, the right to counsel is the right to effective assistance of counsel.[22]

The right of an accused to counsel finds substance in the performance by the lawyer of his sworn duty of fidelity to his

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[20] *See* Section 14(2), Article III, Constitution.

[21] *People v. Molina*, 423 Phil. 637 (2001).

[22] *Kimmelman v. Morrison*, 477 US 365 (1986) cited in *People v. Liwanag*, 415 Phil. 271 (2001).

client.[23] Tersely put, it means an effective, efficient and truly decisive legal assistance, not a simply perfunctory representation.[24]

In this case, after accepting the criminal case against complainant's son and receiving his attorney's fees, respondent did nothing that could be considered as effective and efficient legal assistance. For all intents and purposes, respondent abandoned the cause of his client. Indeed, on account of respondent's continued inaction, complainant was compelled to seek the services of the Public Attorney's Office. Respondent's lackadaisical attitude towards the case of complainant's son was reprehensible. Not only did it prejudice complainant's son, it also deprived him of his constitutional right to counsel. Furthermore, in failing to use the amount entrusted to him for posting a bond to secure the provisional liberty of his client, respondent unduly impeded the latter's constitutional right to bail.

RESPONDENT FAILED TO RETURN HIS CLIENT'S MONEY

The fiduciary nature of the relationship between counsel and client imposes on a lawyer the duty to account for the money or property collected or received for or from the client.[25]

When a lawyer collects or receives money from his client for a particular purpose (such as for filing fees, registration fees, transportation and office expenses), he should promptly account to the client how the money was spent. If he does not use the money for its intended purpose, he must immediately return it to the client.[26] His failure either to render an accounting or to return the money (if the intended purpose of the money does not materialize) constitutes a blatant disregard of Rule 16.01 of the Code of Professional Responsibility.[27]

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[23] *Callangan v. People*, G.R. No. 153414, 27 June 2006, 493 SCRA 269 citing *People v. Ferrer,* 454 Phil. 431 (2003).

[24] *Id.*

[25] *See* Rule 16.01 of the Code of Professional Responsibility.

[26] *In re Nueno*, 48 Phil. 178 (1948).

[27] See *Atty. Navarro v. Atty. Meneses III*, 349 Phil. 520 (1998).

Moreover, a lawyer has the duty to deliver his client's funds or properties as they fall due or upon demand.[28] His failure to return the client's money upon demand gives rise to the presumption that he has misappropriated it for his own use to the prejudice of and in violation of the trust reposed in him by the client.[29] It is a gross violation of general morality as well as of professional ethics; it impairs public confidence in the legal profession and deserves punishment.[30] Indeed, it may border on the criminal as it may constitute a *prima facie* case of swindling or estafa.

Respondent never denied receiving ₱18,000 from complainant for the purpose of posting a bond to secure the provisional liberty of her son. He never used the money for its intended purpose yet also never returned it to the client. Worse, he unjustifiably refused to turn over the amount to complainant despite the latter's repeated demands.

Moreover, respondent rendered no service that would have entitled him to the ₱30,000 attorney's fees. As a rule, the right of a lawyer to a reasonable compensation for his services is subject to two requisites: (1) the existence of an attorney-client relationship and (2) the rendition by the lawyer of services to the client.[31] Thus, a lawyer who does not render legal services is not entitled to attorney's fees. Otherwise, not only would he be unjustly enriched at the expense of the client, he would also be rewarded for his negligence and irresponsibility.

RESPONDENT FAILED TO UPHOLD THE INTEGRITY AND DIGNITY OF THE LEGAL PROFESSION

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[28] Rule 16.03 – A lawyer shall deliver the funds and property of his client when due or upon demand. However, he shall have a lien over the funds and may apply so much thereof as may be necessary to satisfy his lawful fees and disbursements, giving notice promptly thereafter to his client. He shall also have a lien to the same extent on all judgments and executions he has secured for his client as provided for in the Rules of Court.

[29] *Pentecostes v. Ibañez*, 363 Phil. 624 (1999).

[30] *Id.*

[31] *Arce v. Philippine National Bank*, 62 Phil. 570 (1935).

For his failure to comply with the exacting ethical standards of the legal profession, respondent failed to obey Canon 7 of the Code of Professional Responsibility:

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

Indeed, a lawyer who fails to abide by the Canons and Rules of the Code of Professional Responsibility disrespects the said Code and everything that it stands for. In so doing, he disregards the ethics and disgraces the dignity of the legal profession.

Lawyers should always live up to the ethical standards of the legal profession as embodied in the Code of Professional Responsibility. Public confidence in law and in lawyers may be eroded by the irresponsible and improper conduct of a member of the bar.[32] Thus, every lawyer should act and comport himself in a manner that would promote public confidence in the integrity of the legal profession.[33]

Respondent was undeserving of the trust reposed in him. Instead of using the money for the bond of the complainant's son, he pocketed it. He failed to observe candor, fairness and loyalty in his dealings with his client.[34] He failed to live up to his fiduciary duties. By keeping the money for himself despite his undertaking that he would facilitate the release of complainant's son, respondent showed lack of moral principles. His transgression showed him to be a swindler, a deceitful person and a shame to the legal profession.

WHEREFORE, respondent Atty. Alan S. Macasa is hereby found *GUILTY* not only of dishonesty but also of professional

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[32] *Ducat v. Villalon*, 392 Phil. 394 (2000).

[33] *Id.*

[34] CANON 15 - A LAWYER SHALL OBSERVE CANDOR, FAIRNESS AND LOYALTY IN ALL HIS DEALINGS AND TRANSACTIONS WITH HIS CLIENT.

misconduct for prejudicing Francis John Belleza's right to counsel and to bail under Sections 13 and 14(2), Article III of the Constitution, and for violating Canons 1, 7, 17, 18 and 19 and Rules 12.03, 16.01, 16.02, 16.03 and 18.03 of the Code of Professional Responsibility. He is therefore *DISBARRED* from the practice of law effective immediately.

Respondent is hereby *ORDERED* to return to complainant Dolores C. Belleza the amount of ₱30,000 and ₱18,000 with interest at 12% per annum from the date of promulgation of this decision until full payment. Respondent is further *DIRECTED* to submit to the Court proof of payment of the amount within ten days from payment. Failure to do so will subject him to criminal prosecution.

Let copies of this resolution be furnished the Office of the Bar Confidant to be entered into the records of respondent Atty. Alan S. Macasa and the Office of the Court Administrator to be furnished to the courts of the land for their information and guidance.

SO ORDERED.

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

Brion, J., on leave.

THIRD DIVISION

[G.R. No. 151973. July 23, 2009]

NATIONAL POWER CORPORATION, *petitioner, vs.* **SPOUSES LORENZO L. LAOHOO and VISITACION LIM-LAOHOO; and LUZ LOMUNTAD-MIEL,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; EFFECT OF UNTIMELY APPEAL. — Since the appeal was not filed within the reglementary period of 15 days as provided by the Rules, the appeal is dismissible for having been filed out of time. The approval of a notice of appeal becomes the ministerial duty of the lower court, provided the appeal is filed on time. If the notice of appeal is, however, filed beyond the reglementary period, the trial court may exercise its power to refuse or disallow the same in accordance with Section 13 of Rule 41 of the Rules. Let it not be overlooked that the timeliness of an appeal is a jurisdictional caveat that not even this Court can trifle with. Consequently, the trial court committed no error in dismissing the appeal. The failure of the petitioner to perfect an appeal within the period fixed by law renders final the decision sought to be appealed. As a result, no court could exercise appellate jurisdiction to review the decision. It is settled that a decision that has acquired finality becomes immutable and unalterable and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact or law and whether it will be made by the court that rendered it or by the highest court of the land. Otherwise, there will be no end to litigation and this will set to naught the main role of courts of justice to assist in the enforcement of the rule of law and the maintenance of peace and order by settling justiciable controversies with finality. Once a judgment becomes final and executory, all the issues between the parties are deemed resolved and laid to rest. All that remains is the execution of the decision which is a matter of right. The prevailing party is entitled to a writ of execution, the issuance of which is the trial court's ministerial duty.

2. ID.; ID.; ID.; EFFECT OF FAILURE TO PAY APPELLATE COURT'S DOCKET AND OTHER LAWFUL FEES. — [P]etitioner did not pay the appellate court's docket and other lawful fees on time. Respondents pointed out that the payment of the fees, as reflected by the official receipts, was made only after five months from the filing of the notice of appeal. It is a rule that within the period for taking an appeal, the appellant shall pay the full amount of the appellate court's docket and other lawful fees. In the absence of such payment, the trial court may, *motu proprio or* on motion, dismiss the appeal for non-payment of the docket fees and other lawful fees within the reglementary period. Since petitioner failed to pay the docket fees and other lawful fees within the reglementary period, it is apparent that the dismissal of the appeal by the trial court was in order. In *Fil-Estate Properties, Inc. v. Homena-Valencia*, this Court upheld the dismissal of an appeal or notice of appeal for failure to pay the full docket fees within the period for taking the appeal. The payment of docket fees within the prescribed period is mandatory for the perfection of the appeal. Without such payment, the appellate court does not acquire jurisdiction over the subject matter of the action, and the decision sought to be appealed from becomes final and executory. In the present case, petitioner failed to offer any explanation for the belated payment of the required fees.

3. ID.; ID.; ID.; WHEN RECORD ON APPEAL NEED NOT BE FILED.— [T]he filing of a record on appeal is no longer necessary, as the RTC has fully resolved all the issues in the present case. In the recent case of *Marinduque Mining and Industrial Corporation and Industrial Enterprises, Inc. v. Court of Appeals and National Power Corporation*, the Court held that no record on appeal shall be required, except in special proceedings and other cases of multiple or separate appeals where the law or the rules so require. The reason for multiple appeals in the same case is to enable the rest of the case to proceed in the event that a separate and distinct issue is resolved by the trial court and held to be final. In such case, the filing of a record on appeal becomes indispensable only when a particular incident of the case is brought to the appellate court for resolution with the rest of the proceedings remaining within the jurisdiction of the trial court. Hence, if the trial court has already fully and finally resolved all conceivable issues in the

complaint for expropriation, then there is no reason why the original records of the case must remain with the trial court. Therefore, there was no need to file a record on appeal because the original records would already be sent to the appellate court.

4. ID.; ID.; ID.; FRESH PERIOD RULE, NOT APPLICABLE. — Petitioner cannot take refuge in the "fresh period rule." In *Neypes v. Court of Appeals*, the Court standardized the appeal periods provided in the rules in order to afford litigants a fair opportunity to appeal their cases. We allowed a fresh period of fifteen days within which to file a notice of appeal in the RTC, counted from receipt of the order dismissing a motion for a new trial or motion for reconsideration. *Neypes* is inapplicable to the present case, although procedural laws may be given retroactive effect to actions pending and undetermined at the time of their passage; there being no vested rights in the rules of procedure, said retroactive application of procedural rule does not extend to actions that have already become final and executory, like the Order of the trial court in the instant case.

5. ID.; ID.; SERVICE OF THE DECISIONS OR ORDERS; SERVICE TO ONE OF THE PARTY'S SEVERAL COUNSEL IS SUFFICIENT. — Petitioner was represented in the trial court by three lawyers, namely: Attys. Marianito delos Santos, Rosalito Castillo and Neon Cinco. These lawyers hold office at Martinez Bldg., Jones Ave., Cebu City. During the proceedings in the trial court, Atty. Cinco attended the hearings and even filed a pleading on behalf of the petitioner. Thus, he was one of the counsels of record in the case before the RTC. The rules provide that if a party is appearing by counsel, service upon him shall be made upon his counsel or one of them unless service upon the party himself is ordered by the court. In *Ortega v. Pacho,* this Court ruled that service to one of plaintiff's several counsels is sufficient. It was further held that when the rule employs the words "his attorneys or one of them," it can only refer to those employed regardless of whether they belong to the same law firm or office, otherwise that meaning would have been expressed therein. The reason for the rule undoubtedly is that, when more than one attorney appears for a party, notice to one would suffice upon the theory that he would notify or relay the notice to his colleagues in the case. This is a rational and logical interpretation, and we find no

plausible reason to rule otherwise. Accordingly, service of a copy of the decision or orders of the court on Atty. Cinco is deemed service upon the petitioner. The failure of Atty. Cinco to file the necessary notice of appeal on time binds the petitioner.

6. **ID.; ID.; ID.; THE RULE ON MANDATORY SERVICE OF ORDERS AND DECISIONS TO THE OFFICE OF THE SOLICITOR GENERAL, NOT APPLICABLE. —** *National Power Corporation v. NLRC,* as cited by the petitioner insofar as the rule on mandatory service of orders and decisions to the OSG is concerned, cannot be applied to the present case. In the said case, the OSG entered its appearance as counsel for National Power Corporation at the first instance. The deputization of Atty. Restituto O. Mallo was made only after the entry of appearance of the OSG, thus, making it the primary counsel of record. The appearance of the deputized special attorney in the proceedings before the Labor Arbiter did not divest the OSG of control over the case and did not make the deputized special attorney the counsel of record. *Ad contrarium*, in the present case, the NAPOCOR lawyers had been the counsels of record from the very beginning of the case, and the OSG never made any formal entry of appearance.

7. **ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; NOT PROPER REMEDY. —** Time and again, this Court has emphasized that a special civil action for *certiorari* under Rule 65 lies only when there is no appeal, nor plain, speedy and adequate remedy in the ordinary course of law. That action is not a substitute for a lost appeal in general; it is not allowed when a party to a case fails to appeal a judgment to the proper forum. In *Madrigal Transport Inc., v. Lapanday Holdings Corporation,* We held that where an appeal is available to the aggrieved party, the action for *certiorari* will not be entertained. Remedies of appeal and *certiorari* are mutually exclusive, not alternative or successive. Where an appeal is available, *certiorari* will not prosper, even if the ground therefor is grave abuse of discretion. Obviously, this remedy was resorted to by the petitioner due to the fact that its notice of appeal was dismissed by the RTC for having been filed out of time. Petitioner went to the CA alleging grave abuse of discretion on the part of the trial court in dismissing its notice of appeal. However, no grave abuse of discretion can be attributed to the trial court in

dismissing the appeal, as the same was filed beyond the period provided by the rules, more so because the issuance of the order of execution was in accordance with law, as the order to be implemented had already attained finality. Execution shall issue as a matter of right if no appeal has been duly perfected.

8. **ID.; ID.; *CERTIORARI* MUST BE FILED WITHIN THE 60-DAY REGLEMENTARY PERIOD; RATIONALE. —** Assuming *arguendo* that the petition for *certiorari* under Rule 65 is the proper remedy of the petitioner to question the Order dismissing its notice of appeal, still, the same was filed beyond the period provided by the Rules. Petitioner received the Order dismissing its notice of appeal on December 23, 1997. Accordingly, petitioner had a period of 60 days from its receipt to assail the trial court's dismissal of its notice of appeal *via* a petition for *certiorari* with the CA. Petitioner, however, instituted the petition for *certiorari* only on October 27, 1998, or after a period of 10 months, which was definitely beyond the 60-day reglementary period provided by the Rules. The petitioner cannot invoke the doctrine that rules of technicality must yield to the broader interest of substantial justice to spare itself from the consequences of belatedly filing an appeal. While every litigant must be given the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities, the failure to perfect an appeal within the reglementary period is not a mere technicality. It raises a jurisdictional problem, as it deprives the appellate court of its jurisdiction over the appeal. After a decision is declared final and executory, vested rights are acquired by the winning party. Just as a losing party has the right to appeal within the prescribed period, the winning party has the correlative right to enjoy the finality of the decision on the case. After all, a denial of a petition for being time-barred is tantamount to a decision on the merits.

9. **ID.; THE TOTALITY OF THE PROCEDURAL LAPSES COMMITTED PRECLUDES THE APPLICATION OF THE DOCTRINE OF RELAXATION OF THE RULE ON TECHNICALITY. —** The *[Maunlad and Samala]* rulings cannot be applied to the present case, as Atty. Neon Cinco's failure to file the appeal in due time does not amount to excusable negligence. Accordingly, the non-perfection of the appeal on time is not a *mere technicality*. Besides, to grant

the petitioner's plea for the relaxation of the rule on technicality would disturb a well-entrenched ruling that could make uncertain when a judgment attains finality, leaving the same to depend upon the resourcefulness of a party in concocting implausible excuses to justify an unwarranted departure from the time-honored policy of the law that the period for the perfection of an appeal is mandatory and jurisdictional. Attention should also be called to the fact that petitioner failed to act promptly to protect its rights after the RTC dismissed its notice of appeal. It did not even offer an explanation of why it took so many months before it filed its petition for *certiorari* with the CA. We also note that, during the proceedings before the RTC relative to the fixing of the amount of provisional deposit, the petitioner disagreed with the amount fixed by the trial court. Despite its objection, however, petitioner did not contest the fixing of the amount before the proper forum. Thus, it is now too late to question the Order of the RTC fixing the amount of provisional deposits, which petitioner had already deposited and which had already been deducted from the amount of just compensation finally adjudged by the trial court. In sum, petitioner disregarded the rules on the perfection of appeal and the requisites for an appeal to be valid, like the indication of material dates showing the timeliness of the appeal and the payment of the appellate court docket fees and other lawful fees. Petitioner failed to question on time the dismissal of the notice of appeal, and instead availed itself of the remedy of a petition for *certiorari* as a substitute for a lost appeal to assail the RTC's Order which had already attained finality and had been fully executed.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Ernesto P. Miel for Sps. Ernesto and Luz Miel.
Medino L. Acuba for Sps. Lorenzo L. Laohoo, *et al.*

DECISION

PERALTA, *J.*:

Before this Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to annul and set aside the Decision[1] of the Court of Appeals (CA) dated January 25, 2002 in CA-G.R. SP No. 49383.

Petitioner National Power Corporation (NAPOCOR) is a government-owned and controlled corporation created under Republic Act (RA) No. 6395, as amended, with the mandate to undertake the development of hydroelectric generation of power and the production of electricity from nuclear, geothermal and other sources, as well as the transmission of electric power on a nationwide basis.[2] Petitioner decided to acquire an easement of right-of-way over respondents' properties located at Barangay San Andres and Poblacion, Municipality of Catbalogan, Samar for its proposed 350 KV LEYTE-LUZON HVDC POWER TL PROJECT.

On October 2, 1996, petitioner filed two complaints before the Regional Trial Court (RTC) of Catbalogan, Samar, docketed as Civil Case No. 6890,[3] entitled *National Power Corporation v. Sps. Lorenzo L. Laohoo and Visitacion Lim* and Civil Case No. 6891,[4] entitled *National Power Corporation v. Sps. Ernesto Miel and Luz Lomuntad.* Both actions seek to acquire an easement of right-of-way over portions of respondents' properties consisting of 3,258 square meters for the properties of spouses Lorenzo Laohoo and Visitacion Lim-Laohoo (the Spouses Laohoo) and 4,738 square meters for the properties of spouses Ernesto Miel and Luz Lomuntad-Miel (the Spouses Miel).

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[1] Penned by Associate Justice Candido V. Rivera, with Associate Justices Delilah Vidallon-Magtolis and Juan Q. Enriquez, Jr., concurring; *rollo,* pp. 70-74.

[2] Republic Act No. 6395, Sec. 2.

[3] *Rollo*, pp. 110-120.

[4] *Id.* at 121-137.

Petitioner then filed an Urgent *Ex-Parte* Motion for the Issuance of a Writ of Possession[5] in both cases.

On November 5, 1996, the Spouses Laohoo in Civil Case No. 6890 filed their Answer to the complaint acknowledging petitioner's right to expropriate their property, but prayed for payment of just compensation, damages and attorney's fees.[6]

The RTC issued two Orders,[7] both dated November 13, 1996, directing the Sheriff of the RTC to place petitioner in possession of the premises upon deposit with the Philippine National Bank (PNB) of the amount of ₱8,000,000.00, as provisional value fixed by the trial court in Civil Case No. 6891 and the amount of ₱6,000,000.00, as provisional value fixed by the trial court in Civil Case No. 6890.

On November 27, 1996, the Spouses Miel filed a Motion to Dismiss the complaint. They alleged that petitioner could ignore their property and use another land instead. However, in case their property was condemned, they prayed for payment for the improvements on their land, just compensation, damages and attorney's fees.[8]

On January 31, 1997, petitioner filed an Urgent Joint Motion to Reduce Amount of Report,[9] praying that the provisional deposit fixed in both cases be reduced to a reasonable amount, as determined by the trial court. During the hearing on the motion to reduce amount of report, the Spouses Laohoo manifested their willingness to reduce the amount of provisional deposit to ₱5,500,000.00. The trial court set the case for further hearing to give the petitioner time to consider the proposal of the Spouses Laohoo. Eventually, the provisional amounts of deposit were reduced to ₱2,500,000.00 in Civil Case No. 6890 and ₱3,000,000.00 in Civil Case No. 6891. Petitioner deposited

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[5] *Id.* at 138-140.

[6] *Id.* at 165.

[7] *Id.* at 144-147.

[8] *Id.* at 175-177.

[9] *Id.* at 148-151.

the aforementioned amounts with the PNB Catbalogan, Samar Branch. Thus, on February 28, 1997, the RTC issued an Order[10] allowing the petitioner to enter the subject properties.

On February 13, 1997, the RTC appointed three (3) commissioners, namely: Provincial Assessor Engineer Leo N. Dacaynos, Architect Gilbert C. Cinco, and Mr. Eulalio C. Yboa for the purpose of determining the fair and just compensation due the respondents relative to petitioner's installation of its electric transmission lines on their properties. On April 2, 1997, the Commissioners submitted their appraisal report[11] and recommended an amount not lower than ₱1,900.00 per square meter as the fair market value of the properties in controversy.

During the hearing on April 3, 1997, respondents moved that the market value of ₱1,900.00 per square meter recommended by the commissioners be increased to ₱2,200.00 per square meter in Civil Case No. 6890 and to ₱2,500.00 per square meter in Civil Case No. 6891. The trial court set the case for further hearing to give petitioner the opportunity to be heard on the matter. In the meantime, upon motion of the Spouses Laohoo in Civil Case No. 6890, the RTC, on April 8, 1997, issued an Order[12] allowing them to withdraw ₱2,000,000.00 from the amount deposited by petitioner at PNB. Upon a similar motion of the Spouses Miel in Civil Case No. 6891, the RTC issued an Order[13] dated April 8, 1997 allowing the Spouses Miel to withdraw ₱2,500,000.00 from the amount deposited by petitioner at PNB.

On July 2, 1997, petitioner, through Atty. Neon Cinco, filed its Comment and/or Opposition[14] to the commissioner's report. The petitioner prayed that the amount of just compensation be based on the average of the prices as recommended by the Provincial Appraisal Committee of the Province of Samar and as certified by

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[10] *Id.* at 166-178.

[11] *Id.* at 264-269.

[12] *Id.* at 161-162.

[13] *Id.* at 163-164.

[14] *Id.* at 308-309.

the Provincial Assessor, the average of which was much lower than the amount determined by the commissioners.

On September 15, 1997, the trial court issued two Orders[15] requiring the petitioner to pay the amount fixed as just compensation at ₱2,000.00 per square meter or the total amount of ₱6,616,000.00 for Civil Case No. 6890 and ₱9,476,000.00 for Civil Case No. 6891.

On October 2, 1997, petitioner filed Motions for Reconsideration[16] in both cases, which the RTC denied in an Order[17] dated October 14, 1997. Petitioner filed Notices of Appeal,[18] which were dismissed by the trial court in an Order[19] dated December 10, 1997, for being filed out of time.

On March 13, 1998, the trial court issued two Orders[20] directing petitioner to deposit with PNB the balance of the just compensation for the properties of the respondents in the amounts of ₱4,116,000.00 in Civil Case No.6890 and ₱6,476,000.00 in Civil Case No. 6891. Petitioner filed a Motion for Reconsideration[21] of the Orders dated December 10, 1997 and March 13, 1998, praying that its notices of appeal be admitted. The said Motion was denied in a Resolution[22] dated July 2, 1998.

On August 27, 1998, the trial court issued two separate Orders[23] reiterating its previous orders for petitioner to deposit with PNB the amounts adjudged as just compensation on or before September 16, 1998.

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[15] *Id.* at 165-174 and 175-185.

[16] *Id.* at 186-193.

[17] *Id.* at 194-197.

[18] *Id.* at 198-199.

[19] *Id.* at 201-202.

[20] *Id.* at 203-206.

[21] *Id.* at 207-210.

[22] *Id.* at 211-214.

[23] *Id.* at 96-99.

During the hearing on September 29, 1998,[24] the trial court was informed by the manager of PNB, Catbalogan, Samar Branch, that petitioner had not yet deposited the prescribed amounts with the PNB. On October 1, 1998, the RTC directed the issuance of the writs of execution for the enforcement of the court's judgment dated September 15, 1997,[25] on the premise that the judgment of the RTC ordering petitioner to pay respondents the amounts due them, as payment for their expropriated property, had become final and executory. On October 2, 1998, the RTC issued the Writs of Execution[26] in Civil Case Nos. 6890 and 6891, and also issued Notices of Garnishment[27] on the petitioner's accounts with the Land Bank of the Philippines (LBP). On October 13, 1998, petitioner received copies of the RTC Orders dated October 1, 1998.

On October 27, 1998, petitioner filed a Petition for *Certiorari*, Prohibition and Preliminary Injunction with Prayer for a Temporary Restraining Order with the CA, docketed as CA-G.R. SP No. 49383.[28] In a Decision[29] dated January 25, 2002, the CA dismissed the petition for late filing. It ruled that:

It appears from the records of this case that Petitioner's Notice of Appeal was denied by Respondent Court in an Order dated December 10, 1997, a copy of which was received by Petitioner on December 23, 1997 (***Annex*** "**2**" ***of Private Respondents' Consolidated Comments on the Petition***). Accordingly, pursuant to Section 4, Rule 65 of the 1997 Rules on Civil Procedure, Petitioner had sixty (60) days from December 23, 1997 within which to assail the Respondents Court's denial of its Notice of Appeal via Petition for *certiorari* as in the present recourse. Petitioner, however, instituted the present recourse only on October 27, 1998, which is way beyond the sixty (60)-day reglementary period provided by law.

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[24] *Id.* at 215.

[25] *Id.* at 96-99.

[26] *Id.* at 220 and 223, respectively.

[27] *Id.* at 219 and 222.

[28] *Id.* at 75-94.

[29] *Id.* at 70-74.

From the foregoing disquisitions, the instant petition must perforce be denied due course for having been filed out of time.

Hence, the instant petition assigning the following errors:

THE COURT OF APPEALS' QUESTIONED DECISION DATED JANUARY 25, 2002 IS NOT IN ACCORD WITH LAW AND APPLICABLE JURISPRUDENCE CONSIDERING THAT:

I

THE DETERMINATION OF THE AMOUNT OF JUST COMPENSATION WAS SPECULATIVE, ARBITRARY AND DEVOID OF ANY FACTUAL OR LEGAL BASIS.

II

THE DISMISSAL OF THE PETITION FOR *CERTIORARI* ON A MERE TECHNICALITY IS CONTRARY TO THE TIME HONORED DOCTRINE THAT LITIGATION IS NOT A GAME OF TECHNICALITIES AND THERE IS NO VESTED RIGHT IN IT BECAUSE THE GENERAL AIM OF PROCEDURAL LAW IS TO FACILITATE THE APPLICATION OF JUSTICE TO THE PARTY-LITIGANTS.

The petition is not meritorious.

Although the dismissal of the petition by the CA was based on the failure to timely file the petition, such dismissal was not merely based on technicality, but on petitioner's failure to perfect its appeal on time with the RTC.

Records show that, on September 15, 1997, the RTC, in both civil cases, issued orders directing the petitioner to pay the amount fixed as just compensation. Petitioner, through its counsel, received the said Orders on September 25, 1997. On October 2, 1997, petitioner filed by registered mail, a Motion for Reconsideration of the said Orders which the RTC denied in an Order dated October 14, 1997.

On October 30, 1997, petitioner filed a Notice of Appeal by registered mail for the two civil cases. Respondent Spouses

Laohoo filed their Comment and Opposition to the notice of appeal, contending that the said appeal was filed six days late.

Petitioner argued that it was only on October 23, 1997 that the Office of the Regional Legal Counsel, NPC-Visayas Region in Cebu City, received a copy of the Order of October 14, 1997 denying its motion for reconsideration. By computing the remaining eight days reckoned from the date of receipt on October 23, 1997 of the RTC's Order dated October 14, 1997, petitioner insisted that it had until October 31, 1997 within which to file the notice of appeal and, thus, the filing thereof on October 30, 1997 was well within the 15-day reglementary period for taking an appeal as provided by the rules.

In an Order dated December 10, 1997, the RTC dismissed the petitioner's appeal and ruled that:

> It appears from the record that the National Power Corporation received the resolution of this court dated October 14, 1997 denying their motion for reconsideration through their lawyer, Atty. Neon Cinco, on October 15, 1997. It is not, therefore, true that NAPOCOR received the order of denial of said motion for reconsideration on October 23, 1997 as alleged by Atty. Marianito delos Santos.
>
> WHEREFORE, and it appearing that plaintiff's notice of appeal was filed six (6) days beyond the reglementary period, it is ordered that plaintiff's appeal be, and is hereby, dismissed.

There appears to be a controversy between the petitioner and the respondents as to when the petitioner received the RTC Order dated October 14, 1997 denying the petitioner's motion for reconsideration. This issue needs to be settled, because the remaining period (*i.e.,* eight days) within which to appeal is reckoned from the actual date of receipt of the RTC's Order of denial. The determination as to whether petitioner's notice of appeal was filed on time crucial, because if it was seasonably filed, then the RTC gravely abused its discretion in dismissing the same. On the contrary, if it was filed out of time, then the RTC correctly dismissed the notice of appeal and the RTC's Order dated September 15, 1997 had already become final and executory.

This Court finds that the petitioner's appeal before the RTC was filed out of time.

In the Order dated December 10, 1997 dismissing the petitioner's appeal, the RTC made a finding that its counsel, Atty. Neon Cinco, received the Order denying its motion for reconsideration on October 15, 1997. The date of receipt by petitioner, as found by the RTC, was based on the records of the case. Petitioner failed to disprove what was reflected in the records of the RTC that Atty. Cinco received the Order dated October 14, 1997 on October 15, 1997. If the records of the RTC do not show that Atty. Cinco received the same on October 15, 1997, the petitioner could have presented certified true copies of the records of the case in order to disprove the trial court's finding. In the absence of such evidence, the trial court's declaration should be taken as true on its face, as it enjoys the presumption of regularity in the performance of its official duties.[30] Because of the foregoing, We are inclined to rule that petitioner's counsel, Atty. Neon Cinco, received the Order on October 15, 1997.

The trial court's Order dated September 15, 1997 was a final order fixing the just compensation for the expropriated lots of the respondents and, thus, completely disposed of the controversy between the party litigants. Petitioner should have timely appealed the assailed RTC Order under Section 1, Rule 41 of the Rules of Court. In this case, petitioner received on September 25, 1997 a copy of the Order of the trial court dated September 15, 1997 fixing the amount of just compensation on the respondents' properties. On October 2, 1997, or on the seventh day from receipt of the Order dated September 15, 1997, petitioner filed a motion for reconsideration. The RTC denied the motion in an Order dated October 14, 1997, which was received by petitioner's counsel on October 15, 1997. Therefore, petitioner had the remaining period of eight days, or until October 23, 1997, within which to appeal.

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[30] Rules on Evidence, Rule 131, Sec. 2(m) - That official duty has been regularly performed.

Perforce, the filing of the Notice of Appeal on October 30, 1997 was already late.

Since the appeal was not filed within the reglementary period of 15 days as provided by the Rules,[31] the appeal is dismissible[32] for having been filed out of time. The approval of a notice of appeal becomes the ministerial duty of the lower court, provided the appeal is filed on time. If the notice of appeal is, however, filed beyond the reglementary period, the trial court may exercise its power to refuse or disallow the same in accordance with Section 13 of Rule 41 of the Rules.[33] Let it not be overlooked that the timeliness of an appeal is a jurisdictional caveat that not even this Court can trifle with.[34] Consequently, the trial court committed no error in dismissing the appeal.

The failure of the petitioner to perfect an appeal within the period fixed by law renders final the decision sought to be appealed. As a result, no court could exercise appellate jurisdiction to review the decision.[35] It is settled that a decision that has acquired finality becomes immutable and unalterable and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact or law and whether it will be made by the court that rendered it or by the highest court of the land.[36] Otherwise, there will be no end to litigation and this will set to naught the main role of courts of justice to assist in

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[31] Rules of Court, Rule 41, Sec. 3. *Period of ordinary appeal*. - The appeal shall be taken within fifteen (15) days from notice of the judgment or final order appealed from. x x x.

[32] *Id.*, Rule 41, Sec. 13.- Prior to the transmittal of the original record or the record on appeal to the appellate court, the trial court may *motu proprio* or on motion dismiss the appeal for having been taken out of time. (14a)

[33] *Oro v. Diaz*, G.R. No. 140974, July 11, 2001, 361 SCRA 108, 116.

[34] *Bank of America, NT & SA v. Gerochi, Jr.*, G.R. No. 73210, February 10, 1994, 230 SCRA 9, 15.

[35] *Supra* note 33, at 117.

[36] *Peña v. Government Service Insurance System,* G.R. No. 159520, September 19, 2006, 502 SCRA 383, 404.

the enforcement of the rule of law and the maintenance of peace and order by settling justiciable controversies with finality.[37]

Once a judgment becomes final and executory, all the issues between the parties are deemed resolved and laid to rest. All that remains is the execution of the decision which is a matter of right.[38] The prevailing party is entitled to a writ of execution, the issuance of which is the trial court's ministerial duty.[39]

In addition to the non-perfection of the appeal on time, records show that the notice of appeal failed to indicate the date when the petitioner received the Order denying its motion for reconsideration. The rules require that the notice of appeal shall state the material dates showing the timeliness of the appeal.[40] The indication of date is important in order for the trial court to determine the timeliness of the petitioner's appeal.

Likewise, petitioner did not pay the appellate court's docket and other lawful fees on time. Respondents pointed out that the payment of the fees, as reflected by the official receipts,[41] was made only after five months from the filing of the notice of appeal.

It is a rule that within the period for taking an appeal, the appellant shall pay the full amount of the appellate court's docket and other lawful fees.[42] In the absence of such payment, the

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[37] *Estinozo v. Court of Appeals,* G.R. No. 150276, February 12, 2008, 544 SCRA 422, 432.

[38] Rules of Court, Rule 39, Sec. 1. *Execution upon judgments or final orders*. - Execution shall issue as a matter of right, on motion, upon a judgment or order that disposes of the action or proceedings upon the expiration of the period to appeal therefrom if no appeal has been duly perfected. x x x

[39] *Ulang v. Court of Appeals*, G.R. No. 99299, August 26, 1993, 225 SCRA 637, 641.

[40] Rules of Court, Rule 41, Sec. 6 - The notice of appeal shall indicate the parties to the appeal, specify the judgment or final order or part thereof appealed from, specify the court to which the appeal is being taken, ***and state the material dates showing the timeliness of the appeal***.(4a) (Emphasis supplied)

[41] *Rollo*, pp. 407-412.

[42] Rules of Court, Rule 41, Sec. 4. *Appellate court docket and other*

trial court may, *motu proprio or* on motion, dismiss the appeal for non-payment of the docket fees and other lawful fees within the reglementary period.[43] Since petitioner failed to pay the docket fees and other lawful fees within the reglementary period, it is apparent that the dismissal of the appeal by the trial court was in order. In *Fil-Estate Properties, Inc. v. Homena-Valencia*,[44] this Court upheld the dismissal of an appeal or notice of appeal for failure to pay the full docket fees within the period for taking the appeal. The payment of docket fees within the prescribed period is mandatory for the perfection of the appeal. Without such payment, the appellate court does not acquire jurisdiction over the subject matter of the action, and the decision sought to be appealed from becomes final and executory. In the present case, petitioner failed to offer any explanation for the belated payment of the required fees.

Furthermore, as pointed out by the respondents, and as proven by the records of the case, the Order of the trial court dated September 15, 1997 was already fully executed. The Sheriff's Report[45] relative to the satisfaction of judgment in Civil Case Nos. 6890 and 6891, dated November 17, 1998, provided that the writ of garnishment was duly satisfied. The PNB had already delivered the money under garnishment by issuing certified checks in the amount of ₱4,616,000.00 in favor of the Spouses Laohoo and in the amount of ₱6,476,000.00 in favor of the Spouses Miel.

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fees. - ***Within the period for taking an appeal, the appellant shall pay to the clerk of court*** which rendered the judgment or final order appealed from ***the full amount of the appellate court docket and other lawful fees***. Proof of payment of said fees shall be transmitted to the appellate court together with the original record or the record on appeal.

[43] *Id.*, Rule 41, Sec. 13. *Dismissal of Appeal*. - ***Prior to the transmittal of the original record*** or the record on appeal to the appellate court, ***the trial court may motu proprio or on motion dismiss the appeal for having been taken out of time, or for non-payment of the docket and other lawful fees within the reglementary period***. (13a) (As amended by A.M. No. 00-2-10-SC, May 1, 2000.) (Emphasis supplied)

[44] G.R. No. 173942, October 15, 2007, 536 SCRA 252, 260.

[45] *Rollo,* p. 404.

In an effort to justify its belated filing of the notice of appeal within the reglementary period of fifteen days, petitioner, in its Reply,[46] cited *Municipality of Biñan v. Garcia*[47] which explained that since no less than two appeals are allowed in an action for eminent domain, as in actions for partition, the period of appeal from an order of condemnation is thirty days counted from notice of said Order, a record of appeal being required, and not the ordinary period of fifteen days prescribed for actions in general.

Petitioner's argument is self-defeating, considering that it did not file any record on appeal within the reglementary period provided by the Rules after its receipt of the trial court's order. Further, the filing of a record on appeal is no longer necessary, as the RTC has fully resolved all the issues in the present case. In the recent case of *Marinduque Mining and Industrial Corporation and Industrial Enterprises, Inc. v. Court of Appeals and National Power Corporation*,[48] the Court held that no record on appeal shall be required, except in special proceedings and other cases of multiple or separate appeals where the law or the rules so require. The reason for multiple appeals in the same case is to enable the rest of the case to proceed in the event that a separate and distinct issue is resolved by the trial court and held to be final. In such case, the filing of a record on appeal becomes indispensable only when a particular incident of the case is brought to the appellate court for resolution with the rest of the proceedings remaining within the jurisdiction of the trial court. Hence, if the trial court has already fully and finally resolved all conceivable issues in the complaint for expropriation, then there is no reason why the original records of the case must remain with the trial court. Therefore, there was no need to file a record on appeal because the original records would already be sent to the appellate court.

Petitioner cannot take refuge in the "fresh period rule." In *Neypes v. Court of Appeals*,[49] the Court standardized the appeal

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[46] *Id.* at 451-457.

[47] G.R. No. 69260, December 22, 1989, 180 SCRA 576.

[48] G.R. No. 161219, October 6, 2008.

[49] G.R. No. 141524, September 14, 2005, 469 SCRA 633.

periods provided in the rules in order to afford litigants a fair opportunity to appeal their cases. We allowed a fresh period of fifteen days within which to file a notice of appeal in the RTC, counted from receipt of the order dismissing a motion for a new trial or motion for reconsideration. *Neypes* is inapplicable to the present case, although procedural laws may be given retroactive effect to actions pending and undetermined at the time of their passage; there being no vested rights in the rules of procedure,[50] said retroactive application of procedural rule does not extend to actions that have already become final and executory,[51] like the Order of the trial court in the instant case.

Furthermore, petitioner's lame allegation that Atty. Cinco failed to inform petitioner of the denial of its motion for reconsideration cannot be used as a basis to defeat the rules of procedure relative to the timeliness of an appeal.

Petitioner was represented in the trial court by three lawyers, namely: Attys. Marianito delos Santos, Rosalito Castillo and Neon Cinco. These lawyers hold office at Martinez Bldg., Jones Ave., Cebu City. During the proceedings in the trial court, Atty. Cinco attended the hearings and even filed a pleading on behalf of the petitioner. Thus, he was one of the counsels of record in the case before the RTC.

The rules provide that if a party is appearing by counsel, service upon him shall be made upon his counsel or one of them unless service upon the party himself is ordered by the court.[52] In *Ortega v. Pacho,*[53] this Court ruled that service to one of plaintiff's several counsels is sufficient. It was further

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[50] *Pfizer, Inc. v. Galan,* 410 Phil. 483, 491 (2001).

[51] *Borre v. Court of Appeals,* No. 57204, March 14, 1988, 158 SCRA 560.

[52] Rules of Court, Rule 13, Sec. 2, Par. 2. Service is the act of providing a party with a copy of the pleading or paper concerned. ***If any party has appeared by counsel, service upon him shall be made upon his counsel or one of them***, unless service upon the party himself is ordered by the court. Where one counsel appears for several parties, he shall only be entitled to one copy of any paper served upon him by the opposite side. (Emphasis supplied.)

[53] 98 Phil. 618, 622 (1956). (Emphasis supplied.)

held that when the rule employs the words "his attorneys or one of them," it can only refer to those employed regardless of whether they belong to the same law firm or office, otherwise that meaning would have been expressed therein. The reason for the rule undoubtedly is that, when more than one attorney appears for a party, notice to one would suffice upon the theory that he would notify or relay the notice to his colleagues in the case. This is a rational and logical interpretation, and we find no plausible reason to rule otherwise. Accordingly, service of a copy of the decision or orders of the court on Atty. Cinco is deemed service upon the petitioner. The failure of Atty. Cinco to file the necessary notice of appeal on time binds the petitioner.

The general rule is that a client is bound by the acts, even mistakes, of his counsel in the realm of procedural technique. The exception to this rule is when the negligence of counsel is so gross, reckless and inexcusable that the client is deprived of his day in court.[54] The failure of a party's counsel to notify him on time of the adverse judgment to enable him to appeal therefrom is negligence, which is not excusable. Notice sent to counsel of record is binding upon the client, and the neglect or failure of counsel to inform him of an adverse judgment resulting in the loss of his right to appeal is not a ground for setting aside a judgment valid and regular on its face.[55]

To sustain petitioner's self-serving argument that it cannot be bound by its counsel's negligence would set a dangerous precedent, as it would enable every party-litigant to render inoperative any adverse order or decision of the courts, through the simple expedient of alleging gross negligence on the part of its counsel.

Petitioner contends that the Office of the Solicitor General (OSG) was not furnished with a copy of the Order dated December 10, 1997 in Civil Case Nos. 6890 and 6891, dismissing the notice of appeal, or the Order dated July 2, 1998, denying petitioner's

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[54] *Producers Bank of the Philippines v. Court of Appeals*, G.R. No. 126620, April 17, 2002, 381 SCRA 185, 192.

[55] *Mercury Drug Corporation v. Court of Appeals*, G.R. No. 138571, July 13, 2000, 335 SCRA 567, 577.

motion for reconsideration. Hence, the period to appeal the decision to the CA did not even begin to run. It postulated that the period to file an appeal is to be counted from the receipt by the OSG of the order or decision and not from the receipt by the NAPOCOR lawyers, who were merely deputized as Special Attorneys. Such contention is equally bereft of merit.

In *National Power Corporation v. Vine Development Corporation*,[56] it was held that under Section 2(a), Rule 41[57] of the Revised Rules of Court, which pertains to ordinary appeals, the notice of appeal is filed in the very same court that rendered the assailed decision. Since the notice was filed before the RTC, the NAPOCOR lawyers acted clearly within their authority. Indeed, their action ensured that the appeal was filed within the reglementary period. Regardless of which mode of appeal is used, the appeal itself is presumed beneficial to the government; hence, it should be allowed. After all, the OSG may withdraw it, if it believes that the appeal will not advance the government's cause. This case affirmed the authority of National Power Corporation's lawyers to file notices of appeal of adverse decisions rendered by the trial courts.

It may be logically inferred in this case that NAPOCOR lawyers, who had been designated or deputized as special attorneys of the OSG, had the authority to represent the petitioner and file the notice of appeal. Additionally, in *Republic v. Soriano*,[58] We ruled that:

The petitioner's contention that service of the questioned Orders to deputized special attorneys of the OSG would not bind the OSG

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[56] G.R. No. 137785, September 4, 2000, 339 SCRA 580, 589-590.

[57] Section 2. *Modes of appeal*. - (a) Ordinary appeal. — The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction shall be taken by filing a notice of appeal *with the court which rendered the judgment or final order appealed from* and serving a copy thereof upon the adverse party. No record on appeal shall be required except in special proceedings and other cases of multiple or separate appeals where the law or these Rules so require. In such cases, the record on appeal shall be filed and served in like manner." (Emphasis ours.)

[58] G. R. No. 76944, December 20, 1988, 168 SCRA 560, 567.

so that the Orders did not attain their finality when the Motion was filed, does not have a leg to stand on. It is a well-settled principle that the acts of the authorized Deputy bind the principal counsel. Thus, service on the Deputy is service to the OSG.

Moreover, the records will disclose that Atty. Fidel Evangelista, who is a deputized attorney, was the one who appeared for the petitioner in the lower court. It is not only lawful, but also in accordance with the normal and standard practice that notices be sent to said special Attorney to avoid delays and complications. Precisely, the OSG has no time and manpower to handle all the cases of multifarious government entities such that deputization is authorized by law to cope with such contingencies.

Since NAPOCOR lawyers had the authority to represent petitioner, the notice of appeal filed by these special attorneys was binding upon it, and so was their omission to file the same on time. Petitioner cannot now put the blame on its special attorneys in order to circumvent the rule on perfection of appeal.

National Power Corporation v. NLRC,[59] as cited by the petitioner insofar as the rule on mandatory service of orders and decisions to the OSG is concerned, cannot be applied to the present case. In the said case, the OSG entered its appearance as counsel for National Power Corporation at the first instance. The deputization of Atty. Restituto O. Mallo was made only after the entry of appearance of the OSG, thus, making it the primary counsel of record. The appearance of the deputized special attorney in the proceedings before the Labor Arbiter did not divest the OSG of control over the case and did not make the deputized special attorney the counsel of record. *Ad contrarium*, in the present case, the NAPOCOR lawyers had been the counsels of record from the very beginning of the case, and the OSG never made any formal entry of appearance.

Now we go to the propriety of the petitioner's choice of the remedy of a special civil action for *certiorari* which questions the dismissal of the notice of appeal, and prays for the annulment of the writ of execution issued by the trial court.

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[59] G.R. Nos. 90933-61, May 29, 1997, 272 SCRA 704.

Time and again, this Court has emphasized that a special civil action for *certiorari* under Rule 65 lies only when there is no appeal, nor plain, speedy and adequate remedy in the ordinary course of law. That action is not a substitute for a lost appeal in general; it is not allowed when a party to a case fails to appeal a judgment to the proper forum.[60] In *Madrigal Transport Inc., v. Lapanday Holdings Corporation,*[61] We held that where an appeal is available to the aggrieved party, the action for *certiorari* will not be entertained. Remedies of appeal and *certiorari* are mutually exclusive, not alternative or successive. Where an appeal is available, *certiorari* will not prosper, even if the ground therefor is grave abuse of discretion. Obviously, this remedy was resorted to by the petitioner due to the fact that its notice of appeal was dismissed by the RTC for having been filed out of time.

Petitioner went to the CA alleging grave abuse of discretion on the part of the trial court in dismissing its notice of appeal. However, no grave abuse of discretion can be attributed to the trial court in dismissing the appeal, as the same was filed beyond the period provided by the rules, more so because the issuance of the order of execution was in accordance with law, as the order to be implemented had already attained finality. Execution shall issue as a matter of right if no appeal has been duly perfected.[62]

The core issue in the petition for *certiorari* with the CA was the alleged exercise of grave abuse of discretion by the RTC in dismissing petitioner's notice of appeal. When the CA denied the said petition for being filed out of time, petitioner sought relief before this Court through the instant petition for review. However, a perusal of the petition before Us would readily show that the petitioner is now suddenly questioning not only the CA's order of dismissal, but also the determination of the

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[60] *Leca Realty Corporation v. Republic*, G.R. No. 155605, September 27, 2006, 503 SCRA 563, 571.

[61] G.R. No. 156067, August 11, 2004, 436 SCRA 123, 136, 137.

[62] *Supra* note 38.

amount of just compensation by the RTC, which is a question of fact. This requires a review of the evidence presented by the parties before the trial court. It is aphoristic that this kind of reexamination cannot be done through a petition for review on *certiorari* under Rule 45 of the Rules of Court, because this Court is not a trier of facts; it reviews only questions of law. The Court is not duty-bound to analyze and weigh again the evidence considered in the proceedings below.[63]

Assuming *arguendo* that the petition for *certiorari* under Rule 65 is the proper remedy of the petitioner to question the Order dismissing its notice of appeal, still, the same was filed beyond the period provided by the Rules. Petitioner received the Order dismissing its notice of appeal on December 23, 1997. Accordingly, petitioner had a period of 60 days[64] from its receipt to assail the trial court's dismissal of its notice of appeal *via* a petition for *certiorari* with the CA. Petitioner, however, instituted the petition for *certiorari* only on October 27, 1998, or after a period of 10 months, which was definitely beyond the 60-day reglementary period provided by the Rules.

The petitioner cannot invoke the doctrine that rules of technicality must yield to the broader interest of substantial justice to spare itself from the consequences of belatedly filing an appeal. While every litigant must be given the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities, the failure to perfect an appeal within the reglementary period is not a mere technicality. It raises a jurisdictional problem, as it deprives the appellate court of its jurisdiction over the appeal.[65] After a decision is declared final and executory, vested rights are acquired by the winning party. Just as a losing party has the right to appeal within the prescribed period, the winning party has the correlative

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[63] *Umpoc v. Mercado*, G.R. No. 158166, January 21, 2005, 449 SCRA 220, 235.

[64] Rules of Court, Rule 65, Sec. 4.

[65] *Republic v. Court of Appeals*, G.R. No. 129846, January 18, 2000, 322 SCRA 81, 90. (Emphasis supplied.)

right to enjoy the finality of the decision on the case.[66] After all, a denial of a petition for being time-barred is tantamount to a decision on the merits.[67]

In *Peña v. Government Service Insurance System*,[68] We held that there are certain procedural rules that must remain inviolable, like those setting the periods for perfecting an appeal, for it is doctrinally entrenched that the right to appeal is a statutory right, and one who seeks to avail oneself of that right must comply with the statute or rules. These rules, particularly the requirements for perfecting an appeal within the reglementary period specified in the law, must be strictly followed, as they are considered indispensable interdictions against needless delays and for an orderly discharge of judicial business.

Maunlad Savings & Loan Association, Inc. v. CA[69] and *Samala v. Court of Appeals,*[70] cited by the petitioner, cannot be applied on the present case. In *Maunlad*, We allowed the admission of the respondent's documentary exhibits, although its counsel had failed to formally offer them in evidence. We ruled that the failure of the respondent's counsel was excusable since the documents were in the possession of the petitioner. Since the documents were never in the possession of the respondent, and considering the amount of time that had passed since their presentation, it was understandable that they were overlooked when the time came to formally offer the evidence. We likewise ruled that a judgment based on the merits should prevail over the primordial interest of strict enforcement of matters of technicalities.

In *Samala,* We granted the petition because petitioner Jose Samala, who was entrusted with the filing of the notice of appeal,

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[66] *Bello v. National Labor Relations Commission*, G.R. No. 146212, September 5, 2007, 532 SCRA 234, 242.

[67] *Videogram Regulatory Board v. Court of Appeals*, G.R. No. 106564, November 28, 1996, 265 SCRA 50, 56.

[68] G.R.No. 159520, September 19, 2006, 502 SCRA 383, 398.

[69] G.R. No. 114942, November 27, 2008, 346 SCRA 35.

[70] G.R. No. 128628, August 23, 2001, 363 SCRA 535.

suffered stomach pains, which lasted for several days. As a result, the notice of appeal was filed one day late. In this case, We held that the failure to appeal in due time amounted to excusable negligence.

The foregoing rulings cannot be applied to the present case, as Atty. Neon Cinco's failure to file the appeal in due time does not amount to excusable negligence. Accordingly, the non-perfection of the appeal on time is not a *mere technicality*. Besides, to grant the petitioner's plea for the relaxation of the rule on technicality would disturb a well-entrenched ruling that could make uncertain when a judgment attains finality, leaving the same to depend upon the resourcefulness of a party in concocting implausible excuses to justify an unwarranted departure from the time-honored policy of the law that the period for the perfection of an appeal is mandatory and jurisdictional.[71]

Attention should also be called to the fact that petitioner failed to act promptly to protect its rights after the RTC dismissed its notice of appeal. It did not even offer an explanation of why it took so many months before it filed its petition for *certiorari* with the CA.

We also note that, during the proceedings before the RTC relative to the fixing of the amount of provisional deposit, the petitioner disagreed with the amount fixed by the trial court. Despite its objection, however, petitioner did not contest the fixing of the amount before the proper forum. Thus, it is now too late to question the Order of the RTC fixing the amount of provisional deposits, which petitioner had already deposited[72] and which had already been deducted from the amount of just compensation finally adjudged by the trial court.

In sum, petitioner disregarded the rules on the perfection of appeal and the requisites for an appeal to be valid, like the indication of material dates showing the timeliness of the appeal and the payment of the appellate court docket fees and other

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[71] *Trans International v. Court of Appeals,* G.R. No. 128421, October 12, 1998, 297 SCRA 718, 725.

[72] *Id.* at 161-164.

lawful fees. Petitioner failed to question on time the dismissal of the notice of appeal, and instead availed itself of the remedy of a petition for *certiorari* as a substitute for a lost appeal to assail the RTC's Order which had already attained finality and had been fully executed.

WHEREFORE, the petition is *DENIED.* The Decision dated January 25, 2002 of the Court of Appeals in CA-G.R. SP No. 49383 is *AFFIRMED.*

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 161051. July 23, 2009]

COMPANIA GENERAL DE TABACOS DE FILIPINAS and LA FLOR DE LA ISABELA, INC., *petitioners, vs.* **HON. VIRGILIO A. SEVANDAL, as Director and DTI Adjudication Officer, ATTY. RUBEN S. EXTRAMADURA, as Hearing Officer — Office of the Legal Affairs, Department of Trade and Industry, TABAQUERIA DE FILIPINAS, INC., and GABRIEL RIPOLL, JR.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI;* GRAVE ABUSE OF DISCRETION, ABSENCE OF. — The

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* Designated as an additional member in lieu of Associate Justice Antonio Eduardo B. Nachura, per raffle dated July 13, 2009.

mere fact that the CA ruled that the DTI prejudged the main case filed before it does not by itself establish grave abuse of discretion. Moreover, there is no grave abuse of discretion in the instant case because the DTI merely tried to justify the issuance of the writ of preliminary injunction. Sometimes a discussion in passing of the issues to be resolved on the merits is necessary in order to deny or grant an application for the writ. This cannot, however, be considered as a whimsical or capricious exercise of discretion.

2. **ID.; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; ELEMENTS; CONCURRENCE THEREOF, NECESSARY. —** [T]he Court has repeatedly held that, in order that an injunctive relief may be issued, the applicant must show that: "(1) the right of the complainant is clear and unmistakable; (2) the invasion of the right sought to be protected is material and substantial; and (3) there is an urgent and paramount necessity for the writ to prevent serious damage." In establishing the above elements, it bears pointing out that the Court used the term "and" in enumerating the said elements. x x x [I]n *Republic v. David*, [the Court ruled that] x x x [t]he word and — whether it is used to connect words, phrases or full sentences — must be accepted in its common and usual meaning as "binding together and as relating to one another." And implies a conjunction, joinder or union. In the instant case, the import of the use of the term "and" means that all of the elements mentioned above must concur in order that an injunctive writ may be issued. The absence of even one of the elements would be fatal in petitioners' application for the writ.

3. **ID.; ID.; ID.; ID.; ABSENCE OF AN URGENT AND PARAMOUNT NECESSITY FOR THE WRIT TO PREVENT SERIOUS DAMAGE; CASE AT BAR. —** Petitioners claim that as a result of private respondents' "fraudulent and malicious entry into the market, Petitioners' sales dropped by twenty-five [percent] (25%)." Petitioners further aver that the writ of preliminary injunction is necessary as the general appearance of private respondents' products is confusingly similar to that of petitioners' products. Petitioners claim that this has resulted in a marked drop in their sales. Thus, petitioners argue that unless private respondents use similar marks, packaging, and labeling as that of petitioners' products, they will continue to suffer damages. Petitioners' postulations are bereft of merit.

> Petitioners failed to present one iota of evidence in support of their allegations. They failed to present evidence that indeed their sales dropped by an alleged 25% and that such losses resulted from the alleged infringement by private respondents. Without presenting evidence to prove their allegations, petitioners' arguments cannot be given any merit. x x x Due to the absence of the third requisite for the issuance of a preliminary injunction, petitioners' application for the injunctive writ must already fail.

APPEARANCES OF COUNSEL

Suarez & Narvasa Law Firm for petitioners.

Guzman Cruz & Ramires for Tabaqueria De Filipinas and Gabriel Ripoll, Jr.

Domingo C. Lalao & Associates Law Office and *Jose Estrella, Jr.* for respondents.

D E C I S I O N

VELASCO, JR., *J.*:

The Case

This Petition for Review on *Certiorari* under Rule 45 seeks the reversal of the June 16, 2003 Decision[1] and December 1, 2003 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 42881. The CA denied petitioners' Petition for *Certiorari* (With Urgent Application for Temporary Restraining Order and/ or Writ of Preliminary Injunction) and their motion for reconsideration.

The Facts

Petitioner Compania General de Tabacos de Filipinas, also known as "Tabacalera," is a foreign corporation organized and

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[1] *Rollo*, pp. 38-45. Penned by Associate Justice B.A. Adefuin-De la Cruz and concurred in by Associate Justices Jose L. Sabio, Jr. and Hakim S. Abdulwahid.

[2] *Id.* at 47.

existing under the laws of Spain. It is the owner of 24 trademarks registered with the Bureau of Patents, Trademarks and Technology Transfer (BPTTT) of the Department of Trade and Industry (DTI). Tabacalera authorized petitioner La Flor de la Isabela, Inc. to manufacture and sell cigars and cigarettes using the Tabacalera trademarks.

Respondent Gabriel Ripoll, Jr. was an employee of petitioners for 28 years and was the General Manager before he retired sometime in 1993.[3] In the same year, Ripoll organized Tabaqueria de Filipinas, Inc. (Tabaqueria), a domestic corporation also engaged in the manufacture of tobacco products like cigars.[4] Ripoll is the managing director of Tabaqueria.

On October 1, 1993, petitioners filed a Letter-Complaint[5] with the Securities and Exchange Commission praying for the cancellation of the corporate name of Tabaqueria on the following ground:

> Tabaqueria, being engaged in the same business as Tabacalera, cannot be allowed to continue using "tabaqueria" which will confuse and deceive the public into believing that Tabaqueria is operated and managed by, and part of, Tabacalera and that its business is approved, sponsored by, and affiliated with, Tabacalera.

Thereafter, petitioners also filed with the Department of Justice (DOJ)-Task Force on Anti-Intellectual Property Piracy a criminal complaint against Ripoll for Infringement of Trademark and Unfair Competition for violation of Articles 188 and 189 of the Revised Penal Code. The case was docketed as I.S. No. 94C-07941, entitled *Compania General de Tabacos de Filipinas & La Flor de la Isabela, Inc. (Attys. Ferdinand S. Fider and Ma. Dolores T. Syquia v. Gabriel Ripoll, Jr. (Tabaqueria de Filipinas, Inc.)*.

On February 8, 1994, petitioners filed with the DTI a Complaint dated February 4, 1994[6] for Unfair Competition, docketed as Administrative Case No. 94-19 and entitled *Compania General*

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[3] *Id.* at 367.

[4] *Id.* at 67.

[5] *Id.* at 274-277.

[6] *Id.* at 48-65.

de Tabacos de Filipinas and La Flor de la Isabela, Inc. v. Tabaqueria de Filipinas, Inc. and Gabriel Ripoll, Jr.

Petitioners alleged in the Complaint that Tabaqueria deliberately sought to adopt/simulate the Tabacalera trademarks to confuse the public into believing that the Tabaqueria cigars are the same or are somehow connected with the Tabacalera products.[7]

In the Complaint petitioners sought, among others, the issuance of a "preliminary order requiring respondents to refrain from manufacturing, distributing and/or selling the Tabaqueria products."[8]

In their Answer dated April 9, 1994, Tabaqueria and Ripoll opposed the issuance of injunctive relief pending investigation on the ground that petitioners' allegation of unfair competition is unproved and unsubstantiated. They alleged that petitioners failed to establish the following elements required for the issuance of an injunctive writ:

> The party applying for preliminary injunction must show (a) The invasion of the right sought to be protected is material and substantial; (b) The right of complainant is clear and unmistakable; and (c) There is an urgent and paramount necessity for the writ to prevent serious damage. (*Director of Forest Administration vs. Fernandez,* 192 SCRA 121 [1990]; *Phil. Virginia Tobacco Administration vs. De los Angeles,* 164 SCRA 543 [1988])[9]

Meanwhile, on September 1, 1994, the DOJ issued a Resolution[10] in I.S. No. 94C-07941, the dispositive portion of which reads:

> Accordingly, it is hereby recommended that the complaint for unfair competition and/or infringement of trademark be dismissed against respondent Gabriel Ripoll Jr. for insufficiency of evidence.

Petitioners moved for reconsideration of the above resolution, but their motion was denied in a Letter dated October 18, 1994.[11]

[7] *Id.* at 58.

[8] *Id.* at 63.

[9] *Id.* at 71-72.

[10] *Id.* at 258-265.

[11] *Id.* at 266-267.

Later, the Secretary of Justice reversed the Resolution dated September 1, 1994. Upon reconsideration, the Secretary, however, issued a Letter dated February 5, 1997[12] reaffirming the Resolution dated September 1, 1994.

On March 24, 1995, petitioners filed a Motion to Issue Cease and Desist Order[13] with the DTI, praying for the issuance of an order: (1) directing private respondents to immediately cease and desist from manufacturing, distributing, and selling cigar products bearing the marks and design of petitioners; (2) for the immediate seizure of all cigar products of private respondents bearing the marks and design of petitioners; and (3) for the immediate closure of private respondents' establishment involved in the production of those products.

In response, private respondents filed an Opposition to Complainants' Motion to Issue Cease and Desist Order, with Motion to Dismiss Complaint dated March 30, 1995.[14] Private respondents anchored their motion to dismiss on the ground of forum shopping due to petitioners' filing of prior cases of infringement and unfair competition with the DOJ. As to the Motion to Issue Cease and Desist Order, private respondents claimed that such motion was premature considering that the alleged evidence for the issuance of the order was just then marked. Moreover, they alleged that the acts that petitioners sought to be restrained would not cause irreparable injury to them.

Subsequently, the DTI issued a Temporary Restraining Order dated September 18, 1995[15] with a validity period of 20 days from receipt by private respondents.

In an Order dated April 30, 1996, the Office of Legal Affairs of the DTI ruled that there was no similarity in the general appearance of the products of the parties and that consumers

[12] *Id.* at 268-272.

[13] *Id.* at 84-87.

[14] *Id.* at 88-90.

[15] *Id.* at 91-92.

would not be misled. In the same order, the DTI partially granted petitioners' prayer for the issuance of a writ of preliminary injunction. The pertinent portions of the DTI Order state:

DETERMINATION OF SIMILARITY IN GENERAL APPEARANCE AND LIKELIHOOD OF CONFUSION; PRODUCT COMPARISON; USUAL PURCHASER

x x x [L]et us now determine if there is similarity in general appearance between Tabacalera products and Respondents' products, such that it will likely mislead, confuse or deceive the usual purchasers of cigars into buying Respondents' products thinking that what they are buying are the Tabacalera products they intended to buy.

The competing products should be viewed in their totality. But certain features, have to be excluded first. That is what the Supreme Court did in determining similarity between SAN MIGUEL PALE PILSEN (of San Miguel Corporation) and BEER PALE PILSEN (of Asia Brewery, Inc.) in the case of *Asia Brewery, Inc. vs. C.A. and San Miguel Corp.* (G.R. No. 103543, prom. July 5, 1993). In said case, the Supreme Court found that the two competing beer products have certain features in common. Therefore, the two competing products are similar as far as those features are concerned. But the Supreme Court excluded said features. Apparently the Court wanted to distinguish between "similarity as a matter of fact" and "similarity as a matter of law," the latter having a limited scope considering the many exclusions that have to be made. Hereunder are the said features and the reasons cited by the Supreme Court for their exclusion:

COMMON FEATURES	REASONS FOR EXCLUSION
1. The container si steinie bottle.	It is a standard type of bottle and therefore lacks exclusivity. It is of functional or common use. It is universally used.
2. The color of the bottle is amber.	It is a functional feature. Its function is to prevent the transmission of light into the said bottle and thus protect the beer inside the bottle.

3. The phrase “pale pilsen” is carried in their respective trademark.	This phrase is a generic one even if included in their trademarks.
4. The bottle has a capacity of 320 ML and is printed on the label.	It is a metrication and standardization requirement of the defunct Metric System Board (now a function of the Bureau of Product Standards, DTI).
5. The color of the words and design on the label is white.	It is the most economical to use on the label and easiest to bake in the furnace. Hence, a functional feature.
6. Rectangular shape of the label.	It is the usual configuration of labels.
7. The bottle’s shape is round with a neck.	It is commonly and universally used.

In the same case of Supreme Court stated the following, citing Callman, Unfair Competition, Trademarks and Monopolies:

> “Protection against imitation should be properly confined to non-functional features. Even if purely functional elements are slavishly copied, the resemblance will not support an action for unfair competition, and the first user cannot claim secondary meaning protection. Nor can the first user predicate his claim in reliance of any such unpatented functional feature, even at large expenditure of money.”

Following the Supreme Court’s way of determining similarity, OLA will exclude the features which arise from industry practices of cigar manufacturers worldwide, features commonly used by cigar manufacturers, standard features, functional features, features arising from labeling rights and obligations, and generic words and phrases. All of these features have been listed and/or discussed above. Now this needs clarification. When we say that we are excluding the logo because it is a functional and universal feature, what we mean to say is that, the fact that both products bear a logo (and therefore

they are similar in that respect), will be excluded; but the design, words, drawings of the respective logo of the contending parties will be considered. This clarification is also true for the other excluded features.

Before we view the products in their totality, we will first compare the products as to their respective details. The competing products of the Parties consist of around thirty-two (32) wooden boxes. We note the following glaring differences/distinctions:

1. As to the logo engraved on the top and/or back of the cover of the box:

TABACALERA'S:

Tabacalera uses two variants of their logo, one for the ordinary plywood boxes and another for the narra boxes. The logo on the ordinary plywood box is as follows:

There are word/phrases thereon, namely:

1st line – the brand "TABACALERA" (in big letters);

2nd line – the representation "THE FINEST CIGARS SINCE 1881";

3rd line – the representation "HAND MADE 100% TOBACCO";

4th line – the address "MANILA, PHILIPPINES";

5th line – the code "A-4-2".

Between the 2nd line and 3rd line is inscribed the crest and coat of arms of Tabacalera which consists of a shield placed vertically, and divided into 4 parts with inscriptions/drawings in each part. Within the center of the shield is an oval vertically placed with drawings in it. The crest consists of the uppermost part of a watchtower used in ancient times in watching for enemies coming.

As regards the logo on the narra boxes, it is oblong or egg-shaped, in two parallel lines interrupted at its sides with semi-oblong two parallel lines and inscripted within such latter parallel lines on the left side is "100% TABACO" and on the right side "HECHO A MANO". On the lower portion between the oblong lines are the words "COMPANIA

GENERAL DE TABACOS DE FILIPINAS – MANILA, PHILIPPINES, A-4-2." Within the center of the smaller oblong is inscribed the crest and coat (described already above). At each side of the crest/coat are tobacco leaves tied together. On top of the crest is the corporate name "LA FLOR DE LA ISABELA" and this makes the logo confusing because it does not explain the respective role of the two firms mentioned in the logo, such as which one is the manufacturer, the distributor, the licensor, licensee, and trademarks owner.

RESPONDENTS':

A bar curved into a U-shape. It is flanked at the bottom and on its sides with tobacco leaves curved into a "U" also and joined together as in a "laurel". Engraved at the center of said bar is the coat consists of a "shield", on top of which is the crest consists of a prince's crown with a cross on top. The "shield" is divided at its center by a line drawn horizontally with small circles marked at intervals. At the upper portion of said dividing line is a rooster (adopted by Mr. Ripoll from the coat of arms of his clan – Exh. "48") and the lower portion contains three tobacco leaves (representing Mr. Ripoll's 3 sons) joined into one. Encircling the crest and coat is the corporate name "TABAQUERIA DE FILIPINAS, INC." as well as the brand "FLOR DE MANILA". Immediately below the leaves shaped as in a "laurel" is the phrase "HECHO A MANO 100% TOBACO".

2. As to the brand of the product:

TABACALERA'S:

The brand "TABACALERA" is printed in big white Roman letters with black shadows on a red rectangular background, and the latter is set over a gold and red rectangular background with a design which appears to be an inverted letter "Z" leaning to the right side, and said "Z" is used repeatedly forming a "chain" that surrounds the said red background. Said "Z" also fills the left and right sides of the label. The same brand and markings appear on three sides of the box. The back side bears the Government Warning that cigar smoking is dangerous to health.

The brand "FLOR DE MANILA" is not used on Tabacalera's products except on a cardboard pack of cigars, which is just slightly bigger than a pack of 100 mm cigarettes. (Exh. "DD").

RESPONDENTS':

The brand "FLOR DE MANILA" is printed in red letters with black shadows on a white rectangular background, and the latter is set over a gold rectangular background filled with a red design that looks like the letter "P" with its head touching the ground. These brand and markings appear on two sides of the box. The other two sides are occupied by the seal of guaranty and by the said Government Warning.

Both Complainants and Respondents have no trademark registration yet of the brand "Flor de Manila".

3. As to markings on edges of ordinary plywood box:

TABACALERA'S:

The phrase "FLOR FINA" is printed in red Roman letters over a white rectangular background, and the latter is set over a red background with 2 parallel gold lines and the above-mentioned "Z" design in gold used repeatedly forming a straight chain. A tiny company logo colored blue and yellow is marked at intervals.

RESPONDENTS':

The phrase "TABACO FINO" is printed in red letters with strokes that resemble those in Chinese letters, on a white rectangular background, and the latter is set over a gold background with red designs that look like ornate letters "X" and "J". A tiny company logo is marked at intervals.

4. As to "seal of guaranty":

TABACALERA'S:

Colored green and white; with the phrase "REPUBLIC OF THE PHILIPPINES" in big letters and the phrase "sello de garantia de la Flor de la Isabela, Inc."; pasted horizontally at the middle of the left portion of the cigar box if viewed from its top.

RESPONDENTS':

Colored gold and red; with the phrase in big letters "sello de garantia"; bears in big print the company logo; pasted vertically at the middle of the left portion of the cigar box if viewed from its top.

5. As to predominant colors:

TABACALERA'S:

Red, gold, and green, in that order. Has blue and yellow.

RESPONDENTS':

Gold and red, in that order. No green, blue and yellow.

6. Other differences/distinctions

Tabacalera products have the following features:

a. The corporate name "LA FLOR DE LA ISABELA" (engraved on the narra wood boxes; also printed on the seal of guaranty).

b. The brand "TABACALERA" surrounded by said "Z" design.

c. The representation "THE FINEST CIGARS SINCE 1881."

d. The address "MANILA, PHILIPPINES".

e. The code "A-4-2".

f. The phrase "REPUBLIC OF THE PHILIPPINES" in the seal of guaranty. Below said phrase is a mountain which resembles the mountain printed in the old Philippine money. This appears to be a misrepresentation that the Philippine government is a co-guarantor in the seal of guaranty. This seal of guaranty was possibly copied from the seal of guaranty of Cuban-made boxes of cigars. But in Cuba, the government really guarantees the cigars made in Cuba because cigars are one of the main exports of that country. In the Philippines, the government does not guaranty cigars made in the Philippines.

g. The phrase "FLOR FINA" with the said "Z" design.

These seven (7) features are NOT found in Respondents' products.

One of the rules in adjudicating unfair competition cases was laid down by the Supreme Court in the case of *Del Monte Corp. vs. C.A. et al.* (181 SCRA 410) as follows:

> We note that respondent court failed to take into consideration several factors which should have affected its conclusion, to wit: age, training and education of the usual purchaser, the nature and cost of the article, whether the article is bought for immediate consumption and also the condition under which it is usually purchased. Among those, what essentially determines the attitude of the purchaser, specifically his inclination to be cautious, is the cost of the goods. To be sure, a person who buys a box of candies will not exercise as much care as one who buys an expensive watch. As a general rule, an ordinary buyer does not exercise as much prudence in buying an article for which he pays a few centavos as he does in purchasing a more valuable thing. Expensive and valuable items are normally bought after deliberate, comparative and analytical investigation. But mass products, low priced articles as in wide use, and the matters of everyday purchase requiring frequent replacement are bought by the causal consumer without great care.

Certainly, not everybody buys cigars. Very few people buy cigars for they are expensive, have health implications, and its smoke annoys non-smokers. It is really not the "sari-sari" store variety. OLA takes judicial notice that even big department stores and malls do not ordinarily sell cigars. The usual purchasers of cigars are older people not necessarily an elder or professional, besides those cigar aficionados and cigar lovers, who are able and willing to pay and are capable of discerning the products they buy. Definitely the "impulse buyers" (those who make a very quick decision (*e.g.*, 6 seconds) to buy a certain product) are not the usual purchasers of cigars.

"The ordinary purchasers must be thought of as having, and credited with, at least a modicum of intelligence to be able to see the obvious differences between the two trademarks in question." (*Fruit of the Loom, Inc. vs. C.A.,* 133 SCRA 405). From this Supreme Court decision we can say that if the buyer can see the obvious differences between two trademarks, there is more reason for him to see the obvious differences of the whole of the two products themselves even if sold at a glance.

Viewing briefly the competing products in their totality, the two are readily distinguished by their respective brand as

appearing in the box: "TABACALERA" is the brand of the Tabacalera products while "FLOR DE MANILA" is the brand of Respondents' products. In fact, per Certification of BIR dated March 15, 1994, "Flor de Manila" is the brand registered by the Respondents with said bureau (Annex "B", Answer). The Complainants allege in the Complaint (Par. 1.12) that Respondents are using the word "TABAQUERIA" as the brand of their products. This allegation is belied by an inspection of the boxes of Respondents – none of them shows that the word "TABAQUERIA" was detached from the firm name "TABAQUERIA DE FILIPINAS, INC." and used separately as a brand. Also readily distinguishing the two products are their respective distinctive logo: Tabacalera's logo is quite big and ornate while Respondents' logo is quite small and simple. Their respective seal of guaranty are also conspicuous. Tabacalera's seal of guaranty is colored green and white and pasted horizontally while that of Respondents is colored gold and red and pasted vertically. The other glaring differences between the two, which we have listed above, are revealed at once upon a brief look at the competing products.

Confusion becomes more remote when we consider the usual buyers of cigars. We have already discussed that above. They know their brand and they will not be confused by the various words, marks, and designs on the products. This is specially true for purchasers who have been using Tabacalera products for a long time (Tabacalera products have been available since 1881 [per logo of Tabacalera] or 1917 [per Complaint]), and therefore know very well their favorite brand.

If they switch to Respondents' products, it is not because they are deceived and confused but because they find Respondents' products to their taste.

We should also consider that cigars are expensive. Hereunder are sample prices of Respondents' products (Exhs. "EEE" and "III"):

a.	Chest Coronas Largas 25	-	₱ 619.75
b.	Corona 50	-	739.75
c.	Corona Largas 50	-	959.75
d.	Corona Humidor De Luxe 50	-	1,749.75

Tabacalera products are priced higher. The point we are driving at is that with these high prices (which are like prices of wrist watches,

electric fans, tape recorders, and other electrical/electronic appliances), the usual purchasers will be cautious in buying and he will give the product he is buying that examination that corresponds to the amount of money that he will part with.

Therefore, there is definitely no similarity in the general appearance of the competing products and hence there is no likelihood that purchasers will be [misled], deceived and confused into buying Respondents' products thinking that they are buying the Tabacalera products that they intended to buy.

Complainants allege in their Complaint that they have been using the trademark (brand) "FLOR DE MANILA" for their products since 1992. However, Complainants presented only a pack of cigars made by La Flor de la Isabela, Inc., with the brand "Flor de Manila," colored white and gray, and the size is just slightly bigger than a pack of 100 mm. cigarettes. (Exh. "DD"). Buyers cannot possibly make the mistake of buying Respondents' wooden boxes of cigars thinking that what they are buying is this carton pack of cigars of La Flor de la Isabela, Inc.

x x x x x x x x x

In view of all the foregoing, the injunction prayed for cannot be granted *in toto* but only partially, i.e., with respect to the barrel type of container, the existence of which has to be explained and justified further by Respondents, and certain features in the packaging which are confusingly similar to the containers/packaging of Complainants' products x x x.[16] (Emphasis supplied.)

The DTI disposed of the complaint this way:

WHEREFORE:

1. Respondents are hereby enjoined and restrained from further manufacturing and using the wooden barrel type of container as container for their cigars (typified by Exh. "DDD-1"). However, current stocks thereof, which are in their finished – product state, now in possession of Respondents' distributors or retailers may be sold/disposed of in the ordinary course of business, but those still in the possession of Respondents shall be transferred to the box containers.

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[16] *Id.* at 109-115, 119.

2. In connection with the label used on the sides of the boxes (which contain the dominant colors gold and red), Respondents are ordered to:

   a. change either the gold or the red with another color (not blue); or

   b. maintain the said gold and red color combination but add another dominant color (not blue). This injunction no. 2 covers only products yet to be manufactured and not products which are already in the possession of Respondents' distributors/ retailers. This injunction is for the purpose only of making said label of Respondents very distinct.

3. In connection with the narra wood boxes, Respondents are ordered to make distinctive and conspicuous etchings/engravings on the top and/or sides of the said bozes. The etchings/engravings thereon (which are stripe/s) shall be transferred to other exterior parts of the boxes or done away with. This injunction no. 3 covers only products yet to be manufactured and not products which are already in their finished-product state and already in the possession of Respondents' distributors/retailers. This injunction is for the purpose only of making said narra wood boxes of Respondents very distinct, hence, the present boxes can no longer be used by Respondents unless the above-stated changes thereon, as herein ordered, are complied with.

x x x x x x x x x

SO ORDERED.[17]

On June 10, 1996, petitioners filed a Motion for Reconsideration dated June 4, 1996[18] of the above Order contending that: (1) the DTI erroneously passed upon the entire merits of the case where the only pending issue for resolution is the issuance of a preliminary injunction; (2) the findings of facts of the Order are not in accordance with the evidence presented by the parties; and (3) the DTI misapplied the law and jurisprudence applicable on the issues in the instant case. The Motion was denied by the DTI in an Order dated December 10, 1996.[19]

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[17] *Id.* at 120-121.

[18] *Id.* at 122-133.

[19] *Id.* at 141-143.

Thus, on December 26, 1996, petitioners filed a Petition for *Certiorari* (With Urgent Application for Temporary Restraining Order and/or Writ of Preliminary Injunction) dated December 19, 1996[20] with the CA. Petitioners raised substantially the same issues as in their Motion for Reconsideration dated June 4, 1996. The case was docketed as CA-G.R. SP No. 42881 entitled *Compania General de Tabacos de Filipinas and La Flor de la Isabela, Inc. v. Hon. Virgilio A. Sevandal, as Director and DTI Adjudication Officer, Atty. Ruben S. Extramadura,as Hearing Officer – Office of the Legal Affairs, Department of Trade and Industry, Tabaqueria De Filipinas, Inc. and Gabriel Ripoll, Jr.*

The CA, thus, issued the assailed decision dated June 16, 2003 wherein it determined the issues as:

1) Whether or not the Order dated April 30, 1996 disposed of the merits of the case; and

2) Whether or not public respondent committed grave abuse of discretion in refusing to grant petitioners' prayer for injunctive relief.[21]

The CA ruled that the findings of the DTI were premature having passed upon the main issues of the case when the pending incident was only a motion for preliminary injunction. The CA added that the evidence necessary in such a hearing was a mere sampling, not being conclusive of the principal action itself. Thus, the CA ruled that the DTI had prejudged the case and that its findings were premature, to wit:

By holding thus, public respondent OLA-DTI had pre-judged the main case. In fact, there was practically nothing left for the Hearing Officer to try except for private respondents' claim for attorney's fees.

x x x x x x x x x

We therefore rule that public respondent OLA-DTI's finding was premature.[22] (Emphasis supplied)

[20] *Id.* at 144-172.

[21] *Id.* at 42.

[22] *Id.* at 43.

As to the second issue, the CA ruled that the dismissal of the infringement of trademarks and unfair competition case against respondent Ripoll, Jr., renders petitioners' right to an injunctive relief doubtful. Thus, the issuance of an injunction in that case would not be proper. The CA further ruled that petitioners failed to show that there was an urgent and paramount necessity for the issuance of the writ having failed to substantiate their claim that the abrupt drop in the sales of their products was the direct result of the acts of respondents.[23]

Thus, the CA denied the petition.[24]

The petitioners then filed a Motion for Reconsideration dated July 4, 2003[25] to the above decision. This motion was denied for lack of merit in the assailed resolution.

Hence, we have this petition.

The Court's Ruling

This petition must be denied.

The Issues

I.

The Court of Appeals gravely erred in not declaring the Orders of Public Respondent dated 30 April 1996 and 10 December 1996 as completely null and void for having been rendered with Grave Abuse of Discretion amounting to Lack [or] Excess of Jurisdiction.

II.

The Court of Appeals gravely erred in not ruling that the invasion of/to petitioners' rights are substantial and material.

III.

The Court of Appeals gravely erred in ruling that the petitioners' right to the exclusive use of the Tabacalera Trademarks and Design was not shown to be clear and unmistakable.

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[23] *Id.* at 44.

[24] *Id.* at 45.

[25] *Id.* at 173-183.

IV.

The Court of Appeals gravely erred in ruling that there is no urgent and paramount necessity for the issuance of a writ of injunction.[26]

The Orders of the DTI were not rendered in grave abuse of discretion amounting to lack of or in excess of jurisdiction

Petitioners argue that because the CA ruled that the DTI had prejudged the main case, the Decision of the DTI was, therefore, issued in grave abuse of discretion amounting to lack of or in excess of jurisdiction. Thus, petitioners conclude that the DTI Orders dated April 30, 1996 and December 10, 1996 must be considered as null and void.[27]

There is no merit in such contention.

In *First Women's Credit Corporation v. Perez*,[28] we defined grave abuse of discretion as:

By grave abuse of discretion is meant such capricious and whimsical exercise of judgment which 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 or hostility.

We further clarified such principle later in *Buan v. Matugas*:[29]

There is grave abuse of discretion only when there is a capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, such as where the power is exercised in an arbitrary and despotic manner by reason of passion and personal hostility, and it must be so patent or gross as to constitute an evasion of a positive duty or a virtual refusal to perform the duty or to act at all in contemplation of law. **Not every error in the proceedings, or**

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[26] *Id.* at 19.

[27] *Id.* at 20.

[28] G.R. No. 169026, June 15, 2006, 490 SCRA 774, 777-778.

[29] G.R. No. 161179, August 7, 2007, 529 SCRA 263, 270-271.

every erroneous conclusion of law or fact, is grave abuse of discretion. (Emphasis supplied)

Petitioners must prove that the elements above-mentioned were present in the rendering of the questioned Orders of the DTI in order to establish grave abuse of discretion. The mere fact that the CA ruled that the DTI prejudged the main case filed before it does not by itself establish grave abuse of discretion.

Moreover, there is no grave abuse of discretion in the instant case because the DTI merely tried to justify the issuance of the writ of preliminary injunction. Sometimes a discussion in passing of the issues to be resolved on the merits is necessary in order to deny or grant an application for the writ. This cannot, however, be considered as a whimsical or capricious exercise of discretion.

The next three issues shall be discussed simultaneously for being interrelated.

Petitioners failed to establish that they are entitled to a writ of preliminary injunction

Section 3 of Rule 58 provides for the grounds for the issuance of a preliminary injunction:

Sec. 3. *Grounds for issuance of preliminary injunction.* - A preliminary injunction may be granted when it is established:

(a) That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually;

(b) That the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or

(c) That a party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.

Thus, the Court has repeatedly held that, in order that an injunctive relief may be issued, the applicant must show that: "(1) the right of the complainant is clear and unmistakable; (2) the invasion of the right sought to be protected is material and substantial; and (3) there is an urgent and paramount necessity for the writ to prevent serious damage."[30]

In establishing the above elements, it bears pointing out that the Court used the term "and" in enumerating the said elements. In *Mapa v. Arroyo*,[31] this Court defined the term "and" as follows:

In the present case, the employment of the word "and" between "facilities, improvements, infrastructures" and "other forms of development," far from supporting petitioner's theory, enervates it instead since it is basic in legal hermeneutics that "and" is not meant to separate words but is a conjunction used to denote a joinder or union.

While in *Republic v. David*,[32] we applied the above definition with regard an enumeration of conditions or requisites in this wise:

The conditions that were allegedly violated by respondent are contained in paragraph 10 of the Deed of Conditional Sale, as follows:

"10. The Contract shall further [provide] the following terms and conditions:

x x x x x x x x x

(c) The VENDEE, and his heirs and/or successors, shall actually occupy and be in possession of the PROPERTY at all times"

x x x x x x x x x

The use of the conjunctive and in subparagraph (c) is not by any chance a surplusage. Neither is it meant to be without any legal

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[30] *Boncodin v. National Power Corporation Employees Consolidated Union (NECU)*, G.R. No. 162716, September 27, 2006, 503 SCRA 611, 622-623; *Lim v. Court of Appeals*, G.R. No. 134617, February 13, 2006, 482 SCRA 326, 331; *Tayag v. Lacson*, G.R. No. 134971, March 25, 2004, 426 SCRA 282, 299.

[31] G.R. No. 78585, July 5, 1989, 175 SCRA 76, 83.

[32] G.R. No. 155634, August 16, 2004, 436 SCRA 577, 584-586.

signification. Its use is confirmatory of the restrictive intent that the houses provided by petitioner should be for the exclusive use and benefit of the SSS employee-beneficiary.

It is easily discernible, therefore, that both "actual occupancy" and "possession at all times" — not just one or the other — were imposed as conditions upon respondent. The word and — whether it is used to connect words, phrases or full sentences — must be accepted in its common and usual meaning as "binding together and as relating to one another." And implies a conjunction, joinder or union. (Emphasis supplied)

In the instant case, the import of the use of the term "and" means that all of the elements mentioned above must concur in order that an injunctive writ may be issued. The absence of even one of the elements would be fatal in petitioners' application for the writ.

In finding that the third element was absent, that there is no urgent and paramount necessity for the writ to prevent serious damage to petitioners, the CA ruled that:

Second, petitioners have failed to show that there is an urgent and paramount necessity for the issuance of writ of injunction to prevent serious damage. In *Olalia vs. Hizon* (196 SCRA 665, 672), the Supreme Court held:

> "While, to reiterate, the evidence to be submitted at the hearing on the motion for preliminary injunction need not be conclusive and complete, we find that the private respondent has not shown, at least tentatively, that she has been irreparably injured during the five month period the petitioner was operating under the trade name of Pampanga's Pride. On this ground alone, we find that the preliminary injunction should not have been issued by the trial court. It bears repeating that as a preliminary injunction is intended to prevent irreparable injury to the plaintiff, that possibility should be clearly established, if only provisionally, to justify the restraint of the act complained against. No such injury has been shown by the private respondent. Consequently, we must conclude that the issuance of the preliminary injunction in this case, being utterly without basis, was tainted with grave abuse of discretion that we can correct on *certiorari*."

In the case at bench, petitioner failed to substantiate their claim that the abrupt drop in sales was the result of the acts complained of against private respondent.[33] (Emphasis supplied.)

Petitioners claim that as a result of private respondents' "fraudulent and malicious entry into the market, Petitioners' sales dropped by twenty-five [percent] (25%)."[34]

Petitioners further aver that the writ of preliminary injunction is necessary as the general appearance of private respondents' products is confusingly similar to that of petitioners' products. Petitioners claim that this has resulted in a marked drop in their sales. Thus, petitioners argue that unless private respondents use similar marks, packaging, and labeling as that of petitioners' products, they will continue to suffer damages.[35]

Petitioners' postulations are bereft of merit.

Petitioners failed to present one iota of evidence in support of their allegations. They failed to present evidence that indeed their sales dropped by an alleged 25% and that such losses resulted from the alleged infringement by private respondents. Without presenting evidence to prove their allegations, petitioners' arguments cannot be given any merit. Thus, we ruled in *Olalia v. Hizon*:[36]

A preliminary injunction is an order granted at any stage of an action prior to final judgment, requiring a person to refrain from a particular act. As the term itself suggest, it is merely temporary, subject to the final disposition of the principal action. The justification for the preliminary injunction is urgency. It is based on evidence tending to show that the action complained of must be stayed lest the movant suffer irreparable injury or the final judgment granting him relief sought become ineffectual. Necessarily, that evidence need only be a "sampling," as it were, and intended merely to give the court an idea of the justification for the preliminary injunction pending the decision of the case on the merits. The evidence submitted

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[33] *Rollo*, p. 44.

[34] *Id.* at 10.

[35] *Id.* at 27.

[36] G.R. No. 87913, May 6, 1991, 196 SCRA 665, 669.

at the hearing on the motion for the preliminary injunction is not conclusive of the principal action, which has yet to be decided.

Due to the absence of the third requisite for the issuance of a preliminary injunction, petitioners' application for the injunctive writ must already fail; the absence or presence of the other requisites need no longer be discussed.

Such denial is grounded on the oft-repeated principle enunciated in *Vera v. Arca*,[37] where this Court held that:

As far back as March 23, 1909, more than 60 years ago, this Court, in the leading case of *Devesa v. Arbes*, made the categorical pronouncement that the issuance of an injunction is addressed to the sound discretion of the Court, the exercise of which is controlled not so much by the then applicable sections of the Code of Civil Procedure, now the Rules of Court, but by the accepted doctrines, one of which is that it should not be granted while the rights between the parties are undetermined except in extraordinary cases where material and irreparable injury will be done. For it is an action in equity appropriate only when there can be no compensation in damages for the injury thus sustained and where no adequate remedy in law exists. Such a holding reflected the prevailing American doctrine that there is no power "the exercise of which is more delicate, which requires greater caution, deliberation and sound discretion or more dangerous in a doubtful case," being "the strong arm of equity, that never ought to be extended," except where the injury is great and irreparable.

While in *Olalia*,[38] we reiterated the above ruling, as follows:

It has been consistently held that there is no power the exercise of which is more delicate, which requires greater caution, deliberation and sound discretion, or more dangerous in a doubtful case, than the issuance of an injunction. It is the strong arm of equity that should never be extended unless to cases of great injury, where courts of law cannot afford an adequate or commensurate remedy in damages.

Every court should remember that an injunction is a limitation upon the freedom of action of the defendant and should not be granted

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[37] No. L-25721, May 26, 1969, 28 SCRA 351, 358-359.

[38] *Supra* note 36, at 672-673.

lightly or precipitately. It should be granted only when the court is fully satisfied that the law permits it and the emergency demands it.

We again ruled in *Hernandez v. National Power Corporation*:[39]

> At times referred to as the "Strong Arm of Equity," we have consistently ruled that there is no power the exercise of which is more delicate and which calls for greater circumspection than the issuance of an injunction. It should only be extended in cases of great injury where courts of law cannot afford an adequate or commensurate remedy in damages; "in cases of extreme urgency; where the right is very clear; where considerations of relative inconvenience bear strongly in complainant's favor; where there is a willful and unlawful invasion of plaintiff's right against his protest and remonstrance, the injury being a continuing one, and where the effect of the mandatory injunction is rather to reestablish and maintain a preexisting continuing relation between the parties, recently and arbitrarily interrupted by the defendant, than to establish a new relation." (Emphasis supplied)

Clearly, it was incumbent upon the petitioners to support with evidence their claim for the issuance of a preliminary injunction. They failed to do so. Hence, the instant petition must fail.

WHEREFORE, the petition is hereby *DENIED.* The assailed June 16, 2003 Decision and December 1, 2003 Resolution of the CA in CA-G.R. SP No. 42881 are *AFFIRMED.* Costs against petitioners.

SO ORDERED.

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

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[39] G.R. No. 145328, March 23, 2006, 485 SCRA 166, 181.

SPECIAL THIRD DIVISION

[G.R. No. 167809. July 23, 2009]

LANDBANK OF THE PHILIPPINES, *petitioner, vs.* **JOSEFINA R. DUMLAO, A. FLORENTINO R. DUMLAO, JR., and STELLA DUMLAO-ATIENZA, and NESTOR R. DUMLAO, represented by Attorney-in-Fact, A. Florentino R. Dumlao, Jr.,** *respondents.*

SYLLABUS

1. **POLITICAL LAW; CONSTITUTIONAL LAW; EMINENT DOMAIN; DETERMINATION OF JUST COMPENSATION; RULING IN THE CASE OF *GABATIN*, NOT APPLICABLE. —** Petitioner insists that the pronouncement in *Gabatin v. Land Bank of the Philippines* should guide the Court in settling the issue as to what constitutes just compensation for the lands covered by Presidential Decree (PD) No. 27. Petitioner contends that in *Gabatin*, this Court applied the formula prescribed in PD No. 27 and Executive Order (EO) No. 228 for computing the Land Value (LV) of properties covered by PD No. 27. Petitioner now insists that we use the same formula in the present case. However, petitioner's reliance on *Gabatin* is clearly misplaced. It bears noting that *Gabatin* revolved around two issues absent in the present case: *i.e.*, which amount is applicable in determining the Government Support Price (GSP) for *palay*, and whether the same shall be pegged at the time of the taking of the properties. Petitioners in that case did not question the applicability of the formula prescribed in PD No. 27 and in EO No. 228, unlike respondents herein. Hence, *Gabatin* cannot apply to the controversy in the case at bar.

2. **ID.; ID.; ID.; ID.; DETERMINATION OF JUST COMPENSATION IS A JUDICIAL PREROGATIVE. —** [T]he determination of just compensation in cases of expropriation is a judicial prerogative. In *Export Processing Zone Authority v. Dulay*, this Court succinctly, yet clearly, explained: The determination of "just compensation" in eminent domain case is a judicial function. The executive department or the legislature may make the initial determinations, but when a party claims a violation of the guarantee in the Bill of Rights that private

property may not be taken for public use without just compensation, no statute, decree, or executive order can mandate that its own determination shall prevail over the court's findings. Much less can the courts be precluded from looking into the "just-ness" of the decreed compensation.

3. ID.; ID.; ID.; ID.; SITUATION WHERE SECTION 17 OF R.A. 6657 CAN BE APPLIED RETROSPECTIVELY. — [T]he Court has repeatedly held that **if just compensation was not settled prior to the passage of RA No. 6657, it should be computed in accordance with said law, although the property was acquired under PD No. 27**. At the risk of being repetitive, we explain again that Section 17 of RA No. 6657 is made to apply only if the amount of just compensation of lands acquired through PD No. 27 remains unresolved despite the passage of RA No. 6657. It is only in such a case, and to such extent only, that this provision on the determination of just compensation in the Comprehensive Agrarian Reform Law (CARL) of 1988 is made to apply retrospectively.

APPEARANCES OF COUNSEL

LP Legal Services Group for petitioner.
A. Florentino R. Dumlao, Jr. for respondents.

R E S O L U T I O N

NACHURA, *J*.:

For resolution is the Motion for Reconsideration[1] filed by petitioner Land Bank of the Philippines on January 5, 2009 from the Decision[2] of this Court dated November 27, 2008, affirming the February 16, 2005 Decision[3] of the Court of Appeals (CA).

We find that petitioner did not raise substantially new grounds to justify the reconsideration sought. Petitioner merely reiterated

[1] *Rollo*, pp. 294-313.

[2] *Id.* at 265-293.

[3] *Id.* at 60-74.

the arguments already passed upon by this Court. Thus, no cogent reason exists to warrant a reconsideration of this Court's Decision.

This notwithstanding, we will discuss hereunder the arguments raised by petitioner in its motion for reconsideration in order to put a closure to the controversy.

Petitioner insists that the pronouncement in *Gabatin v. Land Bank of the Philippines*[4] should guide the Court in settling the issue as to what constitutes just compensation for the lands covered by Presidential Decree (PD) No. 27.[5] Petitioner contends that in *Gabatin*, this Court applied the formula prescribed in PD No. 27 and Executive Order (EO) No. 228[6] for computing the Land Value (LV) of properties covered by PD No. 27. Petitioner now insists that we use the same formula in the present case.

However, petitioner's reliance on *Gabatin* is clearly misplaced. It bears noting that *Gabatin* revolved around two issues absent in the present case: *i.e*., which amount is applicable in determining the Government Support Price (GSP) for *palay*, and whether the same shall be pegged at the time of the taking of the properties.[7] Petitioners in that case did not question the applicability of the formula prescribed in PD No. 27 and in EO No. 228, unlike respondents herein. Hence, *Gabatin* cannot apply to the controversy in the case at bar.

Moreover, the determination of just compensation in cases of expropriation is a judicial prerogative. In *Export Processing*

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[4] 486 Phil. 366 (2004).

[5] Decreeing the Emancipation of Tenants from the Bondage of the Soil Transferring to Them the Ownership of the Land They Till and Providing the Instruments and Mechanisms Therefor (Issued on October 21, 1972).

[6] Declaring Full Land Ownership to Qualified Farmer Beneficiaries Covered by Presidential Decree No. 27, Determining the Value for Remaining Unvalued Rice and Corn Lands Subject of P.D. No. 27, and Providing for the Manner of Payment by the Farmer Beneficiary and Mode of Compensation to the Landowner (Issued on July 17, 1987).

[7] *Supra* note 1 at 283.

Zone Authority v. Dulay,[8] this Court succinctly, yet clearly, explained:

> The determination of "just compensation" in eminent domain case is a judicial function. The executive department or the legislature may make the initial determinations, but when a party claims a violation of the guarantee in the Bill of Rights that private property may not be taken for public use without just compensation, no statute, decree, or executive order can mandate that its own determination shall prevail over the court's findings. Much less can the courts be precluded from looking into the "just-ness" of the decreed compensation.[9]

Petitioner likewise maintains that this Court ruled that Republic Act (RA) No. 6657 is the principal law governing the determination of just compensation for lands acquired pursuant to PD No. 27[10] which, in effect, gave RA No. 6657 a retroactive effect.[11]

Petitioner's conclusion unduly stretches the Court's pronouncement in its November 27, 2008 Decision. What we simply said was:

> Due to the divergent formulae or guidelines presented by these laws,[12] a number of cases have already been brought to the Court regarding which law applies in computing just compensation for landholdings acquired under PD No. 27. On this score, the Court has repeatedly held that **if just compensation was not settled prior to the passage of RA No. 6657, it should be computed in accordance with said law, although the property was acquired under PD No. 27**.[13] (Emphasis supplied)

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[8] G.R. No. 59603, April 29, 1987, 149 SCRA 305.

[9] *Id.* at 316.

[10] *Rollo*, p. 302.

[11] *Id.*

[12] Referring to PD No. 227, EO No. 228, and RA No. 6657.

[13] *Rollo*, p. 274.

At the risk of being repetitive, we explain again that Section 17 of RA No. 6657[14] is made to apply only if the amount of just compensation of lands acquired through PD No. 27 remains unresolved despite the passage of RA No. 6657. It is only in such a case, and to such extent only, that this provision on the determination of just compensation in the Comprehensive Agrarian Reform Law (CARL) of 1988 is made to apply retrospectively.

WHEREFORE, premises considered, the Motion for Reconsideration filed by petitioner Land Bank of the Philippines is *DENIED.* The case is *REMANDED* to the trial court for final determination of just compensation long due the herein respondents.

SO ORDERED.

Ynares-Santiago (Chairperson), Quisumbing,[*] *Carpio,*[*] and *Chico-Nazario, JJ.,* concur.

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[14] Section 17 of RA No. 6657, otherwise known as the Comprehensive Agrarian Reform Law (CARL) of 1988, reads in full:

Sec. 17. *Determination of Just Compensation*. – In determining just compensation, the cost of acquisition of the land, the current value of the like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, and the assessment made by government assessors shall be considered. The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property as well as the non-payment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation.

[*] Additional members, per Raffle dated May 11, 2009.

SECOND DIVISION

[G.R. No. 174370. July 23, 2009]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **WILLY MARDO GANOY *y* MAMAYABAY,** *appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINALITY OF THE FACTUAL FINDINGS OF THE TRIAL JUDGE THEREON. —** The evaluation of the credibility of witnesses in rape cases is addressed to the sound discretion of the trial judge whose conclusion deserves much weight and respect because he/she has the direct opportunity to observe them on the stand and ascertain if they are telling the truth or not.

2. **ID.; ID.; MEDICO-LEGAL REPORT FORTIFIES THE CLAIM OF RAPE. —** The presence of spermatozoa in complainant's vagina as reflected in the x x x Medico-Legal Report of her examination on the same day she claimed to have been raped all the more fortifies the case for AAA.

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.*:

On appeal is the June 30, 2006 Decision[1] of the Court of Appeals in CA-G.R. H.C.- CR No. 01196 which affirmed with modification the August 8, 2003 Decision[2] of the Regional Trial Court, Branch 172, Valenzuela City in Criminal Case No.

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[1] CA *rollo*, pp. 92-106. Penned by Justice Bienvenido L. Reyes with the concurrence of Justices Regalado E. Maambong and Enrico A. Lanzanas.

[2] Records, pp. 57-62.

222-V-02 finding Willy Mardo Ganoy *y* Mamayabay (appellant) guilty beyond reasonable doubt of rape. The accusatory portion of the Information against appellant reads:

> That on or about March 28, [2002] in Valenzuela City and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, by means of force and intimidation employed upon the person of one [AAA], 17 years old, did then and there wil[l]fully, unlawfully and feloniously have carnal knowledge of said [AAA], 17 years old, thereby subjecting the said minor to sexual abuse which debased, degraded and demeaned her intrinsic worth and dignity as a human being.[3]

Gathered from the evidence for the prosecution is the following version:

In the early morning of March 28, 2002, AAA, then 17 years old and working as a waitress at *Manay's Videoke Bar* in Ugong, Valenzuela City, served two bottles of beer to appellant who had a year earlier been introduced to her by her boyfriend.[4] Since the introduction, however, appellant had made attempts to win her affection. At around 1:30 a.m., AAA boarded a tricycle on her way to a brother's residence at *Mapulang Lupa*, Valenzuela. About 70 meters away from the videoke bar, appellant flagged down the tricycle and boarded it.

Asked by appellant where she was going, AAA replied that she was going to meet her brother at his house.[5] Upon reaching the house, however, her brother was not around. The two thereupon boarded another tricycle to look for him at the Home Centrum, also in *Mapulang Lupa*.[6]

As tricycles could not enter the Home Centrum, the two alighted from the tricycle and proceeded to the inner area going towards it. On approaching a dimly lighted area, appellant

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[3] *Id.* at 1.

[4] TSN, June 17, 2002, pp. 9-19.

[5] *Id.* at 18-19.

[6] TSN, April 11, 2003, p. 20; June 26, 2002, p. 6.

suddenly grabbed AAA and dragged her to a nearby vacant lot. When AAA tried to run, appellant twisted her hands and arms and as she struggled to free herself and shouted for help, the more appellant twisted her hands and pulled her down. Her head hit a stone on the ground which rendered her dizzy. Appellant then held her by the neck, pulled out a knife which he poked at the side of her body, and warned her that "*lalagyan ng gripo ang tagiliran ko.*" Appellant then pulled down her underwear and lifted her skirt and had sexual intercourse with her against her will. He later brought her to a deserted *bodega* and held her there until daybreak.[7]

Upon her release, AAA went directly to the Paso de Blas Police Substation at the Malinta North Luzon Expressway Exit to report that she was raped. Police officers, accompanied by AAA, thus proceeded to the house of appellant where he was arrested.[8]

Dr. Winston S. Tan, Medico-Legal Officer of the Crime Laboratory in Camp Crame, Quezon City who examined AAA on the same day, March 28, 2002, concluded in his Medico-Legal Report[9] that the "findings are compatible with recent sexual intercourse" based on the following:

GENERAL AND EXTRAGENITAL:

PHYSICAL BUILT: Medium built

MENTAL STATUS: Coherent female subject

BREAST: Hemispherical in shape with dark brown areola and nipples from which no secretions could be pressed out.

ABDOMEN: Flat and soft

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[7] *Id.* at 18-25.

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

[9] Exhibit "B", Folder of Exhibits, p. 2.

PHYSICAL INJURIES: An abrasion is noted at the left costal region, measuring 9 x 2 cm, 14 cm from the posterior midline.

GENITAL:

PUBLIC [*sic*] HAIR: Abundant growth
LABIA MAJORA: Full, convex and gaping
LABIA MINORA: Pinkish brown
HYMEN: Carunculae myrtiformis
POSTERIOIR [*sic*] FOURCHETTE: Abraded
EXTERNAL VAGINAL ORIFICE: Offers slight resistance to the introduction of the examining index finger.
VAGINAL CANAL: Wide with flattened rugosities.

CERVIX: Normal in size, color and consistency.

PERIURETHRAL AND VAGINAL SMEARS: POSITIVE for spermatozoa but NEGATIVE for gram-negative diplococci.

x x x (Emphasis in the original; underscoring supplied)

For the defense, appellant and his witnesses Raulito Bato and Amy Bilamera took the witness stand.

Raulito Bato testified that before 3:00 a.m. of March 28, 2002, while he was sleeping at the warehouse located at Candido Compound, Valenzuela City which also served as the sleeping quarters of his four co-stay-in workers, he was awakened by a noise. He later saw appellant jump over the gate of the warehouse. Fifteen minutes later, he saw a girl whom he recognized as AAA, who used to go to the warehouse once a month, enter the compound. He soon heard AAA asking money from appellant.[10]

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[10] TSN, October 28, 2002, pp. 4-16.

Amy Bilamera, who was also working at the videoke bar, testified that on March 27, 2002, she saw AAA talking to appellant whom she knew to be AAA's boyfriend, AAA telling appellant that she would go to Bulacan.[11] She further testified that before the incident, AAA delivered a child on January 22, 2002 by another man but the child died.[12]

Appellant claimed that on March 28, 2002, he went to the videoke bar as instructed by AAA, his girlfriend since May 1998. He left the videoke bar at 2:00 a.m. and proceeded to the warehouse. AAA followed him as she wanted to apologize for their quarrel the night before.[13]

Appellant further claimed that he impregnated AAA but she had the child aborted, hence, she needed money to pay for hospital bills. He did not give her money, however, so she left. He then went home where he was arrested at around 6:00 a.m.[14]

Finding for AAA, the trial court ratiocinated:

The claim of the accused that he and the complainant were sweethearts is simply fantastic under the obtaining circumstance of the case. Outside of his assertion that they were sweethearts, there was no evidence adduced by the accused to show such relationship from 1998 to the day he went to the Manay Videoke Bar in the evening of March 28, 2002. No lovenote and no momento [*sic*] were presented to prove that such romantic relationship existed.

The conduct of the complainant of reporting the incident to the police right after [s]he was freed by the accused indicates the truthfulness of her claim that she was raped. The finding of the medico [-]legal officer as to the **presence of physical injuries** on the person or the complainant and the fact that she was tested **positive for spermatozoa** when she was examined a few hours after the incident corroborate the testimony of the complainant that the accused forcedfully [*sic*] imposed his sexual gratification on her.

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[11] TSN, February 7, 2003, pp. 2-5.

[12] *Id.* at 5. The prosecution presented as Exhibit "D" the Certificate of Death dated January 22, 2002 of a girl who lived only for about 8 hours.

[13] TSN, November 13, 2002, pp. 2-11.

[14] TSN, December 20, 2002, pp. 3-11.

Testifying in support of his alibi, the accused was confused and evasive. The **accused was less than categorical as to the alleged date when the complainant had an abortion of the child he had with her.** This is so because the accused never had a child with the complainant. The **accused and Bato** who was presented to corroborate the alibi of the accused **contradicted each other** as to what happened when the accused allegedly arrived at the warehouse that early morning of March 28, 2002. According to the accused, he stayed inside the warehouse immediately upon arrival and had a long conversation with another stay-in worker inside the warehouse although it was already 2:00 o'clock in the morning. This was contradicted by Bato who testified that the accused upon arrival sat on the hood of a truck apparently waiting for the arrival of the complainant who arrived later.[15] (Emphasis supplied)

By Decision of August 8, 2003,[16] the trial court found him guilty as charged, disposing as follows:

WHEREFORE, judgment is hereby rendered finding accused WILLY MARDO GANOY *y* MAMAYABAY guilty beyond reasonable doubt and as principal of the crime of rape as defined and penalized under Article 266-A in relation to Article 266-B of the Revised Penal Code and hereby sentences him to suffer the penalty of *reclusion perpetua*. Further, the accused is sentenced to pay complainant [AAA] the amount of ₱50,000.00 as moral damages without any subsidiary imprisonment in case of insolvency. Finally, the accused is sentenced to pay the costs of suit.[17] (Underscoring in the original)

This Court to which appellant appealed[18] referred the case to the Court of Appeals by Resolution of June 8, 2005[19] following *People v. Mateo.*[20]

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[15] Records, pp. 61-62.

[16] *Id.* at 57-62.

[17] *Id.* at 62.

[18] *Id.* at 64.

[19] CA *rollo*, p. 47.

[20] 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

By Decision of June 30, 2006,[21] the appellate court affirmed the trial court's decision with modification. Thus it disposed:

WHEREFORE, premises considered, the court *a quo's* Decision dated 08 August 2003 is perforce **AFFIRMED**, with the **MODIFICATION** that aside from the moral damages awarded to the victim, civil indemnity in the amount of ₱50,000.00 be likewise awarded in line with the ruling in ***People v. Calisao,* 372 SCRA 25.**[22] (Emphasis and italics in the original)

In his Supplemental Brief[23] filed before this Court, appellant, describing the testimony of AAA as not "clear, convincing and free from material contradictions," argues that his guilt has not been established beyond reasonable doubt, and that his sweetheart defense should not have been brushed aside as it is credible and corroborated by two witnesses.

The evaluation of the credibility of witnesses in rape cases is addressed to the sound discretion of the trial judge whose conclusion deserves much weight and respect because he/she has the direct opportunity to observe them on the stand and ascertain if they are telling the truth or not.[24]

In brushing aside the defense of appellant, the appellate court held:

It is an undisputed fact that on the fateful day of 28 March 2002, [AAA] was only 17 years old. Mathematically speaking, if we were made to believe accused-appellant Ganoy's claim that he and [AAA] were sweethearts in 1998, she was only barely thirteen at that time. As to ***when, where and under what circumstances*** they came to know each other, were not established by sufficient and competent evidence. In fact, in 2001 [AAA] was still studying at the Doña Remedios Trinidad High School in Angat, Bulacan. She was, therefore, far from Valenzuela

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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.

[21] CA *rollo*, pp. 92-106.

[22] *Id.* at 105.

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

[24] *People v. Ramos*, G.R. No. 172470, April 8, 2008, 550 SCRA 656, 658.

and she had not yet met accused-appellant Ganoy until 2001 when she had already stopped schooling. (***TSN, pp. 4-5, June 17, 2002***). Settled is the rule that allegations are not synonymous to proofs. In the same breath, the accused-appellant Ganoy's claim that on the occasion of the alleged rape, [AAA] was asking money from him to defray the hospitalization bill she incurred a day before due to an abortion, is simply preposterous. It would be the height of absurdity, if the same was true, that [AAA] would be able to report for work and served as a waitress until early morning of that day, if she underwent abortion. Besides, based on the medico-legal findings, there was neither evidence nor report of any unusual abrasions on [AAA]'s internal sexual organs that would prove any recent abortion. On the contrary, the fact that she was raped is conclusively buttressed by the presence of spermatozoa in her vagina.[25] (Emphasis and italics in the original; underscoring supplied)

AAA's credibility gains light from the fact that she lost no time to immediately report the commission of the rape to police authorities.[26]

The presence of spermatozoa in complainant's vagina as reflected in the above-quoted Medico-Legal Report of her examination on the same day she claimed to have been raped all the more fortifies the case for AAA.

In fine, the Court finds that appellant failed to overcome the prosecution evidence showing his guilt beyond reasonable doubt.

WHEREFORE, the June 30, 2006 Decision of the Court of Appeals in CA-GR H.C. – CR No. 01196 is *AFFIRMED.*

SO ORDERED.

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

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[25] CA *rollo*, pp. 103-104.

[26] Vide *People v. Durano*, G.R. No. 175316, March 28, 2007, 519 SCRA 466, 481; *People v. Molleda,* 462 Phil. 461, 469 (2003); *People v. Velasquez,* 399 Phil. 506, 522 (2000); *People v. Sapinoso*, 385 Phil. 382, 387 (2000); *People v. Dela Torre*, 339 Phil. 1, 15 (1997); *People v. Jaca,* G.R. No. 104628, January 18, 1994, 229 SCRA 332, 337; *People v. Grefiel*, G.R. No. 77228, November 13, 1992, 215 SCRA 596, 609.

* Additional member per Special Order No. 658.

** Additional member per Special Order No. 635.

SECOND DIVISION

[G.R. No. 177594. July 23, 2009]

UNIVERSITY OF SAN AGUSTIN, INC., *petitioner, vs.* **UNIVERSITY OF SAN AGUSTIN EMPLOYEES UNION-FFW,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; COLLECTIVE BARGAINING AGREEMENT (CBA); THE LAW BETWEEN THE PARTIES; APPLICATION. — It is a familiar and fundamental doctrine in labor law that the CBA is the law between the parties and they are obliged to comply with its provisions. If the terms of a contract, in this case the CBA, are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of their stipulations shall control. A reading of the x x x provision of the CBA shows that the parties agreed that 80% of the TIP or at the least the amount of ₱1,500 is to be allocated for individual salary increases. The CBA does not speak of any other benefits or increases which would be covered by the employees' share in the TIP, except salary increases. x x x [P]etitioner could have, during the CBA negotiations, opposed the inclusion of or renegotiated the provision allotting 80% of the TIP to salary increases alone, as it was and is not under any obligation to accept respondent's demands hook, line and sinker. Art. 252 of the Labor Code is clear on the matter x x x The records are thus bereft of any showing that petitioner had made it clear during the CBA negotiations that it intended to source not only the salary increases but also the increases in other employee benefits from the 80% of the TIP. Absent any proof that petitioner's consent was vitiated by fraud, mistake or duress, it is presumed that it entered into the CBA voluntarily, had full knowledge of the contents thereof, and was aware of its commitments under the contract.

2. ID.; ID.; ID.; RULINGS IN CEBU INSTITUTE AND *CENTRO ESCOLAR UNIVERSITY*, NOT APPLICABLE. — Contrary to petitioner's assertion, the rulings in *Cebu Institute of*

Medicine v. Cebu Institute of Medicine Employees Union-NFL and in *Centro Escolar University Faculty and Allied Workers Union-Independent v. Court of Appeals* are not applicable to the present case. In *Cebu Institute*, the Court held that SSS contributions and other benefits can be charged to the 70% and that the academic institution has the discretion to dispose of the said 70% with the precondition that the disposition goes to the payment of salaries, wages, allowances and other benefits of its personnel x x x. Significantly, this ruling was arrived at **in the absence of a CBA between the parties**, unlike in the present case. On the other hand, in *Centro Escolar University*, the issue was whether the University may source from the 70% incremental proceeds (IP) the integrated IP incorporated into the salaries of its teaching and non-teaching staff pursuant to the CBAs entered into by their union. The controversy arose because the CBA provided different types of salary increases – some sourced from the University fund and the salary increases brought about by the IP integration which are deducted from the IP. The Court held that the charging of the integrated IP against the 70% is not violative of the CBA which prohibits the deduction of the CBA-won benefits from the 70% of the IP because the integrated IP provided for in the CBAs of the teaching and the non-teaching staff is actually the share of the employees in the 70% of the IP that is incorporated into their salaries as a result of the negotiation between the university and its personnel. Clearly, the above-cited cases have totally different milieus from the case at bar.

3. **ID.; ID.; ID.; REMEDY OF AN EMPLOYER AGAINST THE EFFECTS OF CBA PROVISIONS. —** It is axiomatic that labor laws setting employee benefits only mandate the minimum that an employer must comply with, but the latter is not proscribed from granting higher or additional benefits if it so desires, whether as an act of generosity or by virtue of company policy or a CBA, as it would appear in this case. While, in following to the letter the subject CBA provision petitioner will, in effect, be giving more than 80% of the TIP as its personnel's share in the tuition fee increase, petitioner's remedy lies not in the Court's invalidating the provision, but in the parties' clarifying the same in their subsequent CBA negotiations.

APPEARANCES OF COUNSEL

Padilla Law Office for petitioner.
Mae M. Gellecanao-Laserna for USAEU-FFW.

D E C I S I O N

CARPIO MORALES, *J.*:

The University of San Agustin, Inc. (petitioner) seeks via the present petition for review on *certiorari* partial reconsideration of the Court of Appeals Decision of April 28, 2006[1] and Resolution of April 18, 2007[2] which modified the Voluntary Arbitrator's Decision dated June 16, 2003[3] and Resolution dated July 17, 2003[4] in VA Case No. 139-06-03-2003.

On July 27, 2000, petitioner forged with the University of San Agustin Employees Union-FFW (respondent) a Collective Bargaining Agreement[5] (CBA) effective for five (5) years or from July, 2000 to July, 2005. Among other things, the parties agreed to include a provision on salary increases based on the incremental tuition fee increases or tuition incremental proceeds (TIP) and pursuant to Republic Act No. 6728, The Tuition Fee Law. The said provision on salary increases reads:

ARTICLE VIII

Economic Provisions

x x x x x x x x x

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[1] Annex "A" of the Petition, *Rollo*, pp. 42-54. Penned by Associate Justice Ramon M. Bato, Jr. and concurred in by Associate Justices Arsenio J. Magpale and Isaias P. Dicdican.

[2] Annex "B" of the Petition, *id.* at 55-56. Penned by Associate Justice Isaias P. Dicdican and concurred in by Associate Justices Arsenio J. Magpale and Pampio A. Abarintos.

[3] CA *Rollo*, pp. 42-52. Penned by Voluntary Arbitrator Indalecio P. Arriola.

[4] *Id.* at 53-54. Penned by Voluntary Arbitrator Indalecio P. Arriola.

[5] *Id.* at 55-65.

Section 3. Salary Increases. The following shall be the increases under this Agreement.

SY 2000-2001 – ₱2,000.00 per month, across the board.

SY2001 -2002 - **₱1,500.00 per month or 80% of the TIP, whichever is higher, across the board.**

SY 2002-2003 - ₱1,500.00 per month or 80% of the TIP, whichever is higher, across the board. (Emphasis supplied)

It appears that for the School Year 2001-2002, the parties disagreed on the computation of the salary increases.

Respondent refused to accept petitioner's proposed across-the-board salary increase of ₱1,500 per month and its subtraction from the computation of the TIP of the scholarships and tuition fee discounts it grants to deserving students and its employees and their dependents.

Respondent likewise rejected petitioner's interpretation of the term "salary increases" as referring not only to the increase in salary but also to corresponding increases in other benefits.

Respondent argued that the provision in question referred to "salary increases" alone, hence, the phrase "₱1,500.00 or 80% of the TIP, whichever is higher," should apply only to salary increases and should not include the other increases in benefits received by employees.

Resort to the existing grievance machinery having failed, the parties agreed to submit the case to voluntary arbitration.

By Decision of June 16, 2003, Voluntary Arbitrator (VA) Indalecio P. Arriola of the Department of Labor and Employment-National Conciliation and Mediation Board, Sub-Regional Office No. VI found for respondent, holding that the salary increases shall be paid out of 80% of the TIP should the same be higher than ₱1,500. The VA ratiocinated that the existing CBA is the law between the parties, and as it is not contrary to law, morals and public policy and it having been shown that the parties entered into it voluntarily, it should be respected.

As to petitioner's deduction of scholarship grants and tuition fee discounts from the TIP, the VA ruled that it is invalid, petitioner having waived the collection thereof when it granted the same – a waiver which its employees had nothing to do with – and the employees should not be made to bear or suffer from the burden.

Petitioner's move to reconsider the VA Decision was denied by Order of July 27, 2003, hence, it appealed to the Court of Appeals.

By Decision of April 28, 2006, the appellate court sustained the VA's interpretation of the questioned CBA provision but reversed its finding on the TIP computation.

The appellate court held that the questioned CBA provision is clear and unambiguous, hence, it should be interpreted literally to mean that 80% of the TIP or ₱1,500, whichever is higher, is to be allotted for the employees' salary increases.

Respecting the deduction of scholarship grants and tuition fee discounts from the computation of the TIP, the appellate court held that by its very nature, the TIP excludes any sum which petitioner did not obtain or realize, hence, it is only fair that the same be deducted. The appellate court noted, however, that as to scholarship grants and tuition fee discounts which are fully or partly subsidized by the government or private institutions and individuals, petitioner should include them in the TIP computation.

Petitioner's motion for partial reconsideration of the appellate court's Decision on the interpretation of the questioned CBA provision, as well respondent's motion for reconsideration of the Decision on computation of the TIP, was denied.

Hence, the present petition which seeks <u>only</u> the review of the appellate court's interpretation of the questioned provision of the CBA.

Petitioner maintains that, like the VA, the appellate court erred in interpreting the questioned provision of the above-quoted Sec. 3, Art. VIII of the CBA, since Sec. 5(2) of R.A. 6728 only

mandates that 70% of the TIP of academic institutions is to be set aside for employees' salaries, allowances and other benefits, while at least 20% thereof is to go to the improvement, modernization of buildings, equipment, libraries and other school facilities.

Petitioner adds that the interpretation of the provision that 80% of the TIP should go to salary increases alone, to the exclusion of other benefits, is contrary to R.A. 6728, citing *Cebu Institute of Medicine v. Cebu Institute of Medicine Employees' Union-NFL.*[6]

Petitioner thus concludes that the general principle that the CBA is the law between the parties is unavailing as it is the law, not the stipulations of the parties, which should prevail.

Upon the other hand, respondent, in its Comment[7], maintains that the questioned provision speaks of salary increases alone and was not intended to include other benefits. It asserts that petitioner, in refusing to utilize the 80% of the TIP for salary increases alone, does not want to honor what it voluntarily and knowingly agreed upon in the CBA.

Additionally, respondent points out that petitioner never claimed that its consent to the CBA was vitiated with fraud, mistake or intimidation, and that petitioner has always been aware of the provisions of R.A. 6728 and was even assisted by its accountants, internal and external legal counsels during the CBA negotiations, hence, it can not now renege on its commitment under Sec. 3, Art. VIII of the CBA.

The petition is bereft of merit.

Sec. 3, Art. VIII of the 2000-2005 CBA reads:

ARTICLE VIII

Economic Provisions

x x x x x x x x x

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[6] G.R. No. 141285, July 5, 2001, 360 SCRA 515.

[7] *Rollo*, pp. 81-89.

Section 3. Salary Increases. The following shall be the increases under this Agreement.

SY 2000-2001 – ₱2,000.00 per month, across the board.

SY 2001-2002 – **₱1,500.00 per month or 80% of the TIP, whichever is higher, across the board.**

SY 2002-2003 – ₱1,500.00 per month or 80% of the TIP, whichever is higher, across the board. (Emphasis supplied)

It is a familiar and fundamental doctrine in labor law that the CBA is the law between the parties and they are obliged to comply with its provisions.[8] If the terms of a contract, in this case the CBA, are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of their stipulations shall control.[9]

A reading of the above-quoted provision of the CBA shows that the parties agreed that 80% of the TIP or at the least the amount of ₱1,500 is to be allocated for individual salary increases.

The CBA does not speak of any other benefits or increases which would be covered by the employees' share in the TIP, except salary increases. The CBA reflects the incorporation of different provisions to cover other benefits such as Christmas bonus (Art. VIII, Sec. 1), service award (Art. VIII, Sec.5), leaves (Article IX), educational benefits (Sec.2, Art. X), medical and hospitalization benefits (Secs. 3, 4 and 5, Art. 10), bereavement assistance (Sec. 6, Art. X), and signing bonus (Sec. 8, Art. VIII), without mentioning that these will likewise be sourced from the TIP. Thus, petitioner's belated claim that the 80% TIP should be taken to mean as covering ALL increases and not merely the salary increases as categorically stated in Sec. 3, Art. VIII of the CBA does not lie.

Apropos is the ruling in *St. John Colleges, Inc., vs. St. John Academy Faculty and Employees' Union*[10] where the Court

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[8] *Centro Escolar University Faculty and Allied Workers Union-Independent v. Court of Appeals*, G.R. No. 165486, May 31, 2006, 490 SCRA 61, 72.

[9] *Vide* CIVIL CODE, Art. 1370.

[10] G.R. No. 167892, October 27, 2006, 505 SCRA 764, 774.

held that the school committed Unfair Labor Practice (ULP) when it unceremoniously closed down allegedly because of the union's unreasonable demands including its insistence on having 100% of the incremental tuition fee increase allotted for their members' benefits to be embodied in the CBA. In striking down the school's defense, the Court held:

> **That SJCI agreed to appropriate 100% of the tuition fee increase to the workers' benefits sometime in 1995 does not mean that it was helpless in the face of the Union's demands because neither party is obligated to precipitately give in to the proposal of the other party during collective bargaining.** (Emphasis supplied)

In the present case, petitioner could have, during the CBA negotiations, opposed the inclusion of or renegotiated the provision allotting 80% of the TIP to salary increases alone, as it was and is not under any obligation to accept respondent's demands hook, line and sinker. Art. 252 of the Labor Code is clear on the matter:

> ART. 252. *Meaning of duty to bargain collectively*. – **The duty to bargain collectively means the performance of a mutual obligation to meet and convene promptly and expeditiously in good faith for the purpose of negotiating an agreement** with respect to wages, hours, of work and all other terms and conditions of employment including proposals for adjusting any grievances or questions arising under such agreement and executing a contract incorporating such agreements if requested by either party **but such duty does not compel any party to agree to a proposal or to make any concession.** (Emphasis supplied)

The records are thus bereft of any showing that petitioner had made it clear during the CBA negotiations that it intended to source not only the salary increases but also the increases in other employee benefits from the 80% of the TIP. Absent any proof that petitioner's consent was vitiated by fraud, mistake or duress, it is presumed that it entered into the CBA voluntarily, had full knowledge of the contents thereof, and was aware of its commitments under the contract.

Contrary to petitioner's assertion, the rulings in *Cebu Institute of Medicine v. Cebu Institute of Medicine Employees Union-NFL* and in *Centro Escolar University Faculty and Allied Workers Union-Independent v. Court of Appeals*[11] are not applicable to the present case.

In *Cebu Institute*, the Court held that SSS contributions and other benefits can be charged to the 70% and that the academic institution has the discretion to dispose of the said 70% with the precondition that the disposition goes to the payment of salaries, wages, allowances and other benefits of its personnel, *viz*:

> For sure, the seventy percent (70%) is not to be delivered whole to the employees but packaged in the form of salaries, wages, allowances, and other benefits which may be in the form of SSS, Medicare and Pag-Ibig premiums, all intended for the benefit of the employees. **In other words, the private educational institution concerned has the discretion on the disposition of the seventy percent (70%) incremental tuition fee increase. It enjoys the privilege of determining how much increase in salaries to grant and the kind and amount of allowances and other benefits to give. The only precondition is that seventy percent (70%) of the incremental tuition fee increase goes to the payment of salaries, wages, allowances and other benefits of teaching and non-teaching personnel.** (Emphasis supplied)

Significantly, this ruling was arrived at **in the absence of a CBA between the parties**, unlike in the present case.

On the other hand, in *Centro Escolar University*, the issue was whether the University may source from the 70% incremental proceeds (IP) the integrated IP incorporated into the salaries of its teaching and non-teaching staff pursuant to the CBAs entered into by their union. The controversy arose because the CBA provided different types of salary increases – some sourced from the University fund and the salary increases brought about by the IP integration which are deducted from the IP. The Court held that the charging of the integrated IP against the 70% is not violative of the CBA which prohibits the deduction of the CBA-won benefits from the 70% of the IP because the

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[11] *Supra* note 8.

integrated IP provided for in the CBAs of the teaching and the non-teaching staff is actually the share of the employees in the 70% of the IP that is incorporated into their salaries as a result of the negotiation between the university and its personnel.

Clearly, the above-cited cases have totally different milieus from the case at bar.

Even a perusal of the law will show that it does not make 70% as the mandated ceiling. It reads:

SEC. 5. ***Tuition Fee Supplement for Student in Private High School***

(1) Financial assistance for tuition for students in private high schools shall be provided by the government through a voucher system in the following manners:

(a) For students enrolled in schools charging less than one thousand five hundred pesos (₱1,500) per year in tuition and other fees during school year 1988-89 or such amount in subsequent years as may be determined from time to time by the State Assistance Council: The Government shall provide them with a voucher equal to two hundred ninety pesos ₱290.00: *Provided*, That the student pays in the 1989-1990 school year, tuition and other fees equal to the tuition and other fees paid during the preceding academic year: *Provided*, *further,* That the Government shall reimburse the vouchers from the schools concerned within sixty (60) days from the close of the registration period: *Provided*, *furthermore,* That the student's family resides in the same city or province in which the high school is located unless the student has been enrolled in that school during the previous academic year.

(b) For students enrolled in schools charging above one thousand five hundred pesos (₱1,500) per year in tuition and other fees during the school year 1983-1989 or such amount in subsequent years as may be determined from time to time by the State Assistance Council, no assistance for tuition fees shall be granted by the Government: *Provided, however,* That the schools concerned may raise their tuition fee subject to Section 10 hereof.

(2) **Assistance under paragraph (1), subparagraphs (a) and (b) shall be granted and tuition fee under subparagraph (c) may be increased, on the condition that seventy percent (70%) of**

the amount subsidized allotted for tuition fee or of the tuition fee increases shall go to the payment of salaries, wages, allowances and other benefits of teaching and non-teaching personnel except administrators who are principal stockholders of the school, and may be used to cover increases as provided for in the collective bargaining agreements existing or in force at the time when this Act is approved and made effective: *Provided,* That government subsidies are not used directly for salaries of teachers of nonsecular subjects. **At least twenty percent (20%) shall go to the improvement or modernization of buildings, equipment, libraries, laboratories, gymnasia and similar facilities and to the payment of other costs of operation.** For this purpose, schools shall maintain a separate record of accounts for all assistance received from the government, any tuition fee increase, and the detailed disposition and use thereof, which record shall be determined by the State Assistance Council, during business hours, by the faculty, the non-teaching personnel, students of the school concerned, and Department of Education, Culture and Sports and other concerned government agencies.[12]

Unmistakably, what the law sets is the minimum, not the maximum percentage, and there is even a 10% portion the disposition of which the law does not regulate. Hence, if academic institutions wish to allot a higher percentage for salary increases and other benefits, nothing in the law prohibits them from doing so.

It is axiomatic that labor laws setting employee benefits only mandate the minimum that an employer must comply with, but the latter is not proscribed from granting higher or additional benefits if it so desires, whether as an act of generosity or by virtue of company policy or a CBA, as it would appear in this case. While, in following to the letter the subject CBA provision petitioner will, in effect, be giving more than 80% of the TIP as its personnel's share in the tuition fee increase, petitioner's remedy lies not in the Court's invalidating the provision, but in

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[12] REPUBLIC ACT NO. 6728, "AN ACT PROVIDING GOVERNMENT ASSISTANCE TO STUDENTS AND TEACHERS IN PRIVATE EDUCATION AND APPROPRIATING FUNDS THEREFORE."

the parties' clarifying the same in their subsequent CBA negotiations.

WHEREFORE, the Decision of the Court of Appeals dated April 28, 2006 and the Resolution dated April 18, 2007, which modified the Decision and Resolution dated July 17, 2003 of the Voluntary Arbitrator in VA Case No. 139-06-03-2003, are *AFFIRMED.*

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 178330. July 23, 2009]

MARTIN T. SAGARBARRIA, *petitioner, vs.* **PHILIPPINE BUSINESS BANK,** *respondent.*

SYLLABUS

1. CIVIL LAW; MORTGAGE; FORECLOSURE; INSTANCES WHEN A WRIT OF POSSESSION MAY BE ISSUED; CASE AT BAR. — Under Sec. 7 of Act No. 3135, a writ of possession may be issued either (1) within the one-year redemption period, upon the filing of a bond; or (2) after the lapse of the redemption period, without need of a bond. Within the one-year redemption period, a purchaser in a foreclosure sale may apply for a writ of possession by filing a petition in the form of an *ex parte* motion under oath for that purpose. Upon the filing of such motion with the RTC having jurisdiction over the subject

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

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

property and the approval of the corresponding bond, the law, also in express terms, directs the court to issue the order for a writ of possession. On the other hand, after the lapse of the redemption period, a writ of possession may be issued in favor of the purchaser in a foreclosure sale as the mortgagor is now considered to have lost interest over the foreclosed property. Consequently, the purchaser, who has a right to possession after the expiration of the redemption period, becomes the absolute owner of the property when no redemption is made. In this regard, the bond is no longer needed. The purchaser can demand possession at any time following the consolidation of ownership in his name and the issuance to him of a new TCT. After consolidation of title in the purchaser's name for failure of the mortgagor to redeem the property, the purchaser's right to possession ripens into the absolute right of a confirmed owner. At that point, the issuance of a writ of possession, upon proper application and proof of title, to a purchaser in an extrajudicial foreclosure sale becomes merely a ministerial function. In the present case, petitioner failed to redeem the property within one (1) year from the registration of the Sheriff's Certificate of Sale with the Register of Deeds. PBB, being the purchaser of the property at public auction, thus, had the right to file an *ex parte* motion for the issuance of a writ of possession; and considering that it was its ministerial duty to do so, the trial court had to grant the motion and to thereafter issue the writ of possession.

2. ID.; ID.; ID.; NATURE AND EFFECT OF THE PROCEEDINGS FOR ISSUANCE OF A WRIT OF POSSESSION. — It is settled that the proceeding in a petition for a writ of possession is *ex parte* and summary in nature. It is a judicial proceeding brought for the benefit of one party only, and without notice to, or consent by any person adversely interested. It is a proceeding wherein relief is granted without an opportunity for the person against whom the relief is sought to be heard. No notice is needed to be served upon persons interested in the subject property. Hence, there is no necessity of giving notice to the petitioner since he had already lost all his interests in the property when he failed to redeem the same. Accordingly, the RTC may grant the petition in the absence of the mortgagor, in this case, the petitioner.

3. ID.; ID.; ID.; ID.; THE PROCEEDINGS MAY NOT BE SUSPENDED DUE TO THE PENDENCY OF A COMPLAINT FOR NULLIFICATION OF THE MORTGAGE AND THE FORECLOSURE PROCEEDINGS. — Neither was there a need for the court to suspend the proceedings merely and solely because of the pendency of the complaint for the nullification of the real estate mortgage and the foreclosure proceedings. As held by this Court in *Fernandez v. Espinoza*: x x x Any question regarding the validity of the mortgage or its foreclosure cannot be a legal ground for the refusal to issue a writ of possession. Regardless of whether or not there is a pending suit for the annulment of the mortgage or the foreclosure itself, the purchaser is entitled to a writ of possession, without prejudice, of course, to the eventual outcome of the pending annulment case. x x x Ineluctably, the RTC, Branch 145, which issued the writ of possession, cannot be adjudged to have committed grave abuse of discretion; nor can its order directing the issuance of said writ be considered patently illegal, for, *a fortiori,* there is no discretion involved in its issuance of such an order, it being the ministerial duty of the trial court under the circumstances.

4. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI,* NOT PROPER REMEDY. — We agree with the CA that petitioner pursued the incorrect remedy of *certiorari*. A special civil action for *certiorari* may be availed of only if the lower tribunal has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and if there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law. Absent grave abuse of discretion, petitioners should have filed an ordinary appeal instead of a petition for *certiorari*. The soundness of the order granting the writ of possession is a matter of judgment, with respect to which the remedy of the party aggrieved is ordinary appeal. An error of judgment committed by a court in the exercise of its legitimate jurisdiction is not the same as "grave abuse of discretion." Errors of judgment are correctible by appeal, while those of jurisdiction are reviewable by *certiorari*.

APPEARANCES OF COUNSEL

Elmar Jay Martib I. Dejaresco for petitioner.
Aperocho Somera and Associates for respondent.

R E S O L U T I O N

NACHURA, *J.*:

For resolution is petitioner's motion for reconsideration urging this Court to reconsider its Decision promulgated on January 21, 2008, *viz.*:

Considering the petition for review on *certiorari*, as well as the comment thereon, the Court resolves to DENY the petition for failure to sufficiently show that the appellate court committed reversible error in the challenged decision and resolution as to warrant the exercise by this Court of its discretionary appellate jurisdiction.[1]

The antecedents.

Petitioner Martin Sagarbarria (petitioner) executed a deed of real estate mortgage over his property in San Lorenzo Village, Makati City, in favor of the respondent Philippine Business Bank (PBB) to secure the ₱11,500,000.00 loan of Key Commodities Inc. (Key Commodities).

When the loan became due and demandable, Key Commodities failed to pay the same. Consequently, on February 28, 2003, PBB filed an application for foreclosure with the Office of the Clerk of Court and *Ex-Officio* Sheriff of Makati. The auction sale was then set on March 28, 2003 and a notice of sale was issued.

To enjoin the PBB from proceeding with the foreclosure, petitioner filed a complaint for the *Annulment of Real Estate Mortgage, Nullification of Application for Extrajudicial Foreclosure of Real Estate Mortgage and Damages, with prayer for the immediate issuance of a Temporary Restraining Order (TRO) and/or Preliminary Injunction*[2] with the Regional Trial

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[1] *Rollo*, p. 318-A.

[2] *Id.* at 59-77.

Court (RTC) of Makati City. It was docketed as Civil Case No. 03-312 and was raffled to Branch 64. Petitioner succeeded in pre-empting the auction sale as PBB withdrew its application for extra-judicial foreclosure.

On October 30, 2003, PBB filed an Answer[3] in Civil Case No. 03-312. Traversing petitioner's complaint, PBB contended that there was no factual and legal basis for the annulment of the mortgage. By way of counterclaim, PBB prayed for the payment of the mortgage loan which had already reached ₱18,000,000.00.

On February 24, 2005, while the annulment case remained pending, PBB revived the remedy of foreclosure. It filed a petition[4] for extrajudicial foreclosure, supplementing the facts stated in its first application, as follows: (i) as of February 2005, the obligation had ballooned to ₱30,000,000.00; (ii) the offer of *dacion en pago* was rejected and another demand to pay was served on the petitioner; and (iii) the petitioner's address was already 22 Joaquin Street, San Lorenzo Village Makati.

The petition was granted and a notice of sale was issued setting the auction sale on March 28, 2005. The sale proceeded and the property was awarded to the PBB as the sole bidder for ₱13,000,000.00. A certificate of sale was issued in favor of the PBB and was registered with the Registry of Deeds on March 29, 2005.

In April 2005, respondent filed a petition for the issuance of a writ of possession with the RTC of Makati, docketed as LRC Case No. M-4676 and raffled to Branch 145. Despite the *ex parte* nature of the proceeding, the RTC was able to give due course to the petition only after a year or on April 27, 2006. The RTC granted the petition and ordered the issuance of a writ of possession in favor of PBB upon the latter's posting of a bond of ₱13,000,000.00.[5] However, after being informed that the redemption period had

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[3] *Id.* at 80-89.

[4] *Id.* at 90-93.

[5] *Id.* at 98-99.

already expired and PBB had consolidated its ownership over the subject property on April 20, 2006, the RTC amended its decision on May 29, 2006 by deleting the requirement of a bond. On the same day, a writ of possession[6] was issued in favor of PBB.

Petitioner assailed the issuance of the writ by filing a petition for *certiorari* with the CA. It likewise sought the annulment of the extrajudicial proceedings on the ground that it was conducted and issued without notice and in violation of the rule against forum shopping. Petitioner claimed that he was effectively denied his right to participate in the foreclosure proceedings when the notice of sale was forwarded to him at a different address, despite knowledge of his actual address. He also claimed that the PBB committed forum-shopping when it filed an application for judicial foreclosure during the pendency of the civil case for annulment of mortgage. By opting to collect on its credit through a counterclaim in the case for annulment of mortgage, it had already waived the remedy of extrajudicial foreclosure.

By Decision[7] dated November 22, 2006, the Court of Appeals (CA) affirmed PBB's entitlement to a writ of possession as a matter of right. The CA upheld the general rule that the issuance of a writ of possession to a purchaser in an extrajudicial foreclosure sale becomes merely a ministerial function of the court. It added that the right of the purchaser to the immediate possession of the property cannot be defeated by the pendency of a case for annulment of the mortgage. The CA likewise rejected the claim of forum shopping, holding that to pursue an action, which has a different cause of action, or a remedy that the law allows to be taken despite the existence of another action, is not forum shopping. Finally, it ruled that *certiorari* is not a proper remedy because Section 8 of Act No. 3135 provides for an adequate remedy against an invalid or irregular foreclosure. Hence, petitioner should have filed a

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[6] *Id.* at 100-101.

[7] Penned by Associate Justice Mario L. Guariña III, with Associate Justices Roberto A. Barrios (deceased) and Lucenito N. Tagle (retired), concurring, *id.* at 46-52.

petition under Section 8[8] of Act No. 3135, and in case of an adverse ruling, an appeal from the said adverse decision. The rule is explicit that *certiorari* may only be allowed where there is no appeal or any plain, speedy, and adequate remedy in the ordinary course of law. Although the rule admits of several exceptions, none of them are in point in petitioner's case. Petitioner filed a motion for reconsideration, but the CA denied the same in its June 6, 2007 Resolution.[9]

Petitioner came to us, faulting the CA for dismissing his petition for *certiorari*. On January 21, 2008, this Court denied the petition for failure to sufficiently show that the CA had committed any reversible error in the assailed Decision and Resolution to warrant the exercise by this Court of its discretionary appellate jurisdiction.[10]

Petitioner then filed a *Motion for Reconsideration (With Motion to Elevate the Case to the Supreme Court en Banc)*.[11] In its June 16, 2008 Resolution,[12] this Court required PBB to comment on the motion for reconsideration, but denied petitioner's motion to elevate the case to the Court *en banc*.

In the main, petitioner argues that the RTC committed grave abuse of discretion in granting the writ of possession despite the invalidity of the foreclosure proceedings. Thus, he posits

[8] Section 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 dispose 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.

[9] *Rollo*, p. 54.

[10] *Supra* note 1.

[11] *Id.* at 341-372.

[12] *Id.* at 374.

that the CA committed reversible error in dismissing his petition for *certiorari*. Petitioner urges us to reconsider our Resolution denying the appeal.

At the outset, it must be emphasized that what is on appeal before us is only the issuance of the writ of possession over the subject property issued by the RTC, Branch 145, in LRC Case No. M-4676.

Under Sec. 7 of Act No. 3135,[13] a writ of possession may be issued either (1) within the one-year redemption period, upon the filing of a bond; or (2) after the lapse of the redemption period, without need of a bond.[14]

Within the one-year redemption period, a purchaser in a foreclosure sale may apply for a writ of possession by filing a petition in the form of an *ex parte* motion under oath for that purpose. Upon the filing of such motion with the RTC having jurisdiction over the subject property and the approval of the

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[13] Section 7. Possession during redemption period. – In any sale made under the provisions of this Act, the purchaser may petition the [Regional Trial Court] 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 of any other real property encumbered 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 the 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.

[14] *Philippine National Bank v. Sanao Marketing Corporation*, G.R. No. 153951, July 29, 2005, 465 SCRA 287, 300.

corresponding bond, the law, also in express terms, directs the court to issue the order for a writ of possession.[15]

On the other hand, after the lapse of the redemption period, a writ of possession may be issued in favor of the purchaser in a foreclosure sale as the mortgagor is now considered to have lost interest over the foreclosed property. Consequently, the purchaser, who has a right to possession after the expiration of the redemption period, becomes the absolute owner of the property when no redemption is made. In this regard, the bond is no longer needed. The purchaser can demand possession at any time following the consolidation of ownership in his name and the issuance to him of a new TCT. After consolidation of title in the purchaser's name for failure of the mortgagor to redeem the property, the purchaser's right to possession ripens into the absolute right of a confirmed owner. At that point, the issuance of a writ of possession, upon proper application and proof of title, to a purchaser in an extrajudicial foreclosure sale becomes merely a ministerial function.[16]

In the present case, petitioner failed to redeem the property within one (1) year from the registration of the Sheriff's Certificate of Sale with the Register of Deeds. PBB, being the purchaser of the property at public auction, thus, had the right to file an *ex parte* motion for the issuance of a writ of possession; and considering that it was its ministerial duty to do so, the trial court had to grant the motion and to thereafter issue the writ of possession.

We reject the petitioner's contention that he was denied due process when the trial court issued the writ of possession without notice.

It is settled that the proceeding in a petition for a writ of possession is *ex parte* and summary in nature. It is a judicial proceeding brought for the benefit of one party only, and without notice to, or consent by any person adversely interested. It is

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[15] *Saguan v. Philippine Bank of Communications*, G.R. No. 159882, November 23, 2007, 538 SCRA 390, 396.

[16] *Id.* at 396-397.

a proceeding wherein relief is granted without an opportunity for the person against whom the relief is sought to be heard.[17] No notice is needed to be served upon persons interested in the subject property. Hence, there is no necessity of giving notice to the petitioner since he had already lost all his interests in the property when he failed to redeem the same.[18] Accordingly, the RTC may grant the petition in the absence of the mortgagor, in this case, the petitioner.

Neither was there a need for the court to suspend the proceedings merely and solely because of the pendency of the complaint for the nullification of the real estate mortgage and the foreclosure proceedings. As held by this Court in *Fernandez v. Espinoza*:[19]

> [A]ct No. 3135, as amended by Act No. 4118, is categorical in stating that the purchaser must first be placed in possession of the mortgaged property pending proceedings assailing the issuance of the writ of possession.
>
> Consequently, the RTC under which the application for the issuance of a writ of possession over the subject property is pending cannot defer the issuance of the said writ in view of the pendency of an action for annulment of mortgage and foreclosure sale. The judge with whom an application for a writ of possession is filed need not look into the validity of the mortgage or the manner of its foreclosure.
>
> Any question regarding the validity of the mortgage or its foreclosure cannot be a legal ground for the refusal to issue a writ of possession. Regardless of whether or not there is a pending suit for the annulment of the mortgage or the foreclosure itself, the purchaser is entitled to a writ of possession, without prejudice, of course, to the eventual outcome of the pending annulment case.
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> The spouses Espinoza's position that the issuance of the writ of possession must be deferred pending resolution of Civil Case No. 66256 is therefore unavailing. As we have recounted above, this

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[17] *Santiago v. Merchant Rural Bank of Talavera, Inc.*, G.R. No. 147820, March 18, 2005, 453 SCRA 756, 763-764.

[18] *De Vera v. Agloro*, G.R. No. 155673, January 14, 2005, 448 SCRA 203, 215.

[19] G.R. No. 156421, April 14, 2008, 551 SCRA 136, 149-150.

Court has long settled that a pending action for annulment of mortgage or foreclosure sale does not stay the issuance of the writ of possession.

Ineluctably, the RTC, Branch 145, which issued the writ of possession, cannot be adjudged to have committed grave abuse of discretion; nor can its order directing the issuance of said writ be considered patently illegal, for, *a fortiori,* there is no discretion involved in its issuance of such an order, it being the ministerial duty of the trial court under the circumstances.

We agree with the CA that petitioner pursued the incorrect remedy of *certiorari*. A special civil action for *certiorari* may be availed of only if the lower tribunal has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and if there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law. Absent grave abuse of discretion, petitioners should have filed an ordinary appeal instead of a petition for *certiorari*. The soundness of the order granting the writ of possession is a matter of judgment, with respect to which the remedy of the party aggrieved is ordinary appeal. An error of judgment committed by a court in the exercise of its legitimate jurisdiction is not the same as "grave abuse of discretion." Errors of judgment are correctible by appeal, while those of jurisdiction are reviewable by *certiorari*.[20]

In fine, we find no substantial argument that would warrant a reconsideration of our January 21, 2008 Resolution denying the appeal.

WHEREFORE, the Motion for Reconsideration is *DENIED WITH FINALITY.*

SO ORDERED.

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

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[20] *Saguan v. Philippine Bank of Communications*, *supra* at 402-403.

[*] Vice Justice Diosdado M. Peralta whose spouse concurred in the assailed Court of Appeals resolution.

SECOND DIVISION

[G.R. No. 178760. July 23, 2009]

CARMEN B. DY-DUMALASA, *petitioner, vs.* **DOMINGO SABADO S. FERNANDEZ, VIRGILIO P. MONSALUD, EMELYN R. MONARES, MARIA NILA M. DURO, ROSE GUIAO, JUANITO B. RACCA, JR., RENATO M. CARLOS, JR., WILFREDO M. MERCADO, JUANITA B. DIMANLIG, REYNALDO M. DIMANLIG, AMIE A. MICOR, TYNE C. DIGNADICE (D), JOANNE H. COMANDA, JOCELYN H. FERNANDEZ (D), SHYAMELA L. FARAON, REBECCA V. DUNGAO, DOUGLAS A. ANDOSAY, VIRGINIA V. VILLARTA, VICTORIA O. HUELGAS, LORETA S. SANTERO, MARISSA F. TRASMONTERO, NORBERTO C. TRASMONTERO, DELIA S. DADO, ROWENA L. VICTORIA, MARITES P. TANAN, MA. THERESA ROQUE, DANILO NICOLAS, JOCELYN J. ORDOÑEZ and ANNABEL M. DY,** ***ET AL.*****,** *respondents.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; LABOR ARBITER; ACQUIRED JURISDICTION OVER THE PERSON DESPITE THE ALLEGED LACK OF VALID SERVICE OF SUMMONS; CASE AT BAR. —** Contrary to petitioner's contention, the Labor Arbiter acquired jurisdiction over her person regardless of the fact that there was allegedly no valid service of summons. It bears noting that, in quasi-judicial proceedings, procedural rules governing service of summons are not strictly construed. Substantial compliance therewith is sufficient. In the cases at bar, petitioner, her husband and three other relatives, were all individually impleaded in the complaint. The Labor Arbiter furnished her with notices of the scheduled hearings and other processes. It is undisputed that HELIOS, of which she and her therein co-respondents in the subject cases were the stockholders and managers, was in fact heard, proof of which is the attendance of her husband, President-General Manager of HELIOS, together with counsel in one such scheduled hearing and the Labor Arbiter's

consideration of their position paper in arriving at the Decision, albeit the same position paper was belatedly filed. Clearly, petitioner was adequately represented in the proceedings conducted by the Labor Arbiter by the lawyer retained by HELIOS. Taking into account the peculiar circumstances of the cases, HELIOS' knowledge of the pendency thereof and its efforts to resist them are deemed to be knowledge and action of petitioner. That petitioner and her fellow members of the Board refused to heed the summons and avail of the opportunity to defend themselves as they instead opted to hide behind the corporate veil does not shield them from the application of labor laws. Petitioner can not now thus question the implementation of the Writ of Execution on her on the pretext that jurisdiction was not validly acquired over her person or that HELIOS has a separate and distinct personality as a corporate entity. To apply the normal precepts on corporate fiction and the technical rules on service of summons would be to overturn the bias of the Constitution and the laws in favor of labor.

2. **ID.; ID.; WHEN THE DISPOSITIVE PORTION OF THE LABOR ARBITER'S DECISION DID NOT EXPRESSLY MENTION THE SOLIDARY LIABILITY OF OFFICERS AND BOARD MEMBERS, THE OBLIGATION IS MERELY JOINT. —** As to HELIOS being a separate juridical entity, the Labor Arbiter held that it and "Pat & Suzara" are one and the same, using the same machineries and personnel in the new plant. The Labor Arbiter thus concluded that "indeed, fraud and bad faith on the part of the management are well-established" and, as such, HELIOS *et al.* are liable for the judgment award. While the appellate court reinstated the Labor Arbiter's decision, it held that since its *fallo* did not indicate with certainty the solidary nature of the obligation, the obligation is merely joint. The Court finds this ruling well-taken. x x x A perusal of the Labor Arbiter's Decision readily shows that, notwithstanding the finding of bad faith on the part of the management, the dispositive portion did not expressly mention the solidary liability of the officers and Board members, including petitioner. x x x [A]bsent a clear and convincing showing of the bad faith in effecting the closure of HELIOS that can be individually attributed to petitioner as an officer thereof, and without the pronouncement in the Decision that she is being held solidarily liable, petitioner is only jointly liable.

APPEARANCES OF COUNSEL

Manalo Puno Jocson & Guerson Law Offices for petitioner.
Pro-Labor Legal Assistance Center for respondents.

D E C I S I O N

CARPIO MORALES, *J.*:

Via petition for review on *certiorari*, Carmen B. Dy-Dumalasa (petitioner) seeks the reversal of the Court of Appeals Decision[1] dated April 28, 2006 and Resolution[2] dated June 29, 2007 annulling and setting aside the Resolutions dated January 27, 2005[3] and March 16, 2005[4] of the National Labor Relations Commission (NLRC).

Domingo Sabado S. Fernandez, *et al*. (respondents) are former employees of Helios Manufacturing Corporation (HELIOS), a closed domestic corporation engaged in soap manufacturing located in Muntinlupa, of which petitioner is a stockholder, a member of the Board of Directors, and Acting Corporate Secretary.

On October 23, 2001, respondents filed a Complaint[5] against HELIOS, docketed as NLRC-NCR South Sector Case No. 30-10-04950-01, for illegal dismissal or illegal closure of business, non-payment of salaries and other money claims against HELIOS. The complaint was later consolidated with another case filed by similarly situated employees of HELIOS, docketed as NLRC-NCR South Sector Case No. 30-11-05301-01.[6] Both complaints also impleaded HELIOS' members of the Board of Directors

[1] CA *rollo*, pp. 105-113. Penned by Associate Justice Magdangal M. de Leon and concurred in by Associate Justices Conrado M. Vasquez, Jr. and Mariano C. del Castillo.

[2] *Id.* at 156-159. *Ibid.*

[3] Records, pp. 158-161. Penned by Commissioner Tito F. Genilo and concurred in by Presiding Commissioner Lourdes C. Javier.

[4] *Id.* at 177-179. *Ibid.*

[5] *Id.* at 2.

[6] *Id.* at 22.

(The Board) including herein petitioner. Atty. Arturo Balbastro, one of the members of the Board, was subsequently dropped from the complaint, upon manifestation of respondents.[7]

Despite service of summons,[8] of the remaining four members of the Board, only Leonardo Dy-Dumalasa, HELIOS' President and General Manager-husband of petitioner, appeared with counsel.[9]

As amicable settlement proved not to be viable and with the repeated non-appearance of the members of the Board in the scheduled hearings, the Labor Arbiter required the parties to submit their respective position papers.[10] Only respondents complied with this directive.[11] Despite the grant of a 10-day extension, HELIOS *et al*. failed to submit theirs, hence, the cases were deemed submitted for decision.[12]

In the meantime, or on June 6, 2002, HELIOS *et al*. moved to have their position paper admitted. There being no proof of service of the motion upon respondents, hearings/conferences between the parties were again scheduled, but HELIOS *et al*. failed[13] to attend the same despite due notice. Hence, by Order[14] dated July 22, 2002, Labor Arbiter Nieves V. de Castro denied HELIOS *et al*.'s motion to admit their position paper and again deemed the cases submitted for decision. Just the same, the Labor Arbiter, who took into account HELIOS *et al*.'s position paper despite the earlier denial of their motion to admit it, found HELIOS, its members of the Board, and its stockholders, by

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[7] *Vide* Minutes of December 10, 2001 hearing, *id.* at 19.

[8] *Id.* at 10.

[9] *Vide* Minutes of January 31, 2002 Hearing, *id.* at 27.

[10] *Vide* Notice of Hearing, *id.* at 33.

[11] *Id.* at 34-43.

[12] *Vide* Minutes, May 23, 2002 Hearing, records, p. 64; and Order dated May 23, 2002, *id.* at 65.

[13] *Vide* Minutes of June 6, June 27, July 17, and July 22, 2002 Hearings, records, pp. 83, 85, 86 and 87.

[14] *Id.* at 89.

Decision[15] dated August 30, 2002, liable for illegal dismissal and unfair labor practice, as the closure of the business was attended with fraud and bad faith, having been largely motivated by their desire to interfere with respondents' exercise of the right to self-organization and to evade payment of their claims.

The Labor Arbiter found that the closure of the Muntinlupa office/plant was a sham, as HELIOS simply relocated its operations to a new plant in Carmona, Cavite under the new name of "Pat & Suzara," in response to the newly-established local union. The dispositive portion of the Labor Arbiter's Decision reads:

> WHEREFORE, respondent **HELIOS Manufacturing Corp. or "Pat & Suzara" and its Board of Directors and stockholders are hereby directed** to pay complainants their full backwages from the time they were illegally dismissed on 30 May 2001 up to 30 August 2002; and separation pay of one month's salary for every year of service; to pay complainants' service incentive leave for three (3) years from 1998-2001; to pay proportionate 13th month pay for 2001; to pay moral and exemplary damages of ₱300,000.00 each as prayed for; and to pay 10% of the total award as attorney's fees, or to pay the 29 complainants the total amount of ₱15,195,479.30, plus 10% attorney's fees in the amount of ₱1,519,549.93. The detailed computation of complainant's award forms part of this Decision.
>
> SO ORDERED. (Emphasis supplied)

HELIOS *et al*. filed a Memorandum of Appeal[16] on October 28, 2002, but the same was not accompanied by a cash or surety bond, hence, by Resolution[17] dated March 21, 2003, the NLRC dismissed the appeal. HELIOS *et al*.'s motion for reconsideration having been denied[18] on May 30, 2003 for having

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[15] *Id.* at 110-116. Penned by Labor Arbiter Nieves V. De Castro.

[16] *Id.* at 120-128.

[17] *Id.* at 158-161. Penned by Commissioner Tito F. Genilo and concurred in by Presiding Commissioner Lourdes C. Javier.

[18] Vide Resolution, records, pp. 177-179. *Ibid.*

been filed out of time, the Labor Arbiter's Decision attained finality on July 17, 2003.[19]

After respondents filed a motion for the issuance of a writ of execution,[20] the Labor Arbiter set a pre-execution conference on September 18, 2003. Again, only respondents appeared during the scheduled conference, drawing the Labor Arbiter to issue on October 9, 2003 a Writ of Execution[21] the pertinent portion of which reads:

> NOW THEREFORE, you are hereby commanded to proceed to respondents Helios Manufacturing Corporation or "Pat & Suzara" and its Board of Directors and stockholders with address at Tahanan Compound, Poblacion Uno, Gen. Mariano Alvarez, Cavite or at Warehouse 4, Partition 3, Sunblest Compund, Km. 23, West Service Road, Muntinlupa City, or wherever they may be presently located or holding their business, to collect the amount of SIXTEEN MILLION SEVEN HUNDRED FIFTEEN THOUSAND AND TWENTY EIGHT PESOS (₱16,715,028.00) representing complainant's [*sic*] full backwages, separation pay, service incentive leave pay, proportionate 13th month pay for 2001, moral and exemplary damages and attorney's fees, all pursuant to the decision in this case.
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> x x x x x x x x x
>
> In case you fail to collect the amounts above indicated, you are hereby ordered to cause the satisfaction of the judgment out of respondents' goods or chattels, or in the absence thereof, from respondents' properties not exempt from execution.
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> x x x x x x x x x

Pursuant to the above Writ, Sheriff Antonio Datu issued a Notice of Levy on Real Property[22] under which a house and lot in Ayala-Alabang in the name of petitioner and her husband Leonardo Dy-Dumalasa[23] were levied upon.

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[19] *Vide* Entry of Judgment, records, p. 189.

[20] Records, pp. 186-188.

[21] *Id.* at 211-213.

[22] *Id.* at 346.

[23] *Vide* TCT No. 143442, *id.* at 347-351.

Petitioner moved to quash[24] the Writ, putting up the defense of corporate fiction as well as lack of jurisdiction over her person, but the same was denied by Order[25] dated January 26, 2004. Petitioner appealed to the NLRC, hence, the execution of the Writ was held in abeyance.

By Resolution of January 27, 2005, the NLRC *modified* the Labor Arbiter's Order, holding that petitioner is not jointly and severally liable with HELIOS for respondents' claims, there being no showing that she acted in bad faith nor that HELIOS cannot pay its obligations. Petitioner moved for reconsideration, but this was denied by Resolution dated March 16, 2005, hence, she appealed to the Court of Appeals.

By the assailed Decision, the appellate court *reversed and set aside the NLRC Resolution*, holding that what the NLRC, in effect, modified was not the Order denying the Motion to Quash the Writ of Execution, but the Labor Arbiter's Decision itself — an impermissible act, the Decision having become final and executory, hence, it could no longer be reversed or modified. It further held that the NLRC gravely abused its discretion when it took cognizance of the appeal from the Order denying petitioner's Motion to Quash the Writ of Execution, as no appeal lies therefrom, especially since petitioner attempted to exculpate herself from the judgment obligation by invoking corporate fiction, a defense which could have been raised during the hearings before the Labor Arbiter.

Respecting NLRC's pronouncement that petitioner was not jointly and severally liable, the appellate court held that the same is a superfluity, for there was no statement, either in the main case or in the Writ, that the liability is solidary, hence, petitioner is merely jointly liable for the judgment award.

Petitioner moved for reconsideration of the appellate court's Decision, claiming that the labor tribunal never acquired jurisdiction over her person due to lack of summons, and reiterating her defense that HELIOS has a separate personality. Petitioner's motion was

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[24] Records, pp. 214-221.

[25] *Id.* at 235-238.

denied by the appellate court by Resolution of June 29, 2007, it holding that petitioner's act of filing the Motion to Quash the Writ of Execution as well as her submission of a Memorandum of Appeal was tantamount to submission to the Arbiter's jurisdiction. Hence, the present petition.

Petitioner maintains that as she was never summoned by the Labor Arbiter, jurisdiction over her person was not acquired; and that although the Board and stockholders of HELIOS were impleaded in the original complaint, it was by virtue of their official, not personal capacities.

And she reiterates that HELIOS has a personality separate and distinct from her, and there is nothing in the questioned Writ which directed the Sheriff to attach and levy the properties of the members of the Board or stockholders which are personal to them; and that for her and the other directors and stockholders to be held personally liable for the judgment award, they must have been found guilty of malice and bad faith — a finding absent in the Labor Arbiter's Decision.

Finally, petitioner contends that assuming *arguendo* that she is personally liable together with HELIOS, still, settlement of the entire judgment obligation cannot be claimed from her alone, under the doctrine of limited liability. She thus prays that the appellate court's Decision be reversed and set aside and the NLRC Resolutions reinstated.

The petition is bereft of merit.

Contrary to petitioner's contention, the Labor Arbiter acquired jurisdiction over her person regardless of the fact that there was allegedly no valid service of summons. It bears noting that, in quasi-judicial proceedings, procedural rules governing service of summons are not strictly construed. Substantial compliance therewith is sufficient.[26] In the cases at bar, petitioner, her husband and three other relatives, were all individually impleaded in the complaint. The Labor Arbiter furnished her

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[26] *Eden v. Ministry of Labor and Employment*, G.R. No. 72145, February 28, 1990, 182 SCRA 840, 847, citing *Ang Tibay v. Court of Industrial Relations*, 69 Phil. 635, February 27, 1940.

with notices of the scheduled hearings and other processes. It is undisputed that HELIOS, of which she and her therein co-respondents in the subject cases were the stockholders and managers, was in fact heard, proof of which is the attendance of her husband, President-General Manager of HELIOS, together with counsel in one such scheduled hearing and the Labor Arbiter's consideration of their position paper in arriving at the Decision, albeit the same position paper was belatedly filed.

Clearly, petitioner was adequately represented in the proceedings conducted by the Labor Arbiter by the lawyer retained by HELIOS.

Taking into account the peculiar circumstances of the cases, HELIOS' knowledge of the pendency thereof and its efforts to resist them are deemed to be knowledge and action of petitioner. That petitioner and her fellow members of the Board refused to heed the summons and avail of the opportunity to defend themselves as they instead opted to hide behind the corporate veil does not shield them from the application of labor laws.

Petitioner can not now thus question the implementation of the Writ of Execution on her on the pretext that jurisdiction was not validly acquired over her person or that HELIOS has a separate and distinct personality as a corporate entity. To apply the normal precepts on corporate fiction and the technical rules on service of summons would be to overturn the bias of the Constitution and the laws in favor of labor.[27]

On to the liability of petitioner.

Interestingly, the assailed Court of Appeals Decision did not categorically rule on the issue of bad faith and piercing the corporate veil, it focusing instead on the issues of jurisdiction and the propriety of the NLRC Resolutions. However, the Labor Arbiter found HELIOS *et al.* guilty of bad faith when they closed the company's Muntinlupa plant 15 days before the scheduled cessation of operations, only to reestablish a plant in Carmona, Cavite sometime later as "Pat & Suzara," in response to the newly-created workers' union.

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[27] *Pison-Arceo Agricultural and Development Corporation v. NLRC,* G.R. No. 117890, September 18, 1997.

As to HELIOS being a separate juridical entity, the Labor Arbiter held that it and "Pat & Suzara" are one and the same, using the same machineries and personnel in the new plant.

The Labor Arbiter thus concluded that "indeed, fraud and bad faith on the part of the management are well-established" and, as such, HELIOS *et al*. are liable for the judgment award.

While the appellate court reinstated the Labor Arbiter's decision, it held that since its *fallo* did not indicate with certainty the solidary nature of the obligation, the obligation is merely joint. The Court finds this ruling well-taken. As held in *Industrial Management Int'l. Development Corp v. NLRC:*[28]

> It is an elementary principle of procedure that the resolution of the court in a given issue as embodied in the dispositive part of a decision or order is the controlling factor as to settlement of rights of the parties.

A perusal of the Labor Arbiter's Decision readily shows that, notwithstanding the finding of bad faith on the part of the management, the dispositive portion did not expressly mention the solidary liability of the officers and Board members, including petitioner. Further:

> A solidary or joint and several obligation is one in which each debtor is liable for the entire obligation, and each creditor is entitled to demand the whole obligation. In a joint obligation each obligor answers only for a part of the whole liability and to each obligee belongs only a part of the correlative rights.
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> **Well-entrenched is the rule that solidary obligation cannot lightly be inferred. There is a solidary liability only when the obligation expressly so states, when the law so provides or when the nature of the obligation so requires.**[29] (Emphasis and underscoring supplied)

And as held in *Carag v. NLRC*:[30]

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[28] G.R. No. 101723, May 11, 2000.

[29] *Industrial Management*, *supra*.

[30] G.R. No. 147590, April 2, 2007.

To hold a director personally liable for 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. (Emphasis and underscoring supplied)

Ineluctably, absent a clear and convincing showing of the bad faith in effecting the closure of HELIOS that can be individually attributed to petitioner as an officer thereof, and without the pronouncement in the Decision that she is being held solidarily liable, petitioner is only jointly liable.

The Court in fact finds that the present action is actually a last-ditch attempt on the part of petitioner to wriggle its way out of her share in the judgment obligation and to discuss the defenses which she failed to interpose when given the opportunity. Even as petitioner avers that she is not questioning the final and executory Decision of the Labor Arbiter and admits liability, albeit only joint,[31] still, she proceeds to interpose the defenses that jurisdiction was not acquired over her person and that HELIOS has a separate juridical personality.

As for petitioner's questioning the levy upon her house and lot, she conveniently omits to mention that the same are actually conjugal property belonging to her and her husband. Whether petitioner is jointly or solidarily liable for the judgment obligation, the levied property is not fully absolved from any lien except if it be shown that it is exempt from execution.

WHEREFORE, the petition is *DENIED.* The Decision dated April 28, 2006 and the Resolution dated June 29, 2007 of the Court of Appeals are *AFFIRMED.*

The liability of the respondents in NLRC-NCR South Sector Case No. 30-10-04950-01 and NLRC-NCR South Sector Case No. 30-11-05301-01 pursuant to the Decision of Labor Arbiter Nieves V. de Castro dated August 30, 2002 should be, as it is

[31] *Vide* Paragraphs 1 and 28 of Petition, *rollo*, pp. 22 and 30.

hereby, considered joint, without prejudice to the enforcement of the award against petitioner's co-judgment obligors in said cases.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 179177. July 23, 2009]

CARLOS N. NISDA, *petitioner, vs.* **SEA SERVE MARITIME AGENCY and KHALIFA A. ALGOSAIBI DIVING AND MARINE SERVICES,** *respondents.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; NATIONAL LABOR RELATIONS COMMISSION; RULES OF PROCEDURE; THE 10-DAY REGLEMENTARY PERIOD TO APPEAL TO THE NLRC MUST BE RECKONED FROM DATE OF RECEIPT OF THE LABOR ARBITER'S DECISION BY THE PROPER PARTY; APPLICATION. —** After a careful review of the records of the case, we see no reason to disturb the finding of the NLRC and the Court of Appeals that the joint appeal filed by respondents Sea Serve and ADAMS was duly filed and perfected in compliance with the NLRC Rules of Procedure. In the first place, nowhere in the records of the present petition is it shown that, indeed, respondents Sea Serve and ADAMS were notified of the adverse 23 July 2003 Decision of the Labor Arbiter. x x x Let it be made clear that there is no issue as to the assumption by respondent Sea Serve of any accountability that may arise or may have arisen from the employment contracts previously instituted and processed by

Nobel for respondent ADAMS; or the relief of Nobel from its contractual obligations to the Filipino overseas workers whose employment contracts it processed for respondent ADAMS. The transferee agency, respondent Sea Serve, had assumed long ago from Nobel, the full and complete responsibility of the contractual obligations of the principal, respondent ADAMS, including the alleged liability to petitioner Nisda that is subject of the case at bar. That being the case, therefore, it was imperative upon the Labor Arbiter to have notified respondents Sea Serve and ADAMS of the adverse decision taken against them. Unfortunately, the Labor Arbiter failed to take into account the import of aforementioned transfer of accreditation. This omission is obvious from the face of the Notice dated 1 August 2003, attached to the Labor Arbiter's *Decision* dated 23 July 2003, which informed merely petitioner Nisda and his counsel, Nobel, Guerrero and their counsel. In as much as respondents Sea Serve and ADAMS were left in the dark, so to speak, how can they be expected to question something that they have no knowledge of? It is indisputable that service of the decision of the labor arbiter should be made on parties or their counsel, and the reglementary period for filing an appeal shall be reckoned from the date of such service. Not until respondents Sea Serve and ADAMS were served notice of the 23 July 2003 Decision of the Labor Arbiter, the reglementary period for them to appeal the same to the NLRC had not yet commenced. The 10-day reglementary period to appeal to the NLRC only started to run on 14 October 2003, when Atty. Ng, counsel for respondents Sea Serve and ADAMS, was able to personally secure a copy of the Labor Arbiter's Decision dated 23 July 2003. Therefore, the Joint Appeal Memorandum, filed by respondents Sea Serve and ADAMS on 20 October 2003, just six days after receiving notice and copy of the appealed Decision of the Labor Arbiter, was not filed belatedly.

2. ID.; POEA STANDARD EMPLOYMENT CONTRACT FOR SEAFARERS; ELEMENTS THAT MUST CONCUR FOR AN INJURY OR ILLNESS TO BE COMPENSABLE; WORK-RELATED INJURY AND ILLNESS, DEFINED. — Pursuant to [Sec. 20(B), paragraph 6, of the *2000 POEA Amended Standard Terms and Conditions*], two elements must concur for an injury or illness to be compensable. *First*, that the injury or illness must be work related; and *second*, that the work-related injury or illness must have existed during the term of

the seafarer's employment contract. The *2000 POEA Amended Standard Terms and Conditions* defines "work-related injury" as "injury(ies) resulting in disability or death arising out of and in the course of employment" and "work-related illness" as "any sickness resulting to disability or death as a result of an occupational disease listed under Section 32-A of this contract with the conditions set therein satisfied," x x x.

3. **ID.; ID.; REQUIREMENT FOR COMPENSABILITY OF CARDIO-VASCULAR DISEASE. —** Sec. 32-A(11) of the *2000 POEA Amended Standard Terms and Conditions* explicitly considers Cardio-Vascular Disease as an occupational disease if the same was contracted under working conditions that involve any of the following risks – a) 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. b) The strain of the work that brings about an acute attack must be sufficient severity and must be followed within 24 hours by the clinical signs of cardiac insult to constitute causal relationship. c) If a person who was apparently asymptomatic before being subjected to strain at work showed signs and symptoms of cardiac injury during the performance of his work and such symptoms and signs persisted, it is reasonable to claim a causal relationship. Consequently, for Cardio-Vascular Disease to constitute an occupational disease for which the seafarer may claim compensation, it is incumbent upon said seafarer to show that he developed the same under any of the three conditions identified above.

4. **ID.; ID.; ID.; REASONABLE CONNECTION BETWEEN THE NATURE OF THE EMPLOYEE'S JOB AS A TUG BOAT MASTER AND HIS CORONARY ARTERY DISEASE, SHOWN. —** In the present case, petitioner Nisda was diagnosed to be suffering from a Cardio-Vascular Disease, specifically, a ***Coronary Artery Disease***, only shortly after disembarking from *M/V Algosaibi-42* and arriving in the Philippines. Petitioner Nisda's disease was serious enough to necessitate a Triple Bypass Operation on his heart. x x x Such disease does not develop overnight. The plaque in the coronary arteries would have taken months, if not years, to build up, making it highly probable that petitioner Nisda already had the disease during the life of his POEA-SEC, although it went undiagnosed

because he had yet to experience the symptoms. [R]ecords reveal that petitioner Nisda had been deployed by respondent ADAMS numerous times in a span of 15 years, under several employment contracts. Petitioner Nisda was first hired and deployed by respondent ADAMS as a Tug Boat Master in 1987. He was immediately hired and deployed again by respondent ADAMS after the expiration of each employment contract. Through the years, petitioner Nisda worked for respondent ADAMS essentially under the same or closely similar conditions, *i.e.*, 48-hour work weeks with a maximum of 105 hours of overtime. If we found in *Seagull Shipmanagement* that the different climates and unpredictable weather, as well as the stress of the job, had a correlation with the heart disease of a seafarer working as a radioman on a vessel, then what more in the heart disease of a seafarer serving as a ship master, a position involving more strain and pressure? A Tug (boat) Master is primarily tasked to operate tug boats, a powerful marine vessel that meets large ships out at sea and attach a line to guide/steer the same into and out of berths. In operating such a powerful vessel, a Tug Master requires not just a thorough knowledge of the port environment in which he is operating, but a high level of skill as well. In fact, in the case at bar, respondent ADAMS recognized how grueling petitioner Nisda's job was, according the latter a month of paid vacation every three months of straight service. Thus, more than a reasonable connection between the nature of petitioner Nisda's job and his Coronary Artery Disease has been established. Petitioner Nisda was able to sufficiently prove, by substantial evidence, that his Coronary Artery Disease was work-related, given the arduous nature of his job that caused his disease or, at least, aggravated any pre-existing condition he might have had.

5. ID.; ID.; PROVISION ON TERMINATION OF EMPLOYMENT, CONSTRUED AND APPLIED. — Sec. 2(A) of the POEA-SEC also provides that the POEA-SEC shall be effective until the seafarer's date of arrival at the point of hire upon termination of the employment contract, pursuant to Sec. 18 of the same contract. Sec. 18 states – SECTION 18. TERMINATION OF EMPLOYMENT A. The employment of the seafarer shall cease when the seafarer completes his period of contractual service aboard the vessel, signs-off from the vessel and arrives at the point of hire. Record of the present case reveals that petitioner Nisda signed off and disembarked from *M/V Algosaibi-42*,

and was repatriated to the Philippines, only on 17 July 2002. Hence, it was only on said date that petitioner Nisda's POEA-SEC actually concluded.

6. **ID.; ID.; SUBSEQUENT AGREEMENT NOT SANCTIONED BY POEA IS VOID, AS IT CANNOT SUPERSEDE THE TERMS OF THE STANDARD EMPLOYMENT CONTRACT. —** We cannot subscribe to the assertion of respondents Sea Serve and ADAMS that from 21 May 2002 until his repatriation on 17 July 2002, petitioner Nisda was already toiling under the provisions of the second employment contract he signed with respondent ADAMS without the endorsement of the POEA. In *Placewell International Services Corporation v. Camote*, we held that the subsequently executed side agreement of an overseas contract worker with the foreign employer is void, simply because it is against our existing laws, morals and public policy. The subsequent agreement cannot supersede the terms of the standard employment contract approved by the POEA. Republic Act No. 8042, commonly known as the Migrant Workers Act of 1995, expressly prohibits the substitution or alteration, to the prejudice of the worker, of employment contracts already approved and verified by the Department of Labor and Employment (DOLE) from the time of the actual signing thereof by the parties up to and including the period of the expiration of the same, without the approval of DOLE. Since the second employment contract petitioner Nisda signed with respondent ADAMS was void for not having been sanctioned by the POEA, then petitioner Nisda's employment with respondent ADAMS was still governed by his POEA-SEC until his repatriation to the Philippines on 17 July 2002.

APPEARANCES OF COUNSEL

Byrone M. Timario for petitioner.
Gancayco Balasbas and Associates for respondents.

DECISION

CHICO-NAZARIO, *J.*:

Assailed in this Petition for Review on *Certiorari*[1] under Rule 45 of the Revised Rules of Court is the *Decision*[2] dated 27 September 2006 and *Resolution*[3] dated 10 August 2007 of the Court of Appeals in CA-G.R. SP No. 87562, entitled "Carlos N. Nisda versus National Labor Relations Commission, Sea Serve Maritime Agency and Khalifa A. Algosaibi Diving & Marine Services."

In its challenged Decision, the Court of Appeals dismissed the Petition of Carlos N. Nisda (petitioner Nisda) in CA-G.R. SP No. 87562 and, accordingly, affirmed the *Decision*[4] dated 14 May 2004 of the National Labor Relations Commission (NLRC) in NLRC CA No. 37922-03 (NLRC OFW Case No. [M]03-01-0159-00), entitled "Carlos N. Nisda versus Nobel Ship Services, Inc., Sea Serve Maritime Agency and Khalifa A. Algosaibi Diving & Marine Services."

The present petition originated from a Complaint[5] for the payment of "disability/medical benefits, sickness leave pay, reimbursement of medical and hospitalization expenses and attorney's fees"[6] filed by petitioner Nisda against Nobel Ship Services, Inc. (Nobel), Annabel G. Guerrero[7] (Guerrero), and Khalifa A. Algosaibi Diving & Marine Services Company (respondent ADAMS).

Nobel is a corporation organized and existing under Philippine Laws. It used to be the representative in the Philippines and

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[1] *Rollo*, pp. 8-57.

[2] Penned by Court of Appeals Associate Justice Amelita G. Tolentino with Associate Justices Portia Aliño-Hormachuelos and Arcangelita Romilla-Lontok concurring; *rollo,* pp. 59-74.

[3] *Id.* at 76-77.

[4] *Id.* at 267-280.

[5] *Id.* at 104.

[6] *Id.*

[7] Vice-President for Finance, Nobel Ship Services, Inc.

manning agent of respondent ADAMS, a foreign company based in the Kingdom of Saudi Arabia and engaged in maritime commerce.

In a contract of employment,[8] denominated as the Philippine Overseas Employment Administration (POEA)–Standard Employment Contract (SEC), dated 7 August 2001, petitioner Nisda was hired by ADAMS, through its manning agent, Nobel, as Tugboat Master on *M/V Algosaibi-21*. Petitioner Nisda's employment was to run for a period of "[six] 6 months – continuation of [three] 3 months remaining,"[9] on board the *M/V Algosaibi-21*, under the following terms and conditions approved by the POEA:

1.1 Duration of Contract: 6 MONTHS – Continuation of 3 Months remaining

1.2 Position: MASTER (TUG)

1.3 Basic Monthly Salary: USD1,437.00

1.4 Hours of Work: 48 HOURS/WEEK

1.5 Overtime: FOT 431 (MAX.O.T. 105 HRS/MONTHS)

1.6 Vacation Leave with Pay: USD120.00

1.7 Point of Hire: QUEZON CITY, PHILIPPINES

Deemed incorporated in petitioner Nisda's POEA-SEC is a set of standard provisions established and implemented by the POEA, called the *Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels*,[10] which are the minimum requirements acceptable to the government for the employment of Filipino seafarers.

Petitioner Nisda joined the vessel *M/V Algosaibi-21* on 22 August 2001 at the port of Rastanura, Kingdom of Saudi Arabia.

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[8] *Rollo,* p. 148.

[9] *Id.*

[10] As amended by POEA Department Order No. 4 and Memorandum Circular No. 9, both Series of 2000.

On 30 August 2001, while on board the vessel *M/V Algosaibi-21*, it appeared that petitioner Nisda and a representative of respondent ADAMS entered into a second contract of employment[11] with the following terms and conditions:

Section – 2

a)	Employee name	: Carlos N. Nisda
x x x	x x x	x x x
g)	Job Title	: Master
h)	Basic Salary per Month	: US$ One Thousand Six Hundred Fifty only
j)	Effective Date of Contract	: 22 August 2001
k)	Duration of Contract	: 448 days
l)	Last Day of Contract	: 12 November 2002
x x x	x x x	x x x
q)	Vacation Entitlement	: 28 days for 84 days' work
r)	Vacation Pay	: 1/9th of base pay earned since contract start/previous
x x x	x x x	x x x
y)	Indemnity Start Date	: 22 August 2001

The aforementioned contract contained a stipulation stating:

Section – 10

It is mutually agreed that this contract cancels and supersedes all agreements, contracts and commitments prior to the date hereof (if any) and that after the execution of this contract neither party shall have any Right, Privilege or Benefit other than as mentioned above, except for the Employee's right to an end-of-service award ("Service Indemnity") which shall be calculated from the date specified in Section 2 Para y).[12]

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[11] *Rollo,* p. 152.

[12] *Id.*

The abovequoted contract of employment was neither processed nor sanctioned by the POEA.

Petitioner Nisda disembarked from *M/V Algosaibi-21* at the port of Rastanura, Kingdom of Saudi Arabia, on 12 November 2001, and was repatriated to the Philippines for a month-long paid vacation.

On 9 December 2001, petitioner Nisda again left the Philippines for Gizan, Kingdom of Saudi Arabia, in order to embark on the vessel *M/V Algosaibi-22*. His embarkation was made in fulfillment of his contractual obligation pursuant to the 7 August 2001 POEA-SEC he signed with respondent Algosaibi. According to the pertinent pages of his Seaman's Book, petitioner Nisda's latest deployment lasted until 7 March 2002, the day he again disembarked from the vessel *M/V Algosaibi-22* at the port of Gizan, Kingdom of Saudi Arabia, only to embark the very next day, 8 March 2002, on another vessel, *M/V Algosaibi-42*, this time, at the port of Tanjib, Kingdom of Saudi Arabia.

On 5 May 2002, petitioner Nisda was brought to the *Dar Al-Ta'afi Medical Services* complaining of "*pain of parascapular region of 6 months duration [with] paresthesia and numbness of both upper limbs*."[13] In a *Medical Report*[14] issued by one Dr. Hossam A. Abubeih, an Orthopedist, petitioner Nisda was diagnosed to be suffering from "Myositis of Parascapular (indistinct symbol) [with] Paresthesia on upper limbs." When examined, petitioner Nisda's blood pressure turned out to be 160/100 mm/Hg; thus, he was advised to follow-up "*for BP taking regularly*."[15]

According to petitioner Nisda, on account of the illness he suffered while on board *M/V Algosaibi-42*, he signed off and disembarked from said vessel at the port of Rastanura, Kingdom of Saudi Arabia, on 17 July 2002, and was repatriated to his point of hire, *i.e.*, Quezon City, Philippines. Within three days from his arrival in the Philippines, petitioner Nisda claimed to

[13] Medical Report (CA *rollo*, p. 112).

[14] *Id.*

[15] *Id.*

have presented himself at the office of Nobel for the requisite post-employment medical examination, in compliance with the reportorial requirement under Sec. 20(B) of his POEA-SEC. However, petitioner Nisda was allegedly asked to return a week after for the necessary physical examination at the St. Magdalene Diagnostic Clinic, Inc., the accredited medical service provider of Nobel.

In the meantime, petitioner Nisda went home to Miagao, Iloilo, on 18 July 2002. Only a day after arriving in Miagao, Iloilo, petitioner Nisda complained of difficulty in breathing and chest pains radiating to the back, the same condition for which he was brought to the clinic in Saudi Arabia in May 2002. Petitioner Nisda went to see a Dr. Geraldine Monteclaro Torrefiel, an internist who specialized in allergy, asthma and immunology. In a Certification[16] dated 19 July 2002, Dr. Torrefiel confirmed that she saw petitioner Nisda on even date and reported that –

> [B]ecause of chest pain which radiates to the back associated with exertional dyspnea. I therefore recommend him to see a cardiologist for a complete cardiac evaluation and management.[17]

On 22 July 2002, petitioner Nisda went back to Nobel and was sent to St. Magdalene Diagnostic Clinic, Inc. An electrocardiograph[18] (ECG or EKG) of petitioner Nisda's heart was done at the said clinic, and the test result[19] revealed that he had –

> Normal Sinus Rhythm
> LVH[20] w/ strain and/or ischemia[21]

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[16] *Rollo*, p. 156.

[17] *Id.*

[18] A test that records the electrical activity of the heart.

[19] *Rollo,* p. 157.

[20] Left Ventricle of the Heart.

[21] Reduced blood flow to an organ, usually due to a constricted or blocked artery.

In view of his ECG/EKG result, petitioner Nisda was referred, on 24 August 2002, by St. Magdalene Diagnostic Clinic, Inc. to St. Luke's Medical Center for a coronary angiogram.[22] Said test was conducted on petitioner Nisda on 25 August 2002. The Coronary Angiogram Report[23] contained the following details –

IMPRESSION: *Severe Three Vessel Coronary Artery Disease LV Diastolic Dysfunction*

Based on the foregoing Coronary Angiogram Report, cardiologists impressed upon petitioner Nisda the necessity of a bypass operation. Hence, absent further ado, in view of the seriousness of his condition, petitioner Nisda underwent a *triple* [coronary artery] *bypass surgery*[24] at the Makati Medical Center on 5 September 2002.[25] On 6 September 2002, the Makati Heart Foundation provided respondent ADAMS the "hospital package"[26] for petitioner Nisda's bypass operation. It would appear from the record that there was no response from respondent ADAMS.

A couple of months thereafter, petitioner Nisda obtained a medical certificate from a certain Dr. Levi Rejuso, an internist who specialized in neurology, declaring that –

Upon review of [petitioner Nisda's] history and as per recommendation by his cardiologist (sic) he is refrained (sic) from doing stressful activities. In this regard (sic) he can no longer perform his duties as a Ship Master and is categorized with grade I disability.[27]

The lack of response from respondent ADAMS and Nobel regarding petitioner Nisda's request for payment of disability

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[22] An x-ray test used to detect and diagnose diseases of the blood vessels, such as weakening of the vessel walls and the narrowing or blocking of vessels, and to examine the chambers of the heart. definition of coronary angiogram.

[23] *Rollo*, p. 160.

[24] A coronary artery bypass surgery is a type of heart surgery where blood is rerouted around clogged arteries to improve blood flow and oxygen to the heart.

[25] *Rollo,* pp. 167-168.

[26] *Id.* at 166.

[27] *Id.* at 173.

benefits was deafening. Hence, petitioner Nisda was "forced" to engage the services of counsel. In a letter[28] dated 4 November 2002, a formal demand was made against the foreign employer, respondent ADAMS, and its local manning agent, Nobel, for the payment of the following:

1. the amount of US$60,000.00 as his disability benefit under the POEA Contract;
2. the amount of US$6,600.00 as illness as allowance for 120 days, and;
3. reimbursement of medical, hospital, surgery and medicine expenses in the amount of ₱675,000.00.

Despite the formal demand, respondent ADAMS and Nobel still failed to pay petitioner Nisda's claims. Consequently, petitioner Nisda instituted a Complaint[29] against respondent ADAMS, Nobel, and Guerrero, with the NLRC on 16 January 2003, alleging that "while under contract on board and on vacation pay [he] was medically ill,"[30] with "severe coronary heart disease, *etc.*"[31]

Petitioner Nisda anchored his claim for disability benefit on Section (Sec.) 20(B), paragraph 6 of his POEA-SEC, which, as earlier mentioned, incorporated the *2000 Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels*, and thus provides:

SECTION 20. COMPENSATION AND BENEFITS

x x x x x x x x x

B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:

x x x x x x x x x

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[28] *Id.* at 174-175.

[29] *Id.* at 104.

[30] *Id.*

[31] *Id.*

6. In case of permanent total or partial disability of the seafarer caused by either injury or illness the seafarer shall be compensated in accordance with the schedule of benefits enumerated in Section 32 of this Contract. Computation of his benefits arising from an illness or disease shall be governed by the rates and the rules of compensation applicable at the time the illness or disease was contracted.

Petitioner Nisda claimed that the abovequoted provision entitled him to claim disability benefits or compensation from his foreign employer, respondent ADAMS, and its local manning agent, Nobel, since his illness was supposedly contracted during the term of his POEA-SEC. Likewise, petitioner Nisda prayed for the award of moral and exemplary damages due to the supposed deliberate and wanton refusal of respondent ADAMS and Nobel to pay his monetary claims.

While petitioner Nisda's Complaint was pending before the NLRC, respondent ADAMS remitted on 16 March 2003 to the Makati Medical Center and Makati Heart Foundation the amounts of Four Thousand Three Hundred Eighty-Nine Dollars and Forty Cents (US$4,389.40) and Five Thousand Nine Hundred Ninety-Seven Dollars and Thirty-Three Cents (US$5,997.33), respectively, representing medical and/or hospital expenses, including professional fees of the attending physicians, arising from petitioner Nisda's bypass operation.

Nobel and Guerrero rebutted petitioner Nisda's Complaint before the NLRC, averring that "[t]he illness benefits being claimed by the complainant are not compensable under the POEA Standard Contract as they occurred after the expiration of the complainant's employment contract";[32] that "[t]he foreign principal already remitted the payment for the medical expenses of the complainant";[33] and that Guerrero was not personally liable for the complainant's alleged claims.[34]

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[32] Respondents' Position Paper, p. 2; *rollo*, p. 177.

[33] *Id*. at 180.

[34] *Id*.

On 12 May 2003, Nobel and Guerrero filed a *Motion to Implead*[35] herein respondent Sea Serve Maritime Agency (respondent Sea Serve) on the ground that respondent ADAMS had already transferred its accreditation to the former as evidenced by the *Affidavit of Assumption of Responsibility*[36] executed by one Josephine A. Jocson (Jocson), Managing Director of respondent Sea Serve on 5 May 2003. In said Affidavit, affiant Jocson deposed and stated, *inter alia*, that –

3. That as agent in the Philippines of the above principal in the Philippines (sic) our company assumes full and complete responsibility for all contractual obligations to the seafarers originally recruited and processed by Nobel Shipping Inc. for the vessel(s) MV Algosaibi 1, 2, 22, 23, 24, 25, 26 & MV Midnight Arrow; Algosaibi 21

4. That in case of our failure to effect all contractual obligations of the principal to its seafarers, DOLE/POEA shall impose the necessary penalties in accordance with its Rules and Regulations, including but not limited to suspension/ cancellation of our license/authority as well as confiscation of bonus.

In a Decision[37] dated 23 July 2003, Labor Arbiter Fatima Jambaro-Franco found petitioner Nisda's Complaint meritorious. The decretal part of said Decision reads:

WHEREFORE, premises considered, judgment is hereby rendered, ordering the respondents Nobel Ship Services, Inc./Annabel Guerrero/ Khalifa A. Algosaibi Diving & Marine Services Company to jointly and severally pay complainant Carlos N. Nisda the amount of Seventy Three Thousand Two Hundred Sixty US Dollars (US$73,260.00) or its equivalent in Philippine Peso at the prevailing rate of exchange at the time of actual payment representing his disability benefits, sickness allowance and attorney's fees.

All other claims are DISMISSED for lack of merit.

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[35] *Id.* at 190-191.

[36] *Id.* at 192.

[37] *Id.* at 197-205.

The Labor Arbiter found that there was no doubt that petitioner Nisda's heart condition was contracted during his 15 long years of employment with respondent ADAMS. Factors of said employment, *i.e.*, 12-hour work days and the different weather conditions he was exposed to, predisposed said seafarer to heart disease. In ruling that petitioner Nisda suffered from a permanent disability with a Grade 1 disability or impediment rating, the Labor Arbiter relied on the Certification[38] issued by Dr. Levi Rejuso, a neurologist which states:

> This is to certify that Mr. Carlos N. Nisda, 60/M came in today for his check-up. Upon review of his history and as per recommendation by his cardiologist (sic) he is refrained (sic) from doing stressful activities. In this regard (sic) he can no longer perform his duties as a Ship Master and is categorized with grade I disability.

Ephraim B. Cortez (Atty. Cortez), counsel of respondent ADAMS, Nobel, and Guerrero, withdrew his appearance as counsel for said parties on 18 August 2003.

Petitioner Nisda moved, on 4 September 2003, for the issuance of a writ of execution based on the allegation that respondent ADAMS, Nobel, and Guerrero failed to appeal to the NLRC the 23 July 2003 Decision of the Labor Arbiter.

Petitioner Nisda next filed, on 22 September 2003, a *Manifestation*[39] calling the attention of the Labor Arbiter to the fact that "the dispositive portion of the decision by pure inadvertence alone, did not mention the resolved merits in the body of the decision itself adjudging Sea Serve Maritime Agency with joint and several liability with the rest of the Respondents to Complainant's monetary awards."[40]

Acting on petitioner Nisda's Manifestation, the Labor Arbiter issued an Order dated 30 September 2003, amending the *fallo* of the 23 July 2003 Decision to add the name of respondent Sea Serve to the list of those jointly and severally liable for petitioner Nisda's money claims.

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[38] *Id.* at 173.

[39] *Id.* at 208-209.

[40] *Id.*

Atty. Cortez filed another notice, on 29 September 2003, which reiterated his withdrawal as counsel of record for respondent ADAMS, Nobel, and Guerrero.

On 10 October 2003, respondent Sea Serve received a copy of the 30 September 2003 *Order* of the Labor Arbiter amending the dispositive portion of her 23 July 2003 Decision. Apparently, it was only on said date that respondent Sea Serve learned of the adverse decision rendered against it and its foreign principal, respondent ADAMS. Alarmed, on 14 October 2003, Atty. Jedrek C. Ng (Atty. Ng), counsel of respondents Sea Serve and ADAMS, personally "went to the office of the Labor Arbiter Fatima Jambaro-Franco to verify the records of the case x x x [and] discovered that through mistake, the respondent-appellant [Sea Serve] was not furnished a copy of the *Decision* x x x."[41]

On 20 October 2003, six days after obtaining a copy of the 23 July 2003 *Decision* of the Labor Arbiter, respondents Sea Serve and ADAMS filed their *Memorandum of Appeal* before the NLRC. They maintained that petitioner Nisda's heart ailment was diagnosed long after his 7 August 2001 POEA-SEC expired on 21 September 2002, so he was no longer entitled to disability benefits under said contract. Petitioner Nisda likewise could not claim any benefits under his 30 August 2001 employment contract, which he signed directly with respondent ADAMS, and which had no force and effect in this jurisdiction absent the prior approval of the POEA.

Petitioner Nisda later on filed a *Motion for Immediate Remand for Execution*[42] on the argument that the joint appeal filed by respondents Sea Serve and ADAMS was deemed not perfected for lack of the requisite appeal bond. He cited the 3 November 2003 *Memorandum*[43] issued by then NLRC Chairperson Roy Señeres stating that the Acropolis Central Guaranty Corporation, the surety company that posted the

[41] Memorandum of Appeal of respondents Sea Serve and ADAMS (Footnote No. 1); *rollo,* p. 214.

[42] *Id.* at 238-239.

[43] *Id.* at 240.

appeal bond for respondents Sea Serve and ADAMS, was not authorized to transact business in courts all over the Philippines.

The Third Division of the NLRC promulgated its *Decision*[44] on 14 May 2004, ruling in favor of respondents Sea Serve and ADAMS, thereby reversing the Labor Arbiter's Decision dated 23 July 2003. The dispositive portion of the subject Decision reads:

WHEREFORE, in view of the foregoing, judgment is hereby rendered as follows: a) dismissing the instant complaint against respondent-appellant Sea Serve Maritime Agency; b) denying the claims of complainant Carlos N. Nisda for disability benefits; and c) upholding respondent Khalifa A. Algosaibi Diving Marine Services' payment of the amounts of US$4,389.40 and US$5,997.33, to the Makati Medical Center and Makati Heart Foundation, respectively, as payment for the hospital expenses of complainant.

The NLRC gave due course to the joint appeal filed by respondents Sea Serve and ADAMS, since there was substantial compliance with the rules on appeal, to wit:

In the case at bar, the surety bond issued by Acropolis Central Guarantee Corporation was posted on October 17, 2003, or prior to the issuance of the Memorandum dated November 3, 2003, issued by the NLRC Chairman depriving Acropolis of its accreditation. Respondents cannot be faulted for this unexpected and supervening development, and to pin the blame on them would be tantamount to putting a premium on technicalities and deprive them of procedural due process. Besides, the issue has since become moot and academic, inasmuch as respondents-appellants have complied and transferred its surety bond to a duly authorized bonding company, *i.e.*, South Sea Surety & Guarantee Insurance Co., Inc.[45]

Anent the substantive matter of the appeal, the NLRC initially ruled that respondent Sea Serve could not be held liable with

[44] Penned by Commissioner Ernesto C. Verceles with Commissioners Lourdes C. Javier and Tito F. Genilo concurring; Annex "U" of the Petition; *id.* at 267-280.

[45] *Rollo,* pp. 272-273.

respondent ADAMS for the claim of petitioner Nisda, "inasmuch as the execution of the employment contract, illness, operation and the filing of the instant case all occurred before respondent Sea Serve was impleaded in the case."[46] Nonetheless, the foregoing pronouncement was deemed *functus officio* when the NLRC eventually reversed the ruling of the Labor Arbiter and dismissed petitioner Nisda's claim for payment of disability benefits on the ground that his POEA-SEC had long expired when his illness arose. The NLRC, referring to Secs. 2(B) and 20(B) of the POEA-SEC, which incorporated the *Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels*, ratiocinated that:

> It necessarily follows that in order for an employer to be held liable to the seafarer on account of the latter's illness, the cause thereof must arise during the term of a duly approved POEA contract, which obviously did not happen in the case at bar. In addition, complainant violated the Rules and Regulations of the POEA by entering into a contract exceeding 12 months. He even deceived respondent Nobel by deliberately executing another contract without its consent and sans any approval from the POEA. In his 15 years of working overseas, he cannot feign ignorance of that basic requirement. Thus, for not coming to court with clean hands and in order to prevent complainant from profiting from his own deception, basic rules of fair play dictate that we deny complainant's claim for disability and other medical benefits.[47]

Petitioner Nisda's subsequent Motion for Reconsideration was denied by the NLRC for lack of merit in a *Resolution* dated 26 September 2004.

Undaunted, petitioner Nisda filed an original action for *certiorari* before the Court of Appeals imputing grave abuse of discretion, amounting to lack or excess of jurisdiction, to the NLRC for reversing the 23 July 2003 Decision of the Labor Arbiter.

In a Decision rendered on 27 September 2006, the Court of Appeals dismissed petitioner Nisda's Petition for *Certiorari*

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[46] NLRC Decision, p. 9; *id.* at 275.

[47] *Rollo*, pp. 278-279.

for lack of merit. The appellate court affirmed the challenged 14 May 2004 *Decision* and 26 September 2004 *Resolution* of the NLRC, reasoning thus:

It appears that on May 5, 2002, as certified by the Dar Al Ta'afi Medical Services Co., Ltd. In Saudi Arabia, the petitioner sought medical attention from the said institution due to a complaint of "pain of parascapular region of 6 months duration with parasthesia and numbness of both upper limbs." [Petitioner Nisda] was diagnosed of having Myositis of Parascapular with Paresthesia on upper limbs. He was thus advised to check his blood pressure regularly. He was repatriated on July 17, 2002. Thereafter, his heart ailment was discovered, then he underwent an open heart surgery. Subsequently, he filed the monetary claims against the respondents.

[Petitioner Nisda] based his claims under Section 20(B) of the Standard Terms and Conditions Governing Seafarers On-Board Ocean Going Vessels, most commonly known as the POEA-SEC (Standard Employment Contract). This section specifically provides for the liabilities of the employer for an injury or illness suffered by a seaman during the term of his contract. Primarily, for an injury or illness to be duly compensated under the POEA-SEC, there must be a showing that such injury or illness occurred or was suffered during the effectivity of the employment contract. The same is true with respect to any disability caused by either injury or illness.[48]

Hence, the Court of Appeals concluded that:

[Petitioner Nisda] is claiming compensation for an illness suffered beyond the effectivity and enforceability of the POEA approved contract. While he was allegedly repatriated due to an illness on July 17, 2002, his POEA approved contract apparently expired on May 22, 2002. He cannot insists (sic) that his illness commenced on May 5, 2002 when he once sought medical treatment in Saudi Arabia because he has not shown any evidence to prove that there is a correlation between "Myositis of Parascapular with Paresthesia on upper limbs" and his heart ailment.

Neither can the petitioner invoke the existence of the second contract to hold the respondents liable to his claims pursuant to the

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[48] *Id.* at 70-71.

provisions of POEA-SEC. The said contract was executed in violation of the POEA Rules and Regulations. x x x.[49]

And the NLRC decreed as follows:

> WHEREFORE, the petition is DISMISSED for lack of merit. Accordingly, the assailed decision and resolution dated May 14, 2004 and September 20, 2004, respectively, of the public respondent are hereby AFFIRMED. No pronouncement as to costs.[50]

Petitioner Nisda's Motion for Reconsideration was denied by the Court of Appeals in a *Resolution* dated 10 August 2007.

Hence, this Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court.

The present Petition is premised on the twin arguments that the Court of Appeals erred in (1) affirming the Decision dated 14 May 2004 of the NLRC, which reversed and set aside the supposedly final and executory Decision dated 23 July 2003 of the Labor Arbiter granting disability benefits to petitioner Nisda; and (2) ruling that petitioner Nisda developed his illness beyond the effectivity of his POEA-sanctioned first contract (the POEA-SEC) dated 7 August 2001; and even though within the duration of his second POEA-unsanctioned employment contract dated 30 August 2001, his illness was not compensable.

Petitioner Nisda is fundamentally assailing the finding of both the Court of Appeals and the NLRC that the evidence on record does not support petitioner Nisda's entitlement to disability benefits. This clearly involves a factual inquiry, the determination of which is not the statutory function of this Court. As a rule, only questions of law may be raised in and resolved by this Court on petitions brought under Rule 45 of the Rules of Court. "The reason being that the Court is not a trier of facts; it is not duty-bound to re-examine and calibrate the evidence on record. Moreover, findings of fact of quasi-judicial bodies like the NLRC, as affirmed by the [Court of Appeals], are generally conclusive on this Court."[51]

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[49] *Id.* at 71.

[50] *Id.* at 73.

[51] *Acevedo v. Advanstar Company, Inc.*, G.R. No. 157656, 11 November

In exceptional cases, however, we may be constrained to delve into and resolve factual issues when there is insufficient or insubstantial evidence to support the findings of the tribunal or court below, or when too much is concluded, inferred or deduced from the bare or incomplete facts submitted by the parties, or where the Labor Arbiter and the NLRC came up with conflicting positions.[52] The case at bar constitutes one of these exceptional cases.

The first error imputed by petitioner Nisda to the Court of Appeals essentially concerns the issue of jurisdiction, *i.e.*, whether or not the NLRC and Court of Appeals had jurisdiction to alter, modify or reverse the 23 July 2003 Decision of the Labor Arbiter that had, allegedly, already attained finality. Petitioner Nisda asserts that the Labor Arbiter's Decision dated 23 July 2003 was already final and executory, since respondents Sea Serve and ADAMS (1) filed their appeal with the NLRC beyond the ten-day reglementary period provided by the NLRC Rules of Procedure; and (2) failed to perfect their appeal before the NLRC because they were not able to post the requisite appeal bond.

We are not persuaded. After a careful review of the records of the case, we see no reason to disturb the finding of the NLRC and the Court of Appeals that the joint appeal filed by respondents Sea Serve and ADAMS was duly filed and perfected in compliance with the NLRC Rules of Procedure.

In the first place, nowhere in the records of the present petition is it shown that, indeed, respondents Sea Serve and ADAMS were notified of the adverse 23 July 2003 Decision of the Labor Arbiter. It must be remembered that, by virtue of the *Affidavit of Assumption of Responsibility* dated 5 May 2003, respondent Sea Serve assumed "full and complete responsibility for all contractual obligations to the seafarers originally recruited and processed by Nobel Shipping Inc. for the vessel(s) *MV Algosaibi* 1, 2, 22, 23, 24, 25, 26 & MV Midnight Arrow; *Algosaibi*

2005, 474 SCRA 656, 664.

[52] *Pascua v. National Labor Relations Commission*, 351 Phil. 48, 61 (1998).

21."[53] Said affidavit was made pursuant to Sec. 6, Rule I,[54] Book III,[55] of the 1991 POEA Rules and Regulation Governing Overseas Employment, *viz*:

Section 6. *Transfer of Accreditation.* — The accreditation of a principal or a project may be transferred to another agency provided that transfer shall not involve any diminution of wages and benefits of workers.

The transferee agency in these instances shall comply with the requirements for accreditation and shall assume full and complete responsibility to all contractual obligations of the principals to its workers originally recruited and processed by the former agency. Prior to the transfer of accreditation, the Administration shall notify the previous agency and principal of such application.

Let it be made clear that there is no issue as to the assumption by respondent Sea Serve of any accountability that may arise or may have arisen from the employment contracts previously instituted and processed by Nobel for respondent ADAMS; or the relief of Nobel from its contractual obligations to the Filipino overseas workers whose employment contracts it processed for respondent ADAMS. The transferee agency, respondent Sea Serve, had assumed long ago from Nobel, the full and complete responsibility of the contractual obligations of the principal, respondent ADAMS, including the alleged liability to petitioner Nisda that is subject of the case at bar. That being the case, therefore, it was imperative upon the Labor Arbiter to have notified respondents Sea Serve and ADAMS of the adverse decision taken against them. Unfortunately, the Labor Arbiter failed to take into account the import of aforementioned transfer of accreditation. This omission is obvious from the face of the Notice[56] dated 1 August 2003, attached to the Labor Arbiter's

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[53] See note 36.

[54] ACCREDITATION OF PRINCIPALS AND REGISTRATION OF PROJECTS BY LANDBASED AGENCIES/CONTRACTORS.

[55] PLACEMENT BY THE PRIVATE SECTOR.

[56] CA *rollo* p. 255.

Decision dated 23 July 2003, which informed merely petitioner Nisda and his counsel, Nobel, Guerrero and their counsel.

In as much as respondents Sea Serve and ADAMS were left in the dark, so to speak, how can they be expected to question something that they have no knowledge of? It is indisputable that service of the decision of the labor arbiter should be made on parties or their counsel, and the reglementary period for filing an appeal shall be reckoned from the date of such service. Not until respondents Sea Serve and ADAMS were served notice of the 23 July 2003 Decision of the Labor Arbiter, the reglementary period for them to appeal the same to the NLRC had not yet commenced. The 10-day reglementary period to appeal to the NLRC only started to run on 14 October 2003, when Atty. Ng, counsel for respondents Sea Serve and ADAMS, was able to personally secure a copy of the Labor Arbiter's Decision dated 23 July 2003. Therefore, the Joint Appeal Memorandum, filed by respondents Sea Serve and ADAMS on 20 October 2003, just six days after receiving notice and copy of the appealed Decision of the Labor Arbiter, was not filed belatedly.

And secondly, as for petitioner Nisda's contention of non-perfection of the appeal of respondents Sea Serve and ADAMS for failure of the latter two to post the appeal bond, the Court of Appeals succinctly addressed the same as follows:

> It is not disputed that the respondents' Memorandum of Appeal had already been perfected, with the filing of the requisite appeal bond within the 10-day mandatory period, when the Memorandum of the NLRC concerning the disaccreditation of Acropolis Central Guaranty Corporation, which has the effect of rendering the appeals with bond posted by the said company not perfected, was released. But, just like what the NLRC Chair stated in his letter dated February 10, 2004, the said Memorandum should be applied prospectively.[57]

Notwithstanding the foregoing, we are of the view that the second, more critical, error imputed by petitioner Nisda against the Court of Appeals, concerning the denial of his right to disability benefits, must be sustained given the factual milieu of the present

[57] *Rollo*, p. 68.

case. Sifting through the evidence on record, we are ineluctably convinced that the conclusion of the NLRC and the appellate court, that petitioner Nisda's heart condition is non-compensable, rests on rather shaky foundation.

In his Petition, petitioner Nisda points out that "[he] was certified by the *Dar al Ta'afi* Medical Services Co. Ltd. [o]n May 5, 2002 which was within the term or duration of his contract of his POEA approved contract of employment that was then set to expire on May 2, 2002 with a medical complaint of pain in his parascapular region of 6 months duration already way unto his consummated employment service of his contract of employment with paresthesia and numbness of both upper limbs."[58] He insists further that, "[t]his very medical certification by itself of the Saudi Hospital substantiates the causative circumstance leading to petitioner's permanent total disability of heart ailment x x x."[59]

Respondents Sea Serve and ADAMS oppose petitioner Nisda's claims by arguing that petitioner Nisda cannot base his claim for disability benefits under Sec. 20(B) of his 7 August 2001 POEA-SEC, because "[t]his section specifically provides for the liabilities of the employer for an injury or illness suffered by a seaman during the term of his contract."[60] Since "[p]etitioner filed disability claims for injuries suffered after the expiration of the first contract [*i.e.*, the 7 August 2001 POEA-SEC],"[61] "the NLRC correctly ruled that it cannot acquire jurisdiction over claims arising out of contracts without the necessary approval of the POEA [*i.e.*, the subsequent 30 August 2001 employment contract]."[62]

Taking into consideration the arguments of the parties, the provisions of petitioner Nisda's POEA-SEC, as well as the law

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[58] Petition, p. 41; *id.* at 48.

[59] *Id.*

[60] Comment to the Petition filed by respondents Sea Serve and ADAMS, p. 12; *id.* at 453.

[61] *Id.* at 449.

[62] *Id.*

and jurisprudence on the matter, we rule that petitioner Nisda is entitled to disability benefits.

As with all other kinds of worker, the terms and conditions of a seafarer's employment is governed by the provisions of the contract he signs at the time he is hired. But unlike that of others, deemed written in the seafarer's contract is a set of standard provisions set and implemented by the POEA, called the *Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels*, which are considered to be the minimum requirements acceptable to the government for the employment of Filipino seafarers on board foreign ocean-going vessels. Thus, the issue of whether petitioner Nisda can legally demand and claim disability benefits from respondents Sea Serve and ADAMS for an illness suffered is best addressed by the provisions of his POEA-SEC, which incorporated the *Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels*. When petitioner Nisda was employed on 7 August 2001, it was the *2000 Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels*[63] (hereinafter referred to simply as *Amended Standard Terms and Conditions* for brevity) that applied and were deemed written in or appended to his POEA-SEC.

Sec. 20(B), paragraph 6, of the *2000 Amended Standard Terms and Conditions* provides:

SECTION 20. COMPENSATION AND BENEFITS

x x x x x x x x x

B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

The liabilities of the employer when the seafarer suffers **work-related injury or illness during the term of his contract** are as follows:

x x x x x x x x x

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[63] As amended by POEA Department Order No. 4 and POEA Memorandum Circular No. 9, both Series of 2000.

6. In case of **permanent total or partial disability of the seafarer caused by either injury or illness** the seafarer shall be compensated in accordance with the schedule of benefits enumerated in Section 32 of this Contract. Computation of his benefits arising from an illness or disease shall be governed by the rates and the rules of compensation applicable at the time the illness or disease was contracted. (Emphasis supplied.)

Pursuant to the afore-quoted provision, two elements must concur for an injury or illness to be compensable. *First*, that the injury or illness must be work related; and *second*, that the work-related injury or illness must have existed during the term of the seafarer's employment contract.

The *2000 POEA Amended Standard Terms and Conditions* defines "work-related injury" as "injury(ies) resulting in disability or death arising out of and in the course of employment" and "work-related illness" as "any sickness resulting to disability or death as a result of an occupational disease listed under Section 32-A of this contract with the conditions set therein satisfied," that is –

SECTION 32-A. OCCUPATIONAL DISEASES

For an occupational disease and the resulting disability or death to be compensable, all of the following conditions must be satisfied:

1) The seafarer's work must involve the risks described herein;

2) The disease was contracted as a result of the seafarer's exposure to the described risks;

3) The disease was contracted within a period of exposure and under such other factors necessary to contract it;

4) There was no notorious negligence on the part of the seafarer.

Sec. 32-A(11) of the *2000 POEA Amended Standard Terms and Conditions* explicitly considers Cardio-Vascular Disease as an occupational disease if the same was contracted under working conditions that involve any of the following risks –

a) 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.

b) The strain of the work that brings about an acute attack must be sufficient severity and must be followed within 24 hours by the clinical signs of cardiac insult to constitute causal relationship.

c) If a person who was apparently asymptomatic before being subjected to strain at work showed signs and symptoms of cardiac injury during the performance of his work and such symptoms and signs persisted, it is reasonable to claim a causal relationship.

Consequently, for Cardio-Vascular Disease to constitute an occupational disease for which the seafarer may claim compensation, it is incumbent upon said seafarer to show that he developed the same under any of the three conditions identified above.

In the present case, petitioner Nisda was diagnosed to be suffering from a Cardio-Vascular Disease, specifically, a ***Coronary Artery Disease***, only shortly after disembarking from *M/V Algosaibi-42* and arriving in the Philippines. Petitioner Nisda's disease was serious enough to necessitate a Triple Bypass Operation on his heart.

Petitioner Nisda's Coronary Artery Disease was diagnosed only after numerous tests and evaluations conducted, owing to his consistent and persistent physical complaints. His medical history was well-documented. On 5 May 2002, petitioner Nisda was brought to the *Dar Al-Ta'afi Medical Services,* a clinic in Saudi Arabia, for **"*pain of parascapular region of 6 months duration [with] paresthesia and numbness of both upper limbs*."**[64] Petitioner Nisda then had blood pressure of 160/100 mm/Hg. Dr. Hossam A. Abubeih, an Orthopedist at the clinic, initially diagnosed petitioner Nisda as having *Myositis* of the parascapular region with paresthesia on the upper limbs. On 19 July 2002, only two days after being repatriated to the Philippines, Dr. Torrefiel attended to petitioner Nisda in Iloilo

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[64] *Rollo,* p. 156.

when the latter suffered from **"*chest pain which radiates to the back associated with exertional dyspnea*."**[65] Dr. Torrefiel advised petitioner Nisda to undergo complete cardiac evaluation. In view of Dr. Torrefiel's advice, St. Magdalene Diagnostic Clinic, Inc., the accredited health service provider of respondent Nobel, conducted on 22 July 2002 an ECG/EKG of petitioner Nisda's heart, revealing that the left ventricle thereof was experiencing a strain and/or ischemia. A barrage of cardio-vascular tests followed thereafter, including the Coronary Angiogram, to fully assess the condition of petitioner Nisda's heart. The Coronary Angiogram irrefutably exposed petitioner Nisda's ***Severe Three Vessel Coronary Artery Disease and Left Ventricle Diastolic Dysfunction***.[66]

According to the National Heart Lung and Blood Institutes of the National Institutes of Health,[67] the primary medical research agency of the United States of America,[68] *coronary artery disease* is a condition in which plaque builds up inside the coronary arteries. These arteries supply the heart muscle with oxygen-rich blood. When the coronary arteries are narrowed or blocked, oxygen-rich blood cannot reach the heart muscle. This can cause ***angina***, a feeling of pain in the chest area or discomfort that occurs when not enough oxygen-rich blood is flowing to an area of the heart muscle. It may also feel like pressure or squeezing in the chest which can be felt in the shoulders, arms, neck, jaw, or back. Generally, the pain tends to get worse with activity and go away with rest. Or a ***heart attack***, which can occur when blood flow to an area of the heart muscle is completely blocked. When oxygen-rich blood is prevented from reaching a specific area of the heart muscle, the tissue of the affected area can die. Another common symptom of the disease is ***shortness of breath***, due to fluid build up in the lungs in the event of

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[65] *Id.* at 156.

[66] *Id.* at 160.

[67] http://www.nhlbi.nih.gov/health/dci/Diseases/Cad/CAD_LivingWith.html visited on 1 July 2009.

[68] http://www.nih.gov/about/NIHoverview.html visited on 1 July 2009.

heart failure or when the heart cannot pump enough blood throughout the body.

The severity of these symptoms varies. The symptoms may get more severe as the buildup of plaque continues to narrow the coronary arteries. Some people who have coronary artery disease, however, have no signs or symptoms, and the disease may be left undiagnosed until a person shows signs and symptoms of a heart attack, heart failure, or arrhythmia.[69]

We observe that the physical discomforts of petitioner Nisda, for which he sought medical attention as early as 5 May 2002 when he was brought to the clinic in Saudi Arabia, bear the hallmarks of coronary artery disease. Such disease does not develop overnight. The plaque in the coronary arteries would have taken months, if not years, to build up, making it highly probable that petitioner Nisda already had the disease during the life of his POEA-SEC, although it went undiagnosed because he had yet to experience the symptoms.

In *Seagull Shipmanagement and Transport, Inc. v. National Labor Relations Commission*,[70] we awarded benefits to the heirs of the seafarer therein who worked as a radioman on board a vessel; and who, after ten months from his latest deployment, suffered from bouts of coughing and shortness of breath, necessitating open heart surgery. We found in said case that the seafarer's work exposed him to different climates and unpredictable weather, which could trigger a heart attack or heart failure.We likewise ruled in said case that the seafarer had served the contract for a significantly long amount of time, and that his employment had contributed, even to a small degree, to the development and exacerbation of his disease.

In the instant case, records[71] reveal that petitioner Nisda had been deployed by respondent ADAMS numerous times in a

[69] An abnormal heart rhythm [ineffective and uncoordinated contractions of the heart muscle and may cause a slow, rapid or irregular pulse] caused by a disruption of the normal functioning of the heart's electrical conduction system.

[70] 388 Phil. 906 (2000).

[71] CA *rollo*, pp. 83-102.

span of 15 years, under several employment contracts. Petitioner Nisda was first hired and deployed by respondent ADAMS as a Tug Boat Master in 1987. He was immediately hired and deployed again by respondent ADAMS after the expiration of each employment contract. Through the years, petitioner Nisda worked for respondent ADAMS essentially under the same or closely similar conditions, *i.e.*, 48-hour work weeks with a maximum of 105 hours of overtime.

If we found in *Seagull Shipmanagement* that the different climates and unpredictable weather, as well as the stress of the job, had a correlation with the heart disease of a seafarer working as a radioman on a vessel, then what more in the heart disease of a seafarer serving as a ship master, a position involving more strain and pressure? A Tug (boat) Master is primarily tasked to operate tug boats, a powerful marine vessel that meets large ships out at sea and attach a line to guide/steer the same into and out of berths.[72] In operating such a powerful vessel, a Tug Master requires not just a thorough knowledge of the port environment in which he is operating, but a high level of skill as well. In fact, in the case at bar, respondent ADAMS recognized how grueling petitioner Nisda's job was, according the latter a month of paid vacation every three months of straight service. Thus, more than a reasonable connection between the nature of petitioner Nisda's job and his Coronary Artery Disease has been established. Petitioner Nisda was able to sufficiently prove, by substantial evidence, that his Coronary Artery Disease was work-related, given the arduous nature of his job that caused his disease or, at least, aggravated any pre-existing condition he might have had. Respondents Sea Serve and ADAMS, on the other hand, utterly failed to refute the said connection.

Respondents Sea Serve and ADAMS cannot rely on the seemingly imprecise Medical Report issued by the *Dar Al Ta'afi*, which stated that petitioner Nisda was suffering from Myositis, or a non-specific inflammation of the muscles of the parascapular

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[72] http://www.careersatsea.com.au/careers/towage-salvage/tug-master.htm visited on 10 July 2009.

region or chest area.[73] We note that petitioner Nisda was then only attended to by an Orthopedist, a surgeon whose area of expertise is the skeletal system composed of the bones and muscles. Petitioner Nisda was not seen by a cardiologist in Saudi Arabia even though his blood pressure was high, high enough that he was advised to regularly monitor the same.

It is also of no moment that petitioner Nisda passed his pre-employment medical examination before he was hired and deployed by respondent ADAMS as a seafarer. It has been accepted that pre-employment medical examinations are usually not exploratory in nature.[74] The same is not intended to be a totally in-depth and thorough examination of an applicant's medical condition. It merely determines whether one is "fit to work" at sea or "fit for sea service"; it does not describe the real state of health of an applicant. "While a [pre-employment medical examination] may reveal enough for the [foreign employer] to decide whether a seafarer is fit for overseas employment, it may not be relied upon to inform petitioners of a seafarer's true state of health. The [pre-employment medical examination] could not have divulged respondent's illness considering that the examinations were not exploratory."[75]

As a defense against any liability, respondents Sea Serve and ADAMS incessantly posit that petitioner Nisda's POEA-SEC had already expired when the latter was repatriated to the Philippines on 17 July 2002 and subsequently diagnosed with Coronary Artery Disease.

We disagree.

To be sure, the duration of petitioner Nisda's POEA-SEC was "6 MONTHS – Continuation of 3 months,"[76] or nine months

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[73] http://www.hopkinsmedicine.org/myositis/myositis/ visited on 1 July 2009.

[74] *The Estate of Posedio Ortega v. Court of Appeals,* G.R. No. 175005, 30 April 2008, 553 SCRA 649, 660.

[75] *NYK-FIL Ship Management, Inc. v. National Labor Relations Commission,* G.R. No. 161104, 27 September 2006, 503 SCRA 595, 609.

[76] *Rollo,* p. 148.

entirely. Petitioner Nisda signed his POEA-SEC on 7 August 2001; but per Sec. 2(A) of the same, it was to commence only on 22 August 2001, the date of petitioner Nisda's actual departure from the airport in the point of hire, which was Quezon City, carrying with him his POEA-approved employment contract.[77] The period of nine months, counted from 22 August 2001, expired on 21 May 2002.

However, Sec. 2(A) of the POEA-SEC also provides that the POEA-SEC shall be effective until the seafarer's date of arrival at the point of hire upon termination of the employment contract, pursuant to Sec. 18 of the same contract. Sec. 18 states –

> SECTION 18. TERMINATION OF EMPLOYMENT
>
> A. The employment of the seafarer shall cease when the seafarer completes his period of contractual service aboard the vessel, signs-off from the vessel and arrives at the point of hire.

Record of the present case reveals that petitioner Nisda signed off and disembarked from *M/V Algosaibi-42*, and was repatriated to the Philippines, only on 17 July 2002. Hence, it was only on said date that petitioner Nisda's POEA-SEC actually concluded.

We cannot subscribe to the assertion of respondents Sea Serve and ADAMS that from 21 May 2002 until his repatriation on 17 July 2002, petitioner Nisda was already toiling under the provisions of the second employment contract he signed with respondent ADAMS without the endorsement of the POEA.

In *Placewell International Services Corporation v. Camote*,[78] we held that the subsequently executed side agreement of an overseas contract worker with the foreign employer is void, simply because it is against our existing laws, morals and public policy. The subsequent agreement cannot supersede the terms

[77] SECTION 2. COMMENCEMENT/DURATION OF CONTRACT

A. The employment contract between the employer and the seafarer shall commence upon actual departure of the seafarer from the airport or seaport in the point of hire and with a POEA approved contract x x x.

[78] G.R. No. 169973, 26 June 2006, 492 SCRA 761.

of the standard employment contract approved by the POEA. Republic Act No. 8042, commonly known as the Migrant Workers Act of 1995, expressly prohibits the substitution or alteration, to the prejudice of the worker, of employment contracts already approved and verified by the Department of Labor and Employment (DOLE) from the time of the actual signing thereof by the parties up to and including the period of the expiration of the same, without the approval of DOLE.[79] Since the second employment contract petitioner Nisda signed with respondent ADAMS was void for not having been sanctioned by the POEA, then petitioner Nisda's employment with respondent ADAMS was still governed by his POEA-SEC until his repatriation to the Philippines on 17 July 2002.

That petitioner Nisda was diagnosed with heart disease only on 19 July 2002, already two days after his return to the Philippines, is of no adverse significance to his claim. Sec. 20(B)(3) of the *2000 POEA Amended Standard Terms and Conditions* requires that a seafarer, signing off from the vessel for medical treatment, must submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return, *viz*:

SECTION 20. COMPENSATION AND BENEFITS

x x x x x x x x x

B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:

x x x x x x x x x

3.Upon sign-off from the vessel for medical treatment, x x x.

x x x x x x x x x

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[79] *Datuman v. First Cosmopolitan Manpower and Promotion Services, Inc.*, G.R. No. 156029, 14 November 2008, citing *Placewell International Services Corporation v. Camote*, *id.*

> For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return x x x.

The post-employment medical examination is clearly meant to verify the medical condition for which the seafarer signed off from the vessel. In the case at bar, petitioner Nisda's post-employment medical examination revealed a far more serious medical condition, Coronary Heart Disease, than what he was first diagnosed with in Saudi Arabia. And, as we previously established herein, it is highly improbable that petitioner Nisda developed said disease only within the few days from his arrival in the Philippines. The far more reasonable and logical conclusion is that he already had the disease while still on board the vessel of respondent ADAMS and well within the life of his POEA-SEC.

Moreover, well worth considering is the riposte to the query: If respondent ADAMS truly considered that petitioner Nisda contracted his Coronary Artery Disease way after the effectivity of the latter's POEA-SEC, then why did it remit the amounts of US$4,389.40 and US$5,997.33 to the Makati Medical Center and Makati Heart Foundation, respectively, as payment for the expenses incurred for a former employee's triple bypass operation?

Any dispute as to petitioner Nisda's state of health could have easily been resolved had respondents Sea Serve and ADAMS stayed true to the provisions of the *2000 Amended Standard Terms and Conditions*, particularly Sec. 20(B)(3), which allows the following option:

3. Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance x x x until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician x x x.

x x x x x x x x x

If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the

Employer and the seafarer. The third doctor's decision shall be final and binding on both parties. (Emphasis supplied.)

Without the opinion of a doctor for respondents Sea Serve and ADAMS, or one they could have jointly chosen with petitioner Nisda, we are constrained to make a ruling based on the evidence already submitted by the parties and made part of the records of this case, including the medical certifications petitioner Nisda obtained from his attending physicians.

Undoubtedly then, under his POEA-SEC, which incorporated the *2000 POEA Amended Standard Terms and Conditions*, petitioner Nisda has a right to receive disability benefit and sickness allowance for 120 days, on account of his Coronary Heart Disease, which qualifies as a total and permanent disability with Grade I Impediment. The computation of the monetary award as stated in the decision of the labor arbiter, however, must be modified in that the sickness allowance for 120 days should be based merely on petitioner Nisda's basic salary of US$1,437.00 per month under his POEA-SEC, multiplied by 4 months for a total of US$5,748.00. With regard to his disability benefit classified as Grade I Impediment, he should receive 120% of US$50,000.00 as dictated by the 2000 POEA *Amended Standard Terms and Conditions*, specifically Secs. 20(B)(3)[80] and

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[80] SECTION 20. COMPENSATION AND BENEFITS

x x x x x x x x x

B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:

x x x x x x x x x

3. Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but in no case shall this period exceed one hundred twenty (120) days.

For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the a gency within the same period is deemed as

20(B)(6)[81] *vis-à-vis* Secs. 32[82] and 32-A.[83] The 10% attorney's fee that was awarded by the Labor Arbiter shall also be maintained, but must reflect the modified amount of the sickness allowance and disability benefit and to be deducted from the winning amount due.[84]

All told, the evidence, including medical documentation, presented by petitioner Nisda, substantially proved that a reasonable connection existed between the work he performed for respondent ADAMS and the development and exacerbation of his Coronary Artery Disease, hence, making it an occupational disease, as described and compensated for by Sec. 32-A of the *2000 POEA Amended Standard Terms and Conditions*. Consequently, it was erroneous for the NLRC and the Court of Appeals to deny petitioner Nisda's claims for disability benefits under Sec. 20(B), paragraph 6 of the *2000 POEA Amended Standard Terms and Conditions*.

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compliance. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits. If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the Employer and the seafarer. The third doctor's decision shall be final and binding on both parties.

[81] SECTION 20. COMPENSATION AND BENEFITS

x x x x x x x x x

B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:

x x x x x x x x x

6. In case of permanent total or partial disability of the seafarer caused by either injury or illness the seafarer shall be compensated in accordance with the schedule of benefits enumerated in Section 32 of this Contract. Computation of his benefits arising from an illness or disease shall be governed by the rates and the rules of compensation applicable at the time the illness or disease was contracted.

[82] SCHEDULE OF DISABILITY OR IMPEDIMENT FOR INJURIES SUFFERED AND DISEASES INCLUDING OCCUPATIONAL DISEASES OR ILLNESS CONTRACTED.

[83] OCCUPATIONAL DISEASES

[84] Sec. 11, Rule VIII, Book III of the Omnibus Rules Implementing the Labor Code.

WHEREFORE, premises considered, the instant Petition is *GRANTED.* The assailed Decision dated 27 September 2006 and Resolution 10 August 2006 of the Court of Appeals in CA-G.R. SP No. 87562 are *REVERSED* and *SET ASIDE.* The Decision dated 23 July 2003 of the Labor Arbiter, as amended by the Order dated 30 September 2003, in NLRC OFW Case No. (M) 03-01-0159-00 is *AFFIRMED* with *MODIFICATION*. Respondents Sea Serve Maritime Agency and Khalifa A. Algosaibi Diving and Marine Services are hereby ordered to jointly and severally pay petitioner Carlos N. Nisda the amount of US$65,748.00 representing his disability pay amounting to US$60,000.00 and sickness allowance of US$5,748.00. The 10% attorney's fee that was awarded by the Labor Arbiter shall be maintained but must reflect the modified amount of the monetary award and is to be deducted from the same.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 179546. July 23, 2009]

COCA-COLA BOTTLERS PHILS., INC., *petitioner, vs.* **ALAN M. AGITO, REGOLO S. OCA III, ERNESTO G. ALARIAO, JR., ALFONSO PAA, JR., DEMPSTER P. ONG, URRIQUIA T. ARVIN, GIL H. FRANCISCO and EDWIN M. GOLEZ,** *respondents.*

SYLLABUS

REMEDIAL LAW; MOTIONS; MOTION FOR PARTIAL RECONSIDERATION; REMEDY TO CLARIFY THE

DISPOSITIVE PORTION OF THE DECISION. — This Court finds merit in the respondents' motion for partial reconsideration, since the words "inclusive of allowance and x x x other benefits or the monetary equivalent thereof" are merely descriptive of "full backwages," which this Court had already categorically awarded to respondents after a thorough discussion of the merits of the case. They do not constitute a new or additional award to respondents. The inclusion of these words in the dispositive part of the Decision serves only to clarify the same so that in the implementation thereof, none of the rights legally due to the respondents shall be overlooked.

APPEARANCES OF COUNSEL

De La Rosa & Nograles for petitioner.
Armando San Antonio for respondents.

R E S O L U T I O N

CHICO-NAZARIO, *J.*:

In a Decision dated 13 February 2009, the Court denied the petition filed in this case and partially affirmed the Decision dated 19 February 2007 and the Resolution dated 31 August 2007 of the Court of Appeals in CA-G.R. SP No. 85320, insofar as it found that an employer-employee relationship existed between petitioner Coca-Cola Bottlers Philippines, Inc. and herein respondents. However, instead of remanding the case to the National Labor Relations Commission (NLRC) for further proceedings as the appellate court had ordered, this Court ordered the petitioner to reinstate respondents without loss of seniority rights and to pay them full back wages from the time their compensation was withheld up to their actual reinstatement.

On 13 April 2009, respondents filed a *Motion for Clarification and/or Partial Motion for Reconsideration* wherein it quoted the decretal part of the Decision dated 13 February 2009 and the decisive paragraph that precedes it:

Given that respondents were illegally dismissed by petitioner, they are entitled to reinstatement, full backwages, inclusive of

allowance, and to their other benefits or the monetary equivalent thereof computed from the time their compensations were withheld from them up to the time of their actual reinstatement, as mandated under Article 279 of the Labor Code.

IN VIEW OF THE FOREGOING, the instant Petition is **DENIED**. The Court **AFFIRMS WITH MODIFICATION** the Decision dated 19 February 2007 of the Court of Appeals in CA-GR SP NO. 85320. The Court **DECLARES** that respondents were illegally dismissed and, accordingly, **ORDERS** petitioner to reinstate them without loss of seniority rights, and to pay them full backwages computed from the time their compensation was withheld up to the time of their actual reinstatement. (Underscored by respondents.)

Respondents seek to include in the *fallo* of the afore-quoted Decision the words "inclusive of allowance and x x x other benefits or the monetary equivalent thereof," found in the discussion.

This Court finds merit in the respondents' motion for partial reconsideration, since the words "inclusive of allowance and x x x other benefits or the monetary equivalent thereof" are merely descriptive of "full backwages," which this Court had already categorically awarded to respondents after a thorough discussion of the merits of the case. They do not constitute a new or additional award to respondents. The inclusion of these words in the dispositive part of the Decision serves only to clarify the same so that in the implementation thereof, none of the rights legally due to the respondents shall be overlooked.

WHEREFORE, the respondents' *Motion for Clarification and/or Partial Motion for Reconsideration* is *GRANTED*. The dispositive part of the Decision dated 13 February 2009 is *MODIFIED* to read as follows:

IN VIEW OF THE FOREGOING, the instant Petition is *DENIED.* The Court *AFFIRMS WITH MODIFICATION* the Decision dated 19 February 2007 of the Court of Appeals in CA-G.R. SP No. 85320. The Court *DECLARES* that respondents were illegally dismissed and, accordingly, *ORDERS* petitioner to reinstate them without loss of seniority rights, and to pay them full backwages, **inclusive of allowances, and their other benefits or the monetary equivalent**

thereof computed from the time their compensation was withheld up to the time of their actual reinstatement. Costs against the petitioner.

SO ORDERED.

Ynares-Santiago (Chairperson), Carpio Morales, Nachura, and *Peralta, JJ.,* concur.

THIRD DIVISION

[G.R. No. 182420. July 23, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ELSIE BARBA *y* BIAZON,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); ESSENTIAL ELEMENTS OF SALE OF ILLEGAL DRUGS; APART FROM SHOWING THE ELEMENTS, THE IDENTITY OF PROHIBITED DRUG MUST BE ESTABLISHED. —** To reiterate, the essential elements in a prosecution for sale of illegal drugs are: (1) the identities of the buyer and the seller, the object, and consideration; and (2) the delivery of the thing sold and the payment for it. The prohibited drug is an integral part of the *corpus delicti* of the crime of possession or selling of regulated/prohibited drug; proof of its identity, existence, and presentation in court are crucial. A conviction cannot be sustained if there is a persistent doubt on the identity of the drug. The identity of the prohibited drug must be established with moral certainty. Apart from showing that the elements of possession or sale are present, the fact that the substance illegally possessed and sold in the first place is the same substance offered in court as exhibit must likewise be established

with the same degree of certitude as that needed to sustain a guilty verdict.

2. ID.; ID.; IDENTITY OF THE SUBJECT SUBSTANCE, HOW PROVED; CHAIN OF CUSTODY RULE, EXPLAINED AND APPLIED. — The identity of the subject substance is established by showing the chain of custody. In *Espinoza v. State*, an adequate foundation establishing a continuous chain of custody is said to have been established if the State accounts for the evidence at each stage from its acquisition to its testing, and to its introduction at trial. In a prosecution for sale of illegal drugs, this foundation takes more significance because of the nature of the evidence involved. The more fungible the evidence, the more significant its condition, or the higher its susceptibility to change, the more elaborate the foundation must be. In those circumstances, it must be shown that there has been no tampering, alteration, or substitution. The chain of custody presented by the prosecution in this case suffers from incompleteness. After the illegal drugs were seized from Barba, PO2 Rabina marked the plastic sachets with his initials. PO1 Almacen marked the tooter in the same manner. The seized aluminum foil was marked "AA",presumably after PO2 Arnulfo Aguillon but there is no testimony on this. Once at the police station, the drugs and paraphernalia were then made the subject of a Request for Examination issued by Inspector Bauto. The specimens were then turned over to the PNP Crime Laboratory Office where Forensic Chemist Jabonillo made his conclusion that the sachets and the aluminum foil contained *shabu*. During trial, he testified that the specimen he examined was the same one he brought to the court. Exhibit "G" or Chemistry Report No. D-086-2003 was also presented as evidence to show that the seized items were positive for dangerous drugs. Pieced together, the prosecution's evidence, however, does not supply all the links needed in the chain of custody rule. The records do not tell us what happened after the seized items were brought to the police station and after these were tested at the forensic laboratory. Doubt is now formed as to the integrity of the evidence.

3. ID.; ID.; ID.; FAILURE TO ESTABLISH THE IDENTITY OF THE ILLEGAL DRUG. — Although the non-presentation of some of the witnesses who can attest to an unbroken chain of

evidence may in some instances be excused, there should be a justifying factor for the prosecution to dispense with their testimonies. Here, however, no explanation was proffered as to why key individuals who had custody over the drugs at certain periods were not identified and/or not presented as witnesses. Uncertainty, therefore, arises if the drugs and paraphernalia seized during the buy-bust operation on January 2003 were the same specimens presented in court in December of that same year. The very identity of the illegal drug is in question because of the absence of key prosecution witnesses. No one knows if the drug seized at the time of the buy-bust operation is the same drug tested and later kept as evidence against Barba. Though there was a stipulation during trial that the specimens submitted as evidence yielded positive for *shabu*, this only touches on one link in the chain of custody. Thus, given the failure of the prosecution to identify the continuous whereabouts of such fungible pieces of evidence, we are unable to conclude that all elements of the crime have been established beyond reasonable doubt.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

VELASCO, JR., *J.*:

This is an appeal from the August 29, 2007 Decision of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 01587 entitled *People of the Philippines v. Elsie Barba y Biazon*, which affirmed the September 14, 2005 Decision in Criminal Case No. Q-03-114526 of the Regional Trial Court (RTC), Branch 103 in Quezon City. The RTC convicted accused-appellant Elsie Barba *y* Biazon of violation of Section 5 of Republic Act No. (RA) 9165 or *The Comprehensive Dangerous Drugs Act of 2002*.

The Facts

An Information was filed charging Barba with drug pushing under RA 9165, quoted below:

That on or about the 16th day of January, 2003, in Quezon City, Philippines, the said accused, not being authorized to sell, deliver, transport or distribute any dangerous drugs, did then and there, willfully and unlawfully sell, dispense, deliver, transport and distribute or act as broker in the said transaction, 0.04 (zero point zero four) gram of white crystalline substance containing Methylamphetamine Hydrochloride, a dangerous drug.

Contrary to law.[1]

According to the prosecution, PO2 Rodel Rabina, PO2 Arnulfo Aguillon, and PO1 Michael Almacen conducted a surveillance operation against Barba in Pag-asa, Quezon City on January 16, 2003. Satisfied that Barba was engaged in the sale of illegal drugs, they conducted a buy-bust operation the next day. PO2 Rabina acted as poseur-buyer.[2] PO2 Rabina went to Barba's house with their informant and asked Barba if he could buy PhP 200 worth of *shabu* from her. Barba left to go inside her house. As she was going inside, PO2 Rabina noticed three (3) men inside who were engaging in a pot session. These men were identified as Barba's co-accused Eduardo Silvestre, Rene Banzuelo, and Reynaldo Labrador.[3]

After a few moments, Barba came back with two (2) sachets which she gave to PO2 Rabina. She then asked if he would like to test the purity of the sachets' contents, to which PO2 Rabina replied in the negative. He gave a PhP 200 marked bill to Barba and then scratched his head, the pre-arranged signal for the other members of the buy-bust team to join them. Barba, Silvestre, Banzuelo, and Labrador were all arrested. The PhP 200 marked bill, *shabu*, and drug paraphernalia found were retrieved and brought to the police station along with the accused.[4] PO2 Rabina marked the plastic sachets with "RR," his initials.[5]

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[1] *Rollo*, pp. 2-3.

[2] *Id.* at 3.

[3] CA *rollo*, p. 16.

[4] *Id.*

[5] TSN, September 10, 2003, p. 7.

PO1 Almacen, on the other hand, marked the confiscated tooter with "MA01-17-03," his initials included. That same day, Inspector Rodrigo Legaspi Bauto submitted a Request for Laboratory Examination[6] (Exhibit "F") of the seized drug and paraphernalia addressed to the Crime Laboratory of the Philippine National Police (PNP) Central Police District. In turn, Forensic Chemist Leonard M. Jabonillo prepared Chemistry Report No. D-086-2003[7] (Exhibit "G") which showed that of the specimens[8] submitted, the plastic sachets and the strip of aluminum foil contained methylamphetamine hydrochloride or *shabu*.

Barba was subsequently charged for drug pushing. The others arrested were charged with possession of drug paraphernalia. All four accused pleaded not guilty at their arraignment.

Barba denied the charge against her by claiming she had been framed. On January 17, 2003, at around 2:30 in the morning, she was awakened by the sound of someone knocking on her door. The door was then forcibly opened and eight (8) persons entered her house and searched the premises. Although no illegal drugs had been found she was arrested along with Banzuelo and brought to the police station. She denied knowing her co-accused Silvestre and Labrador and claimed they were arrested by the police on their way to the police vehicle. Her testimony was corroborated by Banzuelo, who said he was sleeping in Barba's house when they were arrested and that the arresting officers found no illegal drugs or paraphernalia during their search.[9]

The RTC ruled against Barba. The dispositive portion of its Joint Decision reads:

ACCORDINGLY, judgment is hereby rendered as follows:

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[6] Records, p. 9.

[7] *Id.* at 10.

[8] The report covered two (2) heat-sealed transparent plastic sachets both marked "RR/01-17-03" and weighing 0.02 grams; one (1) strip of aluminum foil marked "AA/01-17-03"; and one (1) tooter marked "MA/01-17-03."

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

1. In Criminal Case No. Q-03-114526, accused ELSIE BARBA *y* Biazon is hereby found GUILTY beyond reasonable doubt of the crime of drug pushing and she is hereby sentenced to Life Imprisonment and to pay a fine of Five Hundred Thousand (₱500,000.00) Pesos.
2. In Criminal Case No. Q-03-1145267, accused EDUARDO SILVESTRE *y* Agua, RENE BANZUELO *y* Sigaan and REYNALDO LABRADOR *y* Padua are hereby found GUILTY beyond reasonable doubt of the crime possession of drug paraphernalia and each is hereby sentenced to a jail term of Six (6) Months and One (1) Day to One (1) Year and each to pay a fine of Ten Thousand (₱10,000.00) Pesos.

The drugs involved in these cases, including the drug paraphernalia, are hereby ordered transmitted to the PDEA thru DDB for proper disposition.

SO ORDERED.[10]

On October 5, 2005, Barba filed a Notice of Appeal of the RTC Decision.

In her Appellant's Brief,[11] Barba assigned the following errors: (1) the trial court gravely erred in convicting Barba, when her guilt has not been proved beyond doubt; and (2) the trial court gravely erred when it gave credence to the conflicting and unsupported testimonies of the prosecution's witnesses.

The CA in its decision[12] affirmed the RTC decision. The CA held that the prosecution presented sufficient evidence to overcome the constitutional presumption of innocence. The two police officers who took the stand both testified that Barba was caught *in flagrante delicto*, and their testimonies agreed on the essential facts. According to the CA, the elements required for proving the illegal sale of dangerous drugs were met in consonance with *People v. Mala*:

[10] *Id.* at 18-19. Penned by Judge Jaime N. Salazar, Jr.

[11] *Id.* at 28.

[12] *Rollo*, pp. 2-15. Penned by Associate Justice Rebecca De Guia-Salvador and concurred in by Associate Justices Magdangal M. De Leon and Ricardo R. Rosario.

first, the identity of the seller and the buyer, as well as the object and the consideration of the sale, was proved; and second, the delivery of the thing sold and the payment for it was likewise shown.[13]

Moreover, the appellate court held that no evidence was offered to overturn the legal presumption that the police officers have performed their duties regularly. No improper motive was given as to why they, being involved in the buy-bust operation, would fabricate the charges against Barba and her co-accused.

The CA also held that the so-called inconsistency in the police officers' testimony was inconsequential. Whether or not there was a prior surveillance was immaterial.

On September 13, 2007, Barba filed a Notice of Appeal of the CA Decision.

On June 18, 2008, this Court required the parties to submit supplemental briefs if they so desired. The parties manifested their willingness to submit the case on the basis of the records already submitted.

The Issues

I

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT, WHEN HER GUILT HAS NOT BEEN PROVEN BEYOND REASONABLE DOUBT

II

THE TRIAL COURT GRAVELY ERRED WHEN IT GAVE CREDENCE TO THE CONFLICTING AND UNSUPPORTED TESTIMONIES OF THE PROSECUTION'S WITNESSES

Our Ruling

To reiterate, the essential elements in a prosecution for sale of illegal drugs are: (1) the identities of the buyer and the seller, the object, and consideration; and (2) the delivery of the thing

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[13] G.R. No. 152351, September 18, 2003, 411 SCRA 327, 334-335; citing *People v. Uy*, 384 Phil. 70, 85 (2000).

sold and the payment for it.[14] The prohibited drug is an integral part of the *corpus delicti* of the crime of possession or selling of regulated/prohibited drug; proof of its identity, existence, and presentation in court are crucial.[15] A conviction cannot be sustained if there is a persistent doubt on the identity of the drug. The identity of the prohibited drug must be established with moral certainty. Apart from showing that the elements of possession or sale are present, the fact that the substance illegally possessed and sold in the first place is the same substance offered in court as exhibit must likewise be established with the same degree of certitude as that needed to sustain a guilty verdict.[16]

The identity of the subject substance is established by showing the chain of custody. In *Espinoza v. State*, an adequate foundation establishing a continuous chain of custody is said to have been established if the State accounts for the evidence at each stage from its acquisition to its testing, and to its introduction at trial.[17] In a prosecution for sale of illegal drugs, this foundation takes more significance because of the nature of the evidence involved.[18] The more fungible the evidence, the more significant its condition, or the higher its susceptibility to change, the more elaborate the foundation must be. In those circumstances, it must be shown that there has been no tampering, alteration, or substitution.[19]

The chain of custody presented by the prosecution in this case suffers from incompleteness. After the illegal drugs were seized from Barba, PO2 Rabina marked the plastic sachets with his initials. PO1 Almacen marked the tooter in the same manner. The seized aluminum foil was marked "AA," presumably after PO2 Arnulfo Aguillon but there is no testimony on this. Once

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[14] *People v. Naquita*, G.R. No. 180511, July 28, 2008, 560 SCRA 430, 449; citing *People v. Adam*, 459 Phil. 676, 684 (2003).

[15] See *People v. Sanchez*, G.R. No. 175832, October 15, 2008, 569 SCRA 194.

[16] *People v. Cervantes*, G.R. No. 181494, March 17, 2009.

[17] 859 N.E.2d 375, December 27, 2006.

[18] *Malillin v. People*, G.R. No. 172953, April 30, 2008, 553 SCRA 619, 633.

[19] 23 C.J.S. Criminal Law § 1142.

at the police station, the drugs and paraphernalia were then made the subject of a Request for Examination issued by Inspector Bauto. The specimens were then turned over to the PNP Crime Laboratory Office where Forensic Chemist Jabonillo made his conclusion that the sachets and the aluminum foil contained *shabu*. During trial, he testified that the specimen he examined was the same one he brought to the court. Exhibit "G" or Chemistry Report No. D-086-2003 was also presented as evidence to show that the seized items were positive for dangerous drugs. Pieced together, the prosecution's evidence, however, does not supply all the links needed in the chain of custody rule. The records do not tell us what happened after the seized items were brought to the police station and after these were tested at the forensic laboratory. Doubt is now formed as to the integrity of the evidence.

The latest jurisprudence on illegal drugs cases shows a growing trend in acquittals based on reasonable doubt. These "reasonable doubt acquittals" underscore the lack of strict adherence that law enforcement agencies and prosecutors have shown with regard to the chain of custody rule.

In *Malillin v. People*, we laid down the chain of custody requirements that must be met in proving that the seized drugs are the same ones presented in court: (1) testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence; and (2) witnesses should describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the item.[20]

In *People v. Sanchez*,[21] the accused was acquitted since the prosecution did not make known the identities of the police officers to whom custody of the seized drugs was entrusted after the buy-bust operation. Likewise absent from the evidence is any testimony on the whereabouts of the drugs after they were analyzed by the forensic chemist.

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[20] *Supra* note 18, at 632-633.

[21] *Supra* note 15.

In *People v. Garcia*,[22] the conviction was overturned due in part to the failure of the state to show who delivered the drugs to the forensic laboratory and who had custody of them after their examination by the forensic chemist and pending their presentation in court.

In *People v. Cervantes*,[23] a total of five (5) links in the chain of custody were not presented in court: the desk officer who received the drugs at the police station; the unnamed person who delivered the drugs to the forensic laboratory; the recipient of the drugs at the forensic laboratory; the forensic chemist who did the examination of the drugs; and the person who acted as custodian of the drugs after their analysis.

Although the non-presentation of some of the witnesses who can attest to an unbroken chain of evidence may in some instances be excused, there should be a justifying factor for the prosecution to dispense with their testimonies.[24] Here, however, no explanation was proffered as to why key individuals who had custody over the drugs at certain periods were not identified and/or not presented as witnesses. Uncertainty, therefore, arises if the drugs and paraphernalia seized during the buy-bust operation on January 2003 were the same specimens presented in court in December of that same year.

The very identity of the illegal drug is in question because of the absence of key prosecution witnesses. No one knows if the drug seized at the time of the buy-bust operation is the same drug tested and later kept as evidence against Barba. Though there was a stipulation during trial that the specimens submitted as evidence yielded positive for *shabu*, this only touches on one link in the chain of custody. Thus, given the failure of the prosecution to identify the continuous whereabouts of such

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[22] G.R. No. 173480, February 25, 2009.

[23] *Supra* note 16.

[24] *Cervantes*, *supra* note 16.

fungible pieces of evidence, we are unable to conclude that all elements of the crime have been established beyond reasonable doubt.

WHEREFORE, the appeal is *GRANTED*. The Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 01587 finding accused-appellant Elsie *y* Biazon guilty of drug pushing (Crim. Case No. Q-03-114526) and possession of drug paraphernalia (Crim. Case No. Q-03-1145267) is *REVERSED* and *SET ASIDE*. Accused-appellant Elsie Barba *y* Biazon is *ACQUITTED* on the ground of reasonable doubt and is accordingly immediately *RELEASED* from custody unless she is being lawfully held for some lawful cause.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 182454. July 23, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **FELIX WASIT,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINALITY OF THE FACTUAL FINDINGS OF THE TRIAL COURT THEREON. —** In a prosecution for rape, the credibility of the complaining victim is the single most important issue. An accused's conviction or acquittal depends on the credibility of prosecution's witnesses, most especially that of the private complainant, and her candor, sincerity, and like virtues play a very significant role in the

disposition of the case. If, in the eyes, heart, and mind of the trial court, a complainant's testimony meets the test of credibility, then the accused may be convicted solely on that basis. As found in the affirmed decision of the trial court, AAA's testimony as to being at the receiving end of Wasit's beastly act of molestation was positive and credible. x x x Just like the appellate court, the Court loathes to disturb the trial court's assessment of AAA's credibility having had the opportunity to observe her behavior on the witness box. When the victim is of tender age and immature, courts are inclined to give credit to her account of what transpired, considering not only her relative vulnerability but also the shame to which she would be exposed if the matter to which she testified is not true.

2. **ID.; ID.; ID.; CREDIBILITY OF THE WITNESS IS NOT IMPAIRED BY MINOR INCONSISTENCIES IN HER TESTIMONY. —** It cannot be over-emphasized that the credibility of a rape victim is not diminished, let alone impaired, by minor inconsistencies in her testimony. Such inconsistencies are inconsequential when they refer to minor details that have nothing to do with the essential fact of the commission of the crime––carnal knowledge through force and intimidation. The alleged inconsistencies refer to minor details and are evidently beyond the essential fact of the commission of rape because they do not pertain to the actual sexual assault itself––that very moment when Wasit was forcing himself on AAA. A weeping AAA had pointed to Wasit as the very person who defiled her.

3. **ID.; ID.; POSITIVE IDENTIFICATION PREVAILS OVER BARE DENIAL AND ALIBI. —** [J]urisprudence teaches that between categorical testimonies that ring of truth, on one hand, and a bare denial, on the other, the Court has strongly ruled that the former must prevail. Indeed, positive identification of the accused, when categorical and consistent and without any ill motive on the part of the eyewitnesses testifying on the matter, prevails over alibi and denial. In the instant case, considering that alibis are easy to fabricate with the aid of immediate family members or relatives, they assume no importance in the face of positive identification by the victim herself.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

VELASCO, JR., *J.*:

This is an appeal from the Decision dated September 27, 2007 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 01451, which affirmed the May 22, 2000 Decision in Criminal Case No. 1098 of the Regional Trial Court (RTC), Branch 37 in Bambang, Nueva Vizcaya. The RTC found accused-appellant Felix Wasit guilty beyond reasonable doubt of the crime of rape.

The Facts

In an Information dated August 18, 1998, Wasit was charged with rape committed as follows:

> That in the early morning of November 5, 1997, at Barangay [XXX], Municipality of Kayapa, Province of Nueva Vizcaya, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, taking advantage of superior strength and with lewd designs, did then and there willfully, unlawfully and feloniously have carnal knowledge of [13 year old AAA[1]] against her will and consent, to her damage and prejudice.
>
> CONTRARY TO LAW.

Wasit entered a plea of "not guilty plea" upon arraignment.

During trial, the prosecution presented the following witnesses: AAA, the private complainant, her boardmates Alma Bato and Bensa Tipang, Dr. Christopher Magallanes, and rebuttal witness Felicidad E. Lasaten.

The prosecution's evidence established the following facts:

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[1] The name and personal circumstances of the victim and her immediate family are withheld per RAs 7610 and 9262; and *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

On November 5, 1997, AAA, then 13 years old, was asleep in her room on the second floor of a boarding house in Besong, Nueva Vizcaya, owned by the Wasit parents. Between 1 to 2 o'clock in the morning of that day, she was awakened by the pain she felt between her legs. Someone on top of her was undressing and molesting her. She tried to shout and struggle but her efforts went in vain as the intruder covered her mouth with his hand. After succeeding in having a penile penetration, the yet-unknown offender proceeded to insert his fingers inside AAA's sexual organ and told her, in local dialect, not to shout. She recognized the voice as belonging to Wasit, whom she had been acquainted with for four months. AAA eventually managed to free herself. She stood up, yelled, cried, and then pulled up her panty and knee-length shorts to cover herself. Wasit then asked her to stay quiet, pleaded for forgiveness, and implored her to keep the incident a secret. AAA, however, rushed outside and later told Nieves Wasit, Wasit's sister, of what had just happened. She then started to pack her things so she could go home to Kasibu, Nueva Vizcaya, and report the incident. Nieves, however, prevented her from leaving.[2]

Meanwhile, Bato, who was occupying a room downstairs, was awakened by the commotion upstairs. She testified hearing AAA shout "*Satanas ka* Felix (You are Satan Felix.)." Afterwards, AAA confided to Bato that she had been raped by Wasit.

Tipang, another boarder occupying a room at the ground floor, heard AAA's footsteps while heading toward Nieves' room. Tipang heard Wasit uttered the following line: "Stop, that's enough it's my fault." She was certain that the voice she heard was that of Wasit since he was the lone male boarder on the second floor.[3]

The next day, AAA told her teacher, Marcela Barrino, about the incident. After spending the night at Barrino's place, AAA retrieved her belongings from the Wasit boarding house accompanied by her friend Agnes Langpawan. A few days later,

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[2] *Rollo*, pp. 4-5.

[3] *Id.*

AAA's newly-arrived uncle brought her to the Kayapa Hospital for a medical examination.[4]

The medical examination conducted by Dr. Magallanes on November 10, 1997 showed that there were no evident signs of extra-genital physical injuries on AAA. The medico-legal report dated November 13, 1997, however, stated that there was a notable disruption of the continuity of the hymenal folds at the 4 o'clock position.[5]

Apart from Wasit, the defense presented Nieves, Dionisio Wasit, and Felicidad Wasit as witnesses.

Wasit testified being single and a gardener. From November 1 to November 10, 1997, he had been gathering cogon grass during daytime for the roofing of the boarding house's kitchen. On November 2, 1997, AAA informed him she would be transferring to another lodging house. He then advised her to first inform her parents of her plans. On November 4, 1997, he had dinner with his sister Nieves, brother Dionisio, nephew Marvin, and AAA at the boarding house. Thereafter, Nieves and AAA left ahead to go to bed while he and Dionisio continued with their conversation until about midnight. He woke up early the next day, November 5, 1997, without noticing anything out of the ordinary. In fact, he had breakfast that morning with Nieves, Dionisio, his nephew, and AAA. After completing his usual chores, he went home and noticed that AAA was no longer around. He was told that she would be staying with Barrino. On November 6, 1997, AAA's friend Agnes told him that AAA would be staying with her.

The police came on November 10, 1997 to arrest Wasit while he was gathering cogon grass.[6]

Wasit's siblings, Nieves and Dionisio, corroborated his testimony.[7]

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[4] *Id.* at 6.

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

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

[7] *Id.* at 8.

After trial, the RTC rendered judgment finding Wasit guilty of the crime of rape, the *fallo* of which reads:

> WHEREFORE, the Court hereby finds the accused Felix Wasit GUILTY of the crime of Rape defined and penalized under Art. 266-A and Art. 266-B of the Revised Penal Code, as amended by Republic Act No. 8353, and accordingly sentences him to suffer the penalty of *reclusion perpetua*, and to pay the costs. He is also ordered to pay the offended party the sums of fifty thousand pesos (₱50,000.00) as civil indemnity, fifty thousand pesos (₱50,000,00) as moral damages, and twenty thousand pesos (₱20,000.00) as exemplary damages.
>
> SO ORDERED.[8]

Wasit appealed the RTC Decision to this Court. On September 15, 2004, the Court, in line with the ruling in *People v. Mateo*,[9] transferred the case to the CA for intermediate review.

On September 27, 2007, the CA rendered the assailed Decision[10] affirming *in toto* that of the RTC, inclusive of the award and the amount of damages, disposing as follows:

> WHEREFORE, premises considered, the Appeal is hereby **DENIED** and the questioned Decision dated May 22, 2000 of the Regional Trial Court (RTC), Branch 37, Bambang, Nueva Viscaya, in Criminal Case No. 1098 is **AFFIRMED *in toto.***
>
> SO ORDERED.

On October 17, 2007, Wasit filed a Notice of Appeal of the CA decision.

On July 7, 2008, this Court required the parties to submit supplemental briefs if they so desired. The parties manifested their willingness to submit the case on the basis of the records already submitted.

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[8] *Id.* at 25-26. Penned by Judge Jose Godofredo M. Naui.

[9] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

[10] *Rollo*, pp. 2-18. Penned by Associate Justice Ramon R. Garcia and concurred in by Associate Justices Josefina Guevara-Salonga and Vicente Q. Roxas.

The issues before us are as follows:

I

THE TRIAL COURT [AND THE CA] GRAVELY ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE INCREDIBLE TESTIMONIES OF THE PROSECUTION WITNESSES

II

THE TRIAL COURT [AND THE CA] GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANT OF RAPE DESPITE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT

Wasit in fine questions in this recourse the credibility of the prosecution's witnesses and the adequacy of its evidence. First off, he argues that it is not believable and contrary to common experience for him to insert his finger in AAA's vagina after he had already succeeded in inserting his penis. He found it illogical for AAA not to have awakened while somebody was undressing her.

He likewise dismisses, as incredible, the testimony of prosecution witness Tipang, who recounted that she heard AAA's footsteps while AAA was on her way to Nieves' room. He asserts that it was unbelievable for Tipang, who was occupying a room at the ground floor, to have heard footsteps sounds coming from another floor.

The Court's Ruling

We affirm Wasit's conviction.

What we are being called to review in this appeal are issues that are inconsequential and with little bearing on the finding of guilt beyond reasonable doubt. In a prosecution for rape, the credibility of the complaining victim is the single most important issue.[11] An accused's conviction or acquittal depends on the credibility of prosecution's witnesses, most especially that of

[11] *People v. Opong*, G.R. No. 177822, June 17, 2008, 554 SCRA 706, 716.

the private complainant, and her candor, sincerity, and like virtues play a very significant role in the disposition of the case. If, in the eyes, heart, and mind of the trial court, a complainant's testimony meets the test of credibility, then the accused may be convicted solely on that basis.[12]

As found in the affirmed decision of the trial court, AAA's testimony as to being at the receiving end of Wasit's beastly act of molestation was positive and credible. To quote the trial court:

> The court used not only its ears but also its eyes to receive the evidence to determine whether there were telltale signs that the complaining witness was lying. When she left the witness stand, the court was convinced that she had told the truth. She had spoken softly with some natural sincerity that was convincing. The court had not perceived anything in her manner of testimony, gesture, hesitation and the like by which it could be said that the witness testified falsely. She spoke in a firm, straight-forward and candid manner. Her testimony rang true: it was simple without being hysterical or histrionic. She was able to control her emotions during her testimony but it was clear to the Court that she was distraught, bravely trying to hold back her tears. But, later, her efforts failed and she quietly sobbed.[13]

Just like the appellate court, the Court loathes to disturb the trial court's assessment of AAA's credibility having had the opportunity to observe her behavior on the witness box. When the victim is of tender age and immature, courts are inclined to give credit to her account of what transpired, considering not only her relative vulnerability but also the shame to which she would be exposed if the matter to which she testified is not true.[14]

The manner or order by which AAA narrated the rape incident is not material as long as the elements[15] of the offense are shown

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[12] *People v. Magbanua*, G.R. No. 176265, April 30, 2008, 553 SCRA 698, 705; citing *People v. De Guzman y Pascual*, G.R. No. 124368, June 8, 2000, 333 SCRA 269, 280.

[13] CA *rollo* p. 22.

[14] *Llave v. People*, G.R. No. 166040, April 26, 2006, 488 SCRA 376, 400.

[15] REVISED PENAL CODE, Art. 266-A. *Rape, When and How Committed.*––Rape is committed––

to exist. What is more, as the People countered in its Brief, some people sleep more deeply than others. Other factors explaining her deep slumber may also have been at play for AAA not to awaken at the initial stage of the sexual assault, such as over-fatigue and Wasit's cautiousness in undressing her. AAA's claim that she was not roused from her slumber when Wasit removed her undergarment does not dent her credibility.

Contrary to Wasit's contention, it was likewise not improbable that the people at the ground floor of the boarding house could hear footsteps on the second floor. It is logical that one familiar with all the boarders would be likewise familiar with how each one moves about in the house. It is also not impossible to hear someone's footsteps especially at midnight, when the rape occurred.

It cannot be over-emphasized that the credibility of a rape victim is not diminished, let alone impaired, by minor inconsistencies in her testimony. Such inconsistencies are inconsequential when they refer to minor details that have nothing to do with the essential fact of the commission of the crime––carnal knowledge through force and intimidation. The alleged inconsistencies refer to minor details and are evidently beyond the essential fact of the commission of rape because they do not pertain to the actual sexual assault itself––that very moment when Wasit was forcing himself on AAA.[16] A weeping AAA had pointed to Wasit as the very person who defiled her.

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1. By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a. Through force, threat or intimidation;

b. When the offended party is deprived of reason or is otherwise unconscious;

c. By means of fraudulent machination or grave abuse of authority;

d. When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present;

x x x

[16] *People v. Dela Cruz*, G.R. No. 177572, February 26, 2008, 546 SCRA 703, 720; citations omitted.

In contrast, Wasit simply denied the accusation against him, claiming to have gone to bed at midnight when the incident occurred. The RTC, however, did not accord this denial any probative value in the face of the positive testimony of AAA. The trial court even observed that Wasit, from the way he deported himself, on the witness stand, was far from convincing, his testimony sounding contrived and unnatural.[17] To make matters worse for the defense, Wasit's other witnesses gave the trial court the impression that the Wasit family was closing ranks to cover up a serious felony committed by a family member.

We, thus, affirm the trial court's assessment of the testimonial evidence. *First*, the evaluation of the witnesses' credibility is, to repeat, a matter best left to the trial court because it has the opportunity to observe the witnesses and their demeanor during the trial. Thus, the Court accords great respect to the trial court's findings, unless it overlooked or misconstrued some facts of substance which could have affected the outcome of the case.[18] This rule finds an even more stringent application where the appellate court sustains the trial court's factual determination,[19] as here.

Second, we have long adhered to the rule that the testimony of a minor rape victim is given full weight and credence as no young woman would plausibly concoct a story of defloration, allow an examination of her private parts, and thereafter pervert herself by being subject to a public trial, if she was not motivated solely by the desire to obtain justice for the wrong committed against her. Youth and immaturity are badges of truth.[20]

Third, jurisprudence teaches that between categorical testimonies that ring of truth, on one hand, and a bare denial,

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[17] CA *rollo*, p. 23.

[18] *People v. Montinola*, G.R. No. 178061, January 31, 2008, 543 SCRA 412, 427; citing *People v. Fernandez*, G.R. No. 176060, October 5, 2007, 535 SCRA 159.

[19] *People v. Nieto*, G.R. No. 177756, March 3, 2008, 547 SCRA 511, 524; citing *People v. Cabugatan*, G.R. No. 172019, February 12, 2007, 515 SCRA 537, 547.

[20] *Opong*, *supra* note 11, at 722.

on the other, the Court has strongly ruled that the former must prevail. Indeed, positive identification of the accused, when categorical and consistent and without any ill motive on the part of the eyewitnesses testifying on the matter, prevails over alibi and denial.[21] In the instant case, considering that alibis are easy to fabricate with the aid of immediate family members or relatives, they assume no importance in the face of positive identification by the victim herself.[22]

In sum, the purported flaws in the prosecution's testimonial evidence do not have any negative effect on the credibility of its witnesses. There are no material inconsistencies that merit a reversal of Wasit's conviction.

As to Wasit's pecuniary liability, we increase the award of exemplary damages to PhP 30,000 in line without our holding in *People v. Sia*.[23] We affirm the award of the other damages in the amount set forth in the appealed decision.

WHEREFORE, the appeal is *DENIED*. The CA Decision in CA-G.R. CR- H.C. No. 01451 finding accused-appellant Felix Wasit guilty of the crime of rape is *AFFIRMED* with the *MODIFICATION* that the exemplary damages he is ordered to pay is increased to Php 30,000.

SO ORDERED.

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

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[21] *People v. Dela Paz*, G.R. No. 177294, February 19, 2008, 546 SCRA 363, 378; citing *People v. Tagana*, 468 Phil. 784, 807 (2004).

[22] *People v. Mangompit, Jr.*, G.R. Nos. 139962-66, March 7, 2001, 353 SCRA 833, 847.

[23] G.R. No. 174059, February 27, 2009.

THIRD DIVISION

[G.R. No. 182687. July 23, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **WARLITO MARTINEZ,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; CREDIBILITY OF A MENTALLY RETARDED WITNESS, UPHELD. —** It was established that AAA has an intelligent quotient equivalent to that of a four years old. Further, her mental condition makes her gullible and vulnerable to coercion. Despite these, the RTC and the CA considered AAA's testimony as credible, clear, and convincing. There is no reason to overturn this finding. It is a basic doctrine that anyone who can perceive, and perceiving, can make known such perception to others, may be a witness. Thus, by itself, mental retardation does not disqualify a person from testifying. What is essential is the quality of perception, and the manner in which this perception is made known to the court. x x x In this case, AAA testified in a straightforward and categorical manner that her father had raped her. She even demonstrated before the court their relative positions during the molestations. And even during grueling cross-examination, she remained consistent with her statement that her father had raped her. Thus, her conduct before the court does not indicate that she had been coached, as Warlito would have us believe.

2. **ID.; ID.; ID.; TESTIMONY OF THE WITNESS CONSISTENT WITH THE PHYSICAL FINDING OF PENETRATION. —** Warlito insists that AAA's testimony is not supported by physical evidence. He maintains that the lacerations on AAA's hymen are not conclusive proof of the crime attributed to him because such injuries could result from AAA's own activities as jumping, running, or falling on a hard object. We are not persuaded. As correctly held by the CA, AAA's healed lacerations on her hymen support her testimony rather than destroy it. True, a physician's finding that the hymen of the alleged victim was lacerated does not establish rape. Such result, however, is not presented to prove the fact of rape; rather, it is presented to show the loss of virginity. And when, as in this

case, the victim's forthright testimony is consistent with the physical finding of penetration, there is then, sufficient basis for concluding that sexual intercourse did take place.

3. **CRIMINAL LAW; QUALIFIED RAPE; AWARD OF MORAL AND EXEMPLARY DAMAGES. —** As to the damages, we note that the appellate court correctly modified the amount of moral damages that should be awarded to AAA––from PhP 50,000 to PhP 75,000, in line with current jurisprudence on qualified rape. The amount of exemplary damages, however, should also be modified. Following *People v. Layco*, the award of exemplary damages is increased from PhP 25,000 to PhP 30,000, in order to serve as public example and to protect the young from sexual abuse.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

VELASCO, JR., *J.*:

The Case

This is an appeal from the October 9, 2007 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00217 entitled *People of the Philippines v. Warlito Martinez* which held accused-appellant Warlito Martinez guilty of qualified rape. The assailed Decision affirmed the January 29, 2003 Decision[2] in Criminal Case Nos. 98-297, 98-298, and 98-299 of the Regional Trial Court (RTC), Branch 68 in P.D. Monfort North, Dumangas, Iloilo.

The Facts

The spouses Warlito and BBB live in Janipaan, Mina, Iloilo. They have six children: the three elder daughters have left home,

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[1] *Rollo*, pp. 5-40. Penned by Associate Justice Stephen C. Cruz and concurred in by Associate Justices Antonio L. Villamayor and Francisco Acosta.

[2] CA *rollo*, pp. 20-32. Penned by Judge Gerardo D. Diaz.

while the three younger ones, a mentally retarded daughter and two sons, live with them. AAA[3] is their mentally retarded daughter.

In the early morning of November 8, 1997, BBB went to Iloilo City to procure a ship ticket for her trip to Manila. At around eight o'clock in the morning, AAA, then 13 years old, was tasked to cook rice while her brothers gathered firewood in a distant place. While AAA was cooking, Warlito approached her. Without a word, Warlito removed AAA's clothes and panties. He then forced his naked daughter to lie down on a bed just two arms length away from the kitchen. Thereafter, he stripped off his shirt, pants, and underwear. He parted AAA's thighs, went on top of her, and inserted his penis into AAA's vagina. AAA could only cry in pain.[4]

After the molestation, Warlito threatened to kill AAA if she would reveal the incident to her mother. Thereafter, Warlito left AAA. AAA then walked away from their home. After about an hour, AAA returned.

Around noontime, while AAA's brothers were playing outside the house, Warlito again forced AAA to lie down on the bed. After removing his clothes, he undressed AAA and went on top of her. He then inserted his penis into her vagina. When he was done, he put on his clothes and left her. AAA then put on her clothes and went out of the house. She kept the incident a secret.[5]

In the evening of November 8, 1997, Warlito went to the room where his children were sleeping together. Inside, he saw his two sons sleeping on the left side of AAA. He went beside AAA, removed her clothes and underwear, and likewise, removed his clothes. He,

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[3] Pursuant to Republic Act No. 9262, otherwise known as the "Anti-Violence Against Women and Their Children Act of 2004," and its implementing rules, the real name of the victim, with that of her immediate family members, is withheld and fictitious initials instead are used to represent her to protect her privacy.

[4] *Rollo*, p. 9.

[5] *Id.*

thereafter, went on top of AAA and inserted his penis inside her vagina. AAA cried in pain but Warlito muffled her cries by covering her mouth. After which, Warlito dressed up and went downstairs to sleep. AAA likewise got dressed and fell asleep.[6]

Remembering her father's threat, AAA did not tell her mother that her father had raped her. When AAA's mother left for Manila a few days later, AAA had to endure her father's weekly assault on her virtue.[7]

On March 11, 1998, AAA's grade one teacher, Lorline Siccio, noticed AAA leaning dizzily on her desk. She also observed that AAA appeared to be unusually weak, hardly having the strength to move. Alarmed, Lorline reported the matter to the officer-in-charge of the Janipaan Elementary School. Aware of the fact that Warlito had sired two children from AAA's elder sister, Lorline asked AAA if her father had raped her. AAA answered in the affirmative. The teachers then reported the matter to the Department of Social Welfare and Development.[8]

On March 15, 1998, BBB returned to Janipaan, Mina, Iloilo from Manila. She then learned that her husband had sexually abused AAA. Unable to contain her outrage over Warlito's assault on their mentally retarded daughter, she and AAA filed a complaint against him.

Dr. Flaviano Nestor Tordesillas, a resident physician at the Iloilo Provincial Hospital in Pototan, Iloilo, physically examined AAA. His medical report stated that AAA suffered "[o]ld healed hymenal lacerations at 7:00, 10:00 and 3:00" positions and that her vagina admitted "one examining finger with ease."[9] Dr. Flaviano noted that the lacerations could have been caused by sexual intercourse or by trauma caused by large blood clots during the menstrual period, or masturbation and insertion of an object.[10]

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[6] *Id.* at 9-10.

[7] *Id.* at 10.

[8] *Id.*

[9] CA *rollo*, pp. 24-25.

[10] *Id.* at 25.

Dr. Japheth Fernandez, a psychiatrist, conducted a psychological test on AAA. She confirmed AAA's mental retardation and concluded that AAA's intelligence quotient is equivalent to that of a four (4) years old child.[11]

Warlito was then charged with three counts of qualified rape. Except for the dates of the commission of the crime, the three Informations contained the same allegations, thus:

> That on or about the 8th day of November, 1997, in the municipality of Mina, Province of Iloilo, Philipines, and within the jurisdiction of this Honorable Court, the above-named accused by means of force did then and there willfully unlawfully and feloniously did lie and succeed in having carnal knowledge of [AAA], his 14 year old daughter, for the first time, against her will and consent.[12]

In his defense, Warlito raised denial and alibi. He claimed that it was impossible for him to rape his daughter because he was at the river about 50 meters away from their house during the times that the alleged rape took place.[13] Moreover, he faulted AAA's teachers for maliciously imputing the charge against him and for forcing BBB to file the complaint.

On January 29, 2003, the RTC rendered a Decision, the dispositive part of which reads:

> WHEREFORE, in view of the foregoing, the court finds the accused WARLITO MARTINEZ GUILTY beyond reasonable doubt of three (3) counts of rape under Art. 395 of the Revised Penal Code as amended in relation to Republic Act No. 7695 and imposes on him the extreme penalty of death on each of the three (3) counts of rape he committed. It is further ordered that on each count of rape, the accused must pay the victim the sum of SEVENTY FIVE THOUSAND (PhP 75,000.00) PESOS as civil indemnity; FIFTY THOUSAND (PHP 50,000.00) PESOS as moral damages; and TWENTY THOUSAND (sic) (PhP 25,000.00) as exemplary damages.
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> SO ORDERED.

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[11] *Rollo*, p. 11.

[12] *Id.* at 6.

[13] *Id.* at 11.

The case was appealed to the CA.

The Ruling of the CA

Convinced of AAA's credibility, the appellate court affirmed the trial court's decision. It emphasized that AAA's mental retardation alone is not a ground for her disqualification as a witness. It stressed that the qualification of a witness is anchored on the ability to relate to others the event that was witnessed. In this case, although AAA's intelligence quotient is equivalent to that of a four years old child, the CA found her testimony to be credible, clear, and convincing.

The *fallo* of the October 9, 2007 CA Decision reads:

> WHEREFORE, premises considered, the decision of the Regional Trial Court, Branch 68, P.D. Monforth North, Dumangas, Iloilo, finding accused Warlito Martinez guilty beyond reasonable doubt of three (3) counts of rape is hereby AFFIRMED with the following MODIFICATIONS: (i) the amount of moral damages for each count of rape is [PhP] 75,000.00; (ii) in view, however, of Republic Act No. 9346 prohibiting the imposition of the death penalty, appellant is hereby sentenced to suffer the penalty of *reclusion perpetua* for each count of rape filed against him without the benefit of parole.

Hence, we have this appeal.

The Issues

In a Resolution dated July 16, 2008, this Court required the parties to submit supplemental briefs if they so desired. On September 2, 2008, Warlito, through counsel, signified that he was no longer filing a supplemental brief. Thus, the following issues raised in accused-appellant's Brief dated April 15, 2004 are now deemed adopted in this present appeal:

I.

> The trial court erred in not finding the private complainant's testimony as incredible and that there was apparent improbability in the commission of the rape charges.

II.

The trial court erred in finding the accused-appellant guilty beyond reasonable doubt of three (3) counts of rape.[14]

The Ruling of the Court

The appeal is without merit.

In attacking AAA's credibility, Warlito asserts that her mental retardation affects her ability to convey her experience, thus, making her testimony unreliable. He then points to the inability of AAA to state with certainty the dates when the alleged acts of rape happened. He claims that it was against human experience to forget such a harrowing experience. Moreover, he maintains that AAA's teachers coached her in fabricating the charge against him.

It was established that AAA has an intelligent quotient equivalent to that of a four years old. Further, her mental condition makes her gullible and vulnerable to coercion. Despite these, the RTC and the CA considered AAA's testimony as credible, clear, and convincing. There is no reason to overturn this finding.

It is a basic doctrine that anyone who can perceive, and perceiving, can make known such perception to others, may be a witness.[15] Thus, by itself, mental retardation does not disqualify a person from testifying. What is essential is the quality of perception, and the manner in which this perception is made known to the court.[16]

Accordingly, *People v. Tabio*[17] upheld the credibility of the mentally retarded complaining witness after noting that the witness spoke unequivocally on the details of the crime. The Court in that case observed that the witness would not have spoken so tenaciously about her experience had it not really happened to

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[14] CA *rollo*, p. 51.

[15] Rules of Court, Rule 130, Sec. 20.

[16] *People v. Macapal, Jr.*, G.R. No. 155335, July 14, 2005, 463 SCRA 387, 400.

[17] G.R. No. 179477, February 6, 2008, 544 SCRA 156.

her. In *People v. Macapal, Jr.*,[18] the court stressed that testimonial discrepancies caused by a witness' natural fickleness of memory does not destroy the substance of the testimony of said witness. Likewise, *People v. Martin*[19] appreciated the natural and straightforward narration of the mentally deficient victim and dismissed her inaccurate and unresponsive answers. The Court in *Martin* reasoned that even children of normal intelligence can not be expected to give a precise account of events considering their naiveté and still undeveloped vocabulary and command of language.

In this case, AAA testified in a straightforward and categorical manner that her father had raped her. She even demonstrated before the court their relative positions during the molestations.[20] And even during grueling cross-examination, she remained consistent with her statement that her father had raped her. Thus, her conduct before the court does not indicate that she had been coached, as Warlito would have us believe.

Furthermore, the inconsistencies that Warlito faults AAA with are too minor to be considered. The date of the commission of the crime is not an element of the crime of rape and has no substantial bearing on its commission.[21] What is essential is that there be proof of carnal knowledge of a woman against her will.[22] And the testimony of AAA clearly proved that Warlito had raped her. She would not have been firm in her allegations had not the same really happened.

Nonetheless, Warlito insists that AAA's testimony is not supported by physical evidence. He maintains that the lacerations

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[18] *Supra* note 16.

[19] G.R. No. 172069, January 30, 2008, 543 SCRA 143.

[20] *Rollo*, p. 24.

[21] *People v. Dela Cruz*, G.R. No. 177572, February 26, 2008, 546 SCRA 703, 722; *People v. Emilio*, G.R. Nos. 144305-07, February 6, 2003, 397 SCRA 62, 70; *People v. San Agustin*, G.R. Nos. 135560-61, January 24, 2001, 350 SCRA 216, 223-224.

[22] *People v. Dadulla*, G.R. No. 175946, March 23, 2007, 519 SCRA 48, 59.

on AAA's hymen are not conclusive proof of the crime attributed to him because such injuries could result from AAA's own activities as jumping, running, or falling on a hard object.

We are not persuaded. As correctly held by the CA, AAA's healed lacerations on her hymen support her testimony rather than destroy it. True, a physician's finding that the hymen of the alleged victim was lacerated does not establish rape. Such result, however, is not presented to prove the fact of rape; rather, it is presented to show the loss of virginity.[23] And when, as in this case, the victim's forthright testimony is consistent with the physical finding of penetration, there is then, sufficient basis for concluding that sexual intercourse did take place.[24]

As regards Warlito's defense of alibi, we affirm the findings of the CA, thus:

> In the instant case, the place where the alleged rape was committed and the river where the accused was tending his motor pump at the time of the alleged incident was just separated by a 50 meter distance and the accused admitted that it would not take five minutes to reach his house by normal walking at an average speed. Thus, it was not physically impossible for accused to be at the crime scene. Moreover, positive identification of an eyewitness prevails over the defense of alibi. Hence, accused's attempt to exculpate himself through alibi must fail.[25]

As to the damages, we note that the appellate court correctly modified the amount of moral damages that should be awarded to AAA –– from PhP 50,000 to PhP 75,000, in line with current jurisprudence on qualified rape. The amount of exemplary

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[23] *People v. Bañares*, G.R. No. 127491, May 28, 2004, 430 SCRA 435, 448; *People v. Asuncion*, G.R. No. 136779, September 7, 2001, 364 SCRA 703, 714, citing *People v. Castillo*, G.R. No. 84310, May 29, 1991, 197 SCRA 657.

[24] *People v. Malibiran*, G.R. No. 173471, March 17, 2009; *People v. Corpuz*, G.R. No. 168101, February 13, 2006, 482 SCRA 435, 448; *Bañares*, *supra* note 23.

[25] *Rollo*, p. 37.

damages, however, should also be modified. Following *People v. Layco*,[26] the award of exemplary damages is increased from PhP 25,000 to PhP 30,000, in order to serve as public example and to protect the young from sexual abuse.

WHEREFORE, the Court *AFFIRMS* the October 9, 2007 CA Decision in CA-G.R. CR-H.C. No. 00217 with *MODIFICATIONS*. As modified, the dispositive portion of the CA Decision shall read:

WHEREFORE, the accused WARLITO MARTINEZ is found GUILTY beyond reasonable doubt of committing three (3) counts of QUALIFIED RAPE and is sentenced to suffer the penalty of *reclusion perpetua* for each count of rape, without benefit of parole. Likewise, for each count of rape, he is ordered to pay the victim, the sum of PhP 75,000 as civil indemnity, PhP 75,000 as moral damages, and **PhP 30,000 as exemplary damages**.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 183819. July 23, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ARSENIO CORTEZ *y* MACALINDONG *a.k.a.* "Archie,"** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; ENTRAPMENT; BUY-BUST OPERATION IS A LEGAL FORM OF ENTRAPMENT. — Cortez's

[26] G.R. No. 182191, May 8, 2009.

challenge about the legality of a buy-bust operation is already a closed issue. In *People v. Bongalon*, the Court elucidated on the nature and legality of a buy-bust operation, noting that it is a form of entrapment that is resorted to for trapping and capturing felons who are pre-disposed to commit crimes. The operation is legal and has been proved to be an effective method of apprehending drug peddlers, provided due regard to constitutional and legal safeguards is undertaken.

2. ID.; ID.; ENTRAPMENT, DEFINED AND DISTINGUISHED FROM INSTIGATION. — In American jurisdiction, the term "entrapment" generally has a negative connotation, because the idea to commit the criminal act originates from the police, as opposed to the accused having a predisposition to commit the crime. In *Sorrells v. United States*, entrapment was defined as the "conception and planning of an offense by an officer, and his procurement of its commission by one who would not have perpetrated it except for the trickery, persuasion or fraud of the officer." In *People v. Lua Chu and Uy Se Tieng*, the Court laid down the distinction between entrapment and instigation or inducement, to wit: ENTRAPMENT AND INSTIGATION.—While it has been said that the practice of entrapping persons into crime for the purpose of instituting criminal prosecutions is to be deplored, and while instigation, as distinguished from mere entrapment, has often been condemned and has sometimes been held to prevent the act from being criminal or punishable, the general rule is that it is no defense to the perpetrator of a crime that facilities for its commission were purposely placed in his way, or that the criminal act was done at the 'decoy solicitation' of persons seeking to expose the criminal, or that detectives feigning complicity in the act were present and apparently assisting in its commission. Especially is this true in that class of cases where the offense is one of a kind habitually committed, and the solicitation merely furnishes evidence of a course of conduct. Mere deception by the detective will not shield defendant, if the offense was committed by him, free from the influence or instigation of the detective. The fact that an agent of an owner acts as a supposed confederate of a thief is no defense to the latter in a prosecution for larceny, provided the original design was formed independently of such agent; and where a person approached by the thief as his confederate

notifies the owner or the public authorities, and, being authorized by them to do so, assists the thief in carrying out the plan, the larceny is nevertheless committed. It is generally held that it is no defense to a prosecution for an illegal sale of liquor that the purchase was made by a 'spotter,' detective, or hired informer; but there are cases holding the contrary. It is fairly clear that the concept of entrapment under the American criminal justice system bears a similarity to the concept of instigation or inducement under the Philippine judicial setting. Such that once the criminal intent arises from the police officers without any predisposition from the defendant to commit the crime, both jurisdictions consider the act as illegal. Entrapment in the Philippines is, however, not a defense available to the accused; instigation is, and is considered, an absolutory cause.

3. **ID.; ID.; TWO TESTS TO DETERMINE THE OCCURRENCE OF ENTRAPMENT. —** In determining the occurrence of entrapment, two tests have been developed: the subjective test and the objective test. Under the "subjective" view of entrapment, the focus is on the intent or predisposition of the accused to commit a crime. Under the "objective" view, on the other hand, the primary focus is on the particular conduct of law enforcement officials or their agents and the accused's predisposition becomes irrelevant. The government agent's act is evaluated in the light of the standard of conduct exercised by reasonable persons generally and whether such conduct falls below the acceptable standard for the fair and honorable administration of justice.

4. **ID.; ID.; ID.; THE "OBJECTIVE TEST" IS ADOPTED IN THIS JURISDICTION TO DETERMINE THE VALIDITY OF A BUY-BUST OPERATION; APPLICATION. —** Courts have adopted the "objective" test in upholding the validity of a buy-bust operation. In *People v. Doria*, the Court stressed that, in applying the "objective" test, the details of the purported transaction during the buy-bust operation must be clearly and adequately shown, *i.e.*, the initial contact between the poseur-buyer and the pusher, the offer to purchase, and the promise or payment of the consideration until the consummation of the sale by the delivery of the illegal drug subject of the sale. We further emphasized that the "manner by which the initial contact was made, whether or not through an informant, the offer to purchase the drug, the payment of the 'buy-bust' money,

and the delivery of the illegal drug, whether to the informant alone or the police officer, must be subject of strict scrutiny by courts to insure that law-abiding citizens are not unlawfully induced to commit an offense." In the case at bar, the evidence clearly shows that the police officers used entrapment to nab Cortez in the act of selling *shabu*. As aptly found below, it was the confidential informant who made initial contact with Cortez when he introduced SPO2 Zipagan as buyer. SPO2 Zipagan then asked to buy PhP 200 worth of *shabu* and paid using the previously marked money. Cortez then gave SPO2 Zipagan a plastic sachet containing what turned out to be *shabu*. Then, upon the sending out of the pre-set signal, Cortez was arrested. The established sequence of events categorically shows a typical buy-bust operation as a form of entrapment. The police officers' conduct was within the acceptable standard of fair and honorable administration of justice.

5. ID.; THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. 9165); ELEMENTS OF ILLEGAL SALE OF PROHIBITED DRUGS, ESTABLISHED. — In *People v. Pendatun*, the Court reiterated the essential elements of the crime of illegal sale of prohibited drugs: (1) the accused sold and delivered a prohibited drug to another and (2) he knew that what he had sold and delivered was a prohibited drug. All these elements were ably proved by the prosecution in the instant case. The fact of sale and eventual delivery by Cortez, as seller, of a substance later identified as *shabu* to SPO2 Zipagan, as buyer who paid PhP 200 for it, had been established.

6. ID.; ID.; CHAIN OF CUSTODY RULE, EXPLAINED. — It bears stressing that in every prosecution for illegal sale of prohibited drugs, the presentation in evidence of the seized drug, as an integral part of the *corpus delicti*, is most material. It is, therefore, essential that the identity of the prohibited drug be proved with moral certainty. Even more than this, what must also be established with the same degree of certitude is the fact that the substance bought or seized during the buy-bust operation is the same item offered in court as exhibit. The chain of custody requirement performs this function in that it ensures that unnecessary doubts concerning the identity of the evidence are removed. As a mode of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a

finding that the matter in question is what the proponent claims it to be. In context, this would ideally cover the testimony about every link in the chain, from seizure of the prohibited drug up to the time it is offered in evidence, in such a way that everyone who touched the exhibit would describe how and from whom it was received, to include, as much as possible, a description of the condition in which it was delivered to the next link in the chain.

7. **ID.; ID.; ID.; EXCEPTION TO THE CHAIN OF CUSTODY RULE, APPLIED. —** A close examination of the IRR of RA 9165 readily reveals that the custodial chain rule admits of exceptions. Thus, contrary to the brazen assertions of Cortez, the prescriptions of the IRR's Sec. 21 need not be followed with pedantic rigor as a condition *sine qua non* for a successful prosecution for illegal sale of dangerous drugs. Non-compliance with Sec. 21 does not, by itself, render an accused's arrest illegal or the items seized/confiscated from the accused inadmissible in evidence. What is essential is "the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused." In the instant case, there had been substantial compliance with the legal requirements on the handling of the seized item. Its integrity and evidentiary value had not been diminished. The chain of custody of the drugs subject matter of the case has not been shown to have been broken. x x x It would, thus, appear that the chain in the custody of the illicit drug purchased from Cortez had been *prima facie* established as unbroken. Or at the very least, the integrity and evidentiary value of the seized item had not, under the premises, been compromised.

8. **REMEDIAL LAW; EVIDENCE; DEFENSE OF DENIAL IS WEAK. —** Cortez's main defense of denial cannot prevail over the affirmative and credible testimony of SP02 Zipagan pointing Cortez as the seller of the prohibited substance. Denial, if not substantiated by clear and convincing proof, is negative and self-serving evidence and of little, if any, weight in law. As it can easily be fabricated, in fact a common standard line of defense in most prosecutions arising from violations of RA 9165, denial is inherently weak. And the Court is at loss to understand how Cortez can with a straight face set up the defense

of denial after having been caught in possession of the prohibited substance for which he received PhP 200 from SPO2 Zipagan.

9. **ID.; ID.; CREDIBILITY OF WITNESSES; ABSENCE OF ILL MOTIVE TO FALSELY TESTIFY. —** The conclusion may perhaps be different if the police authorities have a motive in falsely charging Cortez with illegal peddling of *shabu*. But the element of ill motive does not obtain under the premises x x x. Lest it be overlooked, Cortez declared not knowing any of the arresting police officers, having first met them only when they arrested him. This reality argues against the idea that these operatives would falsely testify, or plant evidence, against him.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

VELASCO, JR., *J*.:

The Case

Accused-appellant Arsenio M. Cortez appeals from the Decision dated September 20, 2007 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 02269, affirming the March 21, 2006 Decision in Crim. Case No. 13003-D of the Regional Trial Court (RTC), Branch 164 in Pasig City. The RTC found him guilty of violation of Section 5, Article II of Republic Act No. (RA) 9165 or the *Comprehensive Dangerous Drugs Act of 2002*.

The Facts

In an Information dated October 28, 2003, Cortez was charged with the crime of violation of Sec. 5, Art. II, RA 9165, allegedly committed as follows:

On or about October 26, 2003, in Pasig City, and within the jurisdiction of this Honorable Court, the accused, not being lawfully authorized to sell any dangerous drug, did then and there willfully, unlawfully and feloniously sell, deliver and give away to SPO2 Dante

Zipagan, a police poseur-buyer, one (1) small heat-sealed transparent plastic sachet containing four (4) centigrams (0.04 gram) of white crystalline substance, which was found positive to the tests for methamphetamine hydrochloride, a dangerous drug, in violation of the said law.

Contrary to law.[1]

When arraigned, Cortez entered a plea of "not guilty."

During the pre-trial conference and as shown by the Pre-Trial Order,[2] the defense admitted the authenticity and due execution of the prosecution's **Exhibit "B"**, the memorandum requesting laboratory examination of a substance suspected of being *shabu*, and **Exhibit "C"**, Physical Science Report No. D-2061-03E dated October 26, 2003. The defense also manifested that it would interpose the defense of denial.

To prove its case, the prosecution presented in evidence the testimonies of SPO2 Dante Zipagan and PO1 Michael Espares, both members of the Station Drug Enforcement Unit (SDEU), Pasig City Police Station. On the other hand, the defense presented Arsenio M. Cortez himself, and one Pedrito T. de Borja.

Version of the Prosecution

On October 26, 2003, at about 2 o'clock in the morning, a confidential informant reported to the Pasig City Police SDEU that a certain "Archie" was selling *shabu* in the vicinity of Brgy. Buting, Pasig City. Upon being apprised of this bit of information, SDEU Chief P/Insp. Melbert Esguerra held a briefing, formed a four-man team to conduct a buy-bust operation, and designated SPO2 Zipagan to act as team leader poseur-buyer. Two (2) PhP 100 bills to be used as buy-bust money were handed to SPO2 Zipagan who then put his initials "DZ" on the bill notes. A pre-operation report was made and submitted to the Philippine Drug Enforcement Agency which then gave it control number 2610-03-01.

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

[2] Records, p. 16.

Thereafter, the team, composed of, among others, PO1 Espares and SPO2 Zipagan, with the informant, proceeded to the target area. SPO2 Zipagan and the informant proceeded ahead of the group. At the corner of San Guillermo and E. Mendoza streets, they located the target person whereupon the informant introduced the poseur-buyer to "Archie." When asked how much he wanted to buy, SPO2 Zipagan replied PhP 200 worth only and gave *alias* "Archie" the marked money. Thereafter, "Archie" took out from his right pocket and handed to SPO2 Zipagan a heat-sealed transparent plastic sachet containing a white crystalline substance. Thereupon, SPO2 Zipagan executed the pre-arranged signal, by removing his hat, signifying the consummation of the transaction. SPO2 Zipagan then introduced himself and announced the seller's arrest.

Meanwhile, the back-up police operatives, who were 10 meters away, upon noticing the pre-arranged signal, rushed toward their team leader to help him hold "Archie." SPO2 Zipagan then directed "Archie" to empty his pocket. From his left pocket, "Archie" brought out with his left hand the buy-bust money. PO1 Espares later testified having witnessed this particular episode.

Afterwards, the team hauled "Archie" to the Pasig City Police Station for investigation. The investigator, PO1 Clarence Nipales, then prepared a request for laboratory examination on the white crystalline substance subject of the buy-bust operation. SPO2 Zipagan executed a sworn statement in connection with the arrest of "Archie," who was later identified as accused-appellant Cortez.

The seized transparent plastic sachet containing the white crystalline substance was forwarded to the Eastern Police District Crime Laboratory Office on St. Francis St., Mandaluyong City. P/Insp. Joseph M. Perdido, Forensic Chemical Officer, conducted a qualitative examination on the said specimen weighing 0.04 gram. The examined specimen tested positive for methamphetamine hydrochloride or *shabu.* The corresponding Report No. D-2061-03E contained the following pertinent entries:

SPECIMEN SUBMITTED:

A – One (1) heat-sealed transparent plastic sachet with marking 'AMC 10-26-03' containing 0.04 gram white crystalline substance.

x x x x x x x x x

PURPOSE OF LABORATORY EXAMINATION:

To determine the presence of any dangerous drug.

x x x x x x x x x

FINDINGS:

Qualitative examination conducted on the above-stated specimen gave POSITIVE result to the tests for Methamphetamine Hydrochloride, a dangerous drug.

x x x x x x x x x

CONCLUSION:

Specimen A contain Methamphetamine Hydrochloride, a dangerous drug.[3] x x x

Version of the Defense

Cortez denied committing the crime charged. His own version of what transpired may be summarized as follows:

He recounted that on October 26, 2003, between 12 o'clock midnight and 1 o'clock in the morning, he was in a house on Capt. Cortez St., Pateros, in bed with his live-in partner, Gina Flores, when he heard and answered a knocking sound outside. At the door was someone he met thrice who used to pawn things to him. Once allowed entry, the visitor offered to sell a cell phone. When Cortez expressed disinterest, the visitor took the cell phone unit out and pressed the dial button. At that moment, the door suddenly opened and two persons entered, followed later by two others.

Afterwards, Cortez was alternately brought out and in the house. All the while, he kept on inquiring what the case against him was all about only to be told to talk to the team leader. Finally, he was taken outside the house for a ride in a car driven by the cell phone seller. They stopped at a gasoline station and

[3] *Id.* at 54.

then boarded a tricycle which brought him to the Pasig City Police Station, where he was investigated and finally detained.

Pedrito, the second witness for the defense, testified in gist that in the morning in question, while he was on his way home after buying a cigarette, he saw four persons banging the door of Cortez's house. Moments later, he heard one of the intruders uttered, "*Kilala ko yan, kilala ko yan* (I know him. I know him.)." Then Cortez, followed by Flores, asked about the intrusion but did not get a satisfactory answer.

The Ruling of the Trial Court

On March 21, 2006, in Crim. Case No. 13003-D, the RTC rendered judgment convicting Cortez of the offense charged and sentenced him as follows:

WHEREFORE, the Court finds accused Arsenio Cortez *y* Macalindong *a.k.a.* "Archie" GUILTY beyond reasonable doubt of the crime of selling *shabu* penalized under Section 5, Article II of R.A. 9165 and hereby imposes upon him the penalty of life imprisonment and fine of Five Hundred Thousand (₱500,000.00) Pesos with all the accessory penalties under the law.

The plastic sachet containing *shabu* or methamphetamine hydrochloride (Exhibit "E-1") is hereby ordered confiscated in favor of the government and turned over to the Philippine Drug Enforcement Agency for destruction.

SO ORDERED.[4]

The Ruling of the Appellate Court

Forthwith, Cortez went on appeal to the CA. On September 20, 2007, the CA rendered the assailed decision, disposing as follows:

WHEREFORE, premises considered, the Appeal is hereby DENIED. The challenged Decision is AFFIRMED *in toto*.

SO ORDERED.[5]

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[4] CA *rollo*, p. 43.

[5] *Rollo*, p. 17.

In so ruling, the appellate court dismissed suggestions of frame-up and Cortez's allegations regarding the inability of the prosecution to prove that the drug presented in court was the same drug seized from him.

Cortez filed a Notice of Appeal which the CA gave due course. This Court, by Resolution of September 3, 2008, required the parties to submit supplemental briefs if they so desired. To date, Cortez has not filed any brief, while the People manifested that it is no longer filing any supplemental brief. Cortez's inaction and the prosecution's manifestation indicate their willingness to submit the case on the basis of the records already on file, thus veritably reiterating their principal arguments raised in the CA, which on the part of Cortez may be formulated, as follows:

THE [CA] ERRED IN FINDING ACCUSED-APPELLANT GUILTY OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT

Our Ruling

We sustain Cortez's conviction.

Buy-Bust Operation is a Form of Entrapment

As before the appellate court, Cortez decries that he was a victim of a frame-up, implying the illegality of the buy-bust operation undertaken by the Pasig City anti-drug operatives.

Cortez's challenge about the legality of a buy-bust operation is already a closed issue. In *People v. Bongalon*,[6] the Court elucidated on the nature and legality of a buy-bust operation, noting that it is a form of entrapment that is resorted to for trapping and capturing felons who are pre-disposed to commit crimes. The operation is legal and has been proved to be an effective method of apprehending drug peddlers, provided due regard to constitutional and legal safeguards is undertaken.[7] Entrapment should be distinguished from instigation which has been viewed as contrary to public policy.

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[6] G.R. No. 125025, January 23, 2002, 374 SCRA 289, 306.

[7] *People v. Herrera*, G.R. No. 93728, August 21, 1995, 247 SCRA 433, 439.

In American jurisdiction, the term "entrapment" generally has a negative connotation, because the idea to commit the criminal act originates from the police, as opposed to the accused having a predisposition to commit the crime.[8] In *Sorrells v. United States*, entrapment was defined as the "conception and planning of an offense by an officer, and his procurement of its commission by one who would not have perpetrated it except for the trickery, persuasion or fraud of the officer."[9]

In *People v. Lua Chu and Uy Se Tieng*, the Court laid down the distinction between entrapment and instigation or inducement, to wit:

> ENTRAPMENT AND INSTIGATION. —While it has been said that the practice of entrapping persons into crime for the purpose of instituting criminal prosecutions is to be deplored, and while instigation, as distinguished from mere entrapment, has often been condemned and has sometimes been held to prevent the act from being criminal or punishable, the general rule is that it is no defense to the perpetrator of a crime that facilities for its commission were purposely placed in his way, or that the criminal act was done at the 'decoy solicitation' of persons seeking to expose the criminal, or that detectives feigning complicity in the act were present and apparently assisting in its commission. Especially is this true in that class of cases where the offense is one of a kind habitually committed, and the solicitation merely furnishes evidence of a course of conduct. Mere deception by the detective will not shield defendant, if the offense was committed by him, free from the influence or instigation of the detective. The fact that an agent of an owner acts as a supposed confederate of a thief is no defense to the latter in a prosecution for larceny, provided the original design was formed independently of such agent; and where a person approached by the thief as his confederate notifies the owner or the public authorities, and, being authorized by them to do so, assists the thief in carrying out the plan, the larceny is nevertheless committed. It is generally held that it is no defense to a prosecution for an illegal sale of liquor that the purchase was made by a 'spotter,' detective, or hired informer; but there are cases holding the contrary.[10]

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[8] 22 C.J.S. CRIMLAW § 72.

[9] 287 U.S. 435, 454, 53 S.Ct. 210, 86 A.L.R. 249, 77 L.Ed. 413 (1932).

[10] 56 Phil. 44, 52-53 (1931).

It is fairly clear that the concept of entrapment under the American criminal justice system bears a similarity to the concept of instigation or inducement under the Philippine judicial setting. Such that once the criminal intent arises from the police officers without any predisposition from the defendant to commit the crime, both jurisdictions consider the act as illegal. Entrapment in the Philippines is, however, not a defense available to the accused; instigation is, and is considered, an absolutory cause.[11]

In determining the occurrence of entrapment, two tests have been developed: the subjective test and the objective test.[12] Under the "subjective" view of entrapment, the focus is on the intent or predisposition of the accused to commit a crime.[13] Under the "objective" view, on the other hand, the primary focus is on the particular conduct of law enforcement officials or their agents and the accused's predisposition becomes irrelevant.[14] The government agent's act is evaluated in the light of the standard of conduct exercised by reasonable persons generally and whether such conduct falls below the acceptable standard for the fair and honorable administration of justice.[15]

Courts have adopted the "objective" test in upholding the validity of a buy-bust operation. In *People v. Doria*, the Court stressed that, in applying the "objective" test, the details of the

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[11] *People v. Doria*, G.R. No. 125299, January 22, 1999, 301 SCRA 668, 694.

[12] 22 C.J.S. CRIMLAW § 77.

[13] *Sorrells*, *supra* note 9.

[14] See *People v. Smith*, 31 Cal. 4th 1207, 7 Cal. Rptr. 3d 559, 80 P.3d 662 (2003); *State v. Vallejos*, 1997-NMSC-040, 123 N.M. 739, 945 P.2d 957 (1997); *Elders v. State*, 321 Ark. 60, 900 S.W.2d 170 (1995); *State v. Babers*, 514 N.W.2d 79 (Iowa 1994); *State v. Nehring*, 509 N.W.2d 42 (N.D. 1993); *State v. Nakamura*, 65 Haw. 74, 648 P.2d 183 (1982); *State v. Little*, 121 N.H. 765, 435 A.2d 517 (1981); *State v. Berger*, 285 N.W.2d 533 (N.D. 1979); *People v. Barraza*, 23 Cal. 3d 675, 153 Cal. Rptr. 459, 591 P.2d 947 (1979).

[15] *Keaton v. State*, 253 Ga. 70, 316 S.E.2d 452 (1984); *Bruce v. State*, 612 P.2d 1012 (Alaska 1980).

purported transaction during the buy-bust operation must be clearly and adequately shown, *i.e.*, the initial contact between the poseur-buyer and the pusher, the offer to purchase, and the promise or payment of the consideration until the consummation of the sale by the delivery of the illegal drug subject of the sale. We further emphasized that the "manner by which the initial contact was made, whether or not through an informant, the offer to purchase the drug, the payment of the 'buy-bust' money, and the delivery of the illegal drug, whether to the informant alone or the police officer, must be subject of strict scrutiny by courts to insure that law-abiding citizens are not unlawfully induced to commit an offense."[16]

In the case at bar, the evidence clearly shows that the police officers used entrapment to nab Cortez in the act of selling *shabu*. As aptly found below, it was the confidential informant who made initial contact with Cortez when he introduced SPO2 Zipagan as buyer. SPO2 Zipagan then asked to buy PhP 200 worth of *shabu* and paid using the previously marked money. Cortez then gave SPO2 Zipagan a plastic sachet containing what turned out to be *shabu*. Then, upon the sending out of the pre-set signal, Cortez was arrested. The established sequence of events categorically shows a typical buy-bust operation as a form of entrapment. The police officers' conduct was within the acceptable standard of fair and honorable administration of justice.

Elements of the Crime Established; Chain of Custody Observed

In his further bid for acquittal, Cortez advances the matter of custodial chain. As he asserted in his Brief,[17] the apprehending police officers failed, after the buy bust, to make an inventory of the seized item and mark the container of the substance allegedly recovered from him, thus raising doubts as to the identity of what was seized.

We disagree.

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[16] *Supra* note 11, at 698-699.

[17] CA *rollo*, pp. 26-37.

In *People v. Pendatun*, the Court reiterated the essential elements of the crime of illegal sale of prohibited drugs: (1) the accused sold and delivered a prohibited drug to another and (2) he knew that what he had sold and delivered was a prohibited drug.[18] All these elements were ably proved by the prosecution in the instant case. The fact of sale and eventual delivery by Cortez, as seller, of a substance later identified as *shabu* to SPO2 Zipagan, as buyer who paid PhP 200 for it, had been established. The Court considers the ensuing vivid account of SPO2 Zipagan on this point:

Q: When you arrived at the scene or the reported place, what transpired next, if any?

A: I asked the other operatives to position themselves in a viewing distance and I myself[,] together with the informant[,] proceeded to the corner of San Guillermo and Mendoza Street to locate the suspect.

Q: How far where your companions were from you and [the] suspect during the conduct of the actual buy-bust?

x x x x x x x x x

A: More or less ten (10) meters.

x x x x x x x x x

Q: Were you able to in fact locate the subject?

A: Yes, sir.

Q: How were you able to locate him[?] [Did] you know him personally before the operation?

A: Only the informant, sir, knew the suspect.

Q: And what transpired when you [located] the suspect?

A: I [was] introduced by the informant to the suspect that I will buy a *shabu*, sir.

Q: And what happened after that?

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[18] G.R. No. 148822, July 12, 2004, 434 SCRA 148, 155-156; citing *People v. Cercado*, G.R. No. 144494, July 26, 2002, 385 SCRA 277; *People v. Pacis*, G.R. No. 146309, July 18, 2002, 384 SCRA 684.

A: The suspect asked me if how much I will buy, sir.

Q: What did you tell him?

A: Only 200 pesos.

Q: And 200 pesos worth of *shabu* is how many in terms of grams?

A: I could not…….. (discontinued)

Q: You do not know?

A: Yes, sir.

Q: And what did the subject person tell you or do after that?

A: I gave the money and then he dipped his right hand on his right pocket and gave me on (sic) (1) heat-sealed transparent plastic sachet containing white crystalline substance.

Q: When you said that the person gave you the one (1) transparent plastic sachet you meant that it was actually in your possession at the precise time, you already took possession of the sachet?

A: Yes, sir.

Q: Will you describe what was inside the plastic sachet at that time?

A: It contains white crystalline substance, sir.

Q: And at that very moment[,] what transpired after you have already obtained the plastic sachet from the suspect?

A: I gave my pre-arrange[d] signal to my other co-operatives.

Q: And what happened next?

A: I introduced myself to the accused and I [held] him [as] my two (2) co-operatives helped me in holding the said accused, sir.

Q: Did you announce your arrest on the accused?

A: Yes, sir.

Q: By the way, what was the name of this person from whom you bought this white crystalline substance contained in the plastic sachet?

A: He [was] identified later on as Arsenio Macalindong Cortez.

x x x x

Q: After you announced the arrest of the accused and you have obtained the illegal substance and recovered the buy-bust money, to where did you bring the accused?

A: In our office in Pasig City Police Station, sir.

Q: And [did] you conduct an investigation?

A: Yes, sir.

Q: In connection with the investigation conducted on the accused, what documentation from your recollection was ever prepared?

A: He made a request to examine the recovered evidence.

Q: Who made the request?

A: Our investigator, sir. x x x

Q: Are you familiar with the signature of your police investigator? By the way, who was the investigator who made the report?

A: PO1 Nipales.

Q: If said request will be shown to you will you be able to identify it?

A: Yes, sir.

x x x x x x x x x

Q: You mentioned that the substance was confiscated from the accused [and] was forwarded to the crime laboratory, is that correct?

A: Yes, sir.

Q: Was there a report given by a crime laboratory on the examination conducted?

A: Yes, sir.

Q: When was the report returned or forwarded back to you[?] [W]as it on the same day?

A: I could not remember.

Q: But you were able to get a hold of the copy?

A: Yes, sir.

Q: How about the substance, was there any markings made on said substance before it was forwarded to the crime laboratory?

A: Yes, sir.

Q: Who made the markings?

A: I, sir.

Q: And if said markings or the substance contained the markings is again shown to you, will you still be able to identify [it] again?

A: Yes, sir.

Q: Showing to you this plastic sachet containing white crystalline substance with sub-markings.

I have this plastic sachet with white crystalline substance with markings AMC 10-26-03 with additional marking D-2061-03E enclosed in quotation letter A JMP. At the back portion Exhibit E-1 1-29-04. Can you go over this piece of evidence, plastic sachet containing white crystalline substances, you tell this Honorable Court which markings did you place among the markings which according to you [you] made on said plastic sachet?

A: Capital letter AMC, sir, and the date the accused [was] arrested.

x x x x

Q: Aside from that[,] were there any other markings made by you, the other markings D-2061-03E JMP, whose markings was that?

A: I do not know.

Q: What relation has this piece of plastic sachet containing white crystalline substance, is that the same plastic sachet which was taken from the accused during the buy-bust operation?

A: Yes, sir, this is the same evidence.

Q: Meaning, this was the crystalline substance which was shown to you by the accused during the buy-bust operation?

A: Yes, sir.

x x x x

Q: Do you know what was the result of the laboratory examination?

A: Yes, sir.

Q: Tell the court what was the result?

A: It gave positive result for methamphetamine hydrochloride.

Q: Were you able to get hold of the Physical Science Report of the said substance?

A: Yes, sir.

Q: If said result will be shown to you will you still be able to identify it?

A: Yes, sir.

Q: I'm showing to you this Physical Science Report No. D-2061-03E, is this the report you were referring to?

A: Yes, sir.

Q: Can you go over the result specifically the finding and the conclusion, please read for the benefit of the court the contents of the findings?

A: Findings: Qualitative findings conducted on the above-stated specimen gave positive result to the test for methamphetamine hydrochloride, a dangerous drug.[19] x x x (Emphasis added.)

PO1 Espares, who provided back-up assistance to SPO2 Zipagan in the buy-bust operation, corroborated the foregoing testimony.

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[19] TSN, March 8, 2004, pp. 7-17.

Without a trace of equivocation, the trial court held that the prosecution has proved the elements of the crime charged. The trial court wrote:

From the testimonies of the prosecution witnesses, the identities of the buyer and the seller were sufficiently shown. The object and consideration were also identified in open court. The buy-bust money was marked and formally offered in evidence x x x and the object which is the 0.04 gram of *shabu* was also identified and offered in evidence as Exhibit 'E-1'. The object which is the 0.04 gram of white crystalline substance was tested positive to the tests for methamphetamine hydrochloride, a dangerous drug, after a laboratory examination conducted by P/Insp. Joseph M. Perdido, a Forensic Chemical Officer of the PNP Crime Laboratory x x x. Report No. D-2061-03E submitted by said Forensic Chemical officer was marked and formally offered in evidence as Exhibits 'C' and 'C-1'. The testimony of the Forensic Chemical Officer was dispensed with by both the public prosecutor and the defense counsel after they made some stipulations. Moreover, the testimony of SPO2 Dante Zipagan as regards the transaction that took place on October 26, 2003 was corroborated by PO1 Michael Espares and supported by documentary as well as object evidence as enumerated beforehand.

Therefore, in the opinion of the court, the elements mentioned above are sufficiently proven by the prosecution.[20]

This brings us to the matter of the custodial chain.

It bears stressing that in every prosecution for illegal sale of prohibited drugs, the presentation in evidence of the seized drug, as an integral part of the *corpus delicti*, is most material.[21] It is, therefore, essential that the identity of the prohibited drug be proved with moral certainty. Even more than this, what must also be established with the same degree of certitude is the fact that the substance bought or seized during the buy-bust operation is the same item offered in court as exhibit. The chain of custody requirement performs this function in that it ensures that unnecessary doubts concerning the identity of the evidence are removed.[22]

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[20] CA *rollo*, pp. 42-43.

[21] *Doria*, *supra* note 11, at 718.

[22] *Malillin v. People*, G.R. No. 172953, April 30, 2008, 553 SCRA 619, 632.

As a mode of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. In context, this would ideally cover the testimony about every link in the chain, from seizure of the prohibited drug up to the time it is offered in evidence, in such a way that everyone who touched the exhibit would describe how and from whom it was received, to include, as much as possible, a description of the condition in which it was delivered to the next link in the chain.[23]

To be sure, testimony about a perfect chain is not always the standard because it is almost always impossible to obtain an unbroken chain. Cognizant of this fact, the Implementing Rules and Regulations (IRR) of RA 9165 on the handling and disposition of seized dangerous drugs provide as follows:

SECTION 21. ***Custody and Disposition of Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.*** – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof; ***Provided*****, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures**; ***Provided, further,*** **that non-compliance with these requirements under justifiable**

[23] *Id.*

grounds, as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items x x x. (Emphasis supplied.)

A close examination of the IRR of RA 9165 readily reveals that the custodial chain rule admits of exceptions. Thus, contrary to the brazen assertions of Cortez, the prescriptions of the IRR's Sec. 21 need not be followed with pedantic rigor as a condition *sine qua non* for a successful prosecution for illegal sale of dangerous drugs. Non-compliance with Sec. 21 does not, by itself, render an accused's arrest illegal or the items seized/confiscated from the accused inadmissible in evidence.[24] What is essential is "the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused."[25]

In the instant case, there had been substantial compliance with the legal requirements on the handling of the seized item. Its integrity and evidentiary value had not been diminished. The chain of custody of the drugs subject matter of the case has not been shown to have been broken. The factual milieu of the case yields the following: After SPO2 Zipagan confiscated the 0.04 gram of *shabu* in question, as well as the marked money, following Cortez's arrest, the seized sachet of suspected *shabu* was without delay brought to the Pasig City police station and marked as AMC 10-26-03. Immediately thereafter, the confiscated substance, with a letter of request for examination, was referred to the PNP Crime Laboratory for examination to determine the presence of any dangerous drug. Per Report No. D-2061-03E, the specimen submitted contained methamphetamine hydrochloride. The examining officer, P/Insp. Perdido, duly marked the sachet with his initials, JMP. The contents of the seized plastic sachet

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[24] *People v. Naquita*, G.R. No. 180511, July 28, 2008, 560 SCRA 430, 448; citing *People v. Del Monte*, G.R. No. 179940, April 23, 2008, 552 SCRA 627.

[25] *Id.*; citing *People v. Concepcion*, G.R. No. 178876, June 27, 2008, 556 SCRA 421.

had been found to be the same substance identified and marked as Exhibit "E-1" and adduced in evidence in court.

In *Malillin v. People*,[26] the Court stressed the importance of the testimonies of all persons, if available, who handled the specimen to establish the chain of custody. Thus, the prosecution offered the testimony of SPO2 Zipagan who first had custody of the seized *shabu.* The testimony of the next handling officer, P/Insp. Perdido, was, however, dispensed with after the public prosecutor and the defense counsel stipulated that Exhibit "E-1"[27] is the same specimen mentioned in Exhibits "B-1"[28] and "C-1,"[29] and that the said specimen was regularly examined by the said witness.[30]

It would, thus, appear that the chain in the custody of the illicit drug purchased from Cortez had been *prima facie* established as unbroken. Or at the very least, the integrity and evidentiary value of the seized item had not, under the premises, been compromised.

Defense of Denial is Weak

Cortez's main defense of denial cannot prevail over the affirmative and credible testimony of SP02 Zipagan pointing Cortez as the seller of the prohibited substance. Denial, if not substantiated by clear and convincing proof, is negative and self-serving evidence and of little, if any, weight in law. As it can easily be fabricated, in fact a common standard line of defense in most prosecutions arising from violations of RA 9165,[31] denial is inherently weak.[32] And the Court is at loss to understand

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[26] *Supra* note 22.

[27] CA *rollo*, p. 4. One (1) pc. heat-sealed transparent plastic sachet containing white crystalline substance weighing 0.04 gram.

[28] *Id.* Request for Laboratory Examination.

[29] *Id.* Original copy of Report No. D-2061-03E.

[30] Records, p. 28.

[31] *People v. Eugenio*, G.R. No. 146805, January 16, 2003, 395 SCRA 317, 323; *People v. Barita*, G.R. No. 123541, February 8, 2000, 325 SCRA 22, 38.

[32] *People v. Dulay*, G.R. No. 150624, February 24, 2004, 423 SCRA 652, 662.

how Cortez can with a straight face set up the defense of denial after having been caught in possession of the prohibited substance for which he received PhP 200 from SPO2 Zipagan.

The conclusion may perhaps be different if the police authorities have a motive in falsely charging Cortez with illegal peddling of *shabu*. But the element of ill motive does not obtain under the premises, as determined by the trial court:

> Moreover, SPO2 Dante Zipagan and PO1 Michael Espares are police officers who are presumed to have regularly performed their duties in the absence of proof to the contrary (see Sec. 3(m), Rule 131 of the Rules of Court). The evidence offered by the defense failed to show any ill motive from the prosecution witnesses that would impel them to arrest the accused, Arsenio M. Cortez.[33]

Lest it be overlooked, Cortez declared not knowing any of the arresting police officers, having first met them only when they arrested him. This reality argues against the idea that these operatives would falsely testify, or plant evidence, against him. Cortez, on cross-examination, testified, as follows:

> Q: Did Zipagan approach you to ask for anything?
>
> A: No, sir.
>
> Q: Did any of the three (3) other police officers who arrested you x x x [approach] you and [ask you for] anything?
>
> A: No, sir.
>
> Q: Did you previously know these three (3) police officers previous to your arrest?
>
> A: No, sir.
>
> Q: Do you know if all these four (4) police officers had an [axe] to grind against you or you had any misunderstanding against with them previous to your arrest?
>
> A: This is the first time I saw the police officers.[34]

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[33] CA *rollo*, p. 16.

[34] TSN, July 14, 2005, p. 11.

In all then, we uphold the presumption of regularity in the performance of official duties and find that the prosecution has discharged its burden of proving Cortez's guilt beyond reasonable doubt.

WHEREFORE, the appeal is *DENIED*. The CA Decision in CA-G.R. CR-H.C. No. 02269 finding accused-appellant Arsenio Cortez guilty of the crime charged is *AFFIRMED.*

SO ORDERED.

Ynares-Santiago (Chairperson), Carpio Morales,[*] *Chico-Nazario,* and *Peralta, JJ.,* concur.

THIRD DIVISION

[G.R. No. 185063. July 23, 2009]

SPS. LITA DE LEON and FELIX RIO TARROSA, *petitioners, vs.* **ANITA B. DE LEON, DANILO B. DE LEON, and VILMA B. DE LEON,** *respondents.*

SYLLABUS

1. CIVIL LAW; 1950 CIVIL CODE; PROPERTY ACQUIRED DURING THE MARRIAGE IS PRESUMED TO BELONG TO THE CONJUGAL PARTNERSHIP; APPLICATION. — Article 160 of the 1950 Civil Code, the governing provision in effect at the time Bonifacio and Anita contracted marriage, provides that all property of the marriage is presumed to belong to the conjugal partnership unless it is proved that it pertains exclusively to the husband or the wife. For the presumption to arise, it is not, as *Tan v. Court of Appeals* teaches, even necessary to prove that the property was acquired with funds of the partnership. Only proof of acquisition during the marriage

[*] As per Raffle dated July 8, 2009.

is needed to raise the presumption that the property is conjugal. In fact, even when the manner in which the properties were acquired does not appear, the presumption will still apply, and the properties will still be considered conjugal. In the case at bar, ownership over what was once a PHHC lot and covered by the PHHC-Bonifacio Conditional Contract to Sell was only transferred during the marriage of Bonifacio and Anita. x x x The conditional contract to sell executed by and between Bonifacio and PHHC on July 20, 1965 provided that ownership over and title to the property will vest on Bonifacio only upon execution of the final deed of sale which, in turn, will be effected upon payment of the full purchase price x x x. Evidently, title to the property in question only passed to Bonifacio after he had fully paid the purchase price on June 22, 1970. This full payment, to stress, was made more than two (2) years after his marriage to Anita on April 24, 1968. In net effect, the property was acquired during the existence of the marriage; as such, ownership to the property is, by law, presumed to belong to the conjugal partnership. Such presumption is rebuttable only with strong, clear, categorical, and convincing evidence. There must be clear evidence of the exclusive ownership of one of the spouses, and the burden of proof rests upon the party asserting it.

2. ID.; ID.; ID.; SALE OF CONJUGAL PROPERTY WITHOUT THE CONSENT OF THE WIFE IS VOID *AB INITIO*. — There can be no quibbling that Anita's conformity to the sale of the disputed lot to petitioners was never obtained or at least not formally expressed in the conveying deed. The parties admitted as much in their Joint Stipulation of Facts with Motion earlier reproduced. Not lost on the Court of course is the fact that petitioners went to the process of registering the deed after Bonifacio's death in 1996, some 22 years after its execution. In the interim, petitioners could have had work—but did not—towards securing Anita's marital consent to the sale. It cannot be over-emphasized that the 1950 Civil Code is very explicit on the consequence of the husband alienating or encumbering any real property of the conjugal partnership without the wife's consent. To a specific point, the sale of a conjugal piece of land by the husband, as administrator, must, as a rule, be with the wife's consent. Else, the sale is not valid. So it is that in several cases we ruled that the sale by the husband of property belonging to the conjugal partnership

without the consent of the wife is void *ab initio*, absent any showing that the latter is incapacitated, under civil interdiction, or like causes. The nullity, as we have explained, proceeds from the fact that sale is in contravention of the mandatory requirements of Art. 166 of the Code. Since Art. 166 of the Code requires the consent of the wife before the husband may alienate or encumber any real property of the conjugal partnership, it follows that the acts or transactions executed against this mandatory provision are void except when the law itself authorized their validity. Accordingly, the Deed of Sale executed on January 12, 1974 between Bonifacio and the Tarrosas covering the PHHC lot is void.

3. ID.; ID.; ID.; RIGHT OF A SPOUSE TO ONE-HALF OF THE CONJUGAL ASSETS DOES NOT VEST UNTIL THE LIQUIDATION. — [T]he Court agrees with the CA that the sale of one-half of the conjugal property without liquidation of the partnership is void. Prior to the liquidation of the conjugal partnership, the interest of each spouse in the conjugal assets is **inchoate**, a mere expectancy, which constitutes neither a legal nor an equitable estate, and does not ripen into a title until it appears that there are assets in the community as a result of the liquidation and settlement. The interest of each spouse is limited to the net remainder or "*remanente liquido*" (*haber ganancial*) resulting from the liquidation of the affairs of the partnership after its dissolution. Thus, the right of the husband or wife to one-half of the conjugal assets does not vest until the dissolution and liquidation of the conjugal partnership, or after dissolution of the marriage, when it is finally determined that, after settlement of conjugal obligations, there are net assets left which can be divided between the spouses or their respective heirs. Therefore, even on the supposition that Bonifacio only sold his portion of the conjugal partnership, the sale is still theoretically void, for, as previously stated, the right of the husband or the wife to one-half of the conjugal assets does not vest until the liquidation of the conjugal partnership.

APPEARANCES OF COUNSEL

Francisco L. Rosario, Jr. for petitioner.
QQQ Law Offices for respondents.

D E C I S I O N

VELASCO, JR., *J*.:

The Case

Before us is a Petition for Review on *Certiorari* under Rule 45 assailing and seeking to set aside the Decision[1] and Resolution[2] dated August 27, 2008 and October 20, 2008, respectively, of the Court of Appeals (CA) in CA-G.R. CV No. 88571. The CA affirmed with modification the October 4, 2006 Decision[3] in Civil Case No. Q04-51595 of the Regional Trial Court (RTC), Branch 22 in Quezon City.

The Facts

On July 20, 1965, Bonifacio O. De Leon, then single, and the People's Homesite and Housing Corporation (PHHC) entered into a Conditional Contract to Sell for the purchase on installment of a 191.30 square-meter lot situated in Fairview, Quezon City. Subsequently, on April 24, 1968, Bonifacio married Anita de Leon in a civil rite officiated by the Municipal Mayor of Zaragosa, Nueva Ecija. To this union were born Danilo and Vilma.

Following the full payment of the cost price for the lot thus purchased, PHHC executed, on June 22, 1970, a Final Deed of Sale in favor of Bonifacio. Accordingly, Transfer Certificate of Title (TCT) No. 173677 was issued on February 24, 1972 in the name of Bonifacio, "single."

Subsequently, Bonifacio, for PhP 19,000, sold the subject lot to his sister, Lita, and husband Felix Rio Tarrosa (Tarrosas), petitioners herein. The conveying Deed of Sale dated January 12, 1974 (Deed of Sale) did not bear the written consent and signature of Anita.

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[1] *Rollo*, pp. 191-209. Penned by Associate Justice Remedios A. Salazar-Fernando and concurred in by Associate Justices Rosalinda Asuncion-Vicente and Ramon M. Bato, Jr.

[2] *Id.* at 216-217.

[3] *Id.* at 99-103.

Thereafter, or on May 23, 1977, Bonifacio and Anita renewed their vows in a church wedding at St. John the Baptist Parish in San Juan, Manila.

On February 29, 1996, Bonifacio died.

Three months later, the Tarrosas registered the Deed of Sale and had TCT No. 173677 canceled. They secured the issuance in their names of TCT No. N-173911 from the Quezon City Register of Deeds.

Getting wind of the cancellation of their father's title and the issuance of TCT No. N-173911, Danilo and Vilma filed on May 19, 2003 a Notice of Adverse Claim before the Register of Deeds of Quezon City to protect their rights over the subject property. Very much later, Anita, Danilo, and Vilma filed a reconveyance suit before the RTC in Quezon City. In their complaint, Anita and her children alleged, among other things, that fraud attended the execution of the Deed of Sale and that subsequent acts of Bonifacio would show that he was still the owner of the parcel of land. In support of their case, they presented, *inter alia*, the following documents:

a. A Real Estate Mortgage execution by Bonifacio in favor of spouses Cesar Diankinay and Filomena Almero on July 22, 1977.

b. A Civil Complaint filed by Bonifacio against spouses Cesar Diankinay and Filomena Almero on November 27, 1979 for nullification of the Real Estate Mortgage.

c. The Decision issued by the Court of First Instance of Rizal, Quezon City, promulgated on July 30, 1982, nullifying the Real Estate Mortgage.[4]

The Tarrosas, in their Answer with Compulsory Counterclaim, averred that the lot Bonifacio sold to them was his exclusive property inasmuch as he was still single when he acquired it from PHHC. As further alleged, they were not aware of the supposed marriage between Bonifacio and Anita at the time of the execution of the Deed of Sale.

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[4] *Id.* at 28-29.

After several scheduled hearings, both parties, assisted by their respective counsels, submitted a Joint Stipulation of Facts with Motion, to wit:

1. The parties have agreed to admit the following facts:

a. Bonifacio O. De Leon, while still single x x x, purchased from the [PHHC] through a *Conditional Contract to Sell* on July 20, 1965 a parcel of land with an area of 191.30 square meters situated in Fairview, Quezon City for ₱841.72;

b. On April 24, 1968, Bonifacio O. De Leon married plaintiff Anita B. De Leon before the Municipal Mayor of Zaragosa, Nueva Ecija. Both parties stipulate that said marriage is valid and binding under the laws of the Philippines;

c. On June 22, 1970, Bonifacio O. De Leon paid [PHHC] the total amount of ₱1,023.74 x x x. The right of ownership over the subject parcel of land was transferred to the late Bonifacio O. De Leon on June 22, 1970, upon the full payment of the total [price] of ₱1,023.74 and upon execution of the *Final Deed of Sale*;

d. After full payment, Bonifacio O. De Leon was issued [TCT] No. 173677 on February 24, 1972;

e. On January 12, 1974, Bonifacio O. De Leon executed a *Deed of Sale* in favor of defendants-spouses Felix Rio Tarrosa and Lita O. De Leon disposing the parcel of land under TCT No. 173677 for valuable consideration amount of ₱19,000.00 and subscribed before Atty. Salvador R. Aguinaldo who was commissioned to [notarize] documents on said date. The parties stipulate that the *Deed of Sale* is valid and genuine. However, plaintiff Anita De Leon was not a signatory to the *Deed of Sale* executed on January 12, 1974;

f. That plaintiff Anita B. De Leon and the late Bonifacio O. De Leon were married in church rites on May 23, 1977 x x x;

g. The late Bonifacio O. De Leon died on February 29, 1996 at the UST Hospital, España, Manila;

h. The said "Deed of Sale" executed on January 12, 1974 was registered on May 8, 1996 before the Office of the Register of Deeds of Quezon City and [TCT] No. N-173911 was issued to Lita O. De Leon and Felix Rio Tarrosa.[5]

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[5] *Id.* at 63-65.

The Ruling of the Trial Court

On October 4, 2006, the RTC, on the finding that the lot in question was the conjugal property of Bonifacio and Anita, rendered judgment in favor of Anita and her children. The dispositive portion of the decision reads:

WHEREFORE, premises considered, judgment is hereby rendered in favor of plaintiffs and against defendants in the following manner:

(1) Declaring the Deed of Sale dated January 12, 1974 executed by the late Bonifacio O. De Leon in favor of defendants-spouses Lita De Leon and Felix Rio Tarrosa void *ab initio*;

(2) Directing the Register of Deed of Quezon City to cancel Transfer Certificate of Title No. N-173911 in the name of "Lita O. De Leon, married to Felix Rio Tarrosa" and restore Transfer Certificate of Title No. 173667 in the name of "Bonifacio O. De Leon";

(3) Ordering the defendants-spouses to pay plaintiffs the following sums:

(a) ₱25,000.00 as moral damages;

(b) ₱20,000.00 as exemplary damages;

(c) ₱50,000.00 as attorney's fees plus appearance fee of ₱2,500.00 per court appearance;

(d) Costs of this suit.

SO ORDERED.

Aggrieved, the Tarrosas appealed to the CA. As they would submit, the RTC erred:

(1) in finding for the plaintiffs-appellees by declaring that the land subject matter of the case is conjugal property;

(2) in not declaring the land as the exclusive property of Bonifacio O. De Leon when sold to defendant-appellants;

(3) in ruling that defendant-appellants did not adduce any proof that the property was acquired solely by the efforts of Bonifacio O. De Leon;

(4) in declaring that one-half of the conjugal assets does not vest to Bonifacio O. De Leon because of the absence of liquidation;

(5) in cancelling TCT No. N-173911 and restored TCT No. [173677] in the name of Bonifacio O. De Leon;

(6) in awarding moral and exemplary damages and attorney's fees to the plaintiffs-appellees.[6]

The Ruling of the Appellate Court

On August 27, 2008, the CA rendered a decision affirmatory of that of the RTC, save for the award of damages, attorney's fees, and costs of suit which the appellate court ordered deleted. The *fallo* of the CA decision reads:

WHEREFORE, in view of the foregoing, the assailed decision dated October 4, 2006, of the Regional Trial Court, Branch 22, Quezon City in Civil Case No. Q-04-51595 is hereby AFFIRMED with MODIFICATION, in that the award of moral and exemplary damages as well as attorney's fees, appearance fee and costs of suit are hereby DELETED.

SO ORDERED.

Just like the RTC, the CA held that the Tarrosas failed to overthrow the legal presumption that the parcel of land in dispute was conjugal. The appellate court held further that the cases they cited were inapplicable.

As to the deletion of the grant of moral and exemplary damages, the CA, in gist, held that no evidence was adduced to justify the award. Based on the same reason, it also deleted the award of attorney's fees and costs of suit.

The Tarrosas moved but was denied reconsideration by the CA in its equally assailed resolution of October 20, 2008.

Hence, they filed this petition.

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

The Issues

I

Whether the [CA] gravely erred in concluding that the land purchased on installment by Bonifacio O. De Leon before marriage although some installments were paid during the marriage is conjugal and not his exclusive property.

II

Whether the [CA] gravely erred in ruling that the *Lorenzo, et al. vs. Nicolas, et al.*, and *Alvarez vs. Espiritu* cases do not apply in the case at bar because in the latter the land involved is not a friar land unlike in the former.

III

Whether the [CA] gravely erred in affirming the decision of the trial court *a quo* which ruled that petitioners did not adduce any proof that the land was acquired solely by the efforts of Bonifacio O. De Leon.

IV

Whether the court of appeals gravely erred in affirming the decision of the trial court which ruled that one-half (1/2) of the conjugal assets do not vest to Bonifacio O. De Leon because of the absence of liquidation.

Our Ruling

The petition lacks merit.

The Subject Property is the Conjugal Property of Bonifacio and Anita

The first three issues thus raised can be summed up to the question of whether or not the subject property is conjugal.

Petitioners assert that, since Bonifacio purchased the lot from PHHC on installment before he married Anita, the land was Bonifacio's exclusive property and not conjugal, even though some installments were paid and the title was issued to Bonifacio during

the marriage. In support of their position, petitioners cite *Lorenzo v. Nicolas*[7] and *Alvarez v. Espiritu*.[8]

We disagree.

Article 160 of the 1950 Civil Code, the governing provision in effect at the time Bonifacio and Anita contracted marriage, provides that all property of the marriage is presumed to belong to the conjugal partnership unless it is proved that it pertains exclusively to the husband or the wife. For the presumption to arise, it is not, as *Tan v. Court of Appeals*[9] teaches, even necessary to prove that the property was acquired with funds of the partnership. Only proof of acquisition during the marriage is needed to raise the presumption that the property is conjugal. In fact, even when the manner in which the properties were acquired does not appear, the presumption will still apply, and the properties will still be considered conjugal.[10]

In the case at bar, ownership over what was once a PHHC lot and covered by the PHHC-Bonifacio Conditional Contract to Sell was only transferred during the marriage of Bonifacio and Anita. It is well settled that a conditional sale is akin, if not equivalent, to a contract to sell. In both types of contract, the efficacy or obligatory force of the vendor's obligation to transfer title is subordinated to the happening of a future and uncertain event, usually the full payment of the purchase price, so that if the suspensive condition does not take place, the parties would stand as if the conditional obligation had never existed.[11] In

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[7] 91 Phil. 686 (1952).

[8] No. L-18833, August 14, 1965, 14 SCRA 892.

[9] G.R. No. 120594, June 10, 1997, 273 SCRA 229, 236.

[10] *Ching v. Court of Appeals*, G.R. No. 124642, February 23, 2004, 423 SCRA 356, 370; *Tan*, *supra* note 9; *Viloria v. Aquino*, 28 Phil. 258 (1914).

[11] *Serrano v. Caguiat*, G.R. No. 139173, February 28, 2007, 517 SCRA 57, 64; *Philippine National Bank v. Court of Appeals*, G.R. No. 119580, September 26, 1996, 262 SCRA 464, citing *Rose Packing Co., Inc. v. Court of Appeals*, No. L-33084, November 14, 1988, 167 SCRA 309, 318 and *Lim v. Court of Appeals*, G.R. No. 85733, February 23, 1990, 182 SCRA 564, 670.

other words, in a contract to sell ownership is retained by the seller and is not passed to the buyer until full payment of the price, unlike in a contract of sale where title passes upon delivery of the thing sold.[12]

Such is the situation obtaining in the instant case. The conditional contract to sell executed by and between Bonifacio and PHHC on July 20, 1965 provided that ownership over and title to the property will vest on Bonifacio only upon execution of the final deed of sale which, in turn, will be effected upon payment of the full purchase price, to wit:

> 14. Titles to the property subject of this contract remains with the CORPORATION and shall pass to, and be transferred in the name of the APPLICANT only upon the execution of the final Deed of Sale provided for in the next succeeding paragraph.
>
> 15. Upon the full payment by the APPLICANT of the price of the lot above referred to together with all the interest due thereon, taxes and other charges, and upon his faithful compliance with all the conditions of this contract the CORPORATION agrees to execute in favor of the APPLICANT a final deed of sale of the aforesaid land, and the APPLICANT agrees to accept said deed, as full performance by the CORPORATION of its covenants and undertakings hereunder.[13] x x x

Evidently, title to the property in question only passed to Bonifacio after he had fully paid the purchase price on June 22, 1970. This full payment, to stress, was made more than two (2) years after his marriage to Anita on April 24, 1968. In net effect, the property was acquired during the existence of the marriage; as such, ownership to the property is, by law, presumed to belong to the conjugal partnership.

Such presumption is rebuttable only with strong, clear, categorical, and convincing evidence.[14] There must be clear

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[12] *Serrano*, *supra* at 65.

[13] *Rollo*, p. 45.

[14] *Go v. Yamane*, G.R. No. 160762, May 3, 2006, 489 SCRA 107, 117; citing *Wong v. Intermediate Appellate Court*, G.R. No. 70082, August 19, 1991, 200 SCRA 792.

evidence of the exclusive ownership of one of the spouses,[15] and the burden of proof rests upon the party asserting it.[16]

Petitioners' argument that the disputed lot was Bonifacio's exclusive property, since it was registered solely in his name, is untenable. The mere registration of a property in the name of one spouse does not destroy its conjugal nature.[17] What is material is the **time** when the property was acquired.

Thus, the question of whether petitioners were able to adduce proof to overthrow the presumption is a factual issue best addressed by the trial court. As a matter of long and sound practice, factual determinations of the trial courts,[18] especially when confirmed by the appellate court, are accorded great weight by the Court and, as rule, will not be disturbed on appeal, except for the most compelling reasons.[19] Petitioners have not, as they really cannot, rebut the presumptive conjugal nature of the lot in question. In this regard, the Court notes and quotes with approval the following excerpts from the trial court's disposition:

> The defendants, however, did not adduce any proof that the property in question was acquired solely by the efforts of [Bonifacio]. The established jurisprudence on the matter leads this Court to the conclusion that the property involved in this dispute is indeed the conjugal property of the deceased [Bonifacio] De Leon.

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[15] *Ching*, *supra* note 10; *Francisco v. Court of Appeals*, November 25, 1988, 229 SCRA 188.

[16] *Tan*, *supra* note 9.

[17] *Go*, *supra* note 14, at 119; *Acabal v. Acabal*, G.R. No. 148376, March 31, 2005, 454 SCRA 555, 580, citing *Mendoza v. Reyes*, No. L-31618, August 17, 1983, 124 SCRA 154 and *Bucoy v. Paulino*, No. L-25775, April 26, 1968, 23 SCRA 248.

[18] *Villanueva v. Court of Appeals*, G.R. No. 143286, April 14, 2004, 427 SCRA 439, 451; citing *People v. Cordero*, G.R. Nos. 136894-96, February 7, 2001, 351 SCRA 383.

[19] *Republic v. Court of Appeals*, G.R. No. 116372, January 18, 2001, 349 SCRA 451, 460.

In fact, defendant even admitted that [Bonifacio] brought into his marriage with plaintiff Anita the said land, albeit in the concept of a possessor only as it was not yet registered in his name. The property was registered only in 1972 during the existence of the marriage. However, the absence of evidence on the source of funding has called for the application of the presumption under Article 160 in favor of the plaintiffs.[20]

The cases petitioners cited are without governing applicability to this case simply because they involved a law specifically enacted to govern the disposition of and ownership of friar lands. In *Lorenzo*, the Court held that the pervading legislative intent of Act No. 1120 is "to sell the friar lands acquired by the Government to actual settlers and occupants of the same."[21] The Court went on further to say in *Alvarez* that "under the Friar Lands Act of 1120, the equitable and beneficial title to the land passes to the purchaser the moment the first installment is paid and a certificate of sale is issued."[22] Plainly, the said cases are not applicable here considering that the disputed property is not friar land.

There can be no quibbling that Anita's conformity to the sale of the disputed lot to petitioners was never obtained or at least not formally expressed in the conveying deed. The parties admitted as much in their Joint Stipulation of Facts with Motion earlier reproduced. Not lost on the Court of course is the fact that petitioners went to the process of registering the deed after Bonifacio's death in 1996, some 22 years after its execution. In the interim, petitioners could have had work—but did not—towards securing Anita's marital consent to the sale.

It cannot be over-emphasized that the 1950 Civil Code is very explicit on the consequence of the husband alienating or encumbering any real property of the conjugal partnership without the wife's consent.[23] To a specific point, the sale of a conjugal

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[20] *Rollo*, p. 101.

[21] *Supra* note 7.

[22] *Supra* note 8, at 897; citing *Director of Lands v. Rizal*, 87 Phil. 806 (1950).

[23] Art. 166.

piece of land by the husband, as administrator, must, as a rule, be with the wife's consent. Else, the sale is not valid. So it is that in several cases we ruled that the sale by the husband of property belonging to the conjugal partnership without the consent of the wife is void *ab initio*, absent any showing that the latter is incapacitated, under civil interdiction, or like causes. The nullity, as we have explained, proceeds from the fact that sale is in contravention of the mandatory requirements of Art. 166 of the Code.[24] Since Art. 166 of the Code requires the consent of the wife before the husband may alienate or encumber any real property of the conjugal partnership, it follows that the acts or transactions executed against this mandatory provision are void except when the law itself authorized their validity.[25]

Accordingly, the Deed of Sale executed on January 12, 1974 between Bonifacio and the Tarrosas covering the PHHC lot is void.

Interest in the Conjugal Partnership Is Merely Inchoate until Liquidation

As a final consideration, the Court agrees with the CA that the sale of one-half of the conjugal property without liquidation of the partnership is void. Prior to the liquidation of the conjugal partnership, the interest of each spouse in the conjugal assets is **inchoate**, a mere expectancy, which constitutes neither a legal nor an equitable estate, and does not ripen into a title until it appears that there are assets in the community as a result of the liquidation and settlement.[26] The interest of each spouse is limited to the net remainder or "*remanente liquido*" (*haber ganancial*) resulting from the liquidation of the affairs of the partnership after its dissolution.[27] Thus, the right of the husband

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[24] *Nicolas v. Court of Appeals*, No. L-37631, October 12, 1987, 154 SCRA 635, 643; *Garcia v. Court of Appeals*, 215 Phil. 380 (1984); *Tolentino v. Cardenas*, 123 Phil. 517 (1966).

[25] Civil Code, Art. 5.

[26] *Abalos v. Macatangay, Jr.*, G.R. No. 155043, September 30, 2004, 439 SCRA 649, 663; *Wong*, *supra* note 14, at 803.

[27] *Manuel v. Losano*, 41 Phil. 855 (1918); *Nable Jose v. Nable Jose*, 41 Phil. 713 (1916).

or wife to one-half of the conjugal assets does not vest until the dissolution and liquidation of the conjugal partnership, or after dissolution of the marriage, when it is finally determined that, after settlement of conjugal obligations, there are net assets left which can be divided between the spouses or their respective heirs.[28]

Therefore, even on the supposition that Bonifacio only sold his portion of the conjugal partnership, the sale is still theoretically void, for, as previously stated, the right of the husband or the wife to one-half of the conjugal assets does not vest until the liquidation of the conjugal partnership.

Nevertheless, this Court is mindful of the fact that the Tarrosas paid a valuable consideration in the amount of PhP 19,000 for the property in question. Thus, as a matter of fairness and equity, the share of Bonifacio after the liquidation of the partnership should be liable to reimburse the amount paid by the Tarrosas. It is a well-settled principle that no person should unjustly enrich himself at the expense of another.[29]

WHEREFORE, the petition is *DENIED*. The CA Decision in CA-G.R. CV No. 88571 is *AFFIRMED*. Costs against petitioners.

SO ORDERED.

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

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[28] *Abalos*, *supra* note 26; citing *Quintos de Ansaldo v. Sheriff of Manila*, 64 Phil. 115 (1937).

[29] CIVIL CODE, Art. 22; *Hulst v. PR Builders, Inc.*, G.R. No. 156364, September 3, 2007, 532 SCRA 74, 96; *Advanced Foundation Construction Systems Corporation v. New World Properties and Ventures, Inc.*, G.R. No. 143154, June 21, 2006, 491 SCRA 557, 578; *Reyes v. Lim, et al.*, G.R. No. 134241, August 11, 2003.

EN BANC

[A.C. No. 8243. July 24, 2009]

ROLANDO B. PACANA, JR., *complainant, vs.* **ATTY. MARICEL PASCUAL-LOPEZ,** *respondent.*

SYLLABUS

1. **LEGAL ETHICS; ATTORNEYS; ATTORNEY-CLIENT RELATIONSHIP; A LAWYER SHALL NOT REPRESENT CONFLICTING INTERESTS; RATIONALE. —** Rule 15.03, Canon 15 of the Code of Professional Responsibility provides: Rule 15.03 – A lawyer shall not represent conflicting interests except by written consent of all concerned given after full disclosure of the facts. This prohibition is founded on principles of public policy, good taste and, more importantly, upon necessity. In the course of a lawyer-client relationship, the lawyer learns all the facts connected with the client's case, including its weak and strong points. Such knowledge must be considered sacred and guarded with care. No opportunity must be given to him to take advantage of his client; for if the confidence is abused, the profession will suffer by the loss thereof. It behooves lawyers not only to keep inviolate the client's confidence, but also to avoid the appearance of treachery and double – dealing for only then can litigants be encouraged to entrust their secrets to their lawyers, which is paramount in the administration of justice. It is for these reasons that we have described the attorney-client relationship as one of trust and confidence of the highest degree.

2. **ID.; ID.; ID.; ATTORNEY-CLIENT RELATIONSHIP IS ESTABLISHED EVEN IN THE FORM OF "FRIENDLY ACCOMMODATIONS" AND IN THE ABSENCE OF A WRITTEN CONTRACT. —** Respondent must have known that her act of constantly and actively communicating with complainant, who, at that time, was beleaguered with demands from investors of Multitel, eventually led to the establishment of a lawyer-client relationship. Respondent cannot shield herself from the inevitable consequences of her actions by simply saying that the assistance she rendered to complainant was only in the form of "friendly accommodations," precisely because at

the time she was giving assistance to complainant, she was already privy to the cause of the opposing parties who had been referred to her by the SEC. Respondent also tries to disprove the existence of such relationship by arguing that no written contract for the engagement of her services was ever forged between her and complainant. This argument all the more reveals respondent's patent ignorance of fundamental laws on contracts and of basic ethical standards expected from an advocate of justice. The IBP was correct when it said: The absence of a written contract will not preclude the finding that there was a professional relationship between the parties. **Documentary formalism is not an essential element in the employment of an attorney; the contract may be express or implied.** To establish the relation, it is sufficient that the advice and assistance of an attorney is sought and received in any matter pertinent to his profession.

3. ID.; ID.; ID.; REPRESENTING CONFLICTING INTERESTS AND ENGAGING IN UNLAWFUL AND DECEITFUL CONDUCT COMMITTED IN CASE AT BAR. — Given the situation, the most decent and ethical thing which respondent should have done was either to advise complainant to engage the services of another lawyer since she was already representing the opposing parties, or to desist from acting as representative of Multitel investors and stand as counsel for complainant. She cannot be permitted to do both because that would amount to double-dealing and violate our ethical rules on conflict of interest. x x x [However], respondent took advantage of complainant's hapless situation, initially, by giving him legal advice and, later on, by soliciting money and properties from him. Thereafter, respondent impressed upon complainant that she had acted with utmost sincerity in helping him divest all the properties entrusted to him in order to absolve him from any liability. But simultaneously, she was also doing the same thing to impress upon her clients, the party claimants against Multitel, that she was doing everything to reclaim the money they invested with Multitel. Respondent herself admitted to complainant that without the latter's help, she would not have been able to earn as much and that, as a token of her appreciation, she was willing to share some of her earnings with complainant. Clearly, respondent's act is shocking, as it not only violated Rule 9.02, Canon 9 of the Code of Professional Responsibility, but also toyed with decency and good taste.

4. ID.; ID.; DISBARMENT; A DISBARMENT CASE AGAINST A LAWYER MAY NOT BE RENDERED MOOT AND ACADEMIC BY THE VOLUNTARY TERMINATION OF MEMBERSHIP IN THE BAR. — The resolution of the administrative case filed against respondent is necessary in order to determine the degree of her culpability and liability to complainant. The case may not be dismissed or rendered moot and academic by respondent's act of voluntarily terminating her membership in the Bar regardless of the reason for doing so. This is because membership in the Bar is a privilege burdened with conditions. The conduct of a lawyer may make him or her civilly, if not criminally, liable to his client or to third parties, and such liability may be conveniently avoided if this Court were to allow voluntary termination of membership. Hence, to terminate one's membership in the Bar voluntarily, it is imperative that the lawyer first prove that the voluntary withdrawal of membership is not a ploy to further prejudice the public or to evade liability. No such proof exists in the present case.

APPEARANCES OF COUNSEL

Chato & Vinzons-Chato and *Peter Paul S. Romero* for complainant.

Jose Mari S. Velez, Jr. for respondent.

D E C I S I O N

***PER CURIAM*:**

This case stems from an administrative complaint[1] filed by Rolando Pacana, Jr. against Atty. Maricel Pascual-Lopez charging the latter with flagrant violation of the provisions of the Code of Professional Responsibility.[2] Complainant alleges that respondent committed acts constituting conflict of interest, dishonesty, influence peddling, and failure to render an accounting of all the money and properties received by her from complainant.

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[1] *Rollo*, pp. 1-45.

[2] *Id.* at 8.

On January 2, 2002, complainant was the Operations Director for Multitel Communications Corporation (MCC). MCC is an affiliate company of Multitel International Holdings Corporation (Multitel). Sometime in July 2002, MCC changed its name to Precedent Communications Corporation (Precedent).[3]

According to complainant, in mid-2002, Multitel was besieged by demand letters from its members and investors because of the failure of its investment schemes. He alleges that he earned the ire of Multitel investors after becoming the assignee of majority of the shares of stock of Precedent and after being appointed as trustee of a fund amounting to Thirty Million Pesos (₱30,000,000.00) deposited at Real Bank.

Distraught, complainant sought the advice of respondent who also happened to be a member of the Couples for Christ, a religious organization where complainant and his wife were also active members. From then on, complainant and respondent constantly communicated, with the former disclosing all his involvement and interests in Precedent and Precedent's relation with Multitel. Respondent gave legal advice to complainant and even helped him prepare standard quitclaims for creditors. In sum, complainant avers that a lawyer-client relationship was established between him and respondent although no formal document was executed by them at that time. A Retainer Agreement[4] dated January 15, 2003 was proposed by respondent. Complainant, however, did not sign the said agreement because respondent verbally asked for One Hundred Thousand Pesos (₱100,000.00) as acceptance fee and a 15% contingency fee upon collection of the overpayment made by Multitel to Benefon,[5] a telecommunications company based in Finland. Complainant found the proposed fees to be prohibitive and not within his means.[6] Hence, the retainer agreement remained unsigned.[7]

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[3] *Id.* at 1 and 622.

[4] *Id.* at 13; Annex "B".

[5] *Id.* at 376; 554.

[6] *Id.*

[7] *Id.* at 13.

After a few weeks, complainant was surprised to receive a demand letter from respondent[8] asking for the return and immediate settlement of the funds invested by respondent's clients in Multitel. When complainant confronted respondent about the demand letter, the latter explained that she had to send it so that her clients – defrauded investors of Multitel – would know that she was doing something for them and assured complainant that there was nothing to worry about.[9]

Both parties continued to communicate and exchange information regarding the persistent demands made by Multitel investors against complainant. On these occasions, respondent impressed upon complainant that she can closely work with officials of the Anti-Money Laundering Council (AMLC), the Department of Justice (DOJ), the National Bureau of Investigation (NBI), the Bureau of Immigration and Deportations (BID),[10] and the Securities and Exchange Commission (SEC)[11] to resolve complainant's problems. Respondent also convinced complainant that in order to be absolved from any liability with respect to the investment scam, he must be able to show to the DOJ that he was willing to divest any and all of his interests in Precedent including the funds assigned to him by Multitel.[12]

Respondent also asked money from complainant allegedly for safekeeping to be used only for his case whenever necessary. Complainant agreed and gave her an initial amount of ₱900,000.00 which was received by respondent herself.[13] Sometime thereafter, complainant again gave respondent ₱1,000,000.00.[14] Said amounts were all part of Precedent's collections and sales proceeds which complainant held as assignee of the company's properties.[15]

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[8] *Id.* at 10-12; Annex "A".

[9] *Id.* at 2.

[10] *Id.* at 554.

[11] *Id.* at 377.

[12] *Id.* at 554.

[13] *Id.* at 3 and 14; Annex "C".

[14] *Id.* at 3 and 19; Annex "F".

[15] *Id.*

When complainant went to the United States (US), he received several messages from respondent sent through electronic mail (e-mail) and short messaging system (SMS, or text messages) warning him not to return to the Philippines because Rosario Baladjay, president of Multitel, was arrested and that complainant may later on be implicated in Multitel's failed investment system. Respondent even said that ten (10) arrest warrants and a hold departure order had been issued against him. Complainant, thereafter, received several e-mail messages from respondent updating him of the status of the case against Multitel and promised that she will settle the matter discreetly with government officials she can closely work with in order to clear complainant's name.[16] In two separate e-mail messages,[17] respondent again asked money from complainant, ₱200,000 of which was handed by complainant's wife while respondent was confined in Saint Luke's Hospital after giving birth,[18] and another ₱700,000 allegedly to be given to the NBI.[19]

Through respondent's persistent promises to settle all complainant's legal problems, respondent was able to convince complainant who was still in the US to execute a deed of assignment in favor of respondent allowing the latter to retrieve 178 boxes containing cellular phones and accessories stored in complainant's house and inside a warehouse.[20] He also signed a blank deed of sale authorizing respondent to sell his 2002 Isuzu Trooper.[21]

Sometime in April 2003, wary that respondent may not be able to handle his legal problems, complainant was advised by his family to hire another lawyer. When respondent knew about this, she wrote to complainant *via* e-mail, as follows:

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[16] *Id.* at 3-4 and 20-24; Annexes "G", "H", and "I".

[17] *Id.* at 20-24; Annexes "H" and "I".

[18] *Id.* at 6 and 555.

[19] *Id.* at 6 and 24; Annex "I".

[20] *Id.* at 4, 15 and 554; Annex "D".

[21] *Id.* at 5, 16-17 and 554; Annex "E".

Dear Butchie,

Hi! Ok *ka lang*? Hope you are fine. Sorry if I shocked you but I had to do it **as your friend and lawyer**. The charges are all non-bailable but all the same as the SEC report I told you before. The findings are the same, *i.e.* your company was the front for the fraud of Multitel and that funds were provided you.

I anticipated this, that is why I really pushed for a quitclaim. Rolly is willing to return the Crosswind, laptap *(sic)* and [P]alm [P]ilot. Manny Cancio really helped. Anthony *na lang*. Then, I will need the accounting of all the funds you received from the sale of the phones, every employees and directors['] quitclaim (including yours), the funds transmitted to the clients through me, the funds you utilized, and whatelse *(sic)* is still unremitted, every centavo must be accounted for as DOJ and NBI can have the account opened.

I will also need the ₱30 M proof of deposit with Real [B]ank and the trust given [to] you. So we can inform them [that] it was not touched by you.

I have been informed by Efie that your family is looking at hiring Coco Pimentel. I know him very well as his sister Gwen is my best friend. **I have no problem if you hire him but I will be hands off. I work differently *kasi***. In this cases *(sic)*, you cannot be highprofile *(sic)* because it is the clients who will be sacrificed at the expense of the fame of the lawyer. **I have to work quietly and discreetly.** No funfare. Just like what I did for your guys in the SEC. I have to work with people I am comfortable with. **Efren Santos will sign as your lawyer although I will do all the work.** He can help with all his connections. Val's friend in the NBI is the one is *(sic)* charge of organized crime who is the entity (*sic*) who has your warrant. My law partner was the state prosecutor for financial fraud. Basically we have it covered in all aspects and all departments. I am just trying to liquidate the phones I have allotted for you s ana *(sic)* for your trooper *kasi* whether we like it or not, we have to give this agencies *(sic)* to make our work easier according to Val. The funds with Mickey are already accounted in the quit claims *(sic)* as attorneys *(sic)* fees. I hope he will be able to send it so we have funds to work with.

As for your kids, legally they can stay here but recently, it is the children who *(sic)* the irate clients and government officials harass and kidnap to make the individuals they want to come out from hiding *(sic)*. I do not want that to happen. Things will be really easier on my side.

Please do not worry. Give me 3 months to make it all disappear. But if you hire Coco, I will give him the free hand to work with your case. Please trust me. I have never let you down, have I? I told you this will happen but we are ready and prepared. The clients who received the phones will stand by you and make you the hero in this scandal. **I will stand by you always. This is my expertise.** TRUST me! That is all. You have an angel on your side. Always pray though to the best legal mind up there. You will be ok!

Candy[22]

On July 4, 2003, contrary to respondent's advice, complainant returned to the country. On the eve of his departure from the United States, respondent called up complainant and conveniently informed him that he has been cleared by the NBI and the BID.[23]

About a month thereafter, respondent personally met with complainant and his wife and told them that she has already accumulated ₱12,500,000.00 as attorney's fees and was willing to give ₱2,000,000.00 to complainant in appreciation for his help. Respondent allegedly told complainant that without his help, she would not have earned such amount. Overwhelmed and relieved, complainant accepted respondent's offer but respondent, later on, changed her mind and told complainant that she would instead invest the ₱2,000,000.00 on his behalf in a business venture. Complainant declined and explained to respondent that he and his family needed the money instead to cover their daily expenses as he was no longer employed. Respondent allegedly agreed, but she failed to fulfill her promise.[24]

Respondent even publicly announced in their religious organization that she was able to help settle the ten (10) warrants of arrest and hold departure order issued against complainant and narrated how she was able to defend complainant in the said cases.[25]

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[22] *Id.* at 20; Annex "G".

[23] *Id.* at 6.

[24] *Id.*

[25] *Id.* at 360; Exhibit "33".

By April 2004, however, complainant noticed that respondent was evading him. Respondent would either refuse to return complainant's call or would abruptly terminate their telephone conversation, citing several reasons. This went on for several months.[26] In one instance, when complainant asked respondent for an update on the collection of Benefon's obligation to Precedent which respondent had previously taken charge of, respondent arrogantly answered that she was very busy and that she would read Benefon's letter only when she found time to do so.

On November 9, 2004, fed up and dismayed with respondent's arrogance and evasiveness, complainant wrote respondent a letter formally asking for a full accounting of all the money, documents and properties given to the latter.[27] Respondent rendered an accounting through a letter dated December 20, 2004.[28] When complainant found respondent's explanation to be inadequate, he wrote a latter expressing his confusion about the accounting.[29] Complainant repeated his request for an audited financial report of all the properties turned over to her; otherwise, he will be constrained to file the appropriate case against respondent.[30] Respondent replied,[31] explaining that all the properties and cash turned over to her by complainant had been returned to her clients who had money claims against Multitel. In exchange for this, she said that she was able to secure quitclaim documents clearing complainant from any liability.[32] Still unsatisfied, complainant decided to file an affidavit-complaint[33] against respondent before the Commission on Bar Discipline of the

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[26] *Id.* at 7.

[27] *Id.* at 27; Annex "K".

[28] *Id.* at 28-30; Annex "L".

[29] *Id.* at 31-32; Annex "M".

[30] *Id.* at 32.

[31] *Id.* at 33-39; Annex "N".

[32] *Id.*

[33] *Id.* at 1-45.

Integrated Bar of the Philippines (IBP) seeking the disbarment of respondent.

In her Answer-Affidavit,[34] respondent vehemently denied being the lawyer for Precedent. She maintained that no formal engagement was executed between her and complainant. She claimed that she merely helped complainant by providing him with legal advice and assistance because she personally knew him, since they both belonged to the same religious organization.[35]

Respondent insisted that she represented the group of investors of Multitel and that she merely mediated in the settlement of the claims her clients had against the complainant. She also averred that the results of the settlement between both parties were fully documented and accounted for.[36] Respondent believes that her act in helping complainant resolve his legal problem did not violate any ethical standard and was, in fact, in accord with Rule 2.02 of the Code of Professional Responsibility.[37]

To bolster her claim that the complaint was without basis, respondent noted that a complaint for estafa was also filed against her by complainant before the Office of the City Prosecutor in Quezon City citing the same grounds. The complaint was, however, dismissed by Assistant City Prosecutor Josephus Joannes H. Asis for insufficiency of evidence.[38] Respondent argued that on this basis alone, the administrative case must also be dismissed.

In her Position Paper,[39] respondent also questioned the admissibility of the electronic evidence submitted by complainant

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[34] *Id.* at 49-213.

[35] *Id.* at 50.

[36] *Id.* at 51.

[37] Rule 2.02 of Canon 2 of the Code of Professional Responsibility reads in full:

Rule 2.02 – In such cases, even if the lawyer does not accept a case, he shall not refuse to render legal advice to the person concerned if only to the extent necessary to safeguard the latter's rights.

[38] *Id.* at 235-237.

[39] *Id.* at 215-238.

to the IBP's Commission on Bar Discipline. Respondent maintained that the e-mail and the text messages allegedly sent by respondent to complainant were of doubtful authenticity and should be excluded as evidence for failure to conform to the Rules on Electronic Evidence (A.M. No. 01-7-01-SC).

After due hearing, IBP Investigating Commissioner Patrick M. Velez issued a Report and Recommendation[40] finding that a lawyer-client relationship was established between respondent and complainant despite the absence of a written contract. The Investigating Commissioner also declared that respondent violated her duty to be candid, fair and loyal to her client when she allowed herself to represent conflicting interests and failed to render a full accounting of all the cash and properties entrusted to her. Based on these grounds, the Investigating Commissioner recommended her disbarment.

Respondent moved for reconsideration,[41] but the IBP Board of Governors issued a Recommendation[42] denying the motion and adopting the findings of the Investigating Commissioner.

The case now comes before this Court for final action.

We affirm the findings of the IBP.

Rule 15.03, Canon 15 of the Code of Professional Responsibility provides:

> Rule 15.03 — A lawyer shall not represent conflicting interests except by written consent of all concerned given after full disclosure of the facts.

This prohibition is founded on principles of public policy, good taste[43] and, more importantly, upon necessity. In the course of a lawyer-client relationship, the lawyer learns all the facts

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[40] *Id.* at 550-566.

[41] *Id.* at 567-576.

[42] *Id.* at 618.

[43] *Hilado v. David*, 84 Phil. 569, 579 (1949) cited in *Quiambao v. Bamba*, A.C. No. 6708, August 25, 2005, 468 SCRA 1, 9-10.

connected with the client's case, including its weak and strong points. Such knowledge must be considered sacred and guarded with care. No opportunity must be given to him to take advantage of his client; for if the confidence is abused, the profession will suffer by the loss thereof.[44] It behooves lawyers not only to keep inviolate the client's confidence, but also to avoid the appearance of treachery and double – dealing for only then can litigants be encouraged to entrust their secrets to their lawyers, which is paramount in the administration of justice.[45] It is for these reasons that we have described the attorney-client relationship as one of trust and confidence of the highest degree.[46]

Respondent must have known that her act of constantly and actively communicating with complainant, who, at that time, was beleaguered with demands from investors of Multitel, eventually led to the establishment of a lawyer-client relationship. Respondent cannot shield herself from the inevitable consequences of her actions by simply saying that the assistance she rendered to complainant was only in the form of "friendly accommodations,"[47] precisely because at the time she was giving assistance to complainant, she was already privy to the cause of the opposing parties who had been referred to her by the SEC.[48]

Respondent also tries to disprove the existence of such relationship by arguing that no written contract for the engagement of her services was ever forged between her and complainant.[49] This argument all the more reveals respondent's patent ignorance of fundamental laws on contracts and of basic ethical standards expected from an advocate of justice. The IBP was correct when it said:

> The absence of a written contract will not preclude the finding that there was a professional relationship between the parties.

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[44] *US v. Laranja*, 21 Phil. 500 (1912).

[45] *Hilado v. David*, *supra* note 43.

[46] *Maturan v. Gonzales,* 350 Phil. 882, 887 (1998).

[47] *Rollo*, p. 50.

[48] *Id.* at 51.

[49] *Id.* at 49.

Documentary formalism is not an essential element in the employment of an attorney; the contract may be express or implied. To establish the relation, it is sufficient that the advice and assistance of an attorney is sought and received in any matter pertinent to his profession.[50] (Emphasis supplied.)

Given the situation, the most decent and ethical thing which respondent should have done was either to advise complainant to engage the services of another lawyer since she was already representing the opposing parties, or to desist from acting as representative of Multitel investors and stand as counsel for complainant. She cannot be permitted to do both because that would amount to double-dealing and violate our ethical rules on conflict of interest.

In *Hornilla v. Atty. Salunat*,[51] we explained the concept of conflict of interest, thus:

There is conflict of interest when a lawyer represents inconsistent interests of two or more opposing parties. The test is "whether or not in behalf of one client, it is the lawyer's duty to fight for an issue or claim, but it is his duty to oppose it for the other client. In brief, if he argues for one client, this argument will be opposed by him when he argues for the other client." This rule covers not only cases in which confidential communications have been confided, but also those in which no confidence has been bestowed or will be used. Also, there is conflict of interests if the acceptance of the new retainer will require the attorney to perform an act which will injuriously affect his first client in any matter in which he represents him and also whether he will be called upon in his new relation to use against his first client any knowledge acquired through their connection. Another test of the inconsistency of interests is whether the acceptance of a new relation will prevent an attorney from the full discharge of his duty of undivided fidelity and loyalty to his client or invite suspicion of unfaithfulness or double dealing in the performance thereof.[52]

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[50] *Id.* at 629.

[51] 453 Phil. 108 (2003).

[52] *Id.* at 111-112.

Indubitably, respondent took advantage of complainant's hapless situation, initially, by giving him legal advice and, later on, by soliciting money and properties from him. Thereafter, respondent impressed upon complainant that she had acted with utmost sincerity in helping him divest all the properties entrusted to him in order to absolve him from any liability. But simultaneously, she was also doing the same thing to impress upon her clients, the party claimants against Multitel, that she was doing everything to reclaim the money they invested with Multitel. Respondent herself admitted to complainant that without the latter's help, she would not have been able to earn as much and that, as a token of her appreciation, she was willing to share some of her earnings with complainant.[53] Clearly, respondent's act is shocking, as it not only violated Rule 9.02, Canon 9 of the Code of Professional Responsibility,[54] but also toyed with decency and good taste.

Respondent even had the temerity to boast that no Multitel client had ever complained of respondent's unethical behavior.[55] This remark indubitably displays respondent's gross ignorance of disciplinary procedure in the Bar. As a member of the Bar, she is expected to know that proceedings for disciplinary actions against any lawyer may be initiated and prosecuted by the IBP Board of Governors, *motu proprio* or upon referral by this

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[53] *Id.* at 6, 38-39.

[54] Rule 9.02, Canon 9 of the Code of Professional Responsibility provides in full:

Rule 9.02 – A lawyer shall not divide or stipulate to divide a fee for legal services with persons not licensed to practice law, except:

a) Where there is a pre-existing agreement with a partner or associate that, upon the latter's death, money shall be paid over a reasonable period of time to his estate or to the persons specified in the agreement; or

b) Where a lawyer undertakes to complete unfinished legal business of a deceased lawyer; or

c) Where a lawyer or law firm includes non-lawyer employees in a retirement plan, even if the plan is based in whole or in part, on a profit-sharing arrangement.

[55] *Rollo*, pp. 66-67; respondent's Answer-Affidavit.

Court or by the Board of Officers of an IBP Chapter[56] even if no private individual files any administrative complaint.

Upon review, we find no cogent reason to disturb the findings and recommendations of the IBP Investigating Commissioner, as adopted by the IBP Board of Governors, on the admissibility of the electronic evidence submitted by complainant. We, accordingly, adopt the same *in toto*.

Finally, respondent argues that the recommendation of the IBP Board of Governors to disbar her on the grounds of deceit, malpractice and other gross misconduct, aside from violation of the Lawyer's Oath, has been rendered moot and academic by voluntary termination of her IBP membership, allegedly after she had been placed under the Department of Justice's Witness Protection Program.[57] Convenient as it may be for respondent to sever her membership in the integrated bar, this Court cannot

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[56] Section 1 of Rule 139-B on Disbarment and Discipline of Attorneys provides in full:

SECTION 1. *How instituted.* – Proceedings for disbarment, suspension or discipline of attorneys may be taken by the Supreme Court *motu proprio*, or by the Integrated Bar of the Philippines (IBP) upon the verified complaint of any person. The complaint shall state clearly and concisely the facts complained of and shall be supported by affidavits or persons having personal knowledge of the facts therein alleged and/or by such documents as may substantiate said facts.

The IBP Board of Governors may, *motu proprio* or upon referral by the Supreme Court or by a Chapter Board of Officers, or at the instance of any person, initiate and prosecute proper charges against any erring attorneys including those in the government service; *Provided, however*, That all charges against Justices of the Court of Appeals and the *Sandiganbayan*, and Judges of the Court of Tax Appeals and lower courts, even if lawyers are jointly charged with them, shall be filed with the Supreme Court; *Provided, further*, That charges filed against Justices and Judges before the IBP, including those filed prior to their appointment in the Judiciary, shall immediately be forwarded to the Supreme Court for disposition and adjudication.

Six (6) copies of the verified complaint shall be filed with the ecretary of the IBP or the Secretary of any of its chapters who shall forthwith transmit the same to the IBP Board of Governors for assignment to investigator.

[57] *Rollo*, pp. 577-584.

allow her to do so without resolving first this administrative case against her.

The resolution of the administrative case filed against respondent is necessary in order to determine the degree of her culpability and liability to complainant. The case may not be dismissed or rendered moot and academic by respondent's act of voluntarily terminating her membership in the Bar regardless of the reason for doing so. This is because membership in the Bar is a privilege burdened with conditions.[58] The conduct of a lawyer may make him or her civilly, if not criminally, liable to his client or to third parties, and such liability may be conveniently avoided if this Court were to allow voluntary termination of membership. Hence, to terminate one's membership in the Bar voluntarily, it is imperative that the lawyer first prove that the voluntary withdrawal of membership is not a ploy to further prejudice the public or to evade liability. No such proof exists in the present case.

WHEREFORE, respondent Attorney Maricel Pascual-Lopez is hereby *DISBARRED* for representing conflicting interests and for engaging in unlawful, dishonest and deceitful conduct in violation of her Lawyer's Oath and the Code of Professional Responsibility.

Let a copy of this Decision be entered in the respondent's record as a member of the Bar, and notice of the same be served on the Integrated Bar of the Philippines, and on the Office of the Court Administrator for circulation to all courts in the country.

SO ORDERED.

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

Brion, J., on official leave.

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[58] *St. Louis University Laboratory High School (SLU-LHS) Faculty and Staff v. Atty. Rolando C. dela Cruz,* A.C. No. 6010, August 28, 2006.

SECOND DIVISION

[A.M. No. 02-8-207-MTCC. July 27, 2009]

RE: Report on the Judicial Audit Conducted in the Municipal Trial Court in Cities, Branch 2, Cagayan de Oro City

SYLLABUS

1. **LEGAL ETHICS; JUDGES; THE COURT'S POLICY ON PROMPT RESOLUTION OF CASES, REITERATED. —** We cannot overemphasize the Court's policy on prompt resolution of disputes. Indeed, justice delayed is justice denied. Failure to resolve cases submitted for decision within the period fixed by law constitutes a serious violation of Article III, Section 16 of the Constitution. The honor and integrity of the judicial system is measured not only by the fairness and correctness of decisions rendered, but also by the efficiency with which disputes are resolved. Thus, judges must perform their official duties with utmost diligence if public confidence in the judiciary is to be preserved. There is no excuse for mediocrity in the performance of judicial functions. The position of judge exacts nothing less than faithful observance of the law and the Constitution in the discharge of official duties.

2. **ID.; ID.; THE RESPONSIBILITY OF MAKING A PHYSICAL INVENTORY OF CASES PRIMARILY RESTS ON THE PRESIDING JUDGE. —** Judge Pantanosas, Jr.'s explanation that the undecided cases were never brought to his attention during his incumbency deserves scant consideration. Proper and efficient court management is the responsibility of the judge, and he is the one **directly responsible** for the proper discharge of his official functions. It should be emphasized that the responsibility of making a physical inventory of cases primarily rests on the presiding judge. He ought to know the cases submitted to him for decision or resolution, and he is expected to keep his own record of cases so that he may act on them without undue delay. It is incumbent upon him to devise an efficient recording and filing system in his court so that no disorderliness can affect the flow of cases and their speedy disposition. A judge cannot take refuge behind the inefficiency or mismanagement of his court personnel since proper and

efficient court management is his responsibility. Court personnel are not the guardians of a judge's responsibilities. The efficient administration of justice cannot accept as an excuse the shifting of the blame from one court personnel to another. A judge should be the master of his own domain and take responsibility for the mistakes of his subordinates.

3. **ID.; ID.; BEING DESIGNATED ACTING PRESIDING JUDGE IN ANOTHER SALA IN ADDITION TO HER ORIGINAL STATION IS NO EXCUSE FOR A JUDGE'S DELAY IN PROMPTLY DECIDING CASES PENDING BEFORE HER SALA. —** Being designated Acting Presiding Judge in another sala in addition to her original station is no excuse for respondent judge's delay in promptly deciding cases pending before her sala. x x x We are not unmindful of the burden of heavy caseloads heaped on the shoulders of every trial judge. But that cannot excuse them from doing their mandated duty to resolve cases with diligence and dispatch. Judges burdened with heavy caseloads should request the Court for an extension of the reglementary period within which to decide their cases if they think they cannot comply with their judicial duty. Hence, under the circumstances, all that said judge needed to do was request for an extension of time since this Court has, almost invariably, been considerate with regard to such requests. She did not avail of such remedy. A heavy caseload may excuse a judge's failure to decide cases within the reglementary period but not their failure to request an extension of time within which to decide the case on time.

4. **POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CHARGE; COURT PERSONNEL; FAILURE OF A CLERK OF COURT TO ENSURE AN ORDERLY AND EFFICIENT RECORDS MANAGEMENT IN THE COURT CONSTITUTES INEFFICIENCY AND INCOMPETENCE IN THE PERFORMANCE OF OFFICIAL DUTIES. —** As to the liability of respondent clerk of court, it is undisputed that Mr. Magno was remiss in his duty and responsibility as clerk of court by failing to adopt a system of record management. His efficiency or inefficiency in the performance of his duties and responsibilities does not depend on how his predecessors performed theirs. As the custodian of the court's funds, revenues, records, properties and premises, clerks of court perform very delicate functions and are liable for any loss, shortage,

destruction or impairment thereof. It is presumed that they have familiarized themselves with the various statutes and administrative circulars pertinent to their functions to effectively discharge their duties and responsibilities. Thus, we are not inclined to be sympathetic to Mr. Magno because he cannot plead his lack of knowledge (or ignorance) as an excuse. He is presumed to know his functions and responsibilities. We stress that clerks of court are essential judicial officers who perform delicate administrative functions vital to the prompt and proper administration of justice. Their duty is, *inter alia*, to assist in the management of the calendar of the court and in all matters that do not involve the discretion or judgment properly belonging to the judge. They play a key role in the complement of the court, as their office is the hub of adjudicative and administrative orders, processes and concerns. As such, they are required to be persons of competence, honesty and probity; they cannot be permitted to slacken on their jobs. x x x As branch clerk of court, Mr. Magno's duties included conducting periodic docket inventory and ensuring that the records of each case were accounted for. It was likewise his duty to initiate and cause the search for missing records. It was incumbent upon him to ensure an orderly and efficient records management in the court. His failure to do so constitutes manifest inefficiency and ineptitude which cannot be countenanced.

5. **LEGAL ETHICS; JUDGES; EFFECT OF THE AVAILMENT OF OPTIONAL RETIREMENT ON THE PENDING ADMINISTRATIVE CASE. —** Judge Pantanosas, Jr.'s optional retirement does not warrant the dismissal of the administrative complaint filed against him while he was still in the service nor does it render said administrative case moot and academic. It does not preclude the finding of any administrative liability to which he shall still be answerable. Indeed, the Court retains its jurisdiction either to pronounce the respondent public official innocent of the charges or declare him guilty thereof.

R E S O L U T I O N

QUISUMBING, *J.*:

This administrative matter stemmed from the August 19, 2002 Report[1] on the judicial audit and physical inventory of cases

[1] *Rollo,* pp. 6-20.

conducted by the Audit Team of the Court Management Office in the Municipal Trial Court in Cities (MTCC), Branch 2 of Cagayan de Oro City, now presided by Judge Eleuteria Badoles-Algodon.

The report disclosed that as of April 26, 2002, the trial court had a total case load of 1,654 cases, of which 155 cases have been submitted for decision. Of the 155 cases, 140 cases were already beyond the prescribed 90-day period to decide ordinary cases or the 30-day period to decide cases covered by summary procedure. There were also 10 cases with pending incidents for resolution which had not been acted upon and 428 cases had remained dormant for a considerable length of time either due to the trial court's failure to take action on the pending incidents thereon or its failure to set the case for hearing. Six (6) civil cases had also never been acted upon despite the assignment of the said cases to the trial court as early as August 1997 to October 1999. In 9 criminal cases, the trial court failed to issue writs of execution relative to its orders of confiscation of the bail bonds of accused who jumped bail. The trial court also failed to archive (1) 125 criminal cases where the accused were not arrested despite the lapse of more than 6 months since the issuance of the warrants of arrest, and (2) 35 civil cases where the defendants were not served summons despite the lapse of more than 6 months from the issuance of summons.

The report also showed that Judge Algodon relieved Mr. Alfredo B. Magno, Jr. (Mr. Magno) as Clerk of Court of MTCC, Branch 2, due to the latter's alleged incompetence and inefficiency. Apparently, Judge Algodon blamed Mr. Magno for the chaotic record management in the court. Judge Algodon alleged that during her initial inventory of cases, she found some records of pending cases missing and discovered them with the files of archived cases. She also discovered that some criminal cases which were supposed to have been long disposed of were not promulgated and were merely kept inside the filing cabinet. Judge Algodon further alleged that Mr. Magno failed to submit on time the reports on 46 cases which were subject of *ex-parte* proceedings. Finally, Judge Algodon revealed that some records of pending cases were found bundled together with the records of decided cases.

Overall, the audit team concluded that the loss or erroneous filing of some case records and the failure to act on certain cases raffled to the court were caused by faulty records management. It appeared that Branch 2 did not maintain the prescribed docket books and instead used an ordinary logbook. The court merely relied on the case folders to determine the status of the cases. Consequently, the court personnel could not properly monitor the status of the cases pending before the court.

Upon the recommendation of the Office of the Court Administrator (OCA), the Court issued a Resolution[2] on September 11, 2002 directing Judge Algodon to: (1) inform the Court if decisions have already been rendered in 10 civil cases[3] and 5 criminal cases;[4] (2) submit a written explanation of the delay in the disposition of 24 civil[5] and 12 criminal cases[6] and to decide said cases within 45 days from notice; (3) resolve within 30 days from notice the pending incidents in Civil Case No. 99-Oct-858 as well as in 9 criminal cases;[7] (4) take appropriate actions within 60 days from notice on 41 civil[8] and 372 criminal

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[2] *Id.* at 21-26.

[3] *Id.* at 21. CIVIL CASES NOS. 97-JAN-080, 99-JUN-435, 99-AUG-670, 99-AUG-673, C-JUL-462, C-JUL-539, C-JUL-650, C1-FEB-075, C1-SEP-559, C1-SEP-614.

[4] *Id.* CRIMINAL CASES NOS. 99-02-448, 99-02-449, 99-02-450, M-06-2999 and M-06-3048.

[5] *Id.* CIVIL CASES NOS. 16788, 98-JUN-587, 99-SEP-742, 99-NOV-966, C- FEB-087, C-MAR-216, C-APR-212, C-JUN-437, C-JUL-599, C-SEP-802, C-OCT-979, C-OCT-1004, C-NOV-1082, C-DEC-1141, C1-MAR-138, C1-MAR-140, C-APR-170, C1-APR-194, C1-MAY-223, C1-JUN-309, C1-JUL-432, C-JUL-552, C1-AUG-520, C-SEP-844.

[6] *Id.* CRIMINAL CASES NOS. 64063, 73023, 93-05-4709, 97-08-8580, 97-08-8581, 97-08-8582, 98-02-433, 98-1043, 96-03-1485, 96-04-2456 and M-08-3542, and MI-09-3806.

[7] *Id.* CRIMINAL CASES NOS. 64063, MI-09-3806, MI-104196, 72929, 74807, 75743, 96-05-2703, 96-05-2704 and M-07-3077.

[8] *Id.* at 22. CIVIL CASES NOS. 15941, 98-MAR-221, 99-JUL-574, C-JUL-585, C1-MAR-116, C1-JUL-448, C1-APR-170, 98-APR-349, 99-AUG-

cases[9] pending in her court; (5) issue the corresponding writs of execution, if warranted, for the forfeiture and confiscation

672, C-AUG-664, C1-MAR-148, C1-JUL-484, 96-FEB-076, 98-APR-419, 99-AUG-689, C-AUG-670, C1-JUN-322, C1-AUG-540, 97-SEP-732, 98-NOV-1340, 99-SEP-715, C-SEP-756, C1-JUN-324, C2-FEB-088, 97-OCT-899, 98-DEC-1431, 99-NOV-952, C-SEP-837, C1-JUN-341, LRC-N-96-01, 98-JAN-028, 99-JUN-473, C-APR-260, C-OCT-988, C1-JUL-408, 97-AUG-681, 98-JAN-034, 98-JUN-576, 98-JUN-1331, 99-MAY-414 and 99-OCT-872.

[9] *Id.* at 22-23. CRIMINAL CASES NOS. 64842, 96-08-6246, 96-08-6250, 96-08-6256, 06-11-9743, 97-10-10605, 99-12-5212, M-06-2733, M-12-5556, M-12-5678, M-12-5695, M-12-5818, M-12-5842, M1-01-302, M1-02-641, M1-02-819, M1-02-924, M1-03-1109, M1-03-1171, M1-04-1667, M1-06-2175, M1-06-2278, M1-06-2341, M1-06-2473, M1-06-2494, M1-06-2543, 66139, 96-04-2423, 96-04-2424, 96-08-6244, 96-08-6245, 96-08-6247, 96-08-6248, 96-08-6249, 96-08-6251, 96-08-6252, 96-08-6253, 96-08-6254, 96-08-6255, 96-08-6257, 96-08-6194, 96-08-6195, 96-08-6196, 96-08-6197, 97-09-9398, 97-10-10601, 97-10-10602, 97-10-10603, 97-10-10604, 97-10-10606, 97-10-10607, 97-10-608, 97-10-609, 99-10-4549, M-461, M-544, M-545, M-546, M-547, M-06-2734, M-11-5042, M-12-5551, M-12-5552, M-12-5555, M-12-5558, M-12-5560, M-12-5627, M-12-5633, M-12-5666, M-12-5684, M-12-5687, M-12-5690, M-12-5691, M-12-5693, M-12-5737, M-12-5755, M-12-5756, M-12-5760, M-12-5761, M-12-5821, M-12-5829, M-12-5831, M-12-5836, M-12-5840, M-12-5844, M-12-5875, M-12-5887, M-12-5896, M1-01-094, M1-01-134, M1-01-144, M1-01-171, M1-01-235, M1-01-460, M1-02-696, M1-02-710, M1-02-714, M1-02-735, M1-02-745, M1-02-858, M1-02-859, M1-02-860, M1-02-917, M1-02-920, M1-02-929, M1-02-936, M1-02-987, M1-03-1018, M1-03-1085, M1-03-1154, M1-03-1155, M1-03-1158, M1-03-1159, M1-03-1197, M1-03-1289, M1-03-1290, M1-03-1340, M1-03-1363, M1-04-1755, M1-04-1759, M1-04-1764, M1-04-1769, M1-06-2173, M1-06-2178, M1-06-2179, M1-06-2184, M1-06-2219, M1-06-2241, M1-06-2287, M1-06-2289, M1-06-2318, M1-06-2320, M1-06-2340, M1-06-2376, M1-06-2385, M1-06-2459, M1-06-2467, M1-06-2468, M1-06-2477, M1-06-2480, M1-06-2482, M1-06-2486, M1-06-2487, M1-06-2504, M1-06-2505, M1-06-2535, M1-06-2536, M1-06-2540, M1-06-2544, M1-06-2546, M1-06-2547, M1-06-2550, M1-07-2578, M1-07-2580, M1-07-2631, M1-07-2635, M1-07-2639, M1-07-2644, M1-07-2690, M1-07-2764, M1-07-2785, M1-07-2806, M1-07-2813, M1-07-2814, M1-07-2827, M1-07-2830, M1-07-2832, M1-07-2833, M1-07-2837, M1-07-2840, M1-07-2841,M1-07-2856, M1-07-2858, M1-07-2865, M1-07-2866, M1-07-2867, M1-07-2868, M1-07-2870, M1-07-2914, M1-07-2923, M1-07-2926, M1-07-2945, M1-07-2949, M1-07-2952, M1-07-2955, M1-07-2967, M1-07-2968, M1-07-2971, M1-07-2982, M1-07-3006, M1-08-3039, M1-08-3056, M1-08-3063, M1-08-3070, M1-08-3073, M1-08-3174, M1-08-3075, M1-08-3081, M1-08-3082, M1-08-3083, M1-08-3084, M1-08-3086, M1-08-3108, M1-08-3114, M1-08-3119, M1-08-3122, M1-08-3136, M1-08-3140, M1-08-3160, M1-08-3215, M1-08

of bail bonds in 8 criminal cases;[10] (6) issue orders archiving 35 civil[11] and 124 criminal cases;[12] (7) issue *alias* warrants of

-3218, M1-08-3221, M1-08-3225, M1-08-3226, M1-08-3228, M1-08-3229, M1-08-3230, M1-08-3231, M1-08-3232, M1-08-3235, M1-08-3295, M1-08-3303, M1-08-3307, M1-08-3309, M1-08-3310, M1-08-3311, M1-08-3319, M1-08-3396, M1-08-3421, M1-08-3426, M1-08-3428, M1-08-3430, M1-08-3436, M1-08-3447, M1-08-3455, M1-08-3465, M1-08-3473, M1-08-3478, M1-08-3486, M1-08-3490, M1-08-3493, M1-08-3498, M1-08-3510, M1-08-3512, M1-08-3514, M1-08-3540, M1-08-3542, M1-08-3544, M1-08-3545, M1-08-3548, M1-08-3558, M1-08-3560, M1-09-3825, M1-09-3838, M1-09-3841, M1-09-3849, M1-09-3854, M1-09-3857, M1-09-3866, M1-09-3907, M1-09-3908, M1-09-3932, M1-09-3916, M1-09-3922, M1-09-3925, M1-09-3929, M1-09-3956, M1-09-3966, M1-09-3974, M1-09-3976, M1-09-3980, M1-09-3984, M1-09-3988, M1-10-4010, M1-10-4011, M1-10-4035, M1-10-4037, M1-10-4041, M1-10-4045, M1-10-4047, M1-10-4051, M1-10-4053, M1-10-4055, M1-10-4126, M1-10-4137, M1-10-4138, M1-10-4155, M1-10-4161, M1-10-4163, M1-10-4199, M1-10-4206, M1-10-4220, M1-10-4228, M1-10-4288, M1-10-4298, M1-10-4299, M1-10-4302, M1-10- 4307, M1-10-4310, M1-10-4313, M1-10-4314, M1-10-4325, M1-10-4350, M1-10-4356, M1-10-4434, M1-10-4435, M1-10-4440, M1-10-4441, M1-10-4475, M1-10-4491, M1-10-4494, M1-10-4495, M1-10-4497, M1-10-4498, M1-10-5401, M1-10-4503, M1-10-4509, M1-10-4510, M1-10-4513, M1-10-4516, M1-10-4519, M1-10-4521, M1-10-4522, M1-10-4523, M1-10-4524, M1-10-4525, M1-10-4528, M1-11-4572, M1-11-4598, M1-11-4600, M1-11-4606, M1-11-4607, M1-11-4609, M1-11-4610, M1-11-4611, M1-11-4612, M1-11-4613, M1-11-4614, M1-11-4615, M1-11-4616, M1-11-4629, M1-11-4638, M1-11-4639, M1-11-4645, M1-11-4679, M1-11-4803, M1-12-4887, M1-12-4936, M1-12-4939, M1-12-4942, M1-12-4943, M1-12-4947, M1-12-4948, M1-12-4949, M1-12-4952, M1-12-4954, M1-12-4957, M1-12-5014, M1-12-5016, M1-12-5026, M1-12-5030, M1-12-5032, M1-12-5033, M1-12-5037, M1-12-5040, M1-12-5045, M1-12-5046, M1-12-5053, M1-12-5056, M1-12-5063 and M1-12-5090;

[10] *Id.* at 23. CRIMINAL CASES NOS. M-334, M-335, M-615, M-07-3104, M1-03-1717, M1-09-3822, M1-12-4881 and M2-02-0427.

[11] *Id.* CIVIL CASES NOS. 98-JAN-032, 98-JAN-070, 98-FEB-147, 98-MAR-250, 98-MAR-300, 98-MAR-507, 98-JUN-570, 98-JUL-713, 98-OCT-1231, 99-JAN-087, 99-FEB-095, 99-FEB-170, 99-MAR-257, 99-JUN-470, 99-JUL-555, 99-595, 99-AUG-685, 99-OCT-819, 99-NOV-990, 99-DEC-1045, C-OCT-949, C-NOV-1030, C-NOV-1048, C-NOV-1070, C-NOV-1071, C-NOV-1078, C-DEC-1114, C-DEC-1147, C-DEC-1154, C1-JAN-023, C1-JAN-059, C1-MAR-155, C1-JUN-333, C1-JUN-334 and C1-JUN-363.

[12] *Id.* at 24. CRIMINAL CASES NOS. 96-03-1733, 96-03-1735, 98-02-351, M1-06-2188, M1-06-89, M1-06-90, M1-06-91, M1-06-92, M1-06-93, M1-06-94, M1-06-95, M1-06-2246, M1-06-2309, M1-06-2310, M1-06-2311, M1-06-2312, M1-06-2313, M1-06-2332, M1-06-2342, M1-06-2343, M1-06-2359,

arrest in so far as criminal cases are concerned; (8) furnish Mr. Magno, a copy of his Feedback Report[13] dated April 30, 2002, within 3 days from notice; (9) decide the cases which were submitted for decision before Judge Gregorio D. Pantanosas, Jr., within 90 days from notice; and (10) inform the parties in those cases which were substantially tried by Judge Evelyn Gamotin-Nery that the latter may be required to decide the case, or inform both parties in each case that they may manifest in writing that she (Judge Algodon) should be the one to decide the same, within 90 days from receipt of said written manifestation.

The Court further directed Judge Gregorio D. Pantanosas, Jr., the former Presiding Judge of the MTCC, Branch 2, Cagayan de Oro City, to explain his failure to decide 14 civil[14] and 23 criminal cases[15] within the reglementary period prior to his

M1-06-2396, M1-06-2397, M1-06-2398, M1-06-2463, M1-06-2529, M1-07-2566, M1-07-2586, M1-07-2645, M1-07-2646, M1-07-2648, M1-07-2660, M1-07-2663, M1-07-2667, M1-07-2744, M1-07-2745, M1-07-2746, M1-07-2747, M1-07-2748, M1-07-2749, M1-07-2765, M1-07-2766, M1-07-2793, M1-07-2794, M1-07-2822, M1-07-2822, M1-07-2890, M1-07-2933, M1-07-2977, M1-08-3013, M1-08-3052, M1-08-3150, M1-08-3130, M1-08-3131, M1-08-3132, M1-08-3149, M1-08-3161, M1-08-3200, M1-08-3206, M1-08-3251, M1-08-3252, M1-08-3338, M1-08-3340, M1-08-3342, M1-08-3344, M1-08-3378, M1-08-3400, M1-08-3406, M1-08-3520, M1-08-3525, M1-08-3534, M1-08-3636, M1-08-3571, M1-09-3620, M1-09-3645, M1-09-3632, M1-09-3755, M1-09-3756, M1-09-3757, M1-09-3758, M1-09-3759, M1-09-3760, M1-09-3761, M1-09-3762, M1-09-3763, M1-09-3803, M1-09-3810, M1-09-3783, M1-09-3882, M1-09-3931, M1-09-3947, M1-09-3953, M1-10-4024, M1-104103, M1-10-4104, M1-10-4105, M1-10-4251, M1-10-4252, M1-10-4106, M1-10-4113, M1-10-4189, M1-10-4190, M1-10-4247, M1-10-4253, M1-10-4254, M1-10-4405, M1-10-4416, M1-10-4417, M1-10-4467, M1-10-4468, M1-10-4474, M1-10-4480, M1-11-4617, M1-11-4618, M1-11-4620, M1-11-4621, M1-11-4680, M1-11-4622, M1-11-4646, M1-11-4691, M1-11-4692, M1-11-4693, M1-11-4694 and M1-11-4744.

[13] *Id.* at 173-176.

[14] *Id.* at 25. CIVIL CASES NOS. 2666, 15801, 16073, 16403, 17209, 98-JAN-080, 97-JAN-102, 97-SEP-833, 97-NOV-943, 98-FEB-177, 98-359, 98-JUN-563, 98-AUG-862 and 99-MAY-299.

[15] *Id.* CRIMINAL CASES NOS. 63276, 63492, 69690, 74070, 96-06-3778, 96-06-3799, 96-06-3780, 96-06-3781, 97-04-4188, 97-04-4189, 97-04-4190, 97-04-4191, 97-04-4192, 61937, 62429, 70125, 72139, 72925, 73545, 74065, 96-04-2254, 96-04-2455 and 96-12-10850.

appointment as Presiding Judge of the Regional Trial Court, Branch 20, Cagayan de Oro City. Likewise, Judge Evelyn Gamotin-Nery, Presiding Judge of the Municipal Circuit Trial Court of Opol-El Salvador, Misamis Oriental, was directed to explain her failure to decide 9 civil cases[16] and 39 criminal cases[17] within the reglementary period during her incumbency as the Acting Presiding Judge of the MTCC, Branch 2, Cagayan de Oro City.

In the same Resolution, the Court likewise directed Mr. Magno to submit: (1) a written explanation why no action was ever taken in 6 civil cases[18] raffled to MTCC, Branch 2, Cagayan de Oro City; (2) his comment on the Feedback Report dated April 30, 2002; and (3) a written explanation of his failure to make use of the official docket books during his incumbency as Clerk of Court of the same court. The Court also directed Ms. Helenita T. Gaccion, Acting Clerk of Court of the MTCC, Branch 2, Cagayan de Oro City to inform the Court if they are already using the official docket books for record purposes.

In her Compliance[19] dated October 15, 2002, Judge Algodon explained that she assumed office only on June 18, 2001. At the time of her assumption, court records were in disarray under the management of its former Clerk of Court, resulting in delay in the disposition of cases. It was only after the physical inventory and the judicial audit — that she herself requested — that the rendition of decisions was done. Judge Algodon also reported

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[16] *Id.* CIVIL CASES NOS. 97-JUL-557, 98-NOV-1312, 99-JUL-519, C-JUN-404, C-JUL-454, C-JUL-630, 99-AUG-648, C-FEB-091 and C-FEB-103.

[17] *Id.* CRIMINAL CASES NOS. 67804, 65658, 96-05-3032, 96-05-3033, 96-05-3207, 96-05-3208, 96-05-3209, 96-05-3210, 96-05-3211, 96-05-3212, 96-05-3213, 96-05-3214, 96-05-3215, 96-05-3216, 96-05-3217, 96-05-3218, 96-05-3219, 96-05-3220, 96-06-3663, 96-06-3664, 96-06-3665, 96-06-3666, 96-06-3667, 96-06-3668, 96-06-3708, 96-06-3709, 96-06-3710, 97-07-7008, 97-11-110, 74637, 74638, 96-07-5175, 96-07-5176, 96-08-6281, 97-02-2004, 97-05-5142, 98-01-309, 98-11-4903 and 98-12-5202.

[18] *Id.* CIVIL CASES NOS. 97-AUG-681, 98-JAN-034, 98-JUN-576, 98-NOV-1331, 99-MAY-414 and 99-OCT-872.

[19] *Id.* at 27-29.

that 24 civil cases[20] have already been decided while 6 civil cases[21] were raffled to different branches; 8 criminal cases[22] were submitted for decision; and 4 *alias* warrants of arrests were already issued in 4 criminal cases[23] due to the failure of the accused to appear before the court. She claimed that almost all of the cases have been disposed of while others were submitted for decision with the assistance of the newly designated Clerk of Court.

Judge Pantanosas, Jr., for his part, explained that except for Criminal Cases Nos. 69690, 96-04-2454 and 96-04-2455, he was unaware of the cases cited in the Resolution since those cases were not accounted for by Mr. Magno. He claimed that it was only after the physical inventory conducted by Judge Algodon that he found out that there were several unrecorded cases kept by Mr. Magno. It appeared that those cases were allegedly found inside a box under Mr. Magno's table, his table's drawers and in the cabinet at the back of his table. Some records were also found in the archives section. He stressed that he left only 2 cases undecided due to lack of transcript of stenographic notes when he assumed his position as Presiding Judge of RTC, Branch 20.[24]

Judge Gamotin-Nery, on the other hand, reported that out of the 48 cases she allegedly failed to decide, 37 were already submitted for decision, 2 were ordered dismissed, 1 case was under *ex-parte* proceedings, 1 case was for amicable settlement, another was still for presentation of rebuttal evidence; and 3

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[20] *Id.* at 27-28. CIVIL CASES NOS. 99-AUG-670, C-JUL-539, C-JUL-650, C1-SEPT-559, C1-SEPT-614, 99-AUG-673, C-SEP-802, 16778, 99-SEPT-742, 99-NOV-966, C-MAR-216, C-OCT-979, C-OCT-1004, C-NOV-1082, C-DEC-1141, C1-MAR-138, C1-MAR-140, C1-APR-170, C1-APR-194, C1-MAY-233, C1-JUN-309, C1-JUL-432, C1-AUG-520, C-SEPT-844.

[21] *Id.* at 27. CIVIL CASES NOS. 97-JAN-080, 99-JUN-435, C-JUL-462, 99-JUN-587, C-FEB-087, C-JUL-599.

[22] *Id.* at 28-29. CRIMINAL CASES NOS. 64063, 73023, 97-08-8580 & 8581, 98-02-433, 97-05-4709, 96-03-1485, 96-04-2456, M-08-3542.

[23] *Id.* at 29. CRIMINAL CASES NOS. M-334 & 335, M-615, M1-09-3822, M2-02-0427.

[24] *Id.* at 120-121.

cases were requested to be decided by Judge Algodon. She explained that during her incumbency as Acting Presiding Judge of MTCC, Branch 2, she was also the Judge Designate of Branch 4 of the same court. Thus, she had to attend to cases and concerns not only of her official station, the 7th MCTC of Opol-El Salvador, Misamis Oriental, but also of Branch 2 and Branch 4 of MTCC, Cagayan de Oro City. She asserted that there was no sufficient time to decide all those cases. Consequently, she requested that she be spared from deciding Criminal Cases Nos. 96-06-3663 to 96-06-3710 (9 cases involving the same parties) and Criminal Case No. 98-01-309. She also requested that she be spared from any sanction in the interest of justice and equity.[25]

Commenting on Judge Algodon's Feedback Report, Mr. Magno, for his part, admitted that he did not conduct any inventory of cases as he merely followed his predecessors who only submitted the court's monthly report of cases to the Supreme Court. He claimed that he had no knowledge of those cases which were inserted in the bundle of cases that were already subject for execution. He claimed that he only inherited said problem of the court. He likewise stated that the court had no docket book and that cases raffled to them were recorded only in their logbook. He further reported that Civil Case No. 97-Aug-681 was raffled to Branch 4 and was already decided on September 8, 1998. As to Civil Cases Nos. 98-Jan-034 and 99-Oct-872, he claimed that the records were in the possession of the Sheriff, inadvertently inserted among the cases with issued writs of execution. He added that Civil Case No. 98-June-576 was already set for trial, and Civil Cases Nos. 98-Nov-1331 and 99-May-1414 were not acted upon for insufficiency of bonds but were already dismissed on June 6, 2002.[26]

Lastly, Ms. Gaccion, in her Letter-Compliance[27] dated October 5, 2002, informed the Court that on May 1, 2002, MTCC, Branch 2 had started using the official docket book.

[25] *Id.* at 142-144.

[26] *Id.* at 117-119.

[27] *Id.* at 125.

In a Resolution[28] dated November 25, 2002, the instant complaint was referred to the OCA for evaluation, report and recommendation. The OCA received the records only on September 6, 2007 and submitted its report on November 7, 2007.

In its Report,[29] the OCA recommended that: **(1)** Judge Algodon be directed to comply fully with the directives of the Resolution dated September 11, 2002 since she has yet to inform the Court of the actions taken on the directives and no copies of the orders, resolutions and decisions relative thereto were forwarded to the Court; **(2)** Judge Pantanosas, Jr. be fined in the amount of ₱50,000 to be deducted from whatever retirement benefits he is entitled to for failure to decide 36 cases submitted for decision; **(3)** Judge Gamotin-Nery be fined in the amount of ₱10,000 for failure to decide 10 cases submitted for decision with an admonition to be more diligent in the performance of her judicial duties; and **(4)** Mr. Magno be meted the penalty of fine in the amount of ₱20,000 and sternly warned instead of suspension from office in view of his health condition, and that Mr. Magno be directed to comment on his failure to turnover the confiscated firearms in Criminal Case No. 98-1770 and the fireworks in Criminal Case No. 99-02-484. The OCA further recommended that the matter as to Ms. Helenita T. Gaccion be considered closed and terminated. The OCA noted, however, that the alleged illness of Mr. Magno was unsupported by any medical certificate.

We agree with the findings and recommendations of the OCA except as to the recommended penalty.

We cannot overemphasize the Court's policy on prompt resolution of disputes. Indeed, justice delayed is justice denied. Failure to resolve cases submitted for decision within the period fixed by law constitutes a serious violation of Article III, Section 16[30] of the Constitution.

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[28] *Id.* at 141.

[29] *Id.* at 238-261.

[30] Sec. 16. All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.

The honor and integrity of the judicial system is measured not only by the fairness and correctness of decisions rendered, but also by the efficiency with which disputes are resolved. Thus, judges must perform their official duties with utmost diligence if public confidence in the judiciary is to be preserved. There is no excuse for mediocrity in the performance of judicial functions. The position of judge exacts nothing less than faithful observance of the law and the Constitution in the discharge of official duties.[31]

Judge Pantanosas, Jr.'s explanation that the undecided cases were never brought to his attention during his incumbency[32] deserves scant consideration. Proper and efficient court management is the responsibility of the judge, and he is the one **directly responsible** for the proper discharge of his official functions.[33] It should be emphasized that the responsibility of making a physical inventory of cases primarily rests on the presiding judge. He ought to know the cases submitted to him for decision or resolution, and he is expected to keep his own record of cases so that he may act on them without undue delay. It is incumbent upon him to devise an efficient recording and filing system in his court so that no disorderliness can affect the flow of cases and their speedy disposition.

A judge cannot take refuge behind the inefficiency or mismanagement of his court personnel since proper and efficient court management is his responsibility. Court personnel are not the guardians of a judge's responsibilities. The efficient administration of justice cannot accept as an excuse the shifting of the blame from one court personnel to another. A judge should be the master of his own domain and take responsibility for the mistakes of his subordinates.[34]

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[31] *Petallar v. Pullos*, A.M. No. MTJ-03-1484, January 15, 2004, 419 SCRA 434, 438.

[32] On March 30, 2007, Judge Pantanosas, Jr. filed his optional retirement in view of his candidacy for the position of Vice-Governor.

[33] *Office of the Court Administrator v. Quilala*, A.M. No. MTJ-01-1341, February 15, 2001, 351 SCRA 597, 604.

[34] *Re: Cases Left Undecided by Retired Judge Antonio E. Arbis, RTC Branch 48, Bacolod City*, A.M. No. 99-1-01-RTC, January 20, 2003, 395 SCRA 398, 402-403.

Likewise, Judge Gamotin-Nery's explanation fails to convince us. Being designated Acting Presiding Judge in another sala in addition to her original station is no excuse for respondent judge's delay in promptly deciding cases pending before her sala. In *Re: Report on the Judicial Audit of Cases in the RTC, Br. 35, Iriga City,*[35] we said that being designated Acting Presiding Judge in two other salas is insufficient reason to justify delay in deciding a case for he could have asked for an extension of the period within which to decide it.[36]

We are not unmindful of the burden of heavy caseloads heaped on the shoulders of every trial judge. But that cannot excuse them from doing their mandated duty to resolve cases with diligence and dispatch. Judges burdened with heavy caseloads should request the Court for an extension of the reglementary period within which to decide their cases if they think they cannot comply with their judicial duty.[37] Hence, under the circumstances, all that said judge needed to do was request for an extension of time since this Court has, almost invariably, been considerate with regard to such requests. She did not avail of such remedy.[38] A heavy caseload may excuse a judge's failure to decide cases within the reglementary period but not their failure to request an extension of time within which to decide the case on time.[39]

As to the liability of respondent clerk of court, it is undisputed that Mr. Magno was remiss in his duty and responsibility as clerk of court by failing to adopt a system of record management.

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[35] A.M. No. 97-8-262-RTC, November 27, 1998, 299 SCRA 382.

[36] *Gallego v. Doronila*, A.M. No. MTJ-00-1278, June 26, 2000, 334 SCRA 339, 345-346.

[37] *Report on the Judicial Audit Conducted in the RTC, Branches 2 and 31, Tagum City*, A.M. No. 04-1-56-RTC, February 17, 2005, 451 SCRA 605, 610.

[38] *Re: Judicial Audit Conducted in the Regional Trial Court, Branch 54, Lapu-Lapu City*, A.M. No. 05-8-539-RTC, November 11, 2005, 474 SCRA 455, 462.

[39] *Report on the Judicial Audit Conducted in the RTC, Branches 2 and 31, Tagum City*, *supra*.

His efficiency or inefficiency in the performance of his duties and responsibilities does not depend on how his predecessors performed theirs. As the custodian of the court's funds, revenues, records, properties and premises, clerks of court perform very delicate functions and are liable for any loss, shortage, destruction or impairment thereof. It is presumed that they have familiarized themselves with the various statutes and administrative circulars pertinent to their functions to effectively discharge their duties and responsibilities.[40] Thus, we are not inclined to be sympathetic to Mr. Magno because he cannot plead his lack of knowledge (or ignorance) as an excuse. He is presumed to know his functions and responsibilities.[41]

We stress that clerks of court are essential judicial officers who perform delicate administrative functions vital to the prompt and proper administration of justice. Their duty is, *inter alia*, to assist in the management of the calendar of the court and in all matters that do not involve the discretion or judgment properly belonging to the judge. They play a key role in the complement of the court, as their office is the hub of adjudicative and administrative orders, processes and concerns. As such, they are required to be persons of competence, honesty and probity; they cannot be permitted to slacken on their jobs.

Clearly, on this aspect, Mr. Magno is found to be guilty of inefficiency and incompetence in the performance of his official duties. As pointed out by the OCA, and we quote,

> *To recapitulate, decisions in Crim. Cases Nos. 61616, 62429, 68940 and in affirmed appealed Crim. Cases Nos. 63041, 96-03-1739, 96-03-1740, 96-03-41, 96-03-1742, 96-03-1743, 96-03-44, 96-03-1745, 96-03-1746, 96-03-1747, 96-03-1748, 96-03[-]1749 and 96-03-1750*, were not promulgated but were merely found inside the filing cabinet; Civil Cases Nos. 16286, 16073 and Crim. Cases Nos. 96-02-959 and 96-02-960 were found along archived cases; active Civil Cases Nos. 16403, 99-Aug-616, C-July-502, 96-Nov-970, 99-Feb-155, 98-Mar-0262, 98-Sept-109, 97-Aug-714, 98-Jan-0038, 99-

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[40] *Toribio v. Ofilas*, A.M. No. P-03-1714, February 13, 2004, 422 SCRA 534, 535.

[41] *Id.* at 540.

Nov-960, 16701, 97-Jan-061, 97-Sept-753, 12847, and 98-Mar-0918 as well as Civil Cases Nos. 9753, 9779, and 9791 (submitted for decision) were discovered among the files of terminated cases; no *ex-parte* hearing, as admitted by Mr. Magno, were conducted in cases where respondent was declared in default and that as a consequence no stenographic notes were transcribed particularly in Civil Cases Nos. 98-Nov-1309, 99-June-301, C1-Mar-149, C-Aug-074, mistakenly listed as C-Aug-674, C-Oct-882, C-Oct-899, C-Nov-1074 and 98-Jul-808.

Mr. Magno likewise failed to send Notice of Hearing *on January 23, 2002 to the City Government of Cagayan in LRC Case No. 98-03; set Civil Case C1-Jun-391 for preliminary conference while the motion to lift order of default was still unresolved; set the case of Cooperative vs. Aposkahoy Multi-Purpose Cooperative for preliminary conference without an answer being filed by defendant; and failed to [turnover] the confiscated firearms in Crim. Case No. 98-1770 and the fireworks in Crim. Case No. 99-02-484. He also admitted that there was no physical inventory of cases conducted in this court except only upon the assumption of Judge Algodon.*[42]

An important duty of the trial court is to conduct a monthly physical inventory of cases. Thus, on the clerks of court, as much as on the judges, rests the responsibility for ensuring that delay in the disposition of cases is kept to a minimum. Indeed, while the clerks of court are not guardians of a judge's responsibility, they are expected to assist in the speedy dispensation of justice.[43]

As branch clerk of court, Mr. Magno's duties included conducting periodic docket inventory and ensuring that the records of each case were accounted for. It was likewise his duty to initiate and cause the search for missing records. It was incumbent upon him to ensure an orderly and efficient records management in the court. His failure to do so constitutes manifest inefficiency and ineptitude which cannot be countenanced.[44]

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[42] *Rollo*, pp. 258-259.

[43] *Bernaldez v. Avelino,* A.M. No. MTJ-07-1672, July 9, 2007, 527 SCRA 11, 22.

[44] *Re: Report on the Judicial Audit Conducted in the RTC, Brs. 87 &*

As to the imposable penalty, the failure to render decisions and orders within the mandated period constitutes a violation of Canon 3, Rule 3.05[45] of the Code of Judicial Conduct. Section 9,[46] Rule 140 of the Revised Rules of Court classifies undue delay in rendering a decision or order as a less serious charge punishable under Section 11(B) of the same Rule, thus:

x x x x x x x x x

B. If the respondent is guilty of a less serious charge, any of the following sanctions shall be imposed:

1. Suspension from office without salary and other benefits for not less than one (1) nor more than three (3) months; or

2. **A fine of more than ₱10,000.00 but not exceeding ₱20,000.00.** (Emphasis supplied.)

x x x x x x x x x

Judge Pantanosas, Jr.'s optional retirement does not warrant the dismissal of the administrative complaint filed against him while he was still in the service nor does it render said administrative case moot and academic. It does not preclude the finding of any administrative liability to which he shall still be answerable. Indeed, the Court retains its jurisdiction either to pronounce the respondent public official innocent of the charges or declare him guilty thereof.[47]

98, *Quezon City*, A.M. No. 99-11-423-RTC, June 26, 2001, 359 SCRA 562, 568.

[45] CANON 3–A JUDGE SHOULD PERFORM OFFICIAL DUTIES HONESTLY, AND WITH IMPARTIALITY AND DILIGENCE

x x x x x x x x x

Rule 3.05. – A judge shall dispose of the court's business promptly and decide cases within the required periods.

x x x x x x x x x

[46] SEC. 9. *Less Serious Charges*. – Less serious charges include:

x x x x x x x x x

[47] *Office of the Court Administrator v. Hamoy*, A.M. No. RTJ-04-1830, January 17, 2005, 448 SCRA 322, 328.

Section 52,[48] Rule IV of the Revised Uniform Rules on Administrative Cases in the Civil Service classifies inefficiency and incompetence in the performance of official duties as a grave offense and punishable by suspension ranging from 6 months and 1 day to 1 year, for the first offense, and dismissal for the second offense. There is no showing that Mr. Magno had been earlier administratively charged and found guilty thereof. The proper imposable penalty, in his case, therefore, is suspension and not dismissal.

WHEREFORE, Judge Evelyn Gamotin-Nery is adjudged administratively liable for failure to decide cases within the reglementary period and is hereby *FINED* in the amount of ₱10,500.00 with a *STERN WARNING* that a repetition of the same or similar acts in the future shall be dealt with more severely. Likewise, for failure to decide cases within the reglementary period, Judge Gregorio D. Pantanosas, Jr. is meted a *FINE* of ₱10,500.00 to be deducted from his retirement benefits. The Fiscal Management Office is *DIRECTED* to immediately release the balance of Judge Pantanosas' retirement benefits after such fine has been deducted therefrom.

Having been found guilty of inefficiency and incompetence in the performance of his official duties, Mr. Alfredo B. Magno, Jr. is hereby *SUSPENDED* for a period of six (6) months without pay but with a *STERN WARNING* that a repetition of the same or similar acts in the future shall be dealt with more severely. Mr. Magno is also *DIRECTED* to submit thru OCA, his comment on his failure to turnover the confiscated firearms in Criminal

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

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

x x x x x x x x x

16. Inefficiency and incompetence in the performance of official duties: *1st Offense* - Suspension for six (6) months and one (1) day to one (1) year; *2nd Offense* - Dismissal.

x x x x x x x x x

Case No. 98-1770 and the fireworks in Criminal Case No. 99-02-484 within a period of fifteen (15) days from notice.

Judge Eleuteria Badoles-Algodon is *DIRECTED* to fully comply within 30 days from notice, with the directives of the Resolution dated September 11, 2002, furnishing the Court, through the Office of the Court Administrator a copy of orders, resolutions and decisions issued in connection therewith. As to the matter against Ms. Helenita T. Gaccion, Acting Clerk of Court of the MTCC, Branch 2, Cagayan de Oro City, the matter is hereby considered *CLOSED and TERMINATED.*

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 159131. July 27, 2009]

HEIRS OF TORIBIO WAGA, represented by MERBA A. WAGA, *petitioners, vs.* **ISABELO SACABIN,** *respondent.*

SYLLABUS

1. **CIVIL LAW; POSSESSION; CLAIM OF POSSESSION, UNCONTROVERTIBLY ESTABLISHED. —** The DENR and the trial court's finding that respondent and his predecessors-in-interest have been in possession of Lot No. 452, including the disputed 790 sq.m. portion, in an open, continuous, peaceful,

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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.

and adverse manner since 1940 is uncontroverted. To defeat the claim of respondent, petitioners relied primarily on their certificate of title which includes the disputed 790 sq.m. portion. The Special Investigator from the DENR who conducted the second investigation in 1996 testified that the disputed 790 sq.m. portion is part of respondent's property. The Geodetic Engineer who assisted the investigation and conducted a survey of the adjoining properties of the parties also found that the disputed 790 sq.m. portion rightfully belongs to respondent. Respondent offered as evidence the sketch plan of the adjoining properties prepared by the Geodetic Engineer, which clearly shows that the disputed 790 sq.m. portion is within the property of respondent. Taking into consideration the seven fifty-year old coconut trees planted in a straight line which form a common natural boundary between the lots of the parties, the sketch plan clearly shows that the disputed 790 sq.m. portion is within the side of respondent's property, and is part of Lot No. 452. Another DENR employee who assisted in the ocular inspection of the properties testified that the petitioners and respondent admitted the existence of the common boundary between their lots.

2. ID.; LAND REGISTRATION; RECONVEYANCE; THE TEN-YEAR PRESCRIPTIVE PERIOD IS NOT APPLICABLE WHEN THE COMPLAINANT IS IN POSSESSION OF THE LAND SOUGHT TO BE RECONVEYED; APPLICATION. — An action for reconveyance of property based on an implied or constructive trust is the proper remedy of an aggrieved party whose property had been erroneously registered in another's name. The prescriptive period for the reconveyance of registered property is ten years, reckoned from the date of the issuance of the certificate of title. However, the ten-year prescriptive period for an action for reconveyance is not applicable where the complainant is in possession of the land to be reconveyed and the registered owner was never in possession of the disputed property. In such a case, the action for reconveyance filed by the complainant who is in possession of the disputed property would be in the nature of an action to quiet title which is imprescriptible. x x x In this case, respondent who has been in possession of the disputed property since 1940, by himself and through his predecessors-in-interest, is not barred from bringing the action for reconveyance, which in effect seeks to

quiet title to the property, against petitioners whose claim to the property is based merely on their certificate of title which mistakenly included respondent's property. Respondent has a better right to the disputed property since he and his predecessors-in-interest had long been in possession of the property in the concept of owner. Petitioners only took possession of the disputed property sometime in 1991 when they realized upon partition of Lot No. 450 that the certificate of title issued to them included the disputed property. Reconveyance is just and proper to end the intolerable anomaly that the patentees should have a Torrens title for the land which has never been in their possession and which have been possessed by another person in the concept of owner.

APPEARANCES OF COUNSEL

Cruz Capule & Macron Law Offices for petitioners.
Emmanuel A. Akut for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition for review[1] of the Decision[2] dated 9 July 2003 of the Court of Appeals in CA-GR CV No. 71137. The Court of Appeals affirmed the Decision[3] dated 24 April 2001 of the Regional Trial Court of Misamis Oriental, Branch 44 (trial court).

The Facts

Petitioners' predecessor-in-interest, Toribio Waga, filed a Free Patent Application for Lot No. 450 containing an area of 4,960

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

[2] Penned by Associate Justice Mercedes Gozo-Dadole with Associate Justices Conrado M. Vasquez, Jr. and Rosmari D. Carandang, concurring.

[3] Penned by Presiding Judge Admiral P. Labis.

sq.m. On 1 October 1965, Lot No. 450 was surveyed by a Cadastral Land Surveyor. On 25 September 1968, Free Patent No. 411315 and Original Certificate of Title No. P-8599 (OCT No. P-8599),[4] covering Lot No. 450, were issued in the name of the Heirs of Toribio Waga (petitioners). OCT No. P-8599 was registered in the Office of the Register of Deeds for the Province of Misamis Oriental on 29 August 1974.

On 26 December 1991, Isabelo Sacabin (respondent) filed a protest before the Department of Environment and Natural Resources (DENR), Region X, against the issuance of Free Patent No. 411315 and OCT No. P-8599 to petitioners and their subsequent registration. Respondent alleged that around 500 sq.m. portion of his land, identified as Lot No. 452 which is adjacent to Lot No. 450, had been erroneously included in OCT No. P-8599. The DENR ordered an investigation on the alleged encroachment on respondent's property. On 10 October 1996, the Regional Executive Director of the DENR, Region X, issued a decision[5] recommending that an action be taken by the Director of Lands for the annulment of Free Patent No. 411315 and OCT No. P-8599 issued to petitioners, segregating from Lot No. 450 the 790 sq.m. portion belonging to respondent.

When the Director of Lands failed to act on the recommendation, respondent filed on 9 October 1998 a complaint against petitioners for *Amendment of Original Certificate of Title, Ejectment, and Damages*. The Special Investigator who conducted the ocular inspection of the lots of the parties testified that he found seven fifty-year old coconut trees planted in a straight line and forming a common natural boundary between the lots of the parties. In his report, the Special Investigator found that respondent's lot included the disputed 790 sq.m. portion.

The trial court found that respondent and his predecessors-in-interest have been in possession of Lot No. 452, including the disputed 790 sq.m. portion, in an open, continuous, peaceful, and adverse manner since 1940. Since respondent and his

[4] Records, pp. 8-10.

[5] *Rollo,* pp. 53-55.

predecessors-in-interest have been in possession of Lot No. 452, including the disputed 790 sq.m. portion, for more than 30 years in peaceful, open, continuous and adverse manner and in the concept of owner, then the subject land has become private property of respondent by operation of law.

On 24 April 2001, the trial court rendered a decision, the dispositive portion of which reads:

> WHEREFORE, in view of the foregoing premises, judgment is hereby rendered in favor of plaintiff (Isabelo Sacabin) and against the defendants (Heirs of Toribio Waga, represented by Nellie W. Villamor and Elves Galarosa). Defendants are ordered:
>
> 1) To segregate from OCT No. P-8599 reconvey that portion belonging to plaintiff with an area of 790 sq. meters, more or less;
>
> 2) That defendant Elves Galarosa and all defendants occupying inside or in possession of that portion belonging to plaintiff are ordered to vacate therefrom and turn-over the same to plaintiff;
>
> 3) To pay, jointly and severally, the sum of
>
> a) ₱50,000.00 - for damages
>
> b) ₱30,000.00 - for attorney's fees
>
> c) ₱10,000.00 - for litigation
>
> 4) To pay the cost.
>
> SO ORDERED.[6]

Petitioners appealed the trial court's decision to the Court of Appeals, which affirmed the decision. Hence, this petition.

The Court of Appeals' Ruling

The Court of Appeals held that the action filed by respondent was not intended to defeat the indefeasibility of the title of petitioners but merely to correct the area covered by their title since it encroached on respondent's property. Settled is the rule

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[6] *Id.* at 79-80.

that a person, whose certificate of title included by mistake or oversight the land owned by another, does not become the owner of such land by virtue of the certificate alone. The Torrens System is intended to guarantee the integrity and conclusiveness of the certificate of registration but it is not intended to perpetrate fraud against the real owner of the registered land. The certificate of title cannot be used to protect a usurper from the true owner.

As regards the rule on the indefeasibility of the Torrens title after one year from the decree of registration, the Court of Appeals held that the one-year prescriptive period is not applicable in this case since there is no collateral or direct attack made against petitioners' title but merely a petition for amendment or correction of the true area covered by petitioners' title.

The Issue

The primary issue in this case is whether the complaint for amendment of OCT No. P-8599, which seeks the reconveyance of the disputed property, has already prescribed.

The Ruling of the Court

We find the petition without merit.

Respondent's Possession of Land Since 1940 is Uncontroverted

The DENR and the trial court's finding that respondent and his predecessors-in-interest have been in possession of Lot No. 452, including the disputed 790 sq.m. portion, in an open, continuous, peaceful, and adverse manner since 1940 is uncontroverted. To defeat the claim of respondent, petitioners relied primarily on their certificate of title which includes the disputed 790 sq.m. portion.

The Special Investigator from the DENR who conducted the second investigation in 1996 testified that the disputed 790 sq.m. portion is part of respondent's property. The Geodetic Engineer who assisted the investigation and conducted a survey of the adjoining properties of the parties also found that the disputed 790 sq.m. portion rightfully belongs to respondent. Respondent offered as

evidence the sketch plan[7] of the adjoining properties prepared by the Geodetic Engineer, which clearly shows that the disputed 790 sq.m. portion is within the property of respondent. Taking into consideration the seven fifty-year old coconut trees planted in a straight line which form a common natural boundary between the lots of the parties, the sketch plan clearly shows that the disputed 790 sq.m. portion is within the side of respondent's property, and is part of Lot No. 452. Another DENR employee who assisted in the ocular inspection of the properties testified that the petitioners and respondent admitted the existence of the common boundary between their lots.[8]

Prescriptive Period Not Applicable

Petitioners contend that respondent's action is barred by prescription. Petitioners maintain that their OCT No. P-8599, which was issued in 1968 and registered in the Register of Deeds in 1974, is already indefeasible. They allege that when respondent filed his protest on 26 December 1991, or 17 years after the registration of OCT No. P-8599, it was already too late to question the validity of petitioners' certificate of title.

Indeed, respondent filed his claim to a portion of Lot No. 450 through a protest before the DENR only on 26 December 1991 because it was only in that year that respondent learned that a portion of his property was inadvertently included in petitioners' certificate of title. Petitioners themselves came to know about the exact boundaries of Lot No. 450 and the inclusion of the disputed portion in their certificate of title only in 1991 when they subdivided said land for partition among the heirs.[9] Thus, when petitioners started to take possession of the disputed 790 sq.m. portion in 1991, respondent filed a protest before the DENR on 26 December 1991 to claim the disputed portion for which respondent and his predecessors-in-interest have been in possession since 1940. On 9 October 1998, respondent filed a complaint against petitioners

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[7] Records, p. 70.

[8] *Id.* at 155; TSN, 30 September 1999, p. 6.

[9] *Rollo*, p. 54. *See* Decision dated 10 October 1996 of the Regional Executive Director of the DENR, Region X, p. 2.

for *Amendment of Original Certificate of Title, Ejectment, and Damages*. The action primarily seeks the reconveyance of the disputed 790 sq.m. portion of land through the amendment of OCT No. P-8599.

An action for reconveyance of property respects the decree of registration as incontrovertible and merely seeks the transfer of the property wrongfully or erroneously registered in another's name to its rightful owner or to one who claims to have a better right.[10]

An action for reconveyance of property based on an implied or constructive trust is the proper remedy of an aggrieved party whose property had been erroneously registered in another's name.[11] The prescriptive period for the reconveyance of registered property is ten years, reckoned from the date of the issuance of the certificate of title. However, the ten-year prescriptive period for an action for reconveyance is not applicable where the complainant is in possession of the land to be reconveyed and the registered owner was never in possession of the disputed property.[12] In such a case, the action for reconveyance filed by the complainant who is in possession of the disputed property would be in the nature of an action to quiet title which is imprescriptible.[13]

This case is similar to the case of *Caragay-Layno v. CA*,[14] which involves a counterclaim for reconveyance of property which was filed by petitioner Juliana Caragay-Layno on the

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[10] *Heirs of Valeriano S. Concha, Sr. v. Lumocso,* G.R. No. 158121, 12 December 2007, 540 SCRA 1*; Santos v. Lumbao,* G.R. No. 169129, 28 March 2007, 519 SCRA 408.

[11] *Llenares v. Court of Appeals,* G.R. No. 98709, 13 May 1993, 222 SCRA 10.

[12] *Rementizo v. Heirs of Pelagia Vda. De Madarieta,* G.R. No. 170318, 15 January 2009.

[13] *Santos v. Heirs of Dominga Lustre,* G.R. No. 151016, 6 August 2008, 561 SCRA 120; *Heirs of Marcela Salonga Bituin v. Caoleng, Sr.,* G.R. No. 157567, 10 August 2007, 529 SCRA 747*; Heirs of Salvador Hermosilla v. Remoquillo,* G.R. No. 167320, 30 January 2007, 513 SCRA 403; *Coronel v. Intermediate Appellate Court,* 239 Phil. 264 (1987).

[14] 218 Phil. 685 (1984).

ground that a portion of her property had been fraudulently or mistakenly included in the certificate of title issued for the adjoining lot of the respondent. The Court held:

> Prescription cannot be invoked against JULIANA for the reason that as lawful possessor and owner of the Disputed Portion, her cause of action for reconveyance which, in effect, seeks to quiet title to the property, falls within settled jurisprudence that an action to quiet title to property in one's possession is imprescriptible. Her undisturbed possession over a period of fifty-two (52) years gave her a continuing right to seek the aid of a Court of equity to determine the nature of the adverse claim of a third party and the effect on her own title.
>
> Besides, under the circumstances, JULIANA's right to quiet title, to seek reconveyance, and to annul OCT No. 63 accrued only in 1966 when she was made aware of a claim adverse to her own. It was only then that the statutory period of prescription may be said to have commenced to run against her x x x.[15]

In this case, respondent who has been in possession of the disputed property since 1940, by himself and through his predecessors-in-interest, is not barred from bringing the action for reconveyance, which in effect seeks to quiet title to the property, against petitioners whose claim to the property is based merely on their certificate of title which mistakenly included respondent's property. Respondent has a better right to the disputed property since he and his predecessors-in-interest had long been in possession of the property in the concept of owner. Petitioners only took possession of the disputed property sometime in 1991 when they realized upon partition of Lot No. 450 that the certificate of title issued to them included the disputed property. Reconveyance is just and proper to end the intolerable anomaly that the patentees should have a Torrens title for the land which has never been in their possession and which have been possessed by another person in the concept of owner.[16]

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[15] *Id.* at 690-691.

[16] *Mendizabel v. Apao*, G.R. No. 143185, 20 February 2006, 482 SCRA 587, citing *Bustarga vs. Navo II,* 214 Phil. 86 (1984).

WHEREFORE, we *DENY* the petition. We *AFFIRM* the Decision dated 9 July 2003 of the Court of Appeals in CA-GR CV No. 71137.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 165448. July 27, 2009]

ERNESTO AQUINO, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEAL BY *CERTIORARI* TO THE SUPREME COURT; WHEN IS A QUESTION CONSIDERED ONE OF LAW. —** The Solicitor General alleges that the petition should be denied because petitioner only raises questions of facts and not questions of law. We do not agree. A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For questions to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants. The resolution of the issue must rest solely on what the law provides on the given set of circumstances.
2. **CRIMINAL LAW; PRESIDENTIAL DECREE NO. 705; PUNISHES ANYONE WHO SHALL CUT, GATHER, COLLECT OR REMOVE TIMBER OR OTHER FOREST PRODUCTS FROM ANY FOREST LAND, OR TIMBER FROM ALIENABLE OR DISPOSABLE LAND, OR FROM PRIVATE LAND, WITHOUT ANY AUTHORITY. —**

Petitioner challenges his conviction under Section 68 of PD 705. Section 68 of PD 705 provides: Section 68. *Cutting, Gathering and/or Collecting Timber or Other Forest Products Without License*.-Any person who shall cut, gather, collect, remove timber or other forest products from any forest land, or timber from alienable or disposable public land, or from private land, without any authority, or possess timber or other forest products without the legal documents as required under existing forest laws and regulations, shall be punished with the penalties imposed under Articles 309 and 310 of the Revised Penal Code: Provided, that in the case of partnerships, associations, or corporations, the officers who ordered the cutting, gathering, collection or possession shall be liable, and if such officers are aliens, they shall, in addition to the penalty, be deported without further proceedings on the part of the Commission on Immigration and Deportation. There are two distinct and separate offenses punished under Section 68 of PD 705, to wit: (1) Cutting, gathering, collecting and removing timber or other forest products from any forest land, or timber from alienable or disposable public land, or from private land without any authority; and (2) Possession of timber or other forest products without the legal documents required under existing forest laws and regulations. The provision clearly punishes anyone who shall **cut, gather, collect or remove** timber or other forest products from any forest land, or timber from alienable or disposable public land, or from private land, without any authority.

3. **ID.; ID.; PETITIONER WAS MERELY CHARGED BY THE COMMUNITY ENVIRONMENT AND NATURAL RESOURCES OFFICER TO SUPERVISE THE IMPLEMENTATION OF THE PERMIT AND HE WAS NOT THE ONE WHO CUT, GATHERED, COLLECTED OR REMOVED THE PINE TREES WITHIN THE CONTEMPLATION OF SECTION 68 OF PD 705; PETITIONER COULD NOT LIKEWISE BE CONVICTED OF CONSPIRACY TO COMMIT THE OFFENSE BECAUSE ALL HIS CO-ACCUSED WERE ACQUITTED OF THE CHARGES AGAINST THEM. —** In this case, petitioner was charged by CENRO to supervise the implementation of the permit. He was not the one who cut, gathered, collected or removed the pine trees within the contemplation of Section 68 of PD 705. He was not in possession of the cut trees because the lumber was used by Teachers' Camp for repairs. Petitioner

could not likewise be convicted of conspiracy to commit the offense because all his co-accused were acquitted of the charges against them.

4. **ID.; ID.; PETITIONER MAY HAVE BEEN REMISS IN HIS DUTIES WHEN HE FAILED TO RESTRAIN THE SAWYERS FROM CUTTING TREES MORE THAN WHAT WAS COVERED BY THE PERMIT BUT THE SAME IS NOT ENOUGH TO CONVICT HIM UNDER THE SECTION 68 OF P.D. 705 . —** Petitioner may have been remiss in his duties when he failed to restrain the sawyers from cutting trees more than what was covered by the permit. As the Court of Appeals ruled, petitioner could have informed his superiors if he was really intimidated by Santiago. If at all, this could only make petitioner administratively liable for his acts. It is not enough to convict him under Section 68 of PD 705. Neither could petitioner be liable under the last paragraph of Section 68 of PD 705 as he is not an officer of a partnership, association, or corporation who ordered the cutting, gathering, or collection, or is in possession of the pine trees.

APPEARANCES OF COUNSEL

Antonio F. Angluben 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[1] assailing the 5 June 1997 Decision[2] and 24 September 2004 Resolution[3] of the Court of Appeals in CA-G.R. CR No. 17534.

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

[2] *Rollo*, pp. 16-31. Penned by Associate Justice Eubulo G. Verzola with Associate Justices Minerva P. Gonzaga-Reyes and Hilarion L. Aquino, concurring.

[3] *Id.* at 33-35. Penned by Associate Justice Eubulo G. Versola with Associate Justices Jose L. Sabio and Monina Arevalo- Zenarosa, concurring.

The Antecedent Facts

On behalf of Teachers' Camp, Sergio Guzman filed with the Department of Environment and Natural Resources (DENR) an application to cut down 14 dead Benguet pine trees within the Teachers' Camp in Baguio City. The trees, which had a total volume of 13.37 cubic meters, were to be used for the repairs of Teachers' Camp.

On 19 May 1993, before the issuance of the permit, a team composed of members from the Community Environment and Natural Resources Office (CENRO) and Michael Cuteng (Cuteng), a forest ranger of the Forest Section of the Office of the City Architect and Parks Superintendent of Baguio City, conducted an inspection of the trees to be cut.

Thereafter, Sabado T. Batcagan, Executive Director of the DENR, issued a permit allowing the cutting of 14 trees under the following terms and conditions:

2. That the cut timber shall be utilized as lumber and fuel-wood by the permittee;

3. As replacement, the permittee shall plant one hundred forty (140) pine seedlings in an appropriate place within the area. In the absence of plantable area in the property, the same is required to plant within forest area duly designated by CENRO concerned which shall be properly maintained and protected to ensure/enhance growth and development of the planted seedlings;

4. Violation of any of the conditions set hereof is punishable under Section 68 of PD 705 as amended by E.O. No. 277, Series of 1987; and

5. That non-compliance with any of the above conditions or violations of forestry laws and regulations shall render this permit null and void without prejudice to the imposition of penalties in accordance with existing laws and regulations.

This PERMIT is non-transferable and shall expire ten (10) days from issuance hereof or as soon as the herein authorized volume is exhausted whichever comes first.[4]

On 23 July 1993, Forest Rangers Ramil Windo, Moises Sobrepeña, Daniel Salamo, Pablo Guinawan, Antonio Abellera, and Forester Paul Apilis received information that pine trees were being cut at Teachers' Camp without proper authority. They proceeded to the site where they found Ernesto Aquino (petitioner), a forest ranger from CENRO, and Cuteng supervising the cutting of the trees. They also found sawyers Benedicto Santiago (Santiago) and Mike Masing (Masing) on the site, together with Clemente Salinas (Salinas) and Andrew Nacatab (Nacatab), who were also supervising the cutting of the trees. The forest rangers found 23 tree stumps, out of which only 12 were covered by the permit. The volume of the trees cut with permit was 13.58 cubic meters while the volume of the trees cut without permit was 16.55 cubic meters. The market value of the trees cut without permit was ₱182,447.20, and the forest charges were ₱11,833.25.

An Information for violation of Section 68 of Presidential Decree No. 705[5] (PD 705) was filed against petitioner, Cuteng, Nacatab, Masing, and Santiago, as follows:

That on or about the 23rd day of July, 1993, and subsequent thereto, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually aiding one another, and without any authority, license or permit, did then and there willfully, unlawfully and feloniously cut nine (9) pine trees with a total volume and market price as ₱182,447.20 (Volume 16.55 M^3 424 bd. ft./M^3 and unit price – ₱26.00 bd. ft.) and with a total forest charge of ₱11,833.25 or having a total sum of ₱194,280.45 at Teachers Camp, Baguio City, without the legal documents as required under existing forest laws and regulations, particularly the Department of Environment and Natural Resources Circular No. 05, Series of 1989, in violation of the aforecited law.[6]

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[4] Records, p. 190.

[5] Revised Forestry Code.

[6] *Rollo*, p. 20.

Masing alleged that he was not aware of the limitations on the permit as he was not given a copy of the permit. Masing stated that he cut 10 pine trees under the supervision of petitioner who claimed to be in possession of the necessary permit. He stated that three of the trees were stumps about four or five feet high and were not fit for lumber. He stated that while he was cutting trees, petitioner and Salinas were present.

Santiago testified that he cut trees under petitioner's supervision. He stated that petitioner was in possession of the permit. He stated that he cut 10 trees, six of which were cut into lumber while two were stumps and two were rotten.

Salinas testified that Masing and Santiago were merely hired as sawyers and they merely followed petitioner's instructions.

Cuteng testified that he was part of the team that inspected the trees to be cut before the permit was issued. He stated that the trees cut by Santiago were covered by the permit.

Nacatab testified that he only went to Teachers' Camp on 13 July 1993 and he saw Santiago and Masing cutting down the trees in petitioner's presence.

Petitioner alleged that he was sent to supervise the cutting of trees at Teachers' Camp. He allegedly informed his superior, Paul Apilis, that he was not aware of the trees covered by the permit. However, he still supervised the cutting of trees without procuring a copy of the vicinity map used in the inspection of the trees to be cut. He claimed that he could not prevent the overcutting of trees because he was just alone while Cuteng and Santiago were accompanied by three other men.

The Decision of the Trial Court

In its 26 May 1994 Decision,[7] the Regional Trial Court of Baguio City, Branch 5 (trial court), ruled as follows:

> WHEREFORE, the Court finds and declares the accused ERNESTO AQUINO *y* ESTIPULAR, MICHAEL CUTENG *y* LESCAO and BENEDICTO SANTIAGO *y* DOCLES guilty beyond reasonable doubt

[7] CA *rollo*, pp. 11-18. Penned by Judge Salvador J. Valdez, Jr.

of the crime charged and hereby sentences EACH of them to suffer an indeterminate penalty of SIX (6) YEARS of *prision correccional*, as minimum, to TWENTY (20) YEARS of *reclusion temporal*, as maximum; to indemnify, jointly and severally, the Government in the amounts of ₱182,477.20 and ₱11,833.25, representing the market value of and forest charges on the Benguet pine trees cut without permit; and to pay their proportionate shares in the costs.

The chainsaw confiscated from the accused Santiago is hereby declared forfeited in favor of the Government.

On the other hand, the accused ANDREW NACATAB *y* DODOY and MIKE MASING *y* GANAS are acquitted on reasonable doubt, with costs *de oficio*, and the cash bonds they deposited for their provisional liberty in the amount of ₱7,500.00 each under O.R. Nos. 139605 and 139646, dated February 4, 1996 and February 23, 1994, respectively, are ordered released to them upon proper receipt therefor.

SO ORDERED.[8]

The trial court ruled that the trees cut exceeded the allowed number of the trees authorized to be cut. The trial court further ruled that the cutting of trees went beyond the period stated in the permit.

Petitioner, Cuteng and Santiago appealed from the trial court's Decision.

The Decision of the Court of Appeals

In its 5 June 1997 Decision, the Court of Appeals modified the trial court's Decision as follows:

WHEREFORE, the decision of the court *a quo* is MODIFIED. The accused-appellants Benedicto Santiago and Michael Cuteng are hereby acquitted on reasonable doubt. The appellant Ernesto Aquino is found guilty, and is hereby sentenced to suffer the indeterminate penalty of six (6) years and one (1) day of *prision mayor* as minimum, to fourteen (14) years, eight (8) months, and one (1) day of *reclusion temporal*, as maximum. The award of damages is deleted. No costs.

SO ORDERED.[9]

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[8] *Id.* at 17-18.

[9] *Rollo*, pp. 30-31.

The Court of Appeals ruled that as a forest guard or ranger of the CENRO, DENR, petitioner had the duty to supervise the cutting of trees and to ensure that the sawyers complied with the terms of the permit which only he possessed. The Court of Appeals ruled that while it was Teachers' Camp which hired the sawyers, petitioner had control over their acts. The Court of Appeals rejected petitioner's claim that he was restrained from taking a bolder action by his fear of Santiago because petitioner could have informed his superiors but he did not do so. The Court of Appeals further rejected petitioner's contention that the law contemplated cutting of trees without permit, while in this case there was a permit for cutting down the trees. The Court of Appeals ruled that the trees which were cut by the sawyers were not covered by the permit.

The Court of Appeals ruled that conspiracy was not sufficiently proven. As such, the Court of Appeals found that the prosecution failed to prove Cuteng's guilt beyond reasonable doubt. The Court of Appeals likewise acquitted Santiago because he was only following orders as to which trees to cut and he did not have a copy of the permit.

Petitioner filed a motion for reconsideration. In its 24 September 2004 Resolution, the Court of Appeals denied the motion for lack of merit.

Hence, the petition before this Court.

The Issue

The only issue in this case is whether petitioner is guilty beyond reasonable doubt of violation of Section 68 of PD 705.

The Ruling of this Court

The petition has merit.

The Solicitor General alleges that the petition should be denied because petitioner only raises questions of facts and not questions of law. We do not agree.

A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of

fact when the doubt arises as to the truth or falsity of the alleged facts.[10] For questions to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants.[11] The resolution of the issue must rest solely on what the law provides on the given set of circumstances.[12]

In this case, petitioner challenges his conviction under Section 68 of PD 705.

Section 68 of PD 705 provides:

> Section 68. *Cutting, Gathering and/or Collecting Timber or Other Forest Products Without License*.-Any person who shall cut, gather, collect, remove timber or other forest products from any forest land, or timber from alienable or disposable public land, or from private land, without any authority, or possess timber or other forest products without the legal documents as required under existing forest laws and regulations, shall be punished with the penalties imposed under Articles 309 and 310 of the Revised Penal Code: Provided, that in the case of partnerships, associations, or corporations, the officers who ordered the cutting, gathering, collection or possession shall be liable, and if such officers are aliens, they shall, in addition to the penalty, be deported without further proceedings on the part of the Commission on Immigration and Deportation.

There are two distinct and separate offenses punished under Section 68 of PD 705, to wit:

(1) Cutting, gathering, collecting and removing timber or other forest products from any forest land, or timber from alienable or disposable public land, or from private land without any authority; and

(2) Possession of timber or other forest products without the legal documents required under existing forest laws and regulations.[13]

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[10] *Republic v. Heirs of Fabio*, G.R. No. 159589, 23 December 2008.

[11] *Id.*

[12] *Id.*

[13] *Revaldo v. People*, G.R. No. 170589, 16 April 2009.

The provision clearly punishes anyone who shall **cut, gather, collect or remove** timber or other forest products from any forest land, or timber from alienable or disposable public land, or from private land, without any authority. In this case, petitioner was charged by CENRO to supervise the implementation of the permit. He was not the one who cut, gathered, collected or removed the pine trees within the contemplation of Section 68 of PD 705. He was not in possession of the cut trees because the lumber was used by Teachers' Camp for repairs. Petitioner could not likewise be convicted of conspiracy to commit the offense because all his co-accused were acquitted of the charges against them.

Petitioner may have been remiss in his duties when he failed to restrain the sawyers from cutting trees more than what was covered by the permit. As the Court of Appeals ruled, petitioner could have informed his superiors if he was really intimidated by Santiago. If at all, this could only make petitioner administratively liable for his acts. It is not enough to convict him under Section 68 of PD 705.

Neither could petitioner be liable under the last paragraph of Section 68 of PD 705 as he is not an officer of a partnership, association, or corporation who ordered the cutting, gathering, or collection, or is in possession of the pine trees.

WHEREFORE, we *GRANT* the petition. We *SET ASIDE* the 5 June 1997 Decision and 24 September 2004 Resolution of the Court of Appeals in CA-G.R. CR No. 17534. petitioner Ernesto Aquino is *ACQUITTED* of the charge of violation of Section 68 of Presidential Decree No. 705. Costs *de oficio.*

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 165907. July 27, 2009]

SPS. DOMINADOR R. NARVAEZ and LILIA W. NARVAEZ, *petitioners, vs.* **SPS. ROSE OGAS ALCISO and ANTONIO ALCISO,** *respondents.*

SYLLABUS

1. CIVIL LAW; CONTRACTS; STIPULATIONS *POUR AUTRUI*; REQUISITES; PRESENT IN CASE AT BAR. — In *Limitless Potentials, Inc. v. Quilala*, the Court laid down the requisites of a stipulation *pour autrui*: (1) there is a stipulation in favor of a third person; (2) the stipulation is a part, not the whole, of the contract; (3) the contracting parties clearly and deliberately conferred a favor to the third person — the favor is not an incidental benefit; (4) the favor is unconditional and uncompensated; (5) the third person communicated his or her acceptance of the favor before its revocation; and (6) the contracting parties do not represent, or are not authorized by, the third party. All the requisites are present in the instant case: (1) there is a stipulation in favor of Alciso; (2) the stipulation is a part, not the whole, of the contract; (3) Bate and the Spouses Narvaez clearly and deliberately conferred a favor to Alciso; (4) the favor is unconditional and uncompensated; (5) Alciso communicated her acceptance of the favor before its revocation — she demanded that a stipulation be included in the 14 August 1981 Deed of Sale of Realty allowing her to repurchase the property from the Spouses Narvaez, and she informed the Spouses Narvaez that she wanted to repurchase the property; and (6) Bate and the Spouses Narvaez did not represent, and were not authorized by, Alciso.

2. ID.; ID.; SALES; CONVENTIONAL REDEMPTION; RESPONDENT'S INTIMATION TO PETITIONER SPOUSES THAT SHE WANTED TO REPURCHASE THE PROPERTY IS INSUFFICIENT; TENDER OF PAYMENT IS NECESSARY TO EFFECTIVELY EXERCISE THE RIGHT OF REPURCHASE. — Under Article 1616, Alciso may exercise her right of redemption by paying the Spouses Narvaez (1) the price of the sale, (2) the expenses of the contract,

(3) legitimate payments made by reason of the sale, and (4) the necessary and useful expenses made on the thing sold. In the present case, the cost of the building constitutes a useful expense. Useful expenses include improvements which augment the value of the land. Under the first paragraph of Article 1606, Alciso had four years from 14 August 1981 to repurchase the property since there was no express agreement as to the period when the right can be exercised. Tender of payment of the repurchase price is necessary in the exercise of the right of redemption. Tender of payment is the seller's manifestation of his or her desire to repurchase the property with the offer of **immediate performance**. Alciso's intimation to the Spouses Narvaez that she wanted to repurchase the property was insufficient. To have effectively exercised her right of repurchase, Alciso should have tendered payment.

3. ID.; ID.; ID.; ID.; RESPONDENT CAN STILL EXERCISE HER RIGHT OF REPURCHASE WITHIN 30 DAYS AFTER THE FINALITY OF THE PRESENT CASE AS PROVIDED IN THE THIRD PARAGRAPH OF ARTICLE 1606 OF THE CIVIL CODE. — Under the third paragraph of Article 1606, Alciso has 30 days from the finality of this Decision to exercise her right of repurchase. In *Laserna v. Javier*, the Court held that: The new Civil Code in Article 1606, thereof gives the vendors *a retro* "the right to repurchase within thirty days from the time final judgment was rendered in a civil action, on the basis that the contract was a true sale with the right to repurchase." This provision has been construed to mean that "after the courts have decided by a final or executory judgment that the contract was a *pacto de retro* and not a mortgage, the vendor (whose claim as mortgagor had definitely been rejected) may still have the privilege of repurchasing within 30 days." (*Perez, et al. vs. Zulueta,* 106 Phil., 264.) The third paragraph of Article 1606 allows sellers, who considered the transaction they entered into as mortgage, to repurchase the property within 30 days from the time they are bound by the judgment finding the transaction to be one of sale with right of repurchase.

4. ID.; PROPERTY; ARTICLE 448 OF THE CIVIL CODE IS INAPPLICABLE IN CASES INVOLVING CONTRACTS OF SALE WITH RIGHT TO REPURCHASE AND WHEN THE OWNER OF THE LAND IS THE BUILDER, SOWER OR PLANTER; PETITIONER SPOUSES BUILT THE

COMMERCIAL BUILDING ON THE LAND THEY OWN AND IT WOULD BE ABSURD TO COMPEL THEM TO BUY WHAT THEY ALREADY OWNED. — The rule is that only errors specifically assigned and properly argued in the appellant's brief will be considered, except jurisdictional and clerical errors. However, the Court is clothed with ample authority to review matters not assigned as errors if their consideration is necessary in arriving at a just decision. Article 448 is inapplicable in cases involving contracts of sale with right of repurchase — it is inapplicable when the owner of the land is the builder, sower, or planter. In *Pecson v. Court of Appeals*, the Court held that: **Article 448 does not apply to a case where the owner of the land is the builder, sower, or planter** who then later loses ownership of the land by sale or donation. This Court said so in *Coleongco v. Regalado*: **Article 361 of the old Civil Code is not applicable in this case, for Regalado constructed the house on his own land** before he sold said land to Coleongco. **Article 361 applies only in cases where a person constructs a building on the land of another in good or in bad faith, as the case may be. It does not apply to a case where a person constructs a building on his own land, for then there can be no question as to good or bad faith on the part of the builder.** Elsewise stated, **where the true owner himself is the builder of the works on his own land, the issue of good faith or bad faith is entirely irrelevant.** Article 448 is inapplicable in the present case because the Spouses Narvaez built the commercial building on the land that they own. Besides, to compel them to buy the land, which they own, would be absurd.

5. **REMEDIAL LAW; CIVIL PROCEDURE; APPEAL BY *CERTIORARI* TO THE SUPREME COURT; ONLY QUESTIONS OF LAW ARE REVIEWABLE; WHETHER RESPONDENT COMMUNICATED TO PETITIONER SPOUSES HER ACCEPTANCE IN THE STIPULATION *POUR AUTRUI* IS A QUESTION OF FACT AND IS NOT REVIEWABLE. —** A petition for review on *certiorari* under Rule 45 of the Rules of Court should include only questions of law — questions of fact are not reviewable. A question of law exists when the doubt centers on what the law is on a certain set of facts, while a question of fact exists when the doubt centers on the truth or falsity of the alleged facts. There is a question of law if the issue raised is capable of being resolved

without need of reviewing the probative value of the evidence. Once the issue invites a review of the evidence, the question is one of fact. Whether Alciso communicated to the Spouses Narvaez her acceptance of the favor contained in the stipulation *pour autrui* is a question of fact. It is not reviewable.

6. **ID.; EVIDENCE; FINDINGS OF FACT RULE; EXCEPTIONS; NOT PRESENT IN CASE AT BAR. —** The factual findings of the trial court, especially when affirmed by the Court of Appeals, are binding on the Court. In its 6 April 1998 Decision, the RTC found that Alciso communicated to the Spouses Narvaez her acceptance of the favor contained in the stipulation *pour autrui*. The RTC stated that: **Rose Alciso communicated her acceptance of such favorable stipulation when she went to see defendant Lillia** *[sic]* **Narvaez in their house.** Under the foregoing circumstances, there is no question that plaintiff Rose Alciso can maintain her instant action for the enforcement and/or fulfillment of the aforestated stipulation in her favor to by [sic] back the property in question. (Emphasis supplied) In *Florentino v. Encarnacion, Sr.*, the Court held that the acceptance may be made at any time before the favorable stipulation is revoked and that the acceptance may be in **any form** — it does not have to be formal or express but may be implied. During the trial, Alciso testified that she informed the Spouses Narvaez that she wanted to repurchase the property: The exceptions to the rule that the factual findings of the trial court are binding on the Court are (1) when there is grave abuse of discretion; (2) when the findings are grounded on speculations; (3) when the inference made is manifestly mistaken; (4) when the judgment of the Court of Appeals is based on a misapprehension of facts; (5) when the factual findings are conflicting; (6) when the Court of Appeals went beyond the issues of the case and its findings are contrary to the admissions of the parties; (7) when the Court of Appeals overlooked undisputed facts which, if properly considered, would justify a different conclusion; (8) when the findings of the Court of Appeals are contrary to those of the trial court; (9) when the facts set forth by the petitioners are not disputed by the respondents; and (10) when the findings of the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record. The Spouses Narvaez did not show that the instant case falls under any of the exceptions.

APPEARANCES OF COUNSEL

E.P. Mallari and Associates and *Emiliano L. Gayo* for petitioners.

George Erwin M. Garcia and *Marciano T. Inso* for respondents.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition[1] for review on *certiorari* under Rule 45 of the Rules of Court. The petition challenges the 29 October 2004 Decision[2] of the Court of Appeals in CA-G.R. CV No. 63757. The Court of Appeals affirmed with modification the 6 April 1998 Decision[3] of the Regional Trial Court (RTC), Judicial Region 1, Branch 8, La Trinidad, Benguet, in Civil Case No. 84-CV-0094.

The Facts

Larry A. Ogas (Ogas) owned a 1,329-square meter parcel of land situated in Pico, La Trinidad, Benguet. The property was covered by Transfer Certificate of Title (TCT) No. T-1068, and a portion was subject to a 30-year lease agreement[4] with Esso Standard Eastern, Inc. Ogas sold the property to his daughter Rose O. Alciso (Alciso). TCT No. T-1068 was cancelled and TCT No. T-12422[5] was issued in the name of Alciso.

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[1] *Rollo*, pp. 7-30.

[2] *Id.* at 32-43. Penned by Associate Justice Rosalinda Asuncion-Vicente, with Associate Justices Eugenio S. Labitoria and Bienvenido L. Reyes concurring.

[3] CA *rollo*, pp. 29-47. Penned by Judge Angel V. Colet.

[4] *Rollo*, pp. 54-55.

[5] Records, pp. 10-11.

On 25 August 1979, Alciso entered into a Deed of Sale with Right to Repurchase,[6] selling the property to Jaime Sansano (Sansano) for ₱10,000. Alciso later repurchased the property from Sansano and, on 28 March 1980, she entered into another Deed of Absolute Sale,[7] this time selling the property to Celso S. Bate (Bate) for ₱50,000. The Deed stated that:

> The SELLER warrants that her title to and ownership of the property herein conveyed are free from all liens and encumbrances except those as appear on the face of the title, specifically, that lease over the said property in favor of ESSO STANDARD EASTERN, INC., the rights over which as a lessor the SELLER likewise hereby transfers in full to the buyer.[8]

TCT No. T-12422 was cancelled and TCT No. T-16066[9] was issued in the name of Bate. On 14 August 1981, Bate entered into a Deed of Sale of Realty,[10] selling the property to the spouses Dominador R. Narvaez and Lilia W. Narvaez (Spouses Narvaez) for ₱80,000. TCT No. T-16066 was cancelled and TCT No. T-16528[11] was issued in the name of the Spouses Narvaez. In 1982, the Spouses Narvaez built a commercial building on the property amounting to ₱300,000.

Alciso demanded that a stipulation be included in the 14 August 1981 Deed of Sale of Realty allowing her to repurchase the property from the Spouses Narvaez. In compliance with Alciso's demand, the Deed stated that, "The SELLER (Bate) carries over the manifested intent of the original SELLER of the property (Alciso) to buy back the same at a price under such conditions as the present BUYERS (Spouses Narvaez) may impose." The Spouses Narvaez furnished Alciso with a copy of the Deed.

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[6] *Rollo*, pp. 56-57.

[7] *Id.* at 58-60.

[8] *Id.* at 59.

[9] *Id.* at 63.

[10] *Id.* at 64-67.

[11] *Id*. at 62.

Alciso alleged that she informed the Spouses Narvaez that she wanted to repurchase the property. The Spouses Narvaez demanded ₱300,000, but Alciso was willing to pay only ₱150,000. Alciso and the Spouses Narvaez failed to reach an agreement on the repurchase price.

In a Complaint[12] dated 15 June 1984 and filed with the RTC, Alciso prayed that (1) the 25 August 1979 Deed of Sale with Right to Repurchase, the 28 March 1980 Deed of Absolute Sale, and the 14 August 1981 Deed of Sale of Realty be annulled; (2) the Register of Deeds be ordered to cancel TCT Nos. T-16066 and T-16528; (3) the Spouses Narvaez be ordered to reconvey the property; and (4) Sansano, Bate, and the Spouses Narvaez be ordered to pay damages, attorney's fees and expenses of litigation. Alciso claimed that the intention of the parties was to enter into a contract of real estate mortgage and not a contract of sale with right of repurchase. She stated that:

> [C]ontrary to the clear intention and agreement of the parties, particularly the plaintiffs herein, defendant JAIME SANSANO, taking advantage of the good faith and financial predicament and difficulties of plaintiffs at the time, caused to be prepared and induced with insidous [sic] words and machinations, prevailed upon plaintiff to sign a contract denominated as "Sale With Right to Repurchase," instead of Deed of Real Estate Mortgage as was the clear intention and agreement of the parties.
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> Defendant JAIME SANSANO caused to be prepared a contract denominated as DEED OF ABSOLUTE SALE, covering the lot in question, contrary to the clear intention and understanding of plaintiff who was inveigled into signing said contract under the impression that what she was executing was a real estate mortgage.[13]

The RTC's Ruling

In its 6 April 1998 Decision, the RTC held that (1) the 25 August 1979 Deed of Sale with Right to Repurchase became *functus officio* when Alciso repurchased the property; (2) the

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[12] *Id.* at 44-51.

[13] *Id.* at 45-47.

action to annul the 28 March 1980 Deed of Absolute Sale had prescribed; (3) Alciso had no legal personality to annul the 14 August 1981 Deed of Sale of Realty; (4) the 14 August 1981 Deed of Sale of Realty contained a stipulation *pour autrui* in favor of Alciso — Alciso could repurchase the property; (5) Alciso communicated to the Spouses Narvaez her acceptance of the favor contained in the stipulation *pour autrui*; (6) the repurchase price was ₱80,000; (7) Alciso could either appropriate the commercial building after payment of the indemnity equivalent to one-half of its market value when constructed or sell the land to the Spouses Narvaez; and (8) Alciso was entitled to ₱100,000 attorney's fees and ₱20,000 nominal damages.

The Spouses Narvaez appealed to the Court of Appeals. In their Appellants Brief[14] dated 21 November 2000, the Spouses Narvaez claimed that (1) the 14 August 1981 Deed of Sale of Realty did not contain a stipulation *pour autrui* — not all requisites were present; (2) the RTC erred in setting the repurchase price at ₱80,000; (3) they were purchasers for value and in good faith; and (4) they were builders in good faith.

<u>The Court of Appeals' Ruling</u>

In its 29 October 2004 Decision, the Court of Appeals held that (1) the 14 August 1981 Deed of Sale of Realty contained a stipulation *pour autrui*; (2) Alciso accepted the favor contained in the stipulation *pour autrui*; (3) the RTC erred in setting the repurchase price at ₱80,000; (4) the 14 August 1981 Deed of Sale of Realty involved a contract of sale with right of repurchase and not real estate mortgage; (5) the Spouses Narvaez were builders in good faith; and (6) Alciso could either appropriate the commercial building after payment of the indemnity or oblige the Spouses Narvaez to pay the price of the land, unless the price was considerably more than that of the building. The Court of Appeals remanded the case to the RTC for determination of the property's reasonable repurchase price.

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[14] CA *rollo*, pp. 95-140.

The Issue

The Spouses Narvaez elevated the case to the Court. In their Petition dated 15 December 2004, the Spouses Narvaez claimed that Alciso did not communicate her acceptance of the favor contained in the stipulation *pour autrui*; thus, she could not repurchase the property.

The Court's Ruling

The petition is unmeritorious.

Article 1311, paragraph 2, of the Civil Code states the rule on stipulations *pour autrui*:

> 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.

In *Limitless Potentials, Inc. v. Quilala*,[15] the Court laid down the requisites of a stipulation *pour autrui*: (1) there is a stipulation in favor of a third person; (2) the stipulation is a part, not the whole, of the contract; (3) the contracting parties clearly and deliberately conferred a favor to the third person — the favor is not an incidental benefit; (4) the favor is unconditional and uncompensated; (5) the third person communicated his or her acceptance of the favor before its revocation; and (6) the contracting parties do not represent, or are not authorized by, the third party.

All the requisites are present in the instant case: (1) there is a stipulation in favor of Alciso; (2) the stipulation is a part, not the whole, of the contract; (3) Bate and the Spouses Narvaez clearly and deliberately conferred a favor to Alciso; (4) the favor is unconditional and uncompensated; (5) Alciso communicated her acceptance of the favor before its revocation — she demanded that a stipulation be included in the 14 August 1981 Deed of Sale

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[15] G.R. Nos. 157391, 160749 and 160816, 15 July 2005, 463 SCRA 586, 605.

of Realty allowing her to repurchase the property from the Spouses Narvaez, and she informed the Spouses Narvaez that she wanted to repurchase the property; and (6) Bate and the Spouses Narvaez did not represent, and were not authorized by, Alciso.

The Spouses Narvaez claim that Alciso did not communicate her acceptance of the favor. They state that:

> A perusal of the provision of the Deed of Sale of Realty between Celso Bate and the spouses Dominador R. Narvaez and Lilia W. Narvaez (Annex "B") which clearly provides that "the third person" (Rose O. Alciso) must have communicated her acceptance to the obligors (spouses Dominador R. Narvaez and Lilia W. Narvaez) before its revocation was not complied with. The acceptance is at best by mere inference.
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>
> Petitioner Narvaez clearly stated that while the contract (Deed of Sale of Realty, Annex "D") contained an [sic] stipulation in favor of a third person (Rose O. Alciso), she did not demand its fulfillment and communicate her acceptance to the obligors before its revocation.
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> x x x x x x x x x
>
> We maintain that the stipulation aforequoted is not a stipulation *pour autrui*. Let the following be emphasized:
>
> 1. While the contract contained a stipulation in favor of a third person (Rose Alciso) she did not demand its fulfillment and she never communicated her acceptance to the obligors (Spouses Narvaez) before its revocation (*Uy Tam vs. Leonard*, 30 Phil. 471; *Coquia vs. Fieldmen's Insurance Co., Inc*., 26 SCRA 178)
>
> 2. Granting *arguendo* that the stipulation is a *pour autrui* yet in the three meetings Rose Alciso had with Mrs. Narvaez she never demanded fulfillment of the alleged stipulation *pour autrui* and, what is worse, she did not communicate her acceptance to the obligors before it is revoked.[16]

A petition for review on *certiorari* under Rule 45 of the Rules of Court should include only questions of law — questions of fact are not reviewable. A question of law exists when the

[16] *Rollo*, pp. 19, 22, and 25.

doubt centers on what the law is on a certain set of facts, while a question of fact exists when the doubt centers on the truth or falsity of the alleged facts.There is a question of law if the issue raised is capable of being resolved without need of reviewing the probative value of the evidence. Once the issue invites a review of the evidence, the question is one of fact.[17]

Whether Alciso communicated to the Spouses Narvaez her acceptance of the favor contained in the stipulation *pour autrui* is a question of fact. It is not reviewable.

The factual findings of the trial court, especially when affirmed by the Court of Appeals, are binding on the Court.[18] In its 6 April 1998 Decision, the RTC found that Alciso communicated to the Spouses Narvaez her acceptance of the favor contained in the stipulation *pour autrui*. The RTC stated that:

> **Rose Alciso communicated her acceptance of such favorable stipulation when she went to see defendant Lillia** [sic] **Narvaez in their house**. Under the foregoing circumstances, there is no question that plaintiff Rose Alciso can maintain her instant action for the enforcement and/or fulfillment of the aforestated stipulation in her favor to by [sic] back the property in question.[19] (Emphasis supplied)

In *Florentino v. Encarnacion, Sr.*,[20] the Court held that the acceptance may be made at any time before the favorable stipulation is revoked and that the acceptance may be in **any form** — it does not have to be formal or express but may be implied. During the trial, Alciso testified that she informed the Spouses Narvaez that she wanted to repurchase the property:

q – What was your proposal to Mrs. Narvaez by way of settlement?

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[17] *Pagsibigan v. People*, G.R. No. 163868, 4 June 2009.

[18] *Id.*

[19] CA *rollo*, pp. 41-42.

[20] 169 Phil. 195, 205 (1977).

a – I tried to go to her and asked her if I could redeem the property and Mrs. Narvaez told me why not, you could redeem the property but not our price.

x x x x x x x x x

q – Now, when you went back to her, what if any did you propose to her or tell her, Madam witness?

a – I just asked for the redemption for the property, sir and she just told me wa [sic] the price that I could only redeem the property.

q – Three Hundred thousand pesos?

a – Yes, sir.

q – Did you make any counter proposal?

a – Yes, for the third time I want [sic] back again your Honor...[21]

The exceptions to the rule that the factual findings of the trial court are binding on the Court are (1) when there is grave abuse of discretion; (2) when the findings are grounded on speculations; (3) when the inference made is manifestly mistaken; (4) when the judgment of the Court of Appeals is based on a misapprehension of facts; (5) when the factual findings are conflicting; (6) when the Court of Appeals went beyond the issues of the case and its findings are contrary to the admissions of the parties; (7) when the Court of Appeals overlooked undisputed facts which, if properly considered, would justify a different conclusion; (8) when the findings of the Court of Appeals are contrary to those of the trial court; (9) when the facts set forth by the petitioners are not disputed by the respondents; and (10) when the findings of the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record.[22] The Spouses Narvaez did not show that the instant case falls under any of the exceptions.

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[21] TSN, 4 March 1988, pp. 10-12.

[22] *Ilagan-Mendoza v. Court of Appeals*, G.R. No. 171374, 8 April 2008, 550 SCRA 635, 647.

In its 29 October 2004 Decision, the Court of Appeals held that Bate and the Spouses Narvaez entered into a sale with right of repurchase and that, applying Article 448 of the Civil Code, Alciso could either appropriate the commercial building after payment of the indemnity or oblige the Spouses Narvaez to pay the price of the land, unless the price was considerably more than that of the building. Article 448 states:

> Art. 448. The owner of the land on which anything has been built, sown or planted in good faith, shall have the right to appropriate as his own the works, sowing or planting, after payment of the indemnity provided for in Articles 546 and 548, or to oblige the one who built or planted to pay the price of the land, and the one who sowed, the proper rent. However, the builder or planter cannot be obliged to buy the land if its value is considerably more than that of the building or the trees. In such case, he shall pay reasonable rent, if the owner of the land does not choose to appropriate the building or trees after proper indemnity. The parties shall agree upon the terms of the lease and in case of disagreement, the court shall fix the terms thereof.

The Court of Appeals stated that:

> [T]he contract between defendants-appellants Bate and Narvaez spouses is a contract of sale with a stipulation granting plaintiffs-appellees the right to repurchase the property at a reasonable price. Being the absolute owners of the property in question, defendants-appellants Narvaez spouses have the undisputed right to use, enjoy and build thereon.
>
> Having built the improvement on the land they own and registered in their names, they are likened to builders in good faith and their rights over the improvement shall be governed by Article 448 of the Civil Code which provides:
>
>> ART. 448. The owner of the land on which anything has been built, sown or planted in good faith, shall have the right to appropriate as his own the works, sowing or planting, after payment of the indemnity provided for in Articles 546 and 548, or to oblige the one who built or planted to pay the price of the land, and the one who sowed, the proper rent. However, the builder or planter cannot be obliged to buy the land if its value is considerably more than that of the building or trees. In such

case, he shall pay reasonable rent, if the owner of the land does not choose to appropriate the building or trees after proper indemnity. The parties shall agree upon the terms of the lease and in case of disagreement, the court shall fix the terms thereof.

Applying said Article, plaintiffs-appellees, after repurchasing the land, will have the following options:

(1) to appropriate for themselves the building upon payment of its value to defendants-appellants Narvaez spouses; OR

(2) to compel the defendants-appellants Narvaez spouses to buy the land, unless the value of thereof [sic] be considerably more than that of the building, in which case, said spouses may lease the land instead. The parties shall agree upon the terms of the lease and in case of disagreement, the courts shall fix the terms thereof.[23]

The Court disagrees.

The rule is that only errors specifically assigned and properly argued in the appellant's brief will be considered, except jurisdictional and clerical errors.[24] However, the Court is clothed with ample authority to review matters not assigned as errors if their consideration is necessary in arriving at a just decision.[25]

Article 448 is inapplicable in cases involving contracts of sale with right of repurchase — it is inapplicable when the owner of the land is the builder, sower, or planter. In *Pecson v. Court of Appeals*,[26] the Court held that:

Article 448 does not apply to a case where the owner of the land is the builder, sower, or planter who then later loses ownership of the land by sale or donation. This Court said so in *Coleongco v. Regalado*:

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[23] *Rollo*, pp. 40-41.

[24] *Solid Homes, Inc. v. Court of Appeals*, 341 Phil. 261, 278 (1997).

[25] *Poliand Industrial Limited v. National Development Company*, G.R. No. 143866, 22 August 2005, 467 SCRA 500, 532-533.

[26] 314 Phil. 313, 322-323 (1995).

> **Article 361 of the old Civil Code is not applicable in this case, for Regalado constructed the house on his own land** before he sold said land to Coleongco. **Article 361 applies only in cases where a person constructs a building on the land of another in good or in bad faith, as the case may be. It does not apply to a case where a person constructs a building on his own land, for then there can be no question as to good or bad faith on the part of the builder**.

Elsewise stated, **where the true owner himself is the builder of the works on his own land, the issue of good faith or bad faith is entirely irrelevant**. (Emphasis supplied)

Article 448 is inapplicable in the present case because the Spouses Narvaez built the commercial building on the land that they own. Besides, to compel them to buy the land, which they own, would be absurd.

As the Court of Appeals correctly observed, the terms of the 14 August 1981 Deed of Sale of Realty show that Bate and the Spouses Narvaez entered into a sale with right of repurchase, where Bate transferred his right of repurchase to Alciso. The Deed states that, "The SELLER (Bate) carries over the manifested intent of the original SELLER of the property (Alciso) to buy back the same at a price under such conditions as the present BUYERS (Spouses Narvaez) may impose." Article 1601 of the Civil Code states that, "Conventional redemption shall take place when the vendor reserves the right to repurchase the thing sold, with the obligation to comply with the provisions of Article 1616 and other stipulations which may have been agreed upon." In *Gallar v. Husain*,[27] the Court held that "the right of repurchase may be exercised only by the vendor in whom the right is recognized by contract or by any person to whom the right may have been transferred."

In a sale with right of repurchase, the applicable provisions are Articles 1606 and 1616 of the Civil Code, not Article 448. Articles 1606 and 1616 state:

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[27] 126 Phil. 606, 611 (1967).

Art. 1606. The right referred to in Article 1601, in the absence of an express agreement, shall last four years from the date of the contract.

Should there be an agreement, the period cannot exceed ten years.

However, the vendor may still exercise the right to repurchase within thirty days from the time final judgment was rendered in a civil action on the basis that the contract was a true sale with right to repurchase.

Art. 1616. The vendor cannot avail himself of the right of repurchase without returning to the vendee the price of the sale, and in addition:

(1) The expenses of the contract, and any other legitimate payments made by reason of the sale;

(2) The necessary and useful expenses made on the thing sold.

Under Article 1616, Alciso may exercise her right of redemption by paying the Spouses Narvaez (1) the price of the sale, (2) the expenses of the contract, (3) legitimate payments made by reason of the sale, and (4) the necessary and useful expenses made on the thing sold. In the present case, the cost of the building constitutes a useful expense. Useful expenses include improvements which augment the value of the land.[28]

Under the first paragraph of Article 1606, Alciso had four years from 14 August 1981 to repurchase the property since there was no express agreement as to the period when the right can be exercised. Tender of payment of the repurchase price is necessary in the exercise of the right of redemption. Tender of payment is the seller's manifestation of his or her desire to repurchase the property with the offer of **immediate performance**.[29]

Alciso's intimation to the Spouses Narvaez that she wanted to repurchase the property was insufficient. To have effectively

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[28] *Spouses Macasaet v. Spouses Macasaet*, 482 Phil. 853, 873 (2004).

[29] *Legaspi v. Court of Appeals*, 226 Phil. 24, 29 (1986).

exercised her right of repurchase, Alciso should have tendered payment. In *Lee v. Court of Appeals*,[30] the Court held that:

The rule that tender of payment of the repurchase price is necessary to exercise the right of redemption finds support in civil law. Article 1616 of the Civil Code of the Philippines x x x furnishes the guide, to wit: "The vendor cannot avail himself of the right of repurchase without returning to the vendee the price of the sale..."

Thus, in the case of *Angao vs. Clavano*, 17 Phil. 152, it was held that "it is not sufficient for the vendor to intimate or to state to the vendee that the former desires to redeem the thing sold, but he must immediately thereupon offer to repay the price..." Likewise, in several other cases decided by the Supreme Court (*Fructo vs. Fuentes*, 15 Phil. 362; *Retes vs. Suelto*, 20 Phil. 394; *Rosales vs. Reyes, et al*., 25 Phil. 495; *Canuto vs. Mariano*, 37 Phil. 840; *De la Cruz, et al. vs. Resurreccion, et al.*, 98 Phil. 975; and other cases) where the right to repurchase was held to have been properly exercised, there was a definite finding of tender of payment having been made by the vendor. (Emphasis supplied)

Nevertheless, under the third paragraph of Article 1606, Alciso has 30 days from the finality of this Decision to exercise her right of repurchase. In *Laserna v. Javier*,[31] the Court held that:

The new Civil Code in Article 1606, thereof gives the vendors *a retro* "the right to repurchase within thirty days from the time final judgment was rendered in a civil action, on the basis that the contract was a true sale with the right to repurchase." This provision has been construed to mean that "after the courts have decided by a final or executory judgment that the contract was a *pacto de retro* and not a mortgage, the vendor (whose claim as mortgagor had definitely been rejected) may still have the privilege of repurchasing within 30 days." (*Perez, et al. vs. Zulueta*, 106 Phil., 264.)

The third paragraph of Article 1606 allows sellers, who considered the transaction they entered into as mortgage, to repurchase the property within 30 days from the time they are

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[30] 160-A Phil. 820, 829 (1975).

[31] 110 Phil. 172, 175 (1960).

bound by the judgment finding the transaction to be one of sale with right of repurchase.

WHEREFORE, the Court *DENIES* the petition. The Court *AFFIRMS* the 29 October 2004 Decision of the Court of Appeals in CA-G.R. CV No. 63757 with *MODIFICATION.* Respondent Rose O. Alciso may exercise her right of redemption by paying the petitioners Spouses Dominador R. Narvaez and Lilia W. Narvaez (1) the price of the sale, (2) the expenses of the contract, (3) legitimate payments made by reason of the sale, and (4) the necessary and useful expenses made on the subject property. The Court *DIRECTS* the Regional Trial Court, Judicial Region 1, Branch 8, La Trinidad, Benguet, to determine the amounts of the expenses of the contract, the legitimate expenses made by reason of the sale, and the necessary and useful expenses made on the subject property.

After such determination, respondent Rose O. Alciso shall have 30 days to pay the amounts to petitioners Spouses Dominador R. Narvaez and Lilia W. Narvaez.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 177768. July 27, 2009]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **CHARMEN OLIVO *y* ALONG, NELSON DANDA *y* SAMBUTO, and JOEY ZAFRA *y* REYES,** *appellants.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; RULE; NOT APPLICABLE WHEN CERTAIN MATERIAL FACTS AND CIRCUMSTANCES WERE OVERLOOKED AND WHICH, IF DULY CONSIDERED, MAY VARY THE OUTCOME OF THE CASE. —** It is settled that when the issue is the evaluation of the testimony of a witness or his credibility, this Court accords the highest respect and even finality to the findings of the trial court, absent any showing that it committed palpable mistake, misappreciation of facts or grave abuse of discretion. It is the trial court which has the unique advantage of observing first-hand the facial expressions, gestures and the tone of voice of a witness while testifying.The well-entrenched rule is that findings of the trial court affirmed by the appellate court are accorded high respect, if not conclusive effect, by this Court, absent clear and convincing evidence that the tribunals ignored, misconstrued or misapplied facts and circumstances of substances such that, if considered, the same will warrant the modification or reversal of the outcome of the case. Factual findings of trial courts, when substantiated by the evidence on record, command great weight and respect on appeal, save only when certain material facts and circumstances were overlooked and which, if duly considered, may vary the outcome of the case.

2. **ID.; ID.; ID.; THE TRIAL COURT MISCONSTRUED AND MISAPPLIED FACTS AND CIRCUMSTANCES OF THE CASE WARRANTING MODIFICATION OR REVERSAL OF OUTCOME OF THE CASE; TRIAL COURT GRIEVOUSLY ERRED WHEN IT RULED THAT THE LONE PROSECUTION EYEWITNESS CATEGORICALLY AND POSITIVELY IDENTIFIED APPELLANTS AS THE PERPETRATORS OF THE**

CRIME. — The material fact and circumstance that the lone alleged eyewitness, Maricel Permejo, was not able to identify the accused-appellants as the perpetrators of the crime, varies the outcome of this case. This circumstance was established during the direct examination of Olivo and was not rebutted by the prosecution during cross-examination or in its pleadings. It was only a few days after, when the accused-appellants were brought to Camp Karingal, that Maricel Permejo was again asked to identify the accused-appellants. This time, she identified them as the perpetrators of the crime. The fact that Permejo was not able to identify accused-appellants as the perpetrators of the crime impinges heavily on the credibility of prosecution's evidence. For if, indeed, the accused-appellants were the malefactors of the crime who did not hide their faces during the robbery, the eyewitness, who had such close, traumatic encounter with them, should automatically have recalled their faces upon seeing them. It behooves this Court to declare that she was not able to do so positively. Having ignored the abovementioned important circumstance, the trial court misconstrued and misapplied facts and circumstances of the case, warranting the modification or reversal of the outcome of the case. The trial court grievously erred when it ruled that the lone prosecution eyewitness categorically and positively identified accused-appellants as the perpetrators of the crime.

3. **ID.; ID.; ID.; CIRCUMSTANCES TENDING TO PROVE THAT APPELLANTS WERE NOT THE PERPETRATORS OF THE CRIME; TRIAL COURTS SHOULD REVIEW, ASSESS AND WEIGH THE TOTALITY OF EVIDENCE PRESENTED BY THE PARTIES AND SHOULD NOT CONFINE ITSELF TO ORAL TESTIMONY DURING THE TRIAL. —** Other circumstances tend to prove that the accused-appellants were not the perpetrators of the crime. One, they were not arrested for the crime of robbery with homicide but were arrested during a buy-bust operation. The records are bereft as to whether or not the case against them for violation of Republic Act No. 6425 prospered. Two, they were brought to Camp Karingal for dubious reasons. When SPO2 Dino was asked during direct examination why he was called to investigate the robbery with homicide which occurred in the Batasan area when he was in Camp Karingal, SPO2 Dino replied that it was standard operating procedure (SOP) that when the case is murder and robbery

and the amount is more than ₱1 million, the case will be handled by the Criminal Investigation Unit (CIU). Apparently realizing his mistake that the amount taken was only ₱35,000.00 when asked the same question during cross-examination, SPO2 Dino replied that it was SOP that if the case is murder or homicide and if there is no available police investigator for that police station, then Camp Karingal will be the one to conduct the investigation. Apparently, the accused-appellants were arrested without a warrant during a buy-bust operation on November 24, 2000, transferred to Camp Karingal under dubious circumstances, and made to stand in a police line-up and identified by an eyewitness who failed to identify them three times. These circumstances were ignored by the trial court who gave too much credence on the positive identification of the accused-appellants by the same eyewitness during direct examination. Trial courts are mandated not only to look at the direct examination of witnesses but to the totality of evidence before them. In every case, the court should review, assess and weigh the *totality* of the evidence presented by the parties. It should not confine itself to oral testimony during the trial. We cannot convict appellants for the special complex crime of robbery with homicide when the evidence relied upon by the trial court is plainly erroneous and inadequate to prove appellants' guilt beyond reasonable doubt. Conviction must rest on nothing less than moral certainty, whether it proceeds from direct or circumstantial evidence.

4. **ID.; CRIMINAL PROCEDURE; APPEAL; AN APPEAL TAKEN BY ONE OR MORE OF SEVERAL ACCUSED SHALL NOT AFFECT THOSE WHO DID NOT APPEAL, EXCEPT INSOFAR AS THE JUDGMENT OF THE APPELLATE COURT IS FAVORABLE AND APPLICABLE TO THE LATTER. —** The other accused, Joey Zafra, who is identically circumstanced as the other appellants and who was likewise convicted on the same evidence, does not appear to have perfected an appeal from the trial court's judgment. The record does not show the reason therefor. Be that as it may, the present rule is that an appeal taken by one or more several accused shall not affect those who did not appeal, except insofar as the judgment of the appellate court is favorable and applicable to the latter. Our pronouncements here with respect to the insufficiency of the prosecution evidence to convict appellants beyond reasonable doubt are definitely favorable and applicable

to accused Joey Zafra. He should not therefore be treated as the odd man out and should benefit from the acquittal of his co-accused. In fact, under similar conditions and on the same ratiocination, Section 11(a), Rule 122 of the Rules of Court has justified the extension of our judgment of acquittal to the co-accused who failed to appeal from the judgment of the trial court which we subsequently reversed.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for appellants.

D E C I S I O N

QUISUMBING, *J.*:

This is an appeal from the Decision[1] dated November 30, 2006 of the Court of Appeals in CA- G.R. CR HC No. 00595 which had affirmed *in toto* the Decision[2] dated August 24, 2004 of the Regional Trial Court (RTC) of Quezon City, Branch 81, finding accused-appellants Charmen Olivo (Olivo), Nelson Danda (Danda), and Joey Zafra (Zafra) guilty beyond reasonable doubt of the crime of robbery with homicide, with no aggravating nor mitigating circumstance, and sentencing them to suffer the penalty of *reclusion perpetua* and to indemnify, jointly and severally, the heirs of the victim, Mariano Constantino, ₱65,000 as actual damages, ₱50,000 for the death of the victim, and ₱50,000 as moral damages.

Accused-appellants Olivo, Danda and Zafra were charged in an Information dated November 29, 2000, as follows:

The undersigned accuses CHARMEN OLIVO *Y* ALONG *alias* Lipay, NELSON DANDA *Y* SAMBUTO *alias* Teng, and JOEY ZAFRA

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[1] CA *rollo*, pp. 88-102. Penned by Associate Justice Myrna Dimaranan Vidal, with Associate Justices Bienvenido L. Reyes and Fernanda Lampas Peralta concurring.

[2] Records, pp. 228-231. Penned by Presiding Judge Ma. Theresa L. Dela Torre-Yadao.

Y REYES, of the crime of Robbery with Homicide, committed as follows:

That on or about the 21st day of November 2000, in Quezon City, Philippines, the said accused, conspiring and confederating together and helping one another, with intent to gain and by means of force, violence, and intimidation against persons, to wit: by then and there armed with guns forcibly entered the hardware store of Mariano Constantino [*y*] Zoleta located at Eagle Street, Sitio Veterans B, Bgy. Bagong Silangan, this City, then announced that it was [a] HOLD-UP and ordered Maricel Permejo, storekeeper thereat, at gunpoint to give them the money of said store, did then and there wilfully, unlawfully and feloniously took, rob and carry away the total amount of ₱35,000.00 Philippine Currency, representing the days earnings of said hardware store, that on the occasion of and by reason of the said robbery and in pursuance of their conspiracy, the said accused with intent to kill, did then and there wilfully, unlawfully and feloniously attack, assault and employ personal violence upon the person of one MARIANO CONSTANTINO *Y* ZOLETA, by then and there shooting him with a gun hitting him on the trunk and extrem[i]ties, thereby inflicting upon said Mariano Constantino [*y*] Zoleta serious and mortal wounds which were the direct and immediate cause of his death, to the damage and prejudice of the heirs of said Mariano Constantino [*y*] Zoleta.

CONTRARY TO LAW.[3]

When arraigned on January 22, 2001, all of the accused-appellants pleaded not guilty.[4]

The evidence for the prosecution consisted of the oral testimonies of Maricel Permejo, storekeeper of the victim Mariano Constantino, Pablito Constantino, the victim's brother, SPO2 Joseph Dino (SPO2 Dino), medico-legal officer Dr. Winston Tan, and Emelita Constantino, the victim's wife. The defense, for its part, presented accused-appellants Olivo and Zafra, Dominica Bernal, who was the landlady of Olivo and Danda, and Rodel de Belen who corroborated Zafra's testimony.

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3 *Id.* at 1.

4 *Id.* at 18.

The prosecution, through the Office of the Solicitor General, narrates its version of the facts as follows:

On November 21, 2000, around 6:30 o'clock in the evening, Maricel [Permejo] was tending the store of the victim, Mariano Constantino in Bagong Silangan, Quezon City. Suddenly, three (3) armed men entered the store and demanded money. When Maricel did not accede to the demand, one of the armed men later identified as appellant Nelson Danda kicked her in the leg while his other companion, appellant Joey Zafra got money from the cash register. When the store owner, Mariano Constantino, went inside the store and shouted, the third companion, appellant Charmen Olivo poked a gun at him. Mariano ran towards the back of the house but appellant Olivo nevertheless chased him. Thereafter, Maricel heard successive shots and saw appellants Danda and Zafra going out of the store while the bloodied body of Mariano was lying at the stairway of the house. The victim was taken to the hospital where he died upon arrival.

Two days after the incident SPO2 Joseph Dino received an information from the Batasan Police Station that they have three (3) suspects for drug violations and illegal possession of firearms. He borrowed the suspects for identification by Maricel. When presented to her, she identified them as the men who staged a hold up and shot the deceased.[5]

The defense, through the Public Attorney's Office, summarized its version of facts as follows:

EVIDENCE FOR THE PROSECUTION:

To prove the allegations in the Information, the prosecution presented Maricel [Permejo], Pablito Constantino, SPO2 Joseph Dino, Dr. Winston Tan, and Emelita Constantino.

The evidence for the prosecution tends to establish that while **Maricel [Permejo]** was tending the store of the late Mariano Constantino on 21 November 2000, three (3) armed men barged in at around 6:30 o'clock in the evening and ordered her to bring out the money. When she refused, accused Nelson Danda kicked her leg while accused Joey Zafra proceeded to get the money amounting to ₱35,000.00 from the cash register.

[5] CA *rollo*, pp. 74-75.

Meanwhile, the owner Constantino entered his store and shouted. Accused Charmen Olivo pointed a gun at him. Constantino ran to the back of the house and accused Olivo chased him. Successive gunshots were subsequently heard.

[Permejo] looked for her employer and found him wounded and bloodied along the stairway of the house. She sought help from a neighbor and the victim was brought to the Fairview [General] Hospital where he expired.

The cadaver was brought for autopsy to Camp Crame and **Dr. Winston Tan**, after the procedure, found several gunshot wounds, the fatal among which was the one sustained on the right chest.

The cadaver was thereafter brought to the Dela Paz Funeral where he stayed for a day and a night. The remains were then brought to Marinduque for the wake which lasted four (4) days and four (4) nights. **Emelita Constantino** testified on the civil aspect of the case.

SPO2 Joseph Dino, an investigator at Camp Karingal, was designated to handle the case. He went to the place of the incident and took the statement of Maricel [Permejo]. Two (2) days after, their office received information that the Batasan Police Station has three (3) suspects for violation of Republic Act (RA) 6425. SPO2 Dino borrowed the suspects and when he presented them to Permejo, the latter identified them as the same persons who held them up and shot her employer.

EVIDENCE FOR THE DEFENSE:

The defense presented the following witnesses, to wit: Charmen Olivo, Dominica Bernal, Joey Zafra and Rodel de Belen.

The evidence for the defense of accused Charmen Olivo and Nelson Danda shows that at around 6:30 o'clock in the evening of 21 November 2000, the accused were cleaning the house that they rented from **Dominica Bernal** on 20 November 2000.

While accused Olivo was fetching water along Barangay Holy Spirit in Payatas, Quezon City on 24 November 2000, policemen in civilian clothes mauled and arrested him sans a warrant. Together with two (2) others, they were brought to Station 6 allegedly for violation of R.A. 6425. A woman came and accused Olivo was taken out. The policemen asked her, "*ito ba?*" which she answered in the negative. The same question was repeated twice but the answer was not changed.

After a few days, the accused were imprisoned at Camp Karingal. They were asked their names. The same woman arrived thereat and at a distance of 1 ½ meters, accused Olivo heard the policemen telling the woman "*ituro mo na.*" The woman then mentioned accused Olivo's name.[6]

On August 24, 2004, the RTC rendered a decision convicting accused-appellants of the crime of robbery with homicide. The dispositive portion of the decision states:

WHEREFORE, premises considered, the Court finds accused Charmen Olivo *y* Along, Nelson Danda *y* Sambuto and Joey Zafra *y* Reyes guilty beyond reasonable doubt of the crime of Robbery with Homicide. There being no mitigating or aggravating circumstance, each accused is hereby sentenced to suffer the penalty of *Reclusion Perpetua* and is hereby ordered to indemnify, jointly and severally, the heirs of the victim in the following amounts: ₱65,000.00 as actual damages, ₱50,000.00 for the death of the victim and ₱50,000.00 as moral damages.

SO ORDERED.[7]

Accused-appellants Olivo and Danda appealed to the Court of Appeals.

In a Decision dated November 30, 2006, the Court of Appeals affirmed *in toto* the RTC's decision, as follows:

WHEREFORE, premises considered, the instant appeal is hereby **DISMISSED**. The assailed decision is **AFFIRMED** *in toto*.

SO ORDERED.[8]

Before this Court now, the issues raised by the accused-appellants are the following:

I.

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANTS CHARMEN OLIVO AND NELSON DANDA OF THE CRIME CHARGED DESPITE THE FAILURE OF

[6] *Id.* at 47-49.

[7] Records, p. 231.

[8] CA *rollo*, p. 102.

THE PROSECUTION TO PROVE THEIR GUILT BEYOND REASONABLE DOUBT.

II.

THE COURT *A QUO* GRAVELY ERRED IN FINDING THAT THERE WAS CONSPIRACY IN THE CASE AT BAR.

III.

ASSUMING *ARGUENDO* THAT ACCUSED-APPELLANTS CHARMEN OLIVO AND NELSON DANDA'S CULPABILITY WAS ESTABLISHED, THE COURT *A QUO* GRAVELY ERRED IN CONVICTING THEM OF THE COMPLEX CRIME OF ROBBERY WITH HOMICIDE.[9]

The accused-appellants argue that in criminal prosecutions, the State has the burden of proving the guilt of the accused beyond reasonable doubt. It has to prove the identity of the accused as the malefactor, as well as the fact of the commission of the crime for which he is allegedly responsible.[10] They argue that it can be gleaned from the records of the case that the prosecution relied mainly on the testimony of the alleged eyewitness Maricel Permejo, but her testimony leaves much to be desired.[11] They argue that Maricel Permejo did not point to them as the malefactors and she only did so upon the instruction given in Camp Karingal. They point out that they were invited allegedly for violation of the anti-drugs law and were appalled to learn that they were charged with a different crime and the alleged witness was coached to identify them. Evidently, they stress, their guilt has not been proved with the required quantum of evidence. Where the people's evidence fails to meet the quantum required to overcome the constitutional presumption of innocence, the accused is entitled to acquittal regardless of the weakness of his defense of denial and uncorroborated alibi, for it is better to acquit a guilty man than to unjustly keep in prison one whose guilt has not been proven beyond the required quantum of evidence.[12]

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

[10] *Id.* at 49.

[11] *Id.* at 50.

[12] *Id.* at 52.

The appellants further argue that while the alleged eyewitness claimed she saw the accused-appellant Joey Zafra take the money from the cash register, she did not see how and who killed Mariano Constantino. She merely claimed that she saw the accused-appellants armed and chased the deceased outside the store. They conclude that whether or not the accused-appellants indeed committed homicide on the occasion of the robbery is a matter that has not been proven with the required moral certainty of guilt.[13]

On the other hand, the prosecution, through the Office of the Solicitor General, argues that findings of fact of the trial court are generally upheld on appeal and the accused-appellants are assailing the correctness of the findings of fact of the trial court by impugning the credibility of the prosecution witness Maricel Permejo.[14] The prosecution claims that contrary to the accused-appellants' claim that the police officers taught the witness Maricel Permejo to point to them as the perpetrators, her testimony is straightforward and direct.[15]

After review, we find that the accused-appellants should be acquitted.

It is settled that when the issue is the evaluation of the testimony of a witness or his credibility, this Court accords the highest respect and even finality to the findings of the trial court, absent any showing that it committed palpable mistake, misappreciation of facts or grave abuse of discretion. It is the trial court which has the unique advantage of observing first-hand the facial expressions, gestures and the tone of voice of a witness while testifying.[16]

The well-entrenched rule is that findings of the trial court affirmed by the appellate court are accorded high respect, if not conclusive effect, by this Court, <u>absent clear and convincing</u>

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[13] *Id.* at 53.

[14] *Id.* at 75.

[15] *Id.* at 76.

[16] *People v. Gloria*, G.R. No. 168476, September 27, 2006, 503 SCRA 742, 752.

evidence that the tribunals ignored, misconstrued or misapplied facts and circumstances of substances such that, if considered, the same will warrant the modification or reversal of the outcome of the case.[17]

Factual findings of trial courts, when substantiated by the evidence on record, command great weight and respect on appeal, save only when certain material facts and circumstances were overlooked and which, if duly considered, may vary the outcome of the case.[18]

In this case, the material fact and circumstance that the lone alleged eyewitness, Maricel Permejo, was not able to identify the accused-appellants as the perpetrators of the crime, varies the outcome of this case. This circumstance was established during the direct examination of Olivo and was not rebutted by the prosecution during cross-examination or in its pleadings. Olivo's testimony reads as follows:

x x x x x x x x x

Q: Mr. Witness, when they brought you to Station 6[,] what happened there in Station 6?

A: [(Charmen Olivo)]: A woman [(Maricel Permejo)] came in and the police took me out.

Q: After bringing you out[,] what happened when the certain woman arrived?

A: They questioned the woman sir.

Q: What did they ask the woman?

A: **They asked the woman, ["*ito ba*"]? [T]he woman answered, ["he is not the one sir".]**

Q: **How many times did they ask the woman that question, if they asked more than [once]?**

A: **Three (3) times sir.**

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[17] *Abuan v. People*, G.R. No. 168773, October 27, 2006, 505 SCRA 799, 826.

[18] *People v. Sy*, G.R. No. 171397, September 27, 2006, 503 SCRA 772, 783.

Q: **And what was the answer of that woman for the second and third time that they asked her again?**

A: **Hindi po yan sir.**[19] (Emphasis supplied.)

x x x x x x x x x

It was only a few days after, when the accused-appellants were brought to Camp Karingal, that Maricel Permejo was again asked to identify the accused-appellants. This time, she identified them as the perpetrators of the crime. Olivo's testimony reads as follows:

x x x x x x x x x

Q: After that what happened?

A: The woman gave a negative answer.

After a few days, we were brought to Camp Karingal sir.

Q: When you were brought to Camp Karingal what happened there?

A: Our names were asked sir.

Q: Who took your names?

A: I do not know sir.

Q: What happened after somebody took your names while you were there at Camp Karingal?

A: We were put in prison sir.

Q: What happened after you were brought to the cell?

A: A woman arrived sir.

Q: Are you saying that that woman who arrived was the same woman that you saw there at Station 6?

A: Yes sir.

Q: When she arrived what did you notice that the poli[c]emen were doing while the woman arrived?

A: I saw the poli[c]emen teaching the woman sir.

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[19] TSN, June 19, 2003, p. 7.

Q: How do you know that the poli[c]em[e]n [were] te[a]ching the woman?

A: I heard them sir.

Q: How far were you from the police and this woman when you said you overheard them?

A: About one and one half me[t]ers sir.

Q: And what did the policem[e]n [do] when you said the policemen were teaching the woman[?] What did the policem[e]n tell the woman?

A: The police said ["*ituro mo na*"].

Q: What did the woman do after the policem[e]n said ["*ituro mo na*"] did the[y] point at you and your companion?

A: She mentioned my name sir.

Q: What did the woman [do] aside from mentioning your name?

Aside from the woman [giving] your name, [what else] did she do, if she did any?

A: No more sir.[20]

x x x x x x x x x

The fact that Permejo was not able to identify accused-appellants as the perpetrators of the crime impinges heavily on the credibility of prosecution's evidence. For if, indeed, the accused-appellants were the malefactors of the crime who did not hide their faces during the robbery, the eyewitness, who had such close, traumatic encounter with them, should automatically have recalled their faces upon seeing them. It behooves this Court to declare that she was not able to do so positively.

Having ignored the abovementioned important circumstance, the trial court misconstrued and misapplied facts and circumstances of the case, warranting the modification or reversal of the outcome of the case. The trial court grievously erred when it ruled that

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

the lone prosecution eyewitness categorically and positively identified accused-appellants as the perpetrators of the crime.

Other circumstances tend to prove that the accused-appellants were not the perpetrators of the crime.

One, they were not arrested for the crime of robbery with homicide but were arrested during a buy-bust operation. The records are bereft as to whether or not the case against them for violation of Republic Act No. 6425[21] prospered.

Two, they were brought to Camp Karingal for dubious reasons. When SPO2 Dino was asked during direct examination why he was called to investigate the robbery with homicide which occurred in the Batasan area when he was in Camp Karingal, SPO2 Dino replied that it was standard operating procedure (SOP) that when the case is murder and robbery and the amount is more than ₱1 million, the case will be handled by the Criminal Investigation Unit (CIU). Apparently realizing his mistake that the amount taken was only ₱35,000.00 when asked the same question during cross-examination, SPO2 Dino replied that it was SOP that if the case is murder or homicide <u>and if there is no available police investigator for that police station</u>, then Camp Karingal will be the one to conduct the investigation. SPO2 Dino's testimony during direct examination goes:

x x x x x x x x x

Q: How did you learn of the death of the same person?

A: The case was called at the Batasan Police Station, in our station, and our desk officer told me to handle the case.

Q: By the way, can you tell this court why the case/incident happened in Batasan and you were called to investigate when in fact you were in Camp Karingal?

A: It was SOP in the [Central Police District (CPD)] that when the case is Murder and Robbery [**and the amount] is more than 1 million**, the case is to be handled by the [Criminal Investigation Unit (CIU)].[22] (Emphasis supplied.)

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[21] THE DANGEROUS DRUGS ACT OF 1972, approved on March 30, 1972.

[22] TSN, June 17, 2002, p. 2.

x x x x x x x x x

On cross-examination, he replied:

x x x x x x x x x

Q: Now, Mr. [P]oliceman, would you tell us why you were assigned to conduct the investigation in this case when they have other police investigator[s] at Batasan Hills, Quezon City?

A: Because that was the standard [operating] procedure that if the case is [murder] or [h]omicide **that if there is [no] available police investigator for that police station**, then Camp Karingal will be the one to conduct the investigation.

Q: In your direct examination, I did not remember you tell before this Court that you conduct[ed] the investigation of this case. Since it involved robbery with [h]omicide, do you know how much was involved in the robbery?

A: **If I remember, it was P[h]p 30,000.00 sir**.

Q: **It was not one (1) million?**

A: **Yes sir.**

Q: By the way, who is the one making the assignment in case of destination of [a] case like this[?]

A: The criminal investigator, sir.

Q: You are referring to Camp [K]aringal or Batasan Hills?

A: Camp Karingal, sir.

Q: You are saying that even if the offense is committed at another place, Camp Karingal will be the one to investigate?

A: Yes sir.

Q: This case was reported to the Batasan Hills Police Station?

A: Yes sir.

Q: And it was not directly reported to Camp Karingal?

A: The Batasan Police Station <u>Desk Officer</u> reported the case to Camp Karingal.

Q: How do you know that?

A: The Desk Officer called the Camp Karingal Office, sir.[23] (Emphasis supplied.)

x x x x x x x x x

The abovementioned testimony of SPO2 Dino makes his credibility doubtful.

Apparently, the accused-appellants were arrested without a warrant during a buy-bust operation on November 24, 2000,[24] transferred to Camp Karingal under dubious circumstances, and made to stand in a police line-up and identified by an eyewitness who failed to identify them three times. These circumstances were ignored by the trial court who gave too much credence on the positive identification of the accused-appellants by the same eyewitness during direct examination.

Trial courts are mandated not only to look at the direct examination of witnesses but to the totality of evidence before them. In every case, the court should review, assess and weigh the *totality* of the evidence presented by the parties. It should not confine itself to oral testimony during the trial.[25]

We cannot convict appellants for the special complex crime of robbery with homicide when the evidence relied upon by the trial court is plainly erroneous and inadequate to prove appellants' guilt beyond reasonable doubt. Conviction must rest on nothing less than moral certainty, whether it proceeds from direct or circumstantial evidence.[26]

In view of the foregoing, acquittal of the accused-appellants is in order.

One final note. The other accused, Joey Zafra, who is identically circumstanced as the other appellants and who was likewise convicted on the same evidence, does not appear to have perfected

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[23] TSN, June 20, 2002, pp. 2-4.

[24] Records, pp. 9-10.

[25] *People v. Servano*, G.R. Nos. 143002-03, July 17, 2003, 406 SCRA 508, 523.

[26] *People v. Canlas*, G.R. No. 141633, December 14, 2001, 372 SCRA 401, 403.

an appeal from the trial court's judgment. The record does not show the reason therefor.

Be that as it may, the present rule is that an appeal taken by one or more several accused shall not affect those who did not appeal, except insofar as the judgment of the appellate court is favorable and applicable to the latter.[27] Our pronouncements here with respect to the insufficiency of the prosecution evidence to convict appellants beyond reasonable doubt are definitely favorable and applicable to accused Joey Zafra. He should not therefore be treated as the odd man out and should benefit from the acquittal of his co-accused. In fact, under similar conditions and on the same ratiocination, Section 11(a), Rule 122 of the Rules of Court has justified the extension of our judgment of acquittal to the co-accused who failed to appeal from the judgment of the trial court which we subsequently reversed.[28]

WHEREFORE, the Decision dated November 30, 2006 of the Court of Appeals in CA-G.R. CR HC No. 00595 and the Decision dated August 24, 2004 of the Regional Trial Court of Quezon City, Branch 81 are *REVERSED AND SET ASIDE*. Accused-appellants Charmen Olivo and Nelson Danda are hereby *ACQUITTED* of the crime charged on the ground of reasonable doubt. Pursuant to Rule 122 of the Rules of Court, their co-accused Joey Zafra is declared entitled also to *ACQUITTAL.* Let a copy of this decision be furnished the Director of the New Bilibid Prison, Muntinlupa, Rizal, who is ordered to

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[27] SEC. 11. Effect of appeal by any of several accused. —

(a) An appeal taken by one or more of several accused shall not affect those who did not appeal, except insofar as the judgment of the appellate court is favorable and applicable to the latter.

(b) The appeal of the offended party from the civil aspect shall not affect the criminal aspect of the judgment or order appealed from.

(c) Upon perfection of the appeal, the execution of the judgment or final order appealed from shall be stayed as to the appealing party.

[28] *People v. Fernandez, et al.*, G.R. No. 80481, June 27, 1990, 186 SCRA 830; *People v. Perez, et al.*, G.R. No. 119014, October 15, 1996, 263 SCRA 206.

IMMEDIATELY RELEASE them from confinement unless held for some other legal cause, and to report to this Court any action taken by him within ten days from notice.

No pronouncement as to costs.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 178205. July 27, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **LEO QUEMEGGEN and JANITO DE LUNA,** *accused-appellants.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; DIFFERENT PEOPLE REACT DIFFERENTLY TO A GIVEN SITUATION AND THERE IS NO STANDARD FORM OF HUMAN BEHAVIORAL RESPONSE WHEN ONE IS CONFRONTED WITH A STRANGE EVENT. —** It is well-settled that different people react differently to a given situation, and there is no standard form of human behavioral response when one is confronted with a strange event. Moreover, when it comes to credibility, the trial court's assessment deserves great weight and is even conclusive and binding, if not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence. The reason is obvious. Having the full opportunity to observe directly the witnesses' deportment

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

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

and manner of testifying, the trial court is in a better position than the appellate court to evaluate testimonial evidence properly.

2. **ID.; ID.; ID.; TESTIMONY OF EYEWITNESSES TO THE COMMISSION OF THE CRIME SUFFICIENT TO ESTABLISH PROSECUTION'S CASE; PRESENTATION OF AN EXPERT WITNESS IS NO LONGER NECESSARY. —** Appellants' conviction is not negated by the failure of the prosecution to present any police officer to testify that appellants were arrested on board a pedicab, and that the loot from the robbery was confiscated from them; and an expert witness to testify on the cause of death of the victim. Kagalingan and Tabernilla's testimonies as to the circumstances surrounding the robbery and the killing were sufficient. It must be recalled that they were eyewitnesses to the commission of the crimes. These witnesses adequately narrated the events that transpired from the time the appellants declared a hold-up up to the time they alighted from the passenger jeep. They also witnessed how de Luna and the other malefactors strangled and eventually shot Suing. As to the non-presentation of Dr. Cosidon as an expert witness, records show that appellants, through their counsel *de oficio*, admitted in open court her qualifications and competence, the conduct of autopsy and the results thereof as appearing in Dr. Cosidon's report, including the cause of death. Hence, the presentation of an expert witness was no longer necessary.

3. **CRIMINAL LAW; ROBBERY WITH HOMICIDE; ELEMENTS OF THE CRIME. —** The Information shows that appellants were charged with Robbery with Homicide under Article 294 of the Revised Penal Code. For the accused to be convicted of the said crime, the prosecution is burdened to prove the confluence of the following elements: (1) The taking of personal property is committed with violence or intimidation against persons; (2) The property taken belongs to another; (3) The taking is *animo lucrandi*; and (4) By reason of the robbery or on the occasion thereof, homicide is committed.

4. **ID.; ID.; ID.; NO DIRECT CONNECTION BETWEEN THE ROBBERY AND THE KILLING IN CASE AT BAR. —** The relevant factual circumstances. Appellants, together with the other suspects, boarded Tabernilla's passenger jeep. Suddenly, they announced a hold-up. One of them poked a *balisong* at

the neck of Tabernilla, while the others divested the passengers of their valuables. Obviously, in boarding the passenger jeep, announcing a hold-up, and eventually taking the personal belongings of the passengers, appellants had the intent to gain. Thus, the first three elements of the crime were adequately proven. The only question is whether the fourth element was present, *i.e.*, that by reason or on the occasion of the robbery, homicide was committed. Homicide is said to have been committed by reason or on the occasion of robbery if it is committed a) to facilitate the robbery or the escape of the culprit; b) to preserve the possession by the culprit of the loot; c) to prevent discovery of the commission of the robbery; or d) to eliminate witnesses to the commission of the crime. Given the circumstances surrounding the instant case, we agree with the CA that appellants cannot be convicted of Robbery with Homicide. Indeed, the killing may occur before, during, or after the robbery. And it is immaterial that death would supervene by mere accident, or that the victim of homicide is other than the victim of robbery, or that two or more persons are killed. However, essential for conviction of robbery with homicide is proof of a direct relation, an intimate connection between the robbery and the killing, whether the latter be prior or subsequent to the former or whether both crimes are committed at the same time. From the testimonies of the prosecution witnesses, we cannot see the connection between the robbery and the homicide. It must be recalled that after taking the passengers' personal belongings, appellants (and two other suspects) alighted from the jeepney. At that moment, robbery was consummated. Some of the passengers, however, decided to report the incident to the proper authorities; hence, they went to the nearest police station. There, they narrated what happened. The police eventually decided to go back to the place where the robbery took place. Initially, they saw no one; then finally, Kagalingan saw the suspects on board a pedicab. De Luna and two other suspects were caught and left under the care of Suing. It was then that Suing was killed. Clearly, the killing was distinct from the robbery. There may be a connection between the two crimes, but surely, there was no "direct connection."

5. **ID.; ID.; ID.; SEPARATE CRIMES OF ROBBERY AND HOMICIDE WERE COMMITTED IN CASE AT BAR. —** Though appellants were charged with Robbery with Homicide,

we find Quemeggen guilty of robbery, and de Luna of two separate crimes of robbery and homicide. It is axiomatic that the nature and character of the crime charged are determined not by the designation of the specific crime, but by the facts alleged in the information. Controlling in an information should not be the title of the complaint or the designation of the offense charged or the particular law or part thereof allegedly violated, these being, by and large, mere conclusions of law made by the prosecutor, but the description of the crime charged and the particular facts therein recited. There should also be no problem in convicting an accused of two or more crimes erroneously charged in one information or complaint, but later proven to be independent crimes, as if they were made the subject of separate complaints or informations. As worded, the Information sufficiently alleged all the elements of both felonies. Needless to state, appellants failed, before their arraignment, to move for the quashal of the Information, which appeared to charge more than one offense. They have thereby waived any objection thereto, and may thus be found guilty of as many offenses as those charged in the Information and proven during the trial.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellants.

D E C I S I O N

NACHURA, *J.*:

For review is the Decision[1] of the Court of Appeals (CA) dated December 28, 2006 in CA-G.R. CR-H.C. No. 01498 affirming with modification the Decision[2] of the Regional Trial Court (RTC), Branch 72, Malabon, Metro Manila, dated August 8, 1997.

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[1] Penned by Associate Justice Andres B. Reyes, Jr., with Associate Justices Hakim S. Abdulwahid and Mariflor P. Punzalan Castillo, concurring; *rollo*, pp. 3-17.

[2] Penned by Judge Benjamin M. Aquino, Jr.; CA *rollo*, pp. 15-20.

As established by the prosecution, the facts are as follows:

On October 31, 1996, at around 11:00 in the evening, Noel Tabernilla (Tabernilla) was driving his passenger jeep to Navotas, Metro Manila. Along Road 10 in Navotas, four of the passengers announced a hold-up. One of the robbers poked a *balisong* on Tabernilla's nape,[3] while the other three divested the passengers of their valuables.[4] Then, the hold-uppers alighted from the jeep in a place called "Puting Bato."[5]

From there, Tabernilla and six or seven of his passengers went to the nearest police detachment to report the incident. Three policemen accompanied them to the scene of the crime. While there, the policemen chanced upon the robbers riding a pedicab. Socrates Kagalingan (Kagalingan), one of the passengers-victims, recognized the perpetrators, since one of them was still wearing the belt bag that was taken from him.[6]

The policemen were able to arrest three suspects, including Janito de Luna (de Luna), but Leo Quemeggen (Quemeggen) was able to escape. The three suspects were left under the care of a police officer, Emelito Suing (Suing), while the other police officers pursued Quemeggen. Taking advantage of the situation, the three suspects ganged up on Suing; de Luna held his hand, while the other suspect known as "Weng-Weng" shot him on the head.[7] The suspects thereafter escaped.

Upon the return of the two policemen who unsuccessfully pursued Quemeggen, Suing was brought to the hospital where he eventually died.[8] Dr. Rosalyn Cosidon (Dr. Cosidon) of the Philippine National Police (PNP) Crime Laboratory conducted an autopsy on the cadaver of Suing.[9] She concluded that the

[3] *Id.* at 16.

[4] *Rollo,* p. 5.

[5] CA *rollo*, p. 16.

[6] *Id.*

[7] *Rollo*, p. 6.

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

[9] Records, p. 63.

cause of the death of Suing was hemorrhage as a result of a gunshot wound in the head. The results of her examination were reflected in Medico-Legal Report No. M-1614-96.[10]

Appellants Quemeggen and de Luna were eventually arrested through follow-up operations undertaken by the Navotas Police.[11] On November 5, 1996, appellants were charged in an Information for *Robbery with Homicide*, the pertinent portion of which reads:

> That on or about the 31st day of October 1996, in Navotas, Metro Manila, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together and mutually helping one another, with intent to gain and by means of force, violence and intimidation employed upon the person of one SOCRATES KAGALINGAN *Y* ROXAS, did then and there willfully, unlawfully and feloniously take, rob and carry away the following articles to wit:
>
> One (1) gold necklace worth ————— ₱1,800.00
>
> One (1) men's wrist watch ————— 2,000.00
>
> Cash money amounting to ————— 500.00
>
> Total —————— ₱4,300.00
>
> belonging to said complainant, to the damage and prejudice of the latter in the total amount of ₱4,300.00; that on the occasion of the said Robbery one of the arrested suspect[s] dr[e]w a handgun and shot one PO2 SUING, thereby inflicting upon the said PO2 Suing, serious physical injuries, which directly caused his death.
>
> CONTRARY TO LAW.[12]

Upon arraignment, appellants pleaded "Not Guilty."[13] As the appellants manifested[14] that they were not availing of the pre-trial conference, trial on the merits ensued.

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[10] *Id.* at 76.

[11] *Id.* at 4.

[12] *Id.* at 2.

[13] *Id.* at 19.

[14] *Id.* at 22.

During the trial, Tabernilla and Kagalingan testified for the prosecution. Dr. Cosidon's testimony as an expert witness was dispensed with in view of the appellants' admission of her qualification and competence; the fact that she conducted the autopsy on the cadaver of the victim; that she prepared the sketches of a human body; that a slug was recovered from the head of the victim; and that the body of the victim was identified prior to the autopsy.[15]

Appellants, on the other hand, interposed the defense of alibi. They maintained that they were elsewhere when the robbery and shooting incident took place. They claimed that they were in their respective houses: Quemeggen was helping his grandmother cut pieces of cloth used in making rugs, while de Luna was sleeping with his wife.[16]

On August 8, 1997, the RTC rendered a Decision[17] convicting the appellants of Robbery with Homicide, the dispositive portion of which reads:

> WHEREFORE, premises considered, judgment is hereby rendered finding accused Leo Quemeggen *y* Larawan and Janito de Luna *y* Rayo GUILTY beyond reasonable doubt of the crime of robbery with homicide defined and penalized under Art. 294, par. 1, of the Revised Penal Code, as amended by RA 7659, for which they are both hereby sentenced to the prison term of *RECLUSION PERPETUA*.
>
> Accused Quemeggen and accused de Luna are also ordered to pay (1) the heirs of the victim the amount of ₱50,000.00 as indemnification for the loss of the victim's life, and (2) ₱4,000.00 to Socrates Kagalingan by way of indemnification of the total value of the valuables taken from him during the hold-up.
>
> Costs against the two (2) accused.
>
> SO ORDERED.[18]

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[15] *Id.* at 63.

[16] *Rollo*, p. 9.

[17] *Supra* note 2.

[18] CA *rollo*, pp. 19-20.

The case was elevated to this Court for automatic review, but on February 9, 2005, pursuant to the decision of this Court in *People v. Mateo,*[19] we transferred the case to the CA. [20]

On December 28, 2006, the CA modified the RTC Decision by convicting Quemeggen of Robbery, and de Luna of the separate crimes of Robbery and Homicide. The dispositive portion of the CA decision reads:

> WHEREFORE, in view of the foregoing, the Decision of the Regional Trial Court of Malabon, Metro Manila, Branch 72, in Criminal Case No. 17287-MN dated 8 August 1997 is hereby MODIFIED as follows:
>
> 1. As to accused-appellant Leo Quemeggen: he is found guilty of the crime of Robbery and is hereby sentenced to suffer imprisonment ranging from four (4) years of *prision correc[c]ional* as minimum to eight (8) years of *prision mayor* as maximum with the accessories of said penalty; and
>
> 2. As to accused-appellant Janito de Luna: he is found guilty of the crime of Robbery and is sentenced to suffer imprisonment ranging from four (4) years of *prision correc[c]ional* as minimum to eight (8) years of *prision mayor* as maximum with the accessories of said penalty. He is likewise found guilty of the crime of Homicide and is sentence[d] to suffer imprisonment of eight (8) years and one (1) day of *prision mayor* as minimum to seventeen (17) years and four (4) months of *reclusion temporal* as maximum with the accessories of said penalty.
>
> 3. Both accused-appellants area (sic) also ordered to indemnify Socrates Kagalingan the amount of Four Thousand Pesos (₱4,000.00) for the valuables taken from him during the robbery.
>
> SO ORDERED.[21]

The CA concluded that appellants could not be convicted of the special complex crime of Robbery with Homicide. It noted that Suing was not killed by reason or on the occasion of the

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[19] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

[20] CA *rollo*, p. 104.

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

robbery. Hence, two separate crimes of robbery and homicide were committed. As the appellants were in conspiracy to commit robbery, both were convicted of such offense. However, as to the death of Suing, considering that at the time of the killing, Quemeggen was being chased by the police officers and there was no evidence showing that there was conspiracy, only de Luna was convicted of homicide.[22]

Hence, this appeal, based on the following arguments:

I.

THE TRIAL COURT GRAVELY ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE INCREDIBLE TESTIMONIES OF THE PROSECUTION WITNESSES AND IN NOT CONSIDERING THE DEFENSE INTERPOSED BY THE ACCUSED-APPELLANTS.

II.

THE TRIAL COURT GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANTS OF THE CRIME CHARGED DESPITE FAILURE OF THE PROSECUTION TO PROVE THEIR GUILT BEYOND REASONABLE DOUBT.[23]

In assailing their conviction, appellants argue that: 1) the testimonies of the prosecution witnesses are incredible, because it was unnatural for the robbers not to leave the crime scene immediately after the incident; 2) the prosecution failed to present a policeman to prove that appellants were arrested on board a pedicab, and that the loot from the robbery was confiscated from them; and 3) no expert testimony was presented to prove the fact of death of the victim.[24]

We find no merit in the appeal.

Appellants fault the CA for relying on the improbable testimonies of the prosecution witnesses, who testified that they saw the former at the crime scene riding a pedicab. Appellants add that it was improbable for them not to leave the crime

[22] *Id.* at 12-15.

[23] CA *rollo*, p. 51.

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

scene immediately after the robbery. It is well-settled that different people react differently to a given situation, and there is no standard form of human behavioral response when one is confronted with a strange event.[25] Moreover, when it comes to credibility, the trial court's assessment deserves great weight and is even conclusive and binding, if not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence. The reason is obvious. Having the full opportunity to observe directly the witnesses' deportment and manner of testifying, the trial court is in a better position than the appellate court to evaluate testimonial evidence properly.[26]

Appellants' conviction is not negated by the failure of the prosecution to present any police officer to testify that appellants were arrested on board a pedicab, and that the loot from the robbery was confiscated from them; and an expert witness to testify on the cause of death of the victim. Kagalingan and Tabernilla's testimonies as to the circumstances surrounding the robbery and the killing were sufficient. It must be recalled that they were eyewitnesses to the commission of the crimes. These witnesses adequately narrated the events that transpired from the time the appellants declared a hold-up up to the time they alighted from the passenger jeep. They also witnessed how de Luna and the other malefactors strangled and eventually shot Suing.

As to the non-presentation of Dr. Cosidon as an expert witness, records show that appellants, through their counsel *de oficio*, admitted in open court her qualifications and competence, the conduct of autopsy and the results thereof as appearing in Dr. Cosidon's report, including the cause of death.[27] Hence, the presentation of an expert witness was no longer necessary.

Now, on the nature of the crime or crimes committed. The Information shows that appellants were charged with Robbery

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[25] *People v. Reyes*, 447 Phil. 668, 676 (2003).

[26] *People v. Lara,* G.R. No. 171449, October 23, 2006, 505 SCRA 137, 152.

[27] Records, p. 64.

with Homicide under Article 294 of the Revised Penal Code, which provides in part:

"Art. 294. *Robbery with violence against or intimidation of persons – Penalties.* – Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:

1. The penalty of *reclusion perpetua* to death, when by reason or on the occasion of the robbery, the crime of homicide shall have been committed or when the robbery shall have been accompanied by rape or intentional mutilation or arson."

For the accused to be convicted of the said crime, the prosecution is burdened to prove the confluence of the following elements:

1. The taking of personal property is committed with violence or intimidation against persons;
2. The property taken belongs to another;
3. The taking is *animo lucrandi*; and
4. By reason of the robbery or on the occasion thereof, homicide is committed.[28]

We reiterate, at this point, the relevant factual circumstances. Appellants, together with the other suspects, boarded Tabernilla's passenger jeep. Suddenly, they announced a hold-up. One of them poked a *balisong* at the neck of Tabernilla, while the others divested the passengers of their valuables. Obviously, in boarding the passenger jeep, announcing a hold-up, and eventually taking the personal belongings of the passengers, appellants had the intent to gain. Thus, the first three elements of the crime were adequately proven.

The only question is whether the fourth element was present, *i.e.*, that by reason or on the occasion of the robbery, homicide was committed.

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[28] *People v. Lara, supra* at 154; *People v. De Jesus*, G.R. No. 134815, May 27, 2004, 429 SCRA 384, 401-402; *People v. Sanchez*, 358 Phil. 527, 535 (1998).

Homicide is said to have been committed by reason or on the occasion of robbery if it is committed a) to facilitate the robbery or the escape of the culprit; b) to preserve the possession by the culprit of the loot; c) to prevent discovery of the commission of the robbery; or d) to eliminate witnesses to the commission of the crime.[29]

Given the circumstances surrounding the instant case, we agree with the CA that appellants cannot be convicted of Robbery with Homicide. Indeed, the killing may occur before, during, or after the robbery. And it is immaterial that death would supervene by mere accident, or that the victim of homicide is other than the victim of robbery, or that two or more persons are killed.[30] However, essential for conviction of robbery with homicide is proof of a direct relation, an intimate connection between the robbery and the killing, whether the latter be prior or subsequent to the former or whether both crimes are committed at the same time.[31]

From the testimonies of the prosecution witnesses, we cannot see the connection between the robbery and the homicide. It must be recalled that after taking the passengers' personal belongings, appellants (and two other suspects) alighted from the jeepney. At that moment, robbery was consummated. Some of the passengers, however, decided to report the incident to the proper authorities; hence, they went to the nearest police station. There, they narrated what happened. The police eventually decided to go back to the place where the robbery took place. Initially, they saw no one; then finally, Kagalingan saw the suspects on board a pedicab. De Luna and two other suspects were caught and left under the care of Suing. It was then that Suing was killed. Clearly, the killing was distinct from the robbery. There may be a connection between the two crimes, but surely, there was no "direct connection."

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[29] *People v. Jabiniao, Jr.*, G.R. No. 179499, April 30, 2008, 553 SCRA 769, 783; *People v. De Jesus*, *supra* at 403.

[30] *People v. Jabiniao, Jr.*, *supra* at 783; *People v. De Jesus*, *supra* at 402.

[31] *People v. Werba*, G.R. No. 144599, June 9, 2004, 431 SCRA 482, 497; *People v. Cando*, 398 Phil. 225, 240 (2000).

Though appellants were charged with Robbery with Homicide, we find Quemeggen guilty of robbery, and de Luna of two separate crimes of robbery and homicide. It is axiomatic that the nature and character of the crime charged are determined not by the designation of the specific crime, but by the facts alleged in the information.[32] Controlling in an information should not be the title of the complaint or the designation of the offense charged or the particular law or part thereof allegedly violated, these being, by and large, mere conclusions of law made by the prosecutor, but the description of the crime charged and the particular facts therein recited.[33] There should also be no problem in convicting an accused of two or more crimes erroneously charged in one information or complaint, but later proven to be independent crimes, as if they were made the subject of separate complaints or informations.[34]

As worded, the Information sufficiently alleged all the elements of both felonies.

Needless to state, appellants failed, before their arraignment, to move for the quashal of the Information, which appeared to charge more than one offense. They have thereby waived any objection thereto, and may thus be found guilty of as many offenses as those charged in the Information and proven during the trial.[35]

As to the proper penalty, we sustain the appellate court. The penalty for simple robbery is *prision correccional* in its maximum period to *prision mayor* in its medium period, ranging from 4 years, 2 months and 1 day to 10 years.[36] Applying the Indeterminate Sentence Law, the maximum term thereof shall be 6 years, 1 month and 11 days to 8 years and 20 days; while

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[32] *People v. Lara, supra* note 26, at 156.

[33] *People v. Taño*, 387 Phil. 465, 487 (2000).

[34] *Id.*

[35] *People of the Philippines v. Tamayo,* 434 Phil. 642, 655-656 (2002); *People v. Taño*, *supra* at 487.

[36] Article 294 (5), Revised Penal Code.

the minimum term shall be within the range of the penalty next lower in degree or 4 months and 1 day to 4 years and 2 months. The CA thus correctly imposed the indeterminate penalty of 4 years of *prision correccional* as minimum to 8 years of *prision mayor* as maximum.

On the other hand, the penalty for homicide is *reclusion temporal* or 12 years and 1 day to 20 years.[37] The maximum term of the indeterminate penalty shall be 14 years, 8 months and 1 day to 17 years and 4 months; while the minimum term shall be within the range of *prision mayor* or 6 years and 1 day to 12 years. Therefore, the CA was correct in imposing the indeterminate penalty of 8 years and 1 day of *prision mayor* as minimum to 17 years and 4 months of *reclusion temporal* as maximum.

The Court notes that the CA failed to award civil indemnity *ex delicto* to the heirs of Suing. Civil indemnity is automatically imposed upon the accused without need of proof other than the fact of the commission of murder or homicide.[38] Thus, de Luna shall be liable to pay ₱50,000.00 as civil indemnity for the death of Suing.

Records show that appellants were committed to prison on November 14, 1996.[39] As to Quemeggen, considering that he has been incarcerated for more than twelve (12) years now, which is more than the maximum penalty for the crime of robbery he committed which is only eight (8) years, he should be released from confinement.

WHEREFORE, premises considered, the appeal is *DISMISSED.* The Decision of the Court of Appeals dated December 28, 2006 in CA-G.R. CR-H.C. No. 01498, is *AFFIRMED* with *MODIFICATION.* Janito de Luna is further

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[37] Article 249, Revised Penal Code.

[38] *Razon v. People*, G.R. No. 158053, June 21, 2007, 525 SCRA 284, 303; *People v. Dagani,* G.R. No. 153875, August 16, 2006, 499 SCRA 64; *People v. Se*, 469 Phil. 763 (2004).

[39] Records, p. 14.

ordered to pay the heirs of police officer Emelito Suing ₱50,000.00 as civil indemnity.

Considering that Quemeggen has been incarcerated for more than the maximum penalty for the crime of robbery he committed, the Director of the Bureau of Corrections is hereby *ORDERED* to immediately *RELEASE* LEO QUEMEGGEN from confinement, unless further detention is justified by some other lawful cause, and inform this Court of the action taken within five (5) days from receipt hereof.

SO ORDERED.

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

EN BANC

[G.R. No. 179430. July 27, 2009]

JAMELA SALIC MARUHOM, *petitioner, vs.* **COMMISSION ON ELECTIONS, and MOHAMMADALI "Mericano" A. ABINAL,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ELECTION LAWS; OMNIBUS ELECTION CODE; ELIGIBILITY OF CANDIDATES AND CERTIFICATE OF CANDIDACY; A FALSE REPRESENTATION OF MATERIAL FACT IN THE CERTIFICATE OF CANDIDACY (COC) IS A GROUND FOR DENIAL OR CANCELLATION THEREOF. — Maruhom, whether intentionally or inadvertently, is muddling the issues in this case. The present case is not about her being denied her right to register as a voter, but is all about her making false material representations in her COC, which would warrant the cancellation of the same. Abinal's Petition in SPA No.

07-093 primarily prays that the COMELEC deny due course to or cancel Maruhom's COC under Section 78 of the OEC, alleging that Maruhom made false material representations in her COC. Under Section 78 of the OEC, a false representation of material fact in the COC is a ground for the denial or cancellation of the COC. The false representation must pertain to a material fact that affects the right of the candidate to run for the election for which he filed his COC. Such material fact refers to a **candidate's eligibility or qualification** for elective office like citizenship, residence or **status as a registered voter**. Aside from the requirement of materiality, the false representation must consist of a deliberate attempt to mislead, misinform, or hide a fact that would otherwise render a candidate ineligible. In other words, it must be made with the intention to deceive the electorate as to the would-be candidate's qualifications for public office.

2. **ID.; ID.; ID.; ID.; THE COMMISSION ON ELECTIONS (COMELEC) HAS JURISDICTION OVER A PETITION FILED UNDER SECTION 78 OF THE OMNIBUS ELECTION CODE. — It is settled that the COMELEC has jurisdiction over a petition filed under Section 78 of the OEC.** In the exercise of such jurisdiction, it is within the competence of the COMELEC to determine whether false representation as to material facts was made in the COC. If the candidate states a material representation in the COC that is false, the COMELEC is empowered to deny due course to or cancel the COC. The person whose COC is denied due course or cancelled under Section 78 of the OEC is not treated as a candidate at all, as if such person never filed a COC. Evidence on record supports the following facts: Maruhom registered as a voter in Marawi on 26 July 2003; only three days after, on 29 July 2003, Maruhom again registered as a voter in Marantao, without first canceling her registeration in Marawi; and on 28 March 2007, Maruhom filed her COC declaring that she was a registered voter in Marantao and eligible to run as a candidate for the position of mayor of said municipality.

3. **ID.; ID.; ID.; ID.; PETITIONER'S EARLIER REGISTRATION IN MARAWI IS DEEMED VALID, WHILE HER SUBSEQUENT REGISTRATION IN MARANTAO IS VOID *AB INITIO*; AS SUCH, HER CLAIM THAT SHE IS A REGISTERED VOTER IN MARANTAO IS CONSIDERED**

A FALSE REPRESENTATION IN HER CERTIFICATE OF CANDIDACY. — Given Maruhom's double registration in Marawi and Marantao, then COMELEC should determine which registration was valid and which one was null. COMELEC could not consider both registrations valid because it would then give rise to the anomalous situation where Maruhom could vote in two precincts at the same time. This would be a dangerous precedent that would open the floodgates to massive election cheating and fraud. This was precisely the situation that the COMELEC intended to address when it issued its Minute Resolution No. 00-1513 on 25 July 2000, seven years prior to the 14 May 2007 elections in which Maruhom intended to run. To foster honesty and credibility in the registration of voters, so as to avoid the padding of vote registration, COMELEC laid down the rule in Minute Resolution No. 00-1513 that while the first registration of any voter subsists, any subsequent registration thereto is void *ab initio*. Following the clear and plain words of Minute Resolution No. 00-1513, therefore, Maruhom's earlier registration in Marawi is deemed valid, while her subsequent registration in Marantao is void *ab initio*. Accordingly, Maruhom cannot be considered a registered voter in Marantao and, thus, she made a false representation in her COC when she claimed to be one.

4. **ID.; ID.; ID.; ID.; PETITIONER'S VOTER REGISTRATION CONSTITUTES A MATERIAL FACT BECAUSE IT AFFECTS HER ELIGIBILITY TO BE ELECTED AS MUNICIPAL MAYOR OF MARANTAO. —** Maruhom's voter registration constitutes a material fact because it affects her eligibility to be elected as municipal mayor of Marantao. Section 39(a) of Republic Act No. 7160, otherwise known as the Local Government Code of 1991, requires that an elective local official must be, among other things, a **registered voter** in the *barangay*, **municipality**, city or province where he intends to be elected. Several circumstances convince us that Maruhom was aware that she had a subsisting registration in Marawi and deliberately attempted to conceal said fact, which would have rendered her ineligible to run as mayoralty candidate in Marantao. Before filing her COC, Maruhom requested the COMELEC to cancel her Marawi registration. It is undisputed that by the time Maruhom filed her COC, the COMELEC had not yet acted on her request for cancellation of her Marawi registration. Despite knowing that her request for cancellation

of her Marawi registration was still pending before the COMELEC, Maruhom proceeded to declare, under oath, in her COC, that she was a registered voter in Marantao and that she was eligible to run for the position of mayor of said municipality. There is no showing that Maruhom informed or advised the election officer of Marantao of her subsisting Marawi registration and her pending request for cancellation of the same. Evidently, Maruhom would much rather sweep the fact of her Marawi registration under the carpet, than deal with the complications arising from it, which may very well put in jeopardy her intention to run for mayor of Marantao. Indeed, Maruhom made false material representations in her COC that she was a registered voter in Marantao and that she was eligible to be a mayoralty candidate in said municipality.

5. ID.; ID.; ID.; ID.; THE COMMISSION ON ELECTIONS HAS EXPRESS JURISDICTION UNDER SECTION 78 OF THE OMNIBUS ELECTION CODE OVER PETITIONS FOR CANCELLATION OF CERTIFICATE OF CANDIDACIES ON THE GROUND OF FALSE REPRESENTATIONS; THE CONSTITUTION ALSO EXTENDS TO THE COMMISSION ALL NECESSARY AND INCIDENTAL POWERS FOR IT TO ACHIEVE THE HOLDING OF FREE, ORDERLY, HONEST, PEACEFUL AND CREDIBLE ELECTIONS. — Maruhom's insistence that only the MTC has jurisdiction to rule on her voter registration is specious. It must be underscored that in addition to the express jurisdiction of COMELEC over petitions for cancellation of COCs, on the ground of false material representations, under Section 78 of the OEC, the Constitution also extends to COMELEC all the necessary and incidental powers for it to achieve the holding of free, orderly, honest, peaceful, and credible elections. The determination, therefore, made by the COMELEC that Maruhom's Marawi registration is valid, while her Marantao registration is void, is only in accord with its explicit jurisdiction, or at the very least, its residual powers. Furthermore, as aptly pointed out by Abinal and COMELEC, through the Office of the Solicitor General, the 8 May 2007 Resolution of the COMELEC First Division and the 21 August 2007 Resolution of the COMELEC *en banc* **merely defeated Maruhom's intent to run for elective office, but it did not deprive her of her right to vote.** Although Maruhom's registration in Marantao is void, her registration in Marawi still subsists. She may be barred

from voting or running for mayor in the former, but she may still exercise her right to vote, or even run for an elective post, in the latter.

6. **ID.; ID.; ID.; ID.; PETITIONER'S REITERATION OF HER REQUEST FOR CANCELLATION OF HER MARAWI REGISTRATION THREE YEARS AND THREE MONTHS SINCE HER FIRST REQUEST, AND JUST A WEEK PRIOR TO THE FILING OF HER CERTIFICATE OF CANDIDACY FOR THE MAYORALTY POSITION IN MARANTAO, REVEALS A HARRIED ATTEMPT TO COMPLY WITH THE ELIGIBILITY REQUIREMENTS FOR HER CANDIDACY RATHER THAN A SINCERE DESIRE TO RIGHT A WRONG. —** It is true that Maruhom did make several requests for the cancellation of her Marawi registration, but without official action by the COMELEC thereon, they remain mere requests. They cannot simply be deemed granted. We take note that Maruhom's first request for cancellation of her Marawi registration was submitted on **30 December 2003**, and her next request was made only on **20 March 2007**. Maruhom subsequently filed her COC for the mayoralty position in Marantao on **28 March 2007**. Far from convincing us that she had exercised due diligence in having her Marawi registration cancelled, we are more persuaded that Maruhom had not been assiduous in ensuring that her request for cancellation be acted upon by COMELEC. Maruhom's reiteration of her request for cancellation of her Marawi registration on 20 March 2007, three years and three months since her first request, and just a week prior to the filing of her COC for the mayoralty position in Marantao, reveals a harried attempt to comply with the eligibility requirements for her candidacy than a sincere desire to right a wrong. COMELEC, thus, had more than enough basis to support its conclusion of Maruhom being a double registrant whose subsequent registration in Marantao was null and void, rendering her unfit to run as municipal mayor therein. Therefore, Maruhom, at the time she filed her COC, could not have honestly declared therein that she was a registered voter of Marantao and an eligible candidate for mayor of the said municipality. It is incumbent upon Maruhom to truthfully state her eligibility in her COC, especially so because the COC is filled up under oath. An elective office is a public trust. He who aspires for elective office should not make a mockery of the electoral process by falsely representing himself.

7. ID.; ID.; ID.; ID.; THE COURT WILL NOT INTERFERE WITH A COMMISSION ON ELECTIONS DECISION/ RESOLUTION UNLESS THE COMMISSION IS SHOWN TO HAVE COMMITTED GRAVE ABUSE OF DISCRETION; NO CAPRICIOUS AND WHIMSICAL EXERCISE OF JUDGMENT ON THE PART OF THE COMMISSION IN RENDERING THE ASSAILED RESOLUTIONS IN SPA NO. 07-093. — The well-settled rule is that this Court will not interfere with a COMELEC decision/resolution unless the COMELEC is shown to have committed grave abuse of discretion. Correctly understood, grave abuse of discretion is such "capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, or an exercise of power in an arbitrary and despotic manner by reason of passion or personal hostility, or an exercise of judgment so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined, or to act in a manner not at all in contemplation of law." Given our foregoing discussion, we find no capricious and whimsical exercise of judgment on the part of the COMELEC in rendering the assailed Resolutions in SPA No. 07-093.

APPEARANCES OF COUNSEL

Pete Quirino-Quadra for petitioner.

The Solicitor General for public respondent.

Dimnatang T. Saro and *Alexandro N. Garangan* for private respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

Before Us is a Petition for *Certiorari*[1] with Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction assailing the Resolution[2] dated 21 August

[1] Under Rule 64 in relation to Rule 65 of the Rules of Court; *rollo*, pp. 3-18.

[2] Penned by Chairman Benjamin S. Abalos, Sr. with Commissioners Resurreccion Z. Borra, Florentino A. Tuason, Jr., Romeo A. Brawner and Rene V. Sarmiento, concurring; *rollo,* pp. 40-45.

2007 of the Commission on Elections (COMELEC) *En Banc* and Resolution[3] dated 8 May 2007 of the COMELEC First Division, both pertaining to SPA No. 07-093.

The facts gathered from the records are as follows:

Petitioner Jamela Salic Maruhom (Maruhom) and private respondent Mohammadali "Mericano" A. Abinal (Abinal) were mayoralty candidates in the Municipality of Marantao, Lanao del Sur, for the 14 May 2007 national and local elections. Both Maruhom and Abinal filed their respective sworn Certificates of Candidacy (COCs) for the said position with the COMELEC Election Officer of Marantao. Abinal was then the incumbent Mayor of Marantao who was seeking re-election.

On 1 April 2007, Abinal filed before the COMELEC a Petition for Disqualification and to Deny Due Course to or Cancel the Certificate of Candidacy under Section 78 of Batas Pambansa Bilang 881,[4] otherwise known as the Omnibus Election Code of the Philippines (OEC),[5] against Maruhom, which was docketed as SPA No. 07-093. Abinal alleged that Maruhom was a double registrant, being a registered voter in Precinct No. 0208A, Barangay Panggao Saduc, Marawi City and Precinct No. 0040A, Barangay Kialdan Proper, Marantao. Maruhom registered as a voter in Marawi on 26 July 2003. Only three days thereafter, on 29 July 2003, Maruhom registered again as a voter in Marantao, without canceling her Marawi registration. There being double registration, Maruhom's subsequent registration in Marantao was null and void *ab initio*. And, not being a registered voter in Marantao, Maruhom was disqualified from running for municipal mayor of said municipality.[6]

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[3] *Rollo,* pp. 21-28.

[4] SEC. 78. *Petition to deny due course to or cancel a certificate of candidacy*. – A verified petition seeking to deny due course or to cancel a certificate of candidacy may be filed by any person exclusively on the ground that any material representation contained therein as required under Section 74 hereof is false x x x.

[5] The Omnibus Election Code took effect on 3 December 1985.

[6] Records, p. 11.

Abinal also averred that Maruhom made false material representations in her registrations in Marawi and Marantao.[7] Maruhom stated in her Marawi registration that: (1) she was "Jamela H. Salic Maruhom"; (2) she was born on 5 April 1960; (3) she was born in Marawi; and (4) she had resided in Marawi for 43 years. On the other hand, Maruhom indicated in her Marantao registration that: (1) she was "Hadja Jamelah Salic Abani"; (2) she was born on 3 September 1960; (3) she was born in Marantao; and (4) she had resided in Marantao for 42 years.[8]

Abinal further claimed that Maruhom also made false material representations in her COC. Maruhom wrote in her Marantao registration[9] that she was born on 3 September 1960; she was a registered voter in Precinct No. 0040A, Marantao; and her surname was "Abani" and her maiden/maternal name was "Salic." In contrast, Maruhom declared[10] in her COC that she was born on 5 April 1960; she was a registered voter in Precinct No. 0042A, Marantao; and her surname was "Salic" and her maiden/ maternal name was "Abani, Mama, Esmail, Maruhom." Moreover, Maruhom was registered in Marantao as "Hadja Jamelah Salic Abani." This was inconsistent with the Certificate of Nomination dated 23 March 2007, issued by Dr. Ombra A. Tamano, Lanao del Sur Provincial Chairman of Laban ng Demokratikong Pilipino, stating that Maruhom's full name was "Jamelah Abani Salic."

Abinal asserted that the aforementioned false material representations made by Maruhom were valid grounds for denying due course to, or cancellation of, the latter's COC under Section 78 of the OEC.[11]

Maruhom filed before the COMELEC an Answer with Motion to Dismiss SPA No. 07-093 contending that she was qualified to run as municipal mayor of Marantao, as she had all the

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[7] *Id.* at 22.

[8] *Id.* at 12.

[9] *Id.* at 22.

[10] *Id.*

[11] *Id.*

qualifications and none of the disqualifications provided by law. A candidate could only be disqualified for a ground provided by law, and there was no law declaring double registration as a ground for disqualification. Maruhom also insisted that she did not make false material representations in her COC, because her complete name was "Salic, Jamelah, Abani, Mama, Esmail, Maruhom." Maruhom explained that "Salic" was her father's surname; "Jamelah" was her first name; that "Abani, Mama, Esmail" were her paternal and maternal grandparents' names; and "Maruhom" was her husband's surname. Hence, Maruhom asked the COMELEC to dismiss Abinal's Petition in SPA No. 07-093.[12]

After submission of the parties' Position Papers and Memoranda, the COMELEC First Division issued a Resolution in SPA No. 07-093 on 8 May 2007, granting Abinal's Petition. The COMELEC First Division found that Maruhom had two subsisting registrations, one in Marawi, and another in Marantao. Maruhom's Marantao registration was void *ab initio* pursuant to COMELEC Minute Resolution No. 00-1513, issued on 25 July 2000.[13] Since Maruhom was not a registered voter in Marantao, she was disqualified from being a mayoralty candidate therein. Thus, the COMELEC First Division ordered the deletion

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[12] *Id.* at 27-32.

[13] *In the Matter of the Omnibus Resolution Annulling the Second or Subsequent Registration of any Registered Voter While His First Registration Subsists*:

The Commission, after due deliberation, RESOLVED as it hereby RESOLVES x x x as follows:

1. That while the first registration of any voter subsists, any subsequent registration thereto is void *ab initio*;

2. That to allow the names of such double/multiple registrant to remain in the computerized voters list is to tolerate padding thereof;

(3) That it is imperative to delete the names of the double/multiple registrants from the computerized voters list, their subsequent registration being invalid;

(4) That the deletion of the names of double/multiple registrants shall be without prejudice to their prosecution for committing double/multiple registration. x x x.

of Maruhom's name from the list of official candidates for municipal mayor of Marantao.

Maruhom filed a Motion for Reconsideration of the 8 May 2007 Resolution of the COMELEC First Division, to which Abinal filed an Opposition.[14] The COMELEC First Division then referred Maruhom's Motion for Reconsideration to the COMELEC *en banc* for disposition.[15]

Meanwhile, the 14 May 2007 national and local elections were held, and Abinal won over Maruhom. Abinal was proclaimed the duly elected municipal mayor of Marantao and, thereupon, assumed office. Maruhom filed an election protest against Abinal before the Regional Trial Court (RTC) of Lanao del Sur, Branch 10, docketed as Election Case No. 1731-07.[16]

On 21 August 2007, the COMELEC *En Banc* issued a Resolution denying Maruhom's Motion for Reconsideration and affirming *in toto* the 8 May 2007 Resolution of the COMELEC First Division. The COMELEC *En Banc* further ordered the referral of the case to the COMELEC Law Department for investigation on the possible commission of an election offense by Maruhom.

Aggrieved, Maruhom filed the instant Petition for *Certiorari*, under Rule 64 of the Revised Rules of Court, imputing grave abuse of discretion on the part of COMELEC, based on the following grounds:

I.

THE COMELEC HAS NO JURISDICTION TO DECLARE NULL AND VOID THE REGISTRATION OF THE PETITIONER AS A REGISTERED VOTER OF MARANTAO, LANAO DEL SUR IN THE MAY 14, 2007 ELECTIONS;

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[14] Records, pp. 49-56 and 69-82.

[15] Pursuant to Section 5 (c), Rule 3 of the 1993 COMELEC Rules of Procedure which provides that "any motion to reconsider a decision, resolution, order or ruling of a Division shall be resolved by the Commission *en banc* x x x."

[16] Election Case No. 1731-07 is still pending; *rollo*, p. 145.

II.

THE COMELEC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT DECLARED THE PETITIONER AS A DOUBLE REGISTRANT.[17]

Maruhom challenges in her Petition the jurisdiction of the COMELEC in declaring her registration in Marantao void. She asserts that Section 2, Article IX(c) of the Constitution prohibits the COMELEC from assuming jurisdiction or deciding issues involving the right to vote. Section 33 of Republic Act No. 8189, or the Voter's Registration Act of 1996 (VRA), confers upon the Municipal Trial Courts (MTCs) and Metropolitan Trial Courts (MeTCs) original and exclusive jurisdiction over all cases of inclusion and exclusion of voters in their respective cities or municipalities. Maruhom argues that the validity of her registration in Marantao can only be directly challenged in a petition for exclusion filed with the MTC of Marantao, and cannot be collaterally attacked in the Petition for Disqualification and to Deny Due Course to or Cancel the Certificate of Candidacy filed by Abinal before the COMELEC. Maruhom further contends that the reliance by COMELEC on its "broad plenary powers to enforce and administer all laws relating to election" is baseless in light of the aforementioned Section 33 of the VRA. The Resolution dated 8 May 2007 of the COMELEC First Division and Resolution dated 21 August 2007 of the COMELEC *En Banc* amount to judicial legislation, since the COMELEC has no authority to prescribe what the law does not provide, its functions not being legislative.[18]

Maruhom, whether intentionally or inadvertently, is muddling the issues in this case. The present case is not about her being denied her right to register as a voter, but is all about her making false material representations in her COC, which would warrant the cancellation of the same.

Abinal's Petition in SPA No. 07-093 primarily prays that the COMELEC deny due course to or cancel Maruhom's COC

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[17] *Rollo,* pp. 221-222.

[18] *Id.* at 222-223.

under Section 78 of the OEC, alleging that Maruhom made false material representations in her COC.

Under Section 78 of the OEC, a false representation of material fact in the COC is a ground for the denial or cancellation of the COC. The false representation must pertain to a material fact that affects the right of the candidate to run for the election for which he filed his COC. Such material fact refers to a **candidate's eligibility or qualification** for elective office like citizenship, residence or **status as a registered voter**.[19] Aside from the requirement of materiality, the false representation must consist of a deliberate attempt to mislead, misinform, or hide a fact that would otherwise render a candidate ineligible. In other words, it must be made with the intention to deceive the electorate as to the would-be candidate's qualifications for public office.[20]

It is settled that the COMELEC has jurisdiction over a petition filed under Section 78 of the OEC.[21] In the exercise of such jurisdiction, it is within the competence of the COMELEC to determine whether false representation as to material facts was made in the COC.[22]

If the candidate states a material representation in the COC that is false, the COMELEC is empowered to deny due course to or cancel the COC. The person whose COC is denied due course or cancelled under Section 78 of the OEC is not treated as a candidate at all, as if such person never filed a COC.[23]

Evidence on record supports the following facts: Maruhom registered as a voter in Marawi on 26 July 2003;[24] only three

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[19] *Velasco v. Commission on Elections*, G.R. No. 180051, 24 December 2008; *Fermin v. Commission on Elections*, G.R. No. 179695, 18 December 2008.

[20] *Id.*

[21] *Saya-ang, Sr. v. Commission on Elections*, 462 Phil. 373, 379 (2003).

[22] *Domino v. Commission on Elections*, 369 Phil. 798, 814 (1999).

[23] *Fermin v. Commission on Elections, supra* note 19.

[24] Records, p. 21.

days after, on 29 July 2003, Maruhom again registered as a voter in Marantao, without first canceling her registeration in Marawi;[25] and on 28 March 2007, Maruhom filed her COC declaring that she was a registered voter in Marantao and eligible to run as a candidate for the position of mayor of said municipality.[26]

Given Maruhom's double registration in Marawi and Marantao, then COMELEC should determine which registration was valid and which one was null. COMELEC could not consider both registrations valid because it would then give rise to the anomalous situation where Maruhom could vote in two precincts at the same time. This would be a dangerous precedent that would open the floodgates to massive election cheating and fraud. This was precisely the situation that the COMELEC intended to address when it issued its Minute Resolution No. 00-1513 on 25 July 2000, seven years prior to the 14 May 2007 elections in which Maruhom intended to run. To foster honesty and credibility in the registration of voters, so as to avoid the padding of vote registration, COMELEC laid down the rule in Minute Resolution No. 00-1513 that while the first registration of any voter subsists, any subsequent registration thereto is void *ab initio*.

Following the clear and plain words of Minute Resolution No. 00-1513, therefore, Maruhom's earlier registration in Marawi is deemed valid, while her subsequent registration in Marantao is void *ab initio*. Accordingly, Maruhom cannot be considered a registered voter in Marantao and, thus, she made a false representation in her COC when she claimed to be one.

Maruhom's voter registration constitutes a material fact because it affects her eligibility to be elected as municipal mayor of Marantao. Section 39(a) of Republic Act No. 7160, otherwise known as the Local Government Code of 1991,[27] requires that

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[25] *Id.* at 22.

[26] *Id.* at 20

[27] SECTION 39. ***Qualifications***. – (a) An elective local official must be a citizen of the Philippines; a registered voter in the *barangay*, municipality,

an elective local official must be, among other things, a **registered voter** in the *barangay*, **municipality**, city or province where he intends to be elected.

Several circumstances convince us that Maruhom was aware that she had a subsisting registration in Marawi and deliberately attempted to conceal said fact, which would have rendered her ineligible to run as mayoralty candidate in Marantao. Before filing her COC, Maruhom requested the COMELEC to cancel her Marawi registration.[28] It is undisputed that by the time Maruhom filed her COC, the COMELEC had not yet acted on her request for cancellation of her Marawi registration. Despite knowing that her request for cancellation of her Marawi registration was still pending before the COMELEC, Maruhom proceeded to declare, under oath, in her COC, that she was a registered voter in Marantao and that she was eligible to run for the position of mayor of said municipality. There is no showing that Maruhom informed or advised the election officer of Marantao of her subsisting Marawi registration and her pending request for cancellation of the same. Evidently, Maruhom would much rather sweep the fact of her Marawi registration under the carpet, than deal with the complications arising from it, which may very well put in jeopardy her intention to run for mayor of Marantao.

Indeed, Maruhom made false material representations in her COC that she was a registered voter in Marantao and that she was eligible to be a mayoralty candidate in said municipality.

Maruhom's insistence that only the MTC has jurisdiction to rule on her voter registration is specious. It must be underscored that in addition to the express jurisdiction of COMELEC over petitions for cancellation of COCs, on the ground of false material representations, under Section 78 of the OEC, the Constitution also extends to COMELEC all the necessary and incidental powers

city, or province, or, in the case of a member of the *sangguniang panlalawigan*, *sangguniang panlungsod*, or *sangguniang bayan*, the district where he intendsto be elected; a resident therein for at least one (1) year immediately preceding the day of the election; and able to read and write Filipino or any other local language or dialect.

[28] Records, pp. 57-59.

for it to achieve the holding of free, orderly, honest, peaceful, and credible elections.[29] The determination, therefore, made by the COMELEC that Maruhom's Marawi registration is valid, while her Marantao registration is void, is only in accord with its explicit jurisdiction, or at the very least, its residual powers. Furthermore, as aptly pointed out by Abinal and COMELEC, through the Office of the Solicitor General,[30] the 8 May 2007 Resolution of the COMELEC First Division and the 21 August 2007 Resolution of the COMELEC *en banc* **merely defeated Maruhom's intent to run for elective office, but it did not deprive her of her right to vote**. Although Maruhom's registration in Marantao is void, her registration in Marawi still subsists. She may be barred from voting or running for mayor in the former, but she may still exercise her right to vote, or even run for an elective post, in the latter.

Maruhom does not deny at all that she registered twice. However, Maruhom calls our attention to the fact that on 30 December 2003, she made a written request to the election officer of Marawi to cancel her registration therein as a voter. On 20 March 2007, she reiterated her request to the same election officer. On 23 March 2007, she also informed the COMELEC Law Department of her request for cancellation of her registration in Marawi. Thus, the failure of the election officer of Marawi to cancel Maruhom's voter registration in said municipality, despite repeated requests, should not be taken against the latter.[31]

It is true that Maruhom did make several requests for the cancellation of her Marawi registration, but without official action by the COMELEC thereon, they remain mere requests. They cannot simply be deemed granted. We take note that Maruhom's first request for cancellation of her Marawi registration was submitted on **30 December 2003**, and her next request was made only on **20 March 2007**. Maruhom subsequently filed her COC for the mayoralty position in Marantao on **28 March 2007**. Far from convincing us that she had exercised due diligence

[29] *Maruhom v. Commission on Elections*, 387 Phil. 491, 506 (2000).

[30] *Rollo*, pp. 189-190 and 207.

[31] *Id.* at 224.

in having her Marawi registration cancelled, we are more persuaded that Maruhom had not been assiduous in ensuring that her request for cancellation be acted upon by COMELEC. Maruhom's reiteration of her request for cancellation of her Marawi registration on 20 March 2007, three years and three months since her first request, and just a week prior to the filing of her COC for the mayoralty position in Marantao, reveals a harried attempt to comply with the eligibility requirements for her candidacy than a sincere desire to right a wrong. COMELEC, thus, had more than enough basis to support its conclusion of Maruhom being a double registrant whose subsequent registration in Marantao was null and void, rendering her unfit to run as municipal mayor therein.

Therefore, Maruhom, at the time she filed her COC, could not have honestly declared therein that she was a registered voter of Marantao and an eligible candidate for mayor of the said municipality. It is incumbent upon Maruhom to truthfully state her eligibility in her COC, especially so because the COC is filled up under oath.[32] An elective office is a public trust. He who aspires for elective office should not make a mockery of the electoral process by falsely representing himself.[33]

The well-settled rule is that this Court will not interfere with a COMELEC decision/resolution unless the COMELEC is shown to have committed grave abuse of discretion. Correctly understood, grave abuse of discretion is such "capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, or an exercise of power in an arbitrary and despotic manner by reason of passion or personal hostility, or an exercise of judgment so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined, or to act in a manner not at all in contemplation of law."[34] Given

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[32] Section 73 of the Omnibus Election Code reads:

SEC. 73. *Certificate of Candidacy*. No person shall be eligible for any elective public office unless he files a sworn certificate of candidacy within the period fixed herein.

[33] *Bautista v. Commission on Elections*, 460 Phil. 459, 488 (2003).

[34] *Velasco v. Commission on Elections, supra* note 19.

our foregoing discussion, we find no capricious and whimsical exercise of judgment on the part of the COMELEC in rendering the assailed Resolutions in SPA No. 07-093.

WHEREFORE, after due deliberation, the instant Petition for *Certiorari* is hereby *DISMISSED.* The Resolution dated 8 May 2007 of the COMELEC First Division and the Resolution dated 21 August 2007 of the COMELEC *En Banc* in SPA No. 07-093, are hereby *AFFIRMED in toto*. Costs against petitioner Jamela Salic Maruhom.

SO ORDERED.

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

EN BANC

[G.R. No. 180528. July 27, 2009]

CIVIL SERVICE COMMISSION, *petitioner, vs.* **NELIA O. TAHANLANGIT,** *respondent.*

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS; CIVIL SERVICE COMMISSION; RESPONDENT'S OPTIONAL RETIREMENT MOOTED THE DISAPPROVAL OF HER APPOINTMENT. — When respondent was then allowed to avail herself of optional retirement under the law after having served the government for more than 40 years, within the 15-day period to appeal under Rule 43, petitioner's July 30, 2003 Resolution had become moot and academic. Courts have generally refrained from even expressing an opinion on cases where the issues have become

moot and academic, there being no more justiciable controversy to speak of, so that a determination thereof would be of no practical use or value. In the present case, when her appointment was disapproved by petitioner, respondent would still have been able to retire under the applicable law, R.A. 8291, as said law only requires that the employee concerned must have rendered at least 15 years of service and must not have been receiving disability benefits at the time of retirement. Petitioner, having retired on August 31, 2003, the position of IPRS I is presumed to have been already filled up and to be now occupied by one bearing the requisite qualifications. Hence, passing on the disapproval of respondent's appointment no longer has any practical value. This leaves it unnecessary to pass on petitioner's apprehension that upholding as valid the appointment of one who has not qualified for the position would set a bad precedent. Suffice it to state that petitioner failed to show that according respondent the same treatment granted to Rojas and Quevedo would result in prejudice to the government or to any individual.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Kenneth C. Radaza for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

Via petition for review, the Civil Service Commission (CSC or petitioner) seeks the reversal of the Court of Appeals Decision of September 17, 2007[1] and Resolution of November 9, 2007[2] reversing and setting aside petitioner's Resolution Nos. 03-0237[3]

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[1] Annex "A" of the Petition, *rollo*, pp. 44-54. Penned by Associate Justice Myrna Dimaranan Vidal and concurred in by Associate Justices Jose L. Sabio, Jr., and Jose C. Reyes, Jr.

[2] Annex "B" of the Petition, *rollo*, p. 55. Penned by Associate Justice Myrna Dimaranan Vidal and concurred in by Associate Justices Jose L. Sabio, Jr., and Jose C. Reyes, Jr.

[3] Annex "E" of the Petition, *rollo*, pp. 66-70. Penned by then Chairperson Karina Constantino David and concurred in by Commissioners Jose F. Erestain, Jr. and J. Waldemar V. Valmores.

of February 21, 2003 and 03-0814[4] of July 30, 2003 insofar as they refer to Nelia Tahanlangit (respondent).

On January 1, 1998, the Bureau of Patents, Trademarks and Technology Transfer (BPTTT) was, pursuant to Republic Act No. 8293, "The Intellectual Property Code of the Philippines," reorganized into what is now known as the Intellectual Property Office (IPO).

As a consequence of the reorganization, 137 incumbents of the BPTTT including respondent were appointed to new positions in the approved staffing pattern of the IPO. Under the BPTTT plantilla, respondent occupied the position of Trademark Principal Examiner I — a position said to be comparable to the item of Intellectual Property Rights Specialist I (IPRS-I) under the new IPO plantilla to which she was appointed.

By Decision[5] of May 8, 2001, petitioner's National Capital Regional [NCR] Office disapproved respondent's permanent appointment, along with those of two (2) other appointees, Manuel S. Rojas (Rojas) and Ferdinand G. Quevedo (Quevedo), on the ground that they did not qualify to the respective positions to which they were appointed, respondent and Rojas having lacked the requisite educational qualifications, and Quevedo have lacked the appropriate eligibility.

In the meantime, or on December 31, 2001, Quevedo availed himself of early retirement under Republic Act No. 1616.

Then Department of Trade and Industry Secretary Manuel Roxas II, in his capacity as the appointing authority, appealed the NCR Office Decision to petitioner which it, by Resolution No. 03-0237 of February 21, 2003, affirmed.

On March 11, 2003, Rojas reached the mandatory retirement age of 65 years. The IPO sought reconsideration of petitioner's

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[4] Annex "D" of the Petition, *rollo*, pp. 58-65. Penned by then Chairperson Karina Constantino David and concurred in by Commissioners Jose F. Erestain, Jr. and J. Waldemar V. Valmores.

[5] Annex "C" of the Petition, *rollo*, pp. 56-57. Penned by Atty. Myrna Macatangay, Director III, CSC-NCR.

Resolution No. 03-0237 which petitioner partly granted by Resolution No. 03-0814 of July 30, 2003. Petitioner held that since Quevedo's retirement took effect on December 31, 2001, prior to the issuance of Resolution No. 03-0237 on February 21, 2003, his appointment as Intellectual Property Rights Specialist II should no longer be disturbed, as the same remained valid and subsisting at the time of his availment of optional retirement.

Petitioner further held that the same ruling applied to Rojas, who retired mandatorily on March 11, 2003, after its Resolution No. 03-0237 was issued on February 21, 2003; but in view of the timely filing by Rojas of a motion for reconsideration of said Resolution, his appointment to the position of Intellectual Property Rights Specialist I should also be deemed valid and subsisting. Petitioner affirmed the disapproval of respondent's appointment, however.

Respondent appealed petitioner's Resolution of July 30, 2003 to the Court of Appeals. In the meantime or on August 31, 2003, she optionally retired under Republic Act No. 8291, "The Government Service Insurance System Act of 1997."

By the assailed Decision dated September 17, 2003, the appellate court granted respondent's petition and reversed and set aside petitioner's disapproval of her appointment.

The appellate court held that petitioner's challenged Resolutions had been rendered moot and academic by respondent's retirement from the government service on August 31, 2003. Further, it held that respondent's "optional retirement prior to the finality of [petitioner's] assailed Resolutions is sufficient grounds to accord her the same consideration granted to Rojas and Quevedo; and that in line with its (the appellate court's) equity jurisdiction, "the ends of substantial justice will be better served if herein respondent be allowed to retire from the service upholding that her permanent appointment be considered valid and subsisting at the time of her retirement."

Petitioner's motion for reconsideration having been denied by Resolution of November 9, 2007, the present petition was filed.

Petitioner contends that its ruling in Quevedo's and Rojas' cases cannot be applied to respondent's case, because the attendant circumstances are not analogous, it pointing out that in the former's cases, while the NCR disapproved their appointments as IPRS II and IPRS I, respectively, the disapproval was not yet final and executory at the time of their retirement, whereas in respondent's case, she availed of optional retirement only on August 31, 2003 or after its Resolution No. 03-0814 of July 30, 2003 had become final and executory, pursuant to Item 6 of CSC Memorandum Circular No. 15, s. 2002, which states:

6. The denial of the Commission proper of the Motion for Reconsideration shall be final and executory.

Petitioner further contends that while respondent appealed its Resolutions to the appellate court, the appeal did not stay the execution thereof; hence, at the time she retired, the disapproval of her appointment had been affirmed.

Petitioner also maintains that upholding respondent's appointment to the IPO as IPRS I despite its disapproval thereof having become final and executory would establish a bad precedent in government reorganization, as it relaxes the requirements of the law on appointments/reappointments. Moreover, it contends that a permanent appointment can be issued only to a person who meets all the requirements for the position to which he or she is being appointed; and if respondent did not qualify as IPRS I due to lack of a college degree, the disapproval of her appointment is justified.

Petitioner goes on to debunk respondent's claim that as a permanent employee of BPTTT she is entitled, as a matter of right, to a permanent position in the IPO, it ratiocinating that the circumstance arose out of a valid reorganization plan and, therefore, her security of tenure was not violated. It adds that with the abolition of BPTTT under Republic Act No. 8293, the plantilla positions thereunder ceased to exist and, therefore, there is in law no occupant thereof and no security of tenure to speak of.

Citing *De La Llana v. Alba,*[6] petitioner furthermore avers that the abolition of an office within the competence of a legitimate body, if done in good faith, suffers from no infirmity; and a valid abolition of office results in neither removal nor separation of the incumbents.

Finally, petitioner asserts that, contrary to respondent's position, there is no vested property right to be re-employed in a reorganized office, following *National Land Titles and Deeds Registration Administration v. Civil Service Commission*.[7]

Respondent, in her Comment,[8] insists that her retirement rendered moot and academic the present petition. Invoking humane considerations and illnesses, she begs for the Court's indulgence in order that the retirement benefits that she is presently enjoying be not disturbed.

The Court notes that neither the assailed Decision of the appellate court nor respondent's Comment touched on the validity of Republic Act No. 8293. Neither was the propriety of petitioner's disapproval of respondent's appointment passed upon.

The only issue thus presented for resolution is whether respondent's optional retirement mooted the disapproval of her appointment.

The Court holds in the affirmative.

When respondent retired from the service on August 31, 2003, petitioner's Resolution No. 03-0237 of July 30, 2003 had not attained finality, as it was pending appeal before the appellate court.

Section 80 of petitioner's Resolution No. 99-1936, "The Uniform Rules on Administrative Cases in the Civil Service," provides that a decision of the CSC or its Regional Office shall be immediately executory after fifteen (15) days from receipt thereof, unless a motion for reconsideration is seasonably filed, thus:

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[6] No. L-57883, March 12, 1982, 112 SCRA 294.

[7] G.R. No. 84301, April 7, 1993, 221 SCRA 145.

[8] *Rollo*, pp. 136-138.

Section 80. *Execution of Decision*. – **The decisions of the Commission Proper or its Regional Offices shall be immediately executory after fifteen (15) days from receipt thereof, unless a motion for reconsideration is seasonably filed, in which case the execution of the decision shall be held in abeyance**. (Emphasis and underscoring supplied)

In respondent's case, she received petitioner's Resolution of July 30, 2003 on August 18, 2003; hence, she had until September 2, 2003 to file with the Court of Appeals her appeal or motion for extension of time to file it, in accordance with Section 12, Rule 43 of the Revised Rules of Civil Procedure; otherwise, the said Resolution would become final and executory. Records show that respondent timely filed the petition for review on September 1, 2003. Thus, when she optionally retired from the service on August 31, 2003, petitioner's July 30, 2003 Resolution invalidating her appointment had not attained finality. Petitioner's ruling in the cases of Rojas and Quevedo thus applies.

Petitioner contends, however, that under Item 6 of CSC Memorandum Circular No. 15, s. 2002, its denial of "the Motion for Reconsideration shall be final and executory." The Circular must, however, be read in conjunction with the **above-stated rule** on the disposition of cases before the CSC, as well as Rule 43 of the Revised Rules of Procedure providing appeal from decisions and final orders of quasi-judicial agencies of which it is one. To rule that respondent was effectively terminated from office as of July 30, 2003, the date of promulgation of petitioner's Resolution affirming the disapproval of her appointment would render nugatory and inutile the relief provided for under Rule 43, wherein one can even ask for a stay of the execution of the questioned Resolution.

When respondent was then allowed to avail herself of optional retirement under the law after having served the government for more than 40 years, within the 15-day period to appeal under Rule 43, petitioner's July 30, 2003 Resolution had become moot and academic.

Courts have generally refrained from even expressing an opinion on cases where the issues have become moot and academic,

there being no more justiciable controversy to speak of, so that a determination thereof would be of no practical use or value.[9] In the present case, when her appointment was disapproved by petitioner, respondent would still have been able to retire under the applicable law, R.A. 8291, as said law only requires that the employee concerned must have rendered at least 15 years of service and must not have been receiving disability benefits at the time of retirement. Petitioner, having retired on August 31, 2003, the position of IPRS I is presumed to have been already filled up and to be now occupied by one bearing the requisite qualifications. Hence, passing on the disapproval of respondent's appointment no longer has any practical value.

This leaves it unnecessary to pass on petitioner's apprehension that upholding as valid the appointment of one who has not qualified for the position would set a bad precedent. Suffice it to state that petitioner failed to show that according respondent the same treatment granted to Rojas and Quevedo would result in prejudice to the government or to any individual.

WHEREFORE, the petition is *DENIED.*

SO ORDERED.

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

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[9] *Engaño v. Court of Appeals*, G.R. No. 156959, June 27, 2006, 493 SCRA 323, 329.

FIRST DIVISION

[G.R. No. 180675. July 27, 2009]

VIRGILIO BOTE, *petitioner, vs.* **SAN PEDRO CINEPLEX PROPERTIES CORPORATION,** *respondent.*

SYLLABUS

REMEDIAL LAW; SPECIAL CIVIL ACTIONS; FORCIBLE ENTRY; INSTANT CASE REMANDED TO THE TRIAL COURT TO DETERMINE THE METES AND BOUNDS OF THE LOTS COVERED BY THE PARTIES' RESPECTIVE TITLES AND TO GRANT POSSESSION TO THE PROPER PARTY. — Both petitioner and respondent assert ownership and possession of the land in question and present their respective Torrens titles as evidence thereof. While the MTC found that respondent's certificates of title, TCT Nos. 309608, 309609 and 309610, could be traced back to the mother title, OCT No. 217, it did not make any finding on whether the said certificates in fact cover the disputed property. Considering the vastness of the land covered by OCT No. 217 and the fact that it had been subdivided many times over the years, petitioner and respondent might possibly be claiming **distinct, albeit contiguous,** properties. This can actually be a situation of mistaking another's property as one's own. Settled is the rule that the person who has a Torrens title over the land is entitled to possession thereof. The MTC merely depended on the allegations of the parties that their respective certificates cover the land in question. However, it did not determine whose title actually covers the disputed property. A geodetic survey to determine the metes and bounds of the lots covered by the respective titles of the parties could have solved the matter.

APPEARANCES OF COUNSEL

Tabalingcos and Associates Law Offices for petitioner.
Balgos and Perez for respondent.

RESOLUTION

CORONA, *J.*:

On June 21, 2006, respondent San Pedro Cineplex Properties Corporation filed a complaint for forcible entry[1] in the Municipal Trial Court (MTC) of San Pedro, Laguna, Branch 2.

Respondent asserted that it owned several contiguous properties (with a total area of 74,847 sq.m.) covered by TCT Nos. 309608, 309609 and 309610[2] in Barangay Landayan, San Pedro, Laguna. It purchased the said land from La Paz Housing (LPH) in 1994 and had been leasing out the premises to De la Rosa Transit which operated a bus terminal therein.

Respondent further claimed that its peaceful and uninterrupted possession of the said properties was disrupted in June 2006 when petitioner Virgilio Bote, through violence and intimidation, entered the premises, brought in heavy machineries and built a makeshift structure.

Petitioner, on the other hand, asserted that the land in question was covered by TCT No. T-35050 and registered in the name of his late father-in-law, Manuel Humada Eñano, whose sole heir was his wife, Jennifer Eñano-Bote. In June 2006, he brought in machineries into the premises intending to develop the same in view of the commercialization of Barangay Landayan.

Petitioner likewise claimed that the Eñanos were in possession of the land as their caretaker had been living there since 1965 when Manuel purchased the property (then covered by TCT No. 19832) from Gliceria Kasubuan.

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[1] Under Rule 70 of the Rules of Court. The complaint was docketed as Civil Case No. 06-419. *Rollo,* pp. 86-92.

[2] Respondent appeared as the registered owner in the said titles. *Id.*, pp. 93-97.

Furthermore, inasmuch as the property was the subject of a pending ejectment case,[3] respondent could not have been in possession of the property.[4]

After inspecting the disputed premises and evaluating the pleadings and evidence submitted by the parties, the MTC found that the land in question was originally part of a property covered by OCT No. 217 registered in the name of Gliceria Kasubuan. Kasubuan sold the property to spouses Antonio Sibulo and Rosario Islan who were issued TCT No. 31852. When the property was subdivided pursuant to a judicial order, TCT No. 31852 was cancelled and TCT Nos. 42530 and 42531 were issued in its place. Over the years, the former Kasubuan property was sold and subdivided several times. In 1990, LPH purchased three contiguous lots (with a total area of 74,847 sq. m.) which were part of the Kasubuan property. It built concrete structures and installed security guards within the premises. In 1994, it sold the said parcels of land to respondent. Respondent, the present registered owner, had been leasing out the property to De la Rosa Transit which operates a bus terminal within the premises. In view of these findings, the MTC concluded that respondent had been in peaceful and continuous possession of the property in question since 1994.

In a decision dated September 22, 2006,[5] the MTC held:

> WHEREFORE, finding [respondent's] cause of action to be sufficiently established being supported by evidence on record, judgment is hereby rendered in favor of [respondent] and against [petitioner] as follows:
>
> 1. Ordering [petitioner] and all persons claiming right under them to vacate the parcels of land covered by TCT Nos. 309608, 309609 and T-309610 by removing the fence it built, the equipment, container vans, bulldozers and all security guards it deployed and brought inside the premises

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[3] Civil Case No. 02-308, *San Pedro Cineplex Properties v. Vicente Vergara Atanacio et al.,* in the MTC of San Pedro, Laguna, Branch 1.

[4] *Rollo,* pp. 95-103.

[5] Penned by Acting Presiding Judge Elpidio R. Calis. *Id.*, pp. 75-80.

and surrender peaceful possession of the above parcels of land to herein [respondent];

2. To pay [respondent] the amount of ₱20,000 as attorney's fees and

3. To pay the cost of suit.

SO ORDERED.

Petitioner assailed the decision of the MTC in the Regional Trial Court (RTC) of San Pedro, Laguna, Branch 93.[6] Petitioner insisted that Manuel purchased the land covered by TCT No. 19832 (which, like respondent's certificates, could be traced back to OCT No. 217) from Kasubuan in 1965 and that the said transaction was recorded in the primary book of entries in the Register of Deeds of Sta. Cruz, Laguna. Furthermore, the Eñanos had caretakers living on the land and had been paying real estate taxes thereon since 1966. Thus, they enjoyed continuous and uninterrupted possession of the disputed premises.

In a decision dated January 29, 2007,[7] the RTC reversed and set aside the decision of the MTC. It held that since the property was the subject of a pending ejectment case, respondent could not have had prior possession of the disputed premises.

Respondent assailed the January 29, 2007 decision of the RTC via a petition for review[8] in the Court of Appeals (CA) insisting that it proved by preponderance of evidence its prior possession of the property.

In a decision dated September 28, 2007,[9] the CA set aside the decision of the RTC and reinstated the MTC decision. It held that respondent was in peaceful possession of the disputed property from 1994 until petitioner entered the premises in 2006. Moreover,

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[6] Docketed as Civil Case No. SPL-1206. Petitioner filed a petition for *certiorari* under Rule 65 of the Rules of Court but the RTC decided it as an appeal.

[7] Penned by Judge Francisco Dizon-Pano. *Rollo,* pp. 68-73.

[8] Docketed as CA-G.R. SP No. 99354.

[9] Penned by Associate Justice Ricardo R. Rosario and concurred in by Associate Justices Rebecca de Guia-Salvador and Magdangal M. de Leon. *Rollo,* pp. 51-61.

the filing of another ejectment case by respondent did not negate its prior possession of the disputed land.

Petitioner moved for reconsideration but it was denied.[10] Hence, this recourse[11] with petitioner asserting that the CA erred in finding that respondent proved its prior possession of the disputed land.

We remand the case to the MTC.

Both petitioner and respondent assert ownership and possession of the land in question and present their respective Torrens titles as evidence thereof.

While the MTC found that respondent's certificates of title, TCT Nos. 309608, 309609 and 309610, could be traced back to the mother title, OCT No. 217, it did not make any finding on whether the said certificates in fact cover the disputed property.

Considering the vastness of the land covered by OCT No. 217 and the fact that it had been subdivided many times over the years, petitioner and respondent might possibly be claiming **distinct, albeit contiguous**, properties. This can actually be a situation of mistaking another's property as one's own.

Settled is the rule that the person who has a Torrens title over the land is entitled to possession thereof.[12] The MTC merely depended on the allegations of the parties that their respective certificates cover the land in question. However, it did not determine whose title actually covers the disputed property. A geodetic survey to determine the metes and bounds of the lots covered by the respective titles of the parties could have solved the matter.

WHEREFORE, the case is hereby *REMANDED* to the Municipal Trial Court of San Pedro, Laguna, Branch 2 for further proceedings, particularly to determine whose certificate(s) of

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[10] Resolution dated November 28, 2007. *Id.*, pp. 65-66.

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

[12] *Arambulo v. Gungab,* G.R. No. 156581, 30 September 2005, 471 SCRA 640, 649-650. (citations omitted)

title actually cover the disputed property and thereafter, to grant *possession* to the proper party.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 185220. July 27, 2009]

LAGUNA METTS CORPORATION, *petitioner, vs.* **COURT OF APPEALS, ARIES C. CAALAM and GERALDINE ESGUERRA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; RULES PRESCRIBING THE TIME FOR DOING SPECIFIC ACTS OR FOR TAKING CERTAIN PROCEEDINGS ARE CONSIDERED ABSOLUTELY INDISPENSABLE TO PREVENT NEEDLESS DELAYS AND TO ORDERLY AND PROMPTLY DISCHARGE JUDICIAL BUSINESS; MANDATORY NATURE. — Rules of procedure must be faithfully complied with and should not be discarded with the mere expediency of claiming substantial merit. As a corollary, rules prescribing the time for doing specific acts or for taking certain proceedings are considered **absolutely indispensable** to prevent needless delays and to orderly and promptly discharge judicial business. By their very nature, these rules are regarded as mandatory.

2. ID.; ID.; ID.; RULES PRESCRIBING TIME; PURPOSE. -In *De Los Santos v. Court of Appeals*, we ruled: Section 4 of Rule 65 prescribes a period of 60 days within which to file a petition for *certiorari*. **The 60-day period is deemed**

reasonable and sufficient time for a party to mull over and to prepare a petition asserting grave abuse of discretion by a lower court. The period was specifically set to avoid any unreasonable delay that would violate the constitutional rights of the parties to a speedy disposition of their case.

3. **ID.; ID.; ID.; THE REMOVAL OF THE PARAGRAPH AUTHORIZING THE PROPER COURTS TO GRANT EXTENSIONS BY A.M. NO. 07-07-12-SC SIMPLY MEANT THAT THERE CAN NO LONGER BE EXTENSION OF THE 60-DAY PERIOD WITHIN WHICH TO FILE A PETITION FOR *CERTIORARI*. —** While the proper courts previously had discretion to extend the period for filing a petition for *certiorari* beyond the 60-day period, the amendments to Rule 65 under A.M. No. 07-7-12-SC disallowed extensions of time to file a petition for *certiorari* with the deletion of the paragraph that previously permitted such extensions. As a rule, an amendment by the deletion of certain words or phrases indicates an intention to change its meaning. It is presumed that the deletion would not have been made if there had been no intention to effect a change in the meaning of the law or rule. The amended law or rule should accordingly be given a construction different from that previous to its amendment. If the Court intended to retain the authority of the proper courts to grant extensions under Section 4 of Rule 65, the paragraph providing for such authority would have been preserved. The removal of the said paragraph under the amendment by A.M. No. 07-7-12-SC of Section 4, Rule 65 simply meant that there can no longer be any extension of the 60-day period within which to file a petition for *certiorari*.

4. **ID.; ID.; ID.; RATIONALE FOR THE AMENDMENTS UNDER A.M. NO. 07-7-12-SC IS ESSENTIALLY TO PREVENT THE USE OF THE PETITION FOR *CERTIORARI* UNDER RULE 65 TO DELAY A CASE OR EVEN DEFEAT THE ENDS OF JUSTICE; THE RULE STANDS THAT PETITIONS FOR *CERTIORARI* MUST BE FILED STRICTLY WITHIN 60 DAYS FROM NOTICE OF JUDGMENT OR FROM THE ORDER DENYING A MOTION FOR RECONSIDERATION. —** The rationale for the amendments under A.M. No. 07-7-12-SC is essentially to prevent the use (or abuse) of the petition for *certiorari* under Rule 65 to delay a case or even defeat the

ends of justice. Deleting the paragraph allowing extensions to file petition on compelling grounds did away with the filing of such motions. As the Rule now stands, petitions for *certiorari* must be filed **strictly within 60 days** from notice of judgment or from the order denying a motion for reconsideration.

5. **ID.; ID.; ID.; REASON FOR THE DELAY PROFFERED BY PRIVATE RESPONDENT'S COUNSEL DID NOT QUALIFY AS COMPELLING AND SUFFICIENT REASON TO DEVIATE FROM THE 60-DAY RULE. —** Even assuming that the Court of Appeals retained the discretion to grant extensions of time to file a petition for *certiorari* for compelling reasons, the reasons proffered by private respondents' counsel did not qualify as compelling. Heavy workload is relative and often self-serving. Standing alone, it is not a sufficient reason to deviate from the 60-day rule.

6. **ID.; ID.; ID.; GRANT OF EXTENSION IN CONTRAVENTION OF A.M. NO. 07-7-12-SC; AN ACT PERFORMED IN EXCESS OF JURISDICTION. —** In granting the private respondents' motion for extension of time to file petition for *certiorari*, the Court of Appeals disregarded A. M. No. 07-7-12-SC. The action amounted to a modification, if not outright reversal, by the Court of Appeals of A.M. No. 07-7-12-SC. In so doing, the Court of Appeals arrogated to itself a power it did not possess, a power that only this Court may exercise. For this reason, the challenged resolutions dated August 7, 2008 and October 22, 2008 were invalid as they were rendered by the Court of Appeals in excess of jurisdiction.

7. **ID.; ID.; ID.; WHILE TECHNICALITIES SHOULD NOT UNDULY HAMPER OUR QUEST FOR JUSTICE, ORDERLY PROCEDURE IS ESSENTIAL TO THE SUCCESS OF THAT QUEST TO WHICH ALL COURTS ARE DEVOTED. —** As to the other ground cited by private respondents' counsel, suffice it to say that it was a bare allegation unsubstantiated by any proof or affidavit of merit. Besides, they could have filed the petition on time with a motion to be allowed to litigate *in forma pauperis*. While social justice requires that the law look tenderly on the disadvantaged sectors of society, neither the rich nor the poor has a license to disregard rules of procedure. The fundamental rule of human relations enjoins everyone, regardless of standing in life, to duly observe procedural rules as an aspect of acting with justice, giving

everyone his due and observing honesty and good faith. For indeed, while technicalities should not unduly hamper our quest for justice, orderly procedure is essential to the success of that quest to which all courts are devoted.

APPEARANCES OF COUNSEL

Jimeno Cope & David Law Offices for petitioner.
Banzuela Velandrez & Associates for private respondents.
Morales Rojas & Risos-Vidal for Peerless Integrated Services, Inc.

R E S O L U T I O N

CORONA, *J.*:

This petition arose from a labor case filed by private respondents Aries C. Caalam and Geraldine Esguerra against petitioner Laguna Metts Corporation (LMC).[1] The labor arbiter decided in favor of private respondents and found that they were illegally dismissed by LMC. On appeal, however, the National Labor Relations Commission (NLRC) reversed the decision of the labor arbiter in a decision dated February 21, 2008. Private respondents' motion for reconsideration was denied in a resolution dated April 30, 2008.

Counsel for private respondents received the April 30, 2008 resolution of the NLRC on May 26, 2008. On July 25, 2008, he filed a motion for extension of time to file petition for *certiorari* under Rule 65 of the Rules of Court.[2] The motion alleged that, for reasons[3] stated therein, the petition could not be filed in the

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[1] In particular, Caalam and Esguerra who were allegedly employed with LMC as a machine operator and an inspector, respectively, filed a case for illegal dismissal, regularization and non-payment of service incentive leave with claims for full backwages and payment of moral and exemplary damages and attorney's fees against LMC.

[2] Annex "D" of petition. *Rollo*, pp. 26-29.

[3] Specifically, the motion cited "lack of material time occasioned by voluminous pleadings that have to be written and numerous court appearances to be undertaken" by private respondents' counsel and "lack of funds" on the part of the private respondents as the reasons in support thereof. *Id.*, pp. 26-27.

Court of Appeals within the prescribed 60-day period.[4] Thus, a 15-day extension period was prayed for.[5]

In a resolution dated August 7, 2008,[6] the Court of Appeals granted the motion and gave private respondents a non-extendible period of 15 days within which to file their petition for *certiorari.* LMC moved for the reconsideration of the said resolution claiming that extensions of time to file a petition for *certiorari* are no longer allowed under Section 4, Rule 65 of the Rules of Court, as amended by A.M. No. 07-7-12-SC dated December 4, 2007.[7] This was denied in a resolution dated October 22, 2008. According to the appellate court, while the amendment of the third paragraph of Section 4, Rule 65 admittedly calls for stricter application to discourage the filing of unwarranted motions for extension of time, it did not strip the Court of Appeals of the discretionary power to grant a motion for extension in exceptional cases to serve the ends of justice.

Aggrieved, LMC now assails the resolutions dated August 7, 2008 and October 22, 2008 of the Court of Appeals in this petition for *certiorari* under Rule 65 of the Rules of Court. It contends that the Court of Appeals committed grave abuse of discretion when it granted private respondents' motion for extension of time to file petition for *certiorari* as the Court of Appeals had no power to grant something that had already been expressly deleted from the rules.

We agree.

Rules of procedure must be faithfully complied with and should not be discarded with the mere expediency of claiming substantial merit.[8] As a corollary, rules prescribing the time for doing specific

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[4] The last day of the 60-day period was on July 25, 2008, the day the motion was filed.

[5] *Supra* note 2, p. 27. The case was docketed as CA-G.R. SP No. 104510.

[6] Penned by Associate Justice Normandie B. Pizarro and concurred in by Associate Justices Edgardo P. Cruz (retired) and Fernanda Lampas Peralta of the Seventh Division of the Court of Appeals. *Rollo*, p. 18.

[7] The amendments took effect on December 27, 2007.

[8] *Yutingco v. Court of Appeals*, 435 Phil. 83 (2002).

acts or for taking certain proceedings are considered **absolutely indispensable** to prevent needless delays and to orderly and promptly discharge judicial business. By their very nature, these rules are regarded as mandatory.[9]

In *De Los Santos v. Court of Appeals*,[10] we ruled:

Section 4 of Rule 65 prescribes a period of 60 days within which to file a petition for *certiorari*. **The 60-day period is deemed reasonable and sufficient time for a party to mull over and to prepare a petition asserting grave abuse of discretion by a lower court**. **The period was specifically set to avoid any unreasonable delay that would violate the constitutional rights of the parties to a speedy disposition of their case.** (emphasis supplied)

While the proper courts previously had discretion to extend the period for filing a petition for *certiorari* beyond the 60-day period,[11] the amendments to Rule 65 under A.M. No. 07-7-12-SC disallowed extensions of time to file a petition for *certiorari* with the deletion of the paragraph that previously permitted such extensions.

Section 4, Rule 65 previously read:

SEC. 4. *When and where petition filed*. – The petition shall be filed not later than sixty (60) days from notice of the judgment or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from notice of the denial of said motion.

The petition shall be filed in the Supreme Court or, if it relates to the acts or omissions of a lower court or of a corporation, board, officer or person, in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals whether or not the same is in aid of its appellate jurisdiction, or in the Sandiganbayan if it is in aid of its appellate jurisdiction. If it involves the acts or omissions of a quasi-judicial agency, and unless otherwise provided by law or

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[9] *Gonzales v. Torres*, A.M. No. MTJ-06-1653, 30 July 2007, 528 SCRA 490.

[10] G.R. 147912, 26 April 2006, 488 SCRA 351, citing *Yutingco v. Court of Appeals*, *supra.*

[11] Per A.M. No. 00-2-03-SC effective September 1, 2000.

these rules, the petition shall be filed in and cognizable only by the Court of Appeals.

No extension of time to file the petition shall be granted except for compelling reason and in no case exceeding 15 days.[12] (emphasis supplied)

With its amendment under A.M. No. 07-7-12-SC, it now reads:

SEC. 4. *When and where to file petition*. – The petition shall be filed not later than sixty (60) days from notice of the judgment or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from the notice of the denial of the motion.

If the petition relates to an act or an omission of a municipal trial court or of a corporation, a board, an officer or a person, it shall be filed with the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals or with the Sandiganbayan, whether or not the same is in aid of the court's appellate jurisdiction. If the petition involves an act or an omission of a quasi-judicial agency, unless otherwise provided by law or these rules, the petition shall be filed with and be cognizable only by the Court of Appeals.

In election cases involving an act or omission of a municipal or a regional trial court, the petition shall be filed exclusively with the Commission on Elections, in aid of its appellate jurisdiction.

As a rule, an amendment by the deletion of certain words or phrases indicates an intention to change its meaning. It is presumed that the deletion would not have been made if there had been no intention to effect a change in the meaning of the law or rule. The amended law or rule should accordingly be given a construction different from that previous to its amendment.[13]

If the Court intended to retain the authority of the proper courts to grant extensions under Section 4 of Rule 65, the paragraph providing for such authority would have been preserved.

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[12] *Id.*

[13] See *Niere v. Court of First Instance of Negros Occidental, Br. II*, 153 Phil. 450 (1973).

The removal of the said paragraph under the amendment by A.M. No. 07-7-12-SC of Section 4, Rule 65 simply meant that there can no longer be any extension of the 60-day period within which to file a petition for *certiorari*.

The rationale for the amendments under A.M. No. 07-7-12-SC is essentially to prevent the use (or abuse) of the petition for *certiorari* under Rule 65 to delay a case or even defeat the ends of justice. Deleting the paragraph allowing extensions to file petition on compelling grounds did away with the filing of such motions. As the Rule now stands, petitions for *certiorari* must be filed **strictly within 60 days** from notice of judgment or from the order denying a motion for reconsideration.

In granting the private respondents' motion for extension of time to file petition for *certiorari*, the Court of Appeals disregarded A.M. No. 07-7-12-SC. The action amounted to a modification, if not outright reversal, by the Court of Appeals of A.M. No. 07-7-12-SC. In so doing, the Court of Appeals arrogated to itself a power it did not possess, a power that only this Court may exercise.[14] For this reason, the challenged resolutions dated August 7, 2008 and October 22, 2008 were invalid as they were rendered by the Court of Appeals in excess of its jurisdiction.

Even assuming that the Court of Appeals retained the discretion to grant extensions of time to file a petition for *certiorari* for compelling reasons, the reasons proffered by private respondents' counsel did not qualify as compelling. Heavy workload is relative and often self-serving.[15] Standing alone, it is not a sufficient reason to deviate from the 60-day rule.[16]

As to the other ground cited by private respondents' counsel, suffice it to say that it was a bare allegation unsubstantiated by any proof or affidavit of merit. Besides, they could have filed the petition on time with a motion to be allowed to litigate *in forma pauperis*. While social justice requires that the law look

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[14] *See* Section 5(5), Article VIII, Constitution.

[15] *Yutingco v. Court of Appeals*, *supra.*

[16] *Id.*

tenderly on the disadvantaged sectors of society, neither the rich nor the poor has a license to disregard rules of procedure.tenderly on the disadvantaged sectors of society, neither the rich nor the poor has a license to disregard rules of procedure. The fundamental rule of human relations enjoins everyone, regardless of standing in life, to duly observe procedural rules as an aspect of acting with justice, giving everyone his due and observing honesty and good faith.[17] For indeed, while technicalities should not unduly hamper our quest for justice, orderly procedure is essential to the success of that quest to which all courts are devoted.[18]

WHEREFORE, the petition is hereby *GRANTED*. The resolutions dated August 7, 2008 and October 22, 2008 of the Court of Appeals in CA-G.R. SP No. 104510 are *REVERSED* and *SET ASIDE* and the petition in the said case is ordered *DISMISSED* for having been filed out of time.

SO ORDERED.

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

EN BANC

[G.R. Nos. 186007 & 186016. July 27, 2009]

SALVADOR DIVINAGRACIA, JR., *petitioner, vs.* **COMMISSION ON ELECTIONS and ALEX A. CENTENA,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ELECTION LAWS; COMMISSION ON ELECTIONS RULES OF PROCEDURE; PAYMENT OF

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[17] See Article 19, Civil Code.

[18] Yutingco vs. Court of Appeals, supra.

APPEAL FEE; THE NON-PAYMENT OR THE INSUFFICIENT PAYMENT OF THE ADDITIONAL APPEAL FEE DOES NOT AFFECT THE PERFECTION OF THE APPEAL AND DOES NOT RESULT IN THE OUTRIGHT OR *IPSO FACTO* DISMISSAL OF THE APPEAL; THE COMMISSION ON ELECTIONS HAS DISCRETION TO ALLOW OR DISMISS A PERFECTED APPEAL THAT LACKS PAYMENT OF THE PRESCRIBED APPEAL FEE. —That Comelec Resolution No. 8486 took effect on July 24, 2008 or after a party had filed a notice of appeal, as in the case of petitioner, does not exempt it from paying the Comelec-prescribed appeal fees. The Comelec merely clarified the **existing** rules on the payment of such appeal fees, and allowed the payment thereof within 15 days from filing the notice of appeal. In the recent case of *Aguilar v. Comelec*, the Court harmonized the rules with the following ratiocination: The foregoing resolution is consistent with A.M. No. 07-4-15-SC and the COMELEC Rules of Procedure, as amended. The appeal to the COMELEC of the trial court's decision in election contests involving municipal and *barangay* officials is **perfected** upon the filing of the notice of appeal **and** the payment of the ₱1,000.00 appeal fee to the court that rendered the decision within the five-day reglementary period. **The non-payment or the insufficient payment of the additional appeal fee of ₱3,200.00 to the COMELEC** Cash Division, in accordance with Rule 40, Section 3 of the COMELEC Rules of Procedure, as amended, **does not affect the perfection of the appeal and does not result in outright or *ipso facto* dismissal of the appeal.** Following Rule 22, Section 9(a) of the COMELEC Rules, the appeal ***may*** be dismissed. And pursuant to Rule 40, Section 18 of the same rules, if the fees are not paid, the COMELEC *may* refuse to take action thereon until they are paid and *may* dismiss the action or the proceeding. In such a situation, the COMELEC is merely given the **discretion** to dismiss the appeal or not. In *Aguilar*, the Court recognized the Comelec's discretion to allow or dismiss a "perfected" appeal that lacks payment of the Comelec-prescribed appeal fee. The Court stated that it was more in keeping with fairness and prudence to allow the appeal which was, similar to the present case, perfected months before the issuance of Comelec Resolution No. 8486.

2. ID.; ID.; ID.; ID.; ID.; CASE OF *AGUILAR V. COMELEC* HAS NOT DILUTED THE FORCE OF COMELEC RESOLUTION NO. 8486 ON THE MATTER OF COMPLIANCE WITH THE COMELEC REQUIRED APPEAL FEES; RESOLUTION NO. 8486 MERELY CLARIFIED THE RULES ON COMELEC APPEAL FEES WHICH HAS BEEN EXISTING AS EARLY AS 1993. — *Aguilar* has not, however, diluted the force of Comelec Resolution No. 8486 on the matter of compliance with the Comelec-required appeal fees. To reiterate, Resolution No. 8486 merely *clarified* the rules on Comelec appeal fees which have been existing as early as 1993, the amount of which was last fixed in 2002. The Comelec even went one step backward and extended the period of payment to 15 days from the filing of the notice of appeal.

3. ID.; ID.; ID.; ID.; ID.; COURT DECLARES FOR THE GUIDANCE OF THE BENCH AND BAR THAT FOR NOTICES OF APPEAL FILED AFTER THE PROMULGATION OF THE INSTANT DECISION, ERRORS IN THE MATTER OF NON-PAYMENT OR INCOMPLETE PAYMENT OF THE TWO APPEAL FEES IN ELECTION CASES ARE NO LONGER EXCUSABLE. — Considering that a year has elapsed after the issuance on July 15, 2008 of Comelec Resolution No. 8486, and to further affirm the discretion granted to the Comelec which it precisely articulated through the specific guidelines contained in said Resolution, the Court **NOW DECLARES**, for the guidance of the Bench and Bar, *that* **for notices of appeal filed *after* the promulgation of this decision**, **errors in the matter of non-payment or incomplete payment of the two appeal fees in election cases are *no longer excusable.***

4. ID.; ID.; ID.; ID.; ID.; COMELEC'S APPLICATION OF THE DOCTRINE OF ESTOPPEL BY LACHES IS WELL TAKEN; PETITIONER'S FILING OF THE APPELLEE'S BRIEF WAS INVOCATION OF THE COMELEC JURISDICTION AND AN INDICATION OF HIS ACTIVE PARTICIPATION AND CANNOT BE REFUTED ON THE MERE ASSEVERATION THAT HE WAS ONLY COMPLYING WITH THE COMELEC'S DIRECTIVE TO FILE THE SAME. — On the Comelec's application of the doctrine of estoppel by laches, records show that petitioner raised the issue of lack of jurisdiction for his and private respondent's non-payment of the appeal fee only after the Comelec appreciated

the contested ballots and ruled in favor of respondent, an issue which could have been raised with reasonable diligence at the earliest opportunity. The Court finds the Comelec resolution well-taken. That petitioner's filing of the appellee's brief was an invocation of the Comelec's jurisdiction and an indication of his active participating cannot be refuted on the mere asseveration that he was only complying with the Comelec's directive to file the same. The submission of briefs was ordered precisely because the Comelec could not anticipate the claims and defenses that would be raised by the parties. Moreover, in his Verified Motion for Reconsideration, petitioner once again pleaded to the Comelec to exercise its jurisdiction by dismissing private respondent's appeal on the merits. The doctrine of estoppel by laches is not new in election cases. It has been applied in at least two cases involving the payment of filing fees.

5. **ID.; ID.; ID.; ID.; ID.; TO ALLOW PETITIONER TO ESPOUSE HIS STALE DEFENSE OF NON-PAYMENT OF APPEAL FEES AT LATE STAGE OF THE PROCEEDINGS WOULD RUN AFOUL THE BASIC TENETS OF FAIRNESS. —**To allow petitioner to espouse his stale defense at such late stage of the proceedings would run afoul of the basic tenets of fairness. It is of no moment that petitioner raised the matter in a motion for reconsideration in the same appellate proceedings in the Comelec, and not before a higher court. It bears noting that unlike appellate proceedings before the Comelec, a motion for reconsideration of a trial court's decision in an election protest is a prohibited pleading, which explains why **stale claims of non-payment of <u>filing fees</u>** have always been raised belatedly before the appellate tribunal. In appellate proceedings before the Comelec, the stage to belatedly raise a **stale claim of non-payment of <u>appeal fees</u>** to subvert and adverse decision is a motion for reconsideration. The Commission thus did not gravely abuse its discretion when it did not countenance the glaring inequity presented by such situation.

6. **ID.; ID.; ID.; ID.; ID.; PETITIONER DID NOT COME TO COURT WITH CLEAN HANDS; GUILTY AS HE IS OF THE SAME ACT THAT HE ASSAILS, PETITIONER STANDS ON EQUAL FOOTING WITH PRIVATE RESPONDENT, FOR HE HIMSELF ADMITTEDLY DID NOT PAY THE APPEAL FEE. —** Petitioner, guilty as he is of the same act that he assails, stands on equal footing with private respondent, for he himself

admittedly did not pay the appeal fee, yet the Comelec similarly adjudicated his appeal on the merits, the resolution of which he glaringly does not assail in the present petition. He who comes to court must come with clean hands. Election cases cannot be treated in a similar manner as criminal cases where, upon appeal from a conviction by the trial court, the whole case is thrown open for review and the appellate court can resolve issues which are not even set forth in the pleadings. Petitioner having set his eyes only on the issue of appeal fees, the present petition must be resolved, as it is hereby resolved, on the basis of such singular ground which, as heretofore discussed, failed to convince the Court.

7. ID.; ID.; ID.; ID.; ID.; APPRECIATION OF THE CONTESTED BALLOTS AND ELECTION DOCUMENTS INVOLVES A QUESTION OF FACT, BEST LEFT TO THE DETERMINATION OF THE COMELEC AS A SPECIALIZED AGENCY TASKED WITH THE SUPERVISION OF ELECTIONS ALL OVER THE COUNTRY. — *En passant,* appreciation of the contested ballots and election documents involves a question of fact best left to the determination of the Comelec, a specialized agency tasked with the supervision of elections all over the country. In the absence of grave abuse of discretion or any jurisdictional infirmity or error of law, the factual findings, conclusion, rulings and decisions rendered by the Comelec on matters falling within its competence shall not be interfered with by this Court.

8. ID.; ID.; ID.; ID.; ID.; PETITIONER FAILED TO ESTABLISH, OR EVEN ALLEGED, THE PRESENCE OF GRAVE ABUSE OF DISCRETION WITH RESPECT TO THE SUBSTANCE OF THE ASSAILED RESOLUTIONS; THE SILENCE IS DEEMED AN IMPLIED WAIVER OF WHATEVER INFIRMITIES OR ERRORS OF LAW AGAINST THE SUBSTANTIVE ASPECT OF THE ASSAILED RESOLUTIONS. — By the assailed Resolutions, the Comelec declared as "marked" those ballots containing the words "Ruby," "Ruby Lizardo" and its variants after finding a discernible pattern in the way these words were written on the ballots, leading to the conclusion that they were used to identify the voter. The Comelec found material the following evidence *aliunde*: the name "Ruby Lizardo" referred to a community leader and political supporter of petitioner; said name and its variants

were written on several ballots in different precincts; and the fact that Ruby Lizardo acted as an assistor in the elections cannot hold water since an assistor cannot assist in the preparation of the ballots for more than three times. The Comelec did not invalidate the other ballots for absence of evidence *aliunde* to prove that the markings therein were used for the purpose of identifying the voter. It ruled that circles, crosses and lines (*e.g.* "X" marks) placed on spaces on which the voter has not voted are considered signs to indicate his desistance from voting and should not invalidate the ballot. Petitioner failed to establish, or even allege, the presence of grave abuse of discretion with respect to the substance of the assailed Resolutions. Petitioner's silent stance on this point is an implied waiver of whatever infirmities or errors of law against the substantive aspect of the assailed Resolutions, for the Court abhors a piecemeal approach in the presentation of arguments and the adjudication thereof.

APPEARANCES OF COUNSEL

George Erwin M. Garcia for petitioner.
The Solicitor General for public respondent.
Valenzuela Monserate Alquis and Associates and *Sibayan Lumbos and Associates Law Office* for private respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

Salvador Divinagracia, Jr. (petitioner) and Alex Centena (private respondent) vied for the vice-mayoralty race in Calinog, Iloilo during the May 14, 2007 Elections wherein petitioner garnered 8,141 votes or 13 votes more than the 8,128 votes received by respondent.

After the proclamation of petitioner as the duly elected vice-mayor on May 16, 2007, private respondent filed with the Regional Trial Court (RTC) of Iloilo City an election protest, docketed as Election Case No. 07-2007, claiming that irregularities attended the appreciation of marked ballots in seven precints.[1]

[1] Precinct Nos. 137A, 138A, 68A/69A, 70A, 71A, 148A/149A, and 146A/147A.

By Decision of December 5, 2007, Branch 24 of the RTC dismissed private respondent's protest. It ruled that private respondent failed to overcome the disputable presumption of regularity in the conduct of elections[2] since no challenge of votes or objection to the appreciation of ballots was raised before the Board of Elections Inspectors or the Municipal Board of Canvassers.

Private respondent and petitioner filed their respective notices of appeal before the trial court, upon payment of the ₱1,000 appeal fee under Section 9, Rule 14 of the "Rules of Procedure in Election Contests before the Courts involving Elective Municipal and *Barangay* Officials" (A.M. No. 07-4-15-SC) which took effect on May 15, 2007.

The Comelec, by Order of March 12, 2008, consolidated the appeals of the parties and directed them to file their respective briefs.

Meanwhile, the duly elected mayor of Calinog, Teodoro Lao, died on March 18, 2008. On even date, petitioner assumed office as mayor.

On July 17, 2008, the Comelec *Second* Division issued its first assailed resolution declaring private respondent as the duly elected vice mayor. Thus it disposed:

> WHEREFORE, this Commission GRANTS the Appeal in EAC No. A-10-2008, and hereby DECLARES protestant-appellant Alex Centena as the duly elected Vice-Mayor of the Municipality of Calinog, Iloilo, with a total of 8,130 votes against protestee-appellee Salvador Divinagracia, Jr.'s total of 8,122 votes, or a winning margin of eight (8) votes.
>
> The Decision of the Regional Trial Court of Iloilo City, Branch 24, dated 5 December 2007, is hereby REVERSED and SET ASIDE.
>
> The Appeal in EAC No. A-11-2008 is hereby DENIED for lack of merit.

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[2] A.M. No. 07-4-15-SC (effective May 15, 2007) or the RULES OF PROCEDURE IN ELECTION CONTESTS BEFORE THE COURTS INVOLVING ELECTIVE MUNICIPAL AND BARANGAY OFFICIALS, Rule 13, Sec. 6, par. (a), sub-pars. 4-5 and par. (c), sub-pars. 2-5.

SO ORDERED.[3]

In reversing the trial court's Decision, the Comelec *Second* Division found the same to be fatally defective in form for non-observance of the prescribed rules[4] as it failed to indicate the specific markings in the contested ballots and merely discussed in a general manner the reasons why those ballots should not be declared as "marked."[5] The Comelec re-appreciated those ballots and ascertained that respondent was the true winner in the elections for the vice-mayoralty post.

Petitioner filed a Verified Motion for Reconsideration, alleging, *inter alia*, that both parties failed to pay the appeal fee/s in the amount of ₱3,200 under Section 3, Rule 40 of the Comelec Rules of Procedure,[6] and following Section 9, Rule 22 of the same Rules, an appeal may be dismissed *motu proprio* or upon motion on the ground of failure of the appellant to pay the correct appeal fee.

On January 26, 2009, the Comelec *En Banc* issued its second assailed Resolution affirming[7] the pronouncements of the *Second* Division. It held that petitioner was barred under the doctrine of estoppel by laches when he failed to raise the question of jurisdiction when he filed his Appellant's and Appellee's Briefs.

Hence, the present petition for *certiorari* and prohibition which asserts that payment of the appeal fee is a mandatory and jurisdictional requirement and that the question of jurisdiction

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[3] *Rollo*, p. 85.

[4] RULES OF PROCEDURE IN ELECTION CONTESTS BEFORE THE COURTS INVOLVING ELECTIVE MUNICIPAL AND *BARANGAY* OFFICIALS, Rule 14, Sec. 2.

[5] *Rollo*, pp. 58-59.

[6] COMELEC RULES OF PROCEDURE (February 15, 1993) as amended by COMELEC RESOLUTION No. 02-0130 (September 18, 2002). The fees are broken down as follows: appeal fee= ₱3,000; bailiff's fee= ₱150; and legal research fee= ₱50.

[7] The Comelec *en banc* additionally found three ballots with the word "Rodolfo Lavilla" and its variant as "marked" ballots and thus consequently deducted three more votes from petitioner's total votes (*rollo*, pp. 118-120).

may be raised at any stage of the proceedings. It cites earlier rulings of the Comelec dismissing analogous cases involving the same issue of non-payment of appeal fee which, so he contends, contradict the assailed Resolutions.

In support of the issue of whether the Comelec gravely abused its discretion amounting to lack or excess of jurisdiction in issuing the assailed Resolutions, petitioner submits the following arguments:

7.1. THE PUBLIC RESPONDENT COMELEC DID NOT ACQUIRE JURISDICTION OVER THE APPEAL DOCKETED AS EAC NO. A-10-2008 FOR FAILURE OF THE APPELLANT TO PAY THE FILING FEE/APPEAL FEE.

7.2. PAYMENT OF FILING FEE/APPEAL FEE IS MANDATORY AND JURISDICTIONAL, HENCE, CAN BE RAISED AT ANY STAGE OF THE PROCEEDINGS PENDING WITH THE SAME COURT/ COMELEC.

7.3. THE FLIP-FLOPPING RULINGS OF THE PUBLIC RESPONDENT COMELEC SECOND DIVISION IS IN DEROGATION OF THE RULES AND THE PROPER ADMINISTRATION OF JUSTICE.

7.4. IN ASSAILING THE RULING TO AFFIRM THE SECOND DIVISION RESOLUTION, THE PETITIONER IS NOT BARRED BY ESTOPPEL BECAUSE HIS PARTICIPATION IN THE PROCEEDINGS WAS DIRECTED BY THE PUBLIC RESPONDENT COMELEC.

7.5. THERE APPEARS TO BE AN INCONSISTENCY IN THE APPLICATION OF THE RULES BETWEEN THE FIRST AND SECOND DIVISION OF THE PUBLIC RESPONDENT COMELEC.[8]

Private respondent filed his Comment of March 17, 2009, while petitioner submitted a Reply of May 11, 2009.

Records show that private respondent took his oath of office as vice-mayor and, forthwith successively, as mayor on March 6, 2009,[9] pursuant to the Comelec Order of March 3, 2009 directing the issuance of a writ of execution.[10]

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[8] *Rollo*, p. 18.

[9] *Id.* at 286-287.

[10] *Id.* at 280-281.

The petition lacks merit.

The jurisprudence on payment of filing fees in election cases metamorphosed in the 1997 case of *Loyola v. Comelec*.[11] In *Loyola*, the Court did not dismiss the election protest for inadequate payment of filing fees arising from the incorrect assessment by the clerk of court, after finding substantial compliance with the filing fee requirement in election cases. The Court noted the clerk's ignorance or confusion as to which between Section 5(a)(11),[12] Rule 141 of the Rules of Court and Section 9, Rule 35 of the Comelec Rules of Procedure would apply in assessing the filing fee, considering that the particular election protest fell within the exclusive original jurisdiction of the Regional Trial Court.

After clarifying the matter, the Court in *Loyola* **warned** that the cases cited therein would no longer provide any excuse for such shortcoming and would now bar any claim of good faith, excusable negligence or mistake in any failure to pay the *full* amount of filing fees in election cases which may be filed after the promulgation of the decision in said case.

Shortly thereafter, in the similar case of *Miranda v. Castillo*[13] which involved two election protests filed on May 24, 1995, the Court did not yet heed the *Loyola* warning and instead held that an incomplete payment of filing fee is correctible by the payment of the deficiency. The Court, nonetheless, reiterated the caveat in *Loyola* that it would no longer tolerate any mistake in the payment of the *full* amount of filing fees for election cases filed **after** the promulgation of the *Loyola* decision on March 25, 1997.

The force of the *Loyola* doctrine was strongly felt in the 2000 case of *Soller v. Comelec,*[14] where the Court ordered the

[11] 337 Phil. 134 (1997).

[12] From ₱32, the amount was increased to ₱400 in 1990, and was again increased on a staggered basis from 2004 to 2006 starting with ₱750, ₱1,000, ₱1,500, and ₱2,000, under now Section 7(b)(3).

[13] G.R. No. 126361, June 19, 1997, 274 SCRA 503.

[14] 394 Phil. 197 (2000); for an earlier case, vide *Melendres, Jr. v. Comelec*, 377 Phil. 275 (1999) citing *Roquero v. Comelec*, 351 Phil. 1079, 1087 (1998).

dismissal of the therein election protest for, *inter alia*, *incomplete* payment of filing fee, after finding a ₱268 deficiency in the fees paid, similar to what occurred in *Loyola* and *Miranda.* The Court once again clarified that the then ₱300 filing fee prescribed by the Comelec under Section 9, Rule 35 of the Comelec Rules of Procedure was the correct filing fee that must be paid.

The ripples of the caveat in *Loyola* continued in *Villota v. Commission on Elections*[15] and *Zamoras v. Commission on Elections,*[16] both of which involved, this time, the matter of *full* payment of the appeal fee in election contests within the five-day reglementary period.

The petitioner in *Villota* timely filed a notice of appeal and simultaneously paid to the trial court's cashier the appeal fees totaling ₱170. Four days beyond the reglementary period, the therein petitioner realized his mistake and again paid to the Cash Division of the Comelec the appeal fees in the sum of ₱520, pursuant to Sections 3 and 4, Rule 40 of the Comelec Rules of Procedure, which Sections fix the amount of the fees and the place of payment thereof. Maintaining that errors in the matter of non-payment or incomplete payment of filing fees in election cases are no longer excusable, the Court sustained the Comelec's dismissal of the appeal.

The Court was more emphatic in *Zamoras* in reiterating the *Loyola* doctrine. In that case, the petitioner failed to fully pay the appeal fees under Comelec Resolution No. 02-0130 (September 18, 2002) which amended Section 3, Rule 40 of the Comelec Rules of Procedure by increasing the fees to ₱3,200. There the Court ruled:

> x x x A case is not deemed duly registered and docketed until **full** payment of the filing fee. Otherwise stated, the date of the payment of the filing fee is deemed the *actual* date of the filing of the notice of appeal. x x x
>
> x x x x x x x x x

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[15] 415 Phil. 87 (2001).

[16] G.R. No. 158610, November 12, 2004, 442 SCRA 397.

x x x The payment of the filing fee is a jurisdictional requirement and non-compliance is a valid basis for the dismissal of the case. The subsequent full payment of the filing fee after the lapse of the reglementary period does not cure the jurisdictional defect. x x x[17] (Italics in the original, underscoring supplied)

Such has been the jurisprudential landscape governing the matter of payment of filing fees and appeal fees in election cases.

On May 15, 2007, the Court, by A.M. No. 07-4-15-SC, introduced the "Rules of Procedure in Election Contests before the Courts involving Elective Municipal and *Barangay* Officials," which superseded Rules 35 and 36 of the Comelec Rules of Procedure governing elections protests and *quo warranto* cases before the trial courts.[18] Not only was the amount of the filing fee increased from ₱300 to ₱3,000 for each interest;[19] the amount of filing fee was determined by the Court, not by the Comelec, which was, to recall, the cause of confusion in *Loyola*, *Miranda* and *Soller*.

Another major change introduced by A.M. No. 07-4-15-SC is the imposition of an appeal fee under Section 9 of Rule 14 thereof, separate and distinct from, but payable within the same period as, the appeal fee imposed by the Comelec under Sections 3 and 4, Rule 40 of the Comelec Rules of Procedure, as amended by Comelec Resolution No. 02-0130. **Contrary to respondent's contention, the Comelec-prescribed appeal fee was not superseded by A.M. No. 07-4-15-SC**.

The requirement of these two appeal fees by two different jurisdictions had caused confusion in the implementation by the Comelec of its procedural rules on payment of appeal fees for the perfection of appeals, prompting the Comelec to issue Resolution No. 8486 (July 15, 2008) clarifying as follows:

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[17] *Id.* at 404-406.

[18] RULES OF PROCEDURE IN ELECTION CONTESTS BEFORE THE COURTS INVOLVING ELECTIVE MUNICIPAL AND BARANGAY OFFICIALS, Rule 17, Sec. 1.

[19] RULES OF PROCEDURE IN ELECTION CONTESTS BEFORE THE COURTS INVOLVING ELECTIVE MUNICIPAL AND BARANGAY OFFICIALS, Rule 7, Sec. 1.

1. That if the appellant had already paid the amount of ₱1,000.00 before the Regional Trial Court, Metropolitan Trial Court, Municipal Trial Court or lower courts within the five-day period, pursuant to Section 9, Rule 14 of the Rules of Procedure in Election Contests Before the Courts Involving Elective Municipal and *Barangay* Officials (Supreme Court Administrative Order No. 07-4-15) and his Appeal was given due course by the Court, said **appellant is required to pay the Comelec appeal fee of ₱3,200.00 at the Commission's Cash Division through the Electoral Contests Adjudication Department (ECAD) or by postal money order payable to the Commission on Elections through ECAD, within a period of fifteen days (15) from the time of the filing of the Notice of Appeal with the lower court. If no payment is made within the prescribed period, the appeal *shall* be dismissed** pursuant to Section 9(a) of Rule 22 of the COMELEC Rules of Procedure, which provides:

   Sec. 9. Grounds for Dismissal of Appeal. The appeal may be dismissed upon motion of either party or at the instance of the Commission on any of the following grounds:

   (a) Failure of the appellant to pay the correct appeal fee; x x x

2. That if the appellant failed to pay the ₱1,000.00-appeal fee with the lower court within the five (5) day period as prescribed by the Supreme Court New Rules of Procedure but the case was nonetheless elevated to the Commission, the appeal ***shall*** be dismissed outright by the Commission, in accordance with the aforestated Section 9(a) of Rule 22 of the Comelec Rules of Procedure. (Emphasis, italics and underscoring supplied)

That Comelec Resolution No. 8486 took effect on July 24, 2008[20] or after a party had filed a notice of appeal, as in the case of petitioner, does not exempt it from paying the Comelec-prescribed appeal fees. The Comelec merely clarified the **existing** rules on the payment of such appeal fees, and allowed the payment thereof within 15 days from filing the notice of appeal.

[20] The seventh day following its publication on July 17, 2008 in Philippine Star and Manila Standard Today, pursuant to its effectivity clause.

In the recent case of *Aguilar v. Comelec*,[21] the Court harmonized the rules with the following ratiocination:

> The foregoing resolution is consistent with A.M. No. 07-4-15-SC and the COMELEC Rules of Procedure, as amended. The appeal to the COMELEC of the trial court's decision in election contests involving municipal and *barangay* officials is **perfected** upon the filing of the notice of appeal **and** the payment of the ₱1,000.00 appeal fee to the court that rendered the decision within the five-day reglementary period. **The non-payment or the insufficient payment of the additional appeal fee of ₱3,200.00 to the COMELEC** Cash Division, in accordance with Rule 40, Section 3 of the COMELEC Rules of Procedure, as amended, **does not affect the perfection of the appeal and does not result in outright or *ipso facto* dismissal of the appeal.** Following, Rule 22, Section 9(a) of the COMELEC Rules, the appeal ***may*** be dismissed. And pursuant to Rule 40, Section 18 of the same rules, if the fees are not paid, the COMELEC *may* refuse to take action thereon until they are paid and *may* dismiss the action or the proceeding. In such a situation, the COMELEC is merely given the **discretion** to dismiss the appeal or not. (Italics in the original; emphasis and underscoring supplied)

In *Aguilar*, the Court recognized the Comelec's discretion to allow or dismiss a "perfected" appeal that lacks payment of the Comelec-prescribed appeal fee. The Court stated that it was more in keeping with fairness and prudence to allow the appeal which was, similar to the present case, perfected months before the issuance of Comelec Resolution No. 8486.

Aguilar has not, however, diluted the force of Comelec Resolution No. 8486 on the matter of compliance with the Comelec-required appeal fees. To reiterate, Resolution No. 8486 merely *clarified* the rules on Comelec appeal fees which have been existing as early as 1993, the amount of which was last fixed in 2002. The Comelec even went one step backward and extended the period of payment to 15 days from the filing of the notice of appeal.

Considering that a year has elapsed after the issuance on July 15, 2008 of Comelec Resolution No. 8486, and to further

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[21] G.R. No. 185140, June 30, 2009.

affirm the discretion granted to the Comelec which it precisely articulated through the specific guidelines contained in said Resolution, the Court **now declares**, for the guidance of the Bench and Bar, that **for notices of appeal filed *after* the promulgation of this decision, errors in the matter of non-payment or incomplete payment of the two appeal fees in election cases are *no longer excusable***.

On the Comelec's application of the doctrine of estoppel by laches, records show that petitioner raised the issue of lack of jurisdiction for his and private respondent's non-payment of the appeal fee only after the Comelec appreciated the contested ballots and ruled in favor of respondent, an issue which could have been raised with reasonable diligence at the earliest opportunity. The Court finds the Comelec resolution well-taken.

That petitioner's filing of the appellee's brief was an invocation of the Comelec's jurisdiction and an indication of his active participation cannot be refuted on the mere asseveration that he was only complying with the Comelec's directive to file the same. The submission of briefs was ordered precisely because the Comelec could not anticipate the claims and defenses that would be raised by the parties. Moreover, in his Verified Motion for Reconsideration, petitioner once again pleaded to the Comelec to exercise its jurisdiction by dismissing private respondent's appeal on the merits.[22]

The doctrine of estoppel by laches is not new in election cases. It has been applied in at least two cases involving the payment of filing fees.

In *Navarosa v. Comelec*,[23] the therein petitioner questioned the trial court's jurisdiction over the election protest in the subsequent petition for *certiorari* before the Comelec involving the ancillary issue of execution pending appeal. The petitioner having raised for the first time the therein private respondent's incomplete payment of the filing fee in her Memorandum

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[22] Petitioner argued that the findings and conclusions of the Comelec were "contrary to law, the evidence and existing jurisprudence." (*rollo*, p. 139).

[23] 458 Phil. 233 (2003).

submitted to the Comelec, the Court applied the doctrine of estoppel in this wise:

> In an earlier ruling, the Court held that an election protest is not dismissible if the protestant, relying on the trial court's assessment, pays only a portion of the COMELEC filing fee. However, in ***Miranda v. Castillo***, the Court, reiterating ***Loyola v. Commission on Elections***, held that it would no longer tolerate "any mistake in the payment of the full amount of filing fees for election cases filed after the promulgation of the ***Loyola*** decision on March 25, 1997." Nevertheless, our rulings in ***Miranda*** and ***Loyola*** are inapplicable to the present case.
>
> At no time did petitioner Navarosa ever raise the issue of respondent Esto's incomplete payment of the COMELEC filing fee during the full-blown trial of the election protest. Petitioner Navarosa actively participated in the proceedings below by filing her Answer, presenting her evidence, and later, seeking a stay of execution by filing a supersedeas bond. Not only this, she even invoked the trial court's jurisdiction by filing a counter-protest against respondent Esto in which she must have prayed for affirmative reliefs.
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> Petitioner Navarosa raised the issue of incomplete payment of the COMELEC filing fee only in her memorandum to respondent Esto's petition before the COMELEC Second Division. Petitioner Navarosa's conduct estops her from claiming, at such late stage, that the trial court did not after all acquire jurisdiction over the election protest. Although a party cannot waive jurisdictional issues and may raise them at any stage of the proceedings, estoppel may bar a party from raising such issues. In ***Pantranco North Express v. Court of Appeals***, this Court applied the doctrine of estoppel against a party who also belatedly raised the issue of insufficient payment of filing fees to question the court's exercise of jurisdiction over the case. We held:
>
>> The petitioner raised the issue regarding jurisdiction for the first time in its Brief filed with public respondent [Court of Appeals] x x x After vigorously participating in all stages of the case before the trial court and even invoking the trial court's authority in order to ask for affirmative relief, the petitioner is effectively barred by estoppel from challenging the trial court's jurisdiction.

Indeed, in ***Miranda*** and ***Loyola***, as in every other case where we sustained the dismissal of the election protest for lack or incomplete payment of the COMELEC filing fee, the protestee timely raised the non-payment in a motion to dismiss. Before any revision of the contested ballots, the protestee filed a petition for *certiorari* questioning the trial court's jurisdiction before the COMELEC and eventually before this Court. In contrast, in the instant case, petitioner Navarosa did not raise the incomplete payment of the COMELEC filing fee in a motion to dismiss. Consequently, the trial court proceeded with the revision of the contested ballots and subsequently rendered judgment on the election protest. Petitioner Navarosa raised for the first time the incomplete payment of the COMELEC filing fee in her memorandum before the COMELEC Second Division.

Thus, estoppel has set in precluding petitioner Navarosa from questioning the incomplete payment of the COMELEC filing fee, and in effect assailing the exercise of jurisdiction by the trial court over the election protest. The law vests in the trial court jurisdiction over election protests although the exercise of such jurisdiction requires the payment of docket and filing fees by the party invoking the trial court's jurisdiction. Estoppel now prevents petitioner Navarosa from questioning the trial court's exercise of such jurisdiction, which the law and not any act of the parties has conferred on the trial court. At this stage, the remedy for respondent Esto's incomplete payment is for him to pay the ₱200 deficiency in the COMELEC filing fee. It is highly unjust to the electorate of Libacao, Aklan, after the trial court has completed revision of the contested ballots, to dismiss the election protest and forever foreclose the determination of the true winner of the election for a mere ₱200 deficiency in the COMELEC filing fee. x x x[24] (Italics and emphasis in the original; underscoring supplied)

In *Villagracia v. Commission on Elections*,[25] the Court dismissed the petition after finding that the therein petitioner was estopped from raising the jurisdictional issue for the first time on appeal. The Court ratiocinated:

Petitioner contends that had public respondent followed the doctrine in *Soller v. COMELEC*, it would have sustained the ruling of the First Division that the trial court lacked jurisdiction to hear

[24] *Id.* at 245-248.

[25] G.R. No. 168296, January 31, 2007, 513 SCRA 655.

the election protest due to private respondent's failure to pay the correct filing fees.

We disagree. The *Soller* case is not on all fours with the case at bar. In *Soller*, petitioner therein filed with the trial court a motion to dismiss private respondent's protest on the ground of, among others, lack of jurisdiction. In the case at bar, petitioner actively participated in the proceedings and voluntarily submitted to the jurisdiction of the trial court. It was only after the trial court issued its decision adverse to petitioner that he raised the issue of jurisdiction for the first time on appeal with the COMELEC's First Division.

While it is true that a court acquires jurisdiction over a case upon complete payment of the prescribed filing fee, the rule admits of exceptions, as when a party never raised the issue of jurisdiction in the trial court. As we stated in *Tijam v. Sibonghanoy, et al.*, *viz.*:

> xxx [I]t is too late for the loser to question the jurisdiction or power of the court. xxx [I]t is not right for a party who has affirmed and invoked the jurisdiction of a court in a particular matter to secure an affirmative relief, to afterwards deny that same jurisdiction to escape a penalty.

It was therefore error on the part of the COMELEC's First Division to indiscriminately apply *Soller* to the case at bar. As correctly pointed out by public respondent in its questioned Resolution, *viz.*:

> x x x. Villagracia never assailed the proceedings of the trial court for lack of jurisdiction during the proceedings therein. Instead, he filed an Answer to the Protest on 2 August 2002 and then actively participated during the hearings and revision of ballots and subsequently filed his Formal Offer of Exhibits. The issue on the filing fees was never raised until the Decision adverse to his interest was promulgated by the trial court and only on [a]ppeal to the COMELEC. Necessarily, we apply the case of *Alday vs. FGU Insurance Corporation* where the Supreme Court instructed that "although the lack of jurisdiction of a court may be raised at any stage of the action, a party may be estopped from raising such questions if he has actively taken part in the very proceedings which he questions, belatedly objecting to the court's jurisdiction in the event that the judgment or order subsequently rendered is adverse to him." Villagracia

> is therefore estopped from questioning the jurisdiction of the trial court only on [a]ppeal.[26] (Underscoring supplied)

To allow petitioner to espouse his stale defense at such late stage of the proceedings would run afoul of the basic tenets of fairness. It is of no moment that petitioner raised the matter in a motion for reconsideration in the same appellate proceedings in the Comelec, and not before a higher court. It bears noting that unlike appellate proceedings before the Comelec, a motion for reconsideration of a trial court's decision in an election protest is a prohibited pleading,[27] which explains why **stale claims of non-payment of <u>filing fees</u>** have always been raised belatedly before the appellate tribunal. In appellate proceedings before the Comelec, the stage to belatedly raise a **stale claim of non-payment of <u>appeal fees</u>** to subvert an adverse decision is a motion for reconsideration. The Commission thus did not gravely abuse its discretion when it did not countenance the glaring inequity presented by such situation.

More. Petitioner, guilty as he is of the same act that he assails, stands on equal footing with private respondent, for he himself admittedly did not pay the appeal fee, yet the Comelec similarly adjudicated his appeal on the merits, the resolution of which he glaringly does not assail in the present petition. He who comes to court must come with clean hands.

Election cases cannot be treated in a similar manner as criminal cases where, upon appeal from a conviction by the trial court, the whole case is thrown open for review and the appellate court can resolve issues which are not even set forth in the pleadings.[28] Petitioner having set his eyes only on the issue of appeal fees, the present petition must be resolved, as it is hereby resolved, on the basis of such singular ground which, as heretofore discussed, failed to convince the Court.

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[26] *Id.* at 659-660.

[27] RULES OF PROCEDURE IN ELECTION CONTESTS BEFORE THE COURTS INVOLVING ELECTIVE MUNICIPAL AND *BARANGAY* OFFICIALS, Rule 6, Sec. 1(d); formerly, Comelec RULES OF PROCEDURE, Rule 35, Sec. 19.

[28] *Id.* at 37.

En passant, appreciation of the contested ballots and election documents involves a question of fact best left to the determination of the Comelec, a specialized agency tasked with the supervision of elections all over the country. In the absence of grave abuse of discretion or any jurisdictional infirmity or error of law, the factual findings, conclusions, rulings and decisions rendered by the Comelec on matters falling within its competence shall not be interfered with by this Court.[29]

By the assailed Resolutions, the Comelec declared as "marked" those ballots containing the words "Ruby," "Ruby Lizardo" and its variants after finding a discernible pattern in the way these words were written on the ballots, leading to the conclusion that they were used to identify the voter. The Comelec found material the following evidence *aliunde*: the name "Ruby Lizardo" referred to a community leader and political supporter of petitioner; said name and its variants were written on several ballots in different precincts; and the fact that Ruby Lizardo acted as an assistor in the elections cannot hold water since an assistor cannot assist in the preparation of the ballots for more than three times.[30] The Comelec did not invalidate the other ballots for absence of evidence *aliunde* to prove that the markings therein were used for the purpose of identifying the voter. It ruled that circles, crosses and lines (*e.g.*, "X" marks) placed on spaces on which the voter has not voted are considered signs to indicate his desistance from voting and should not invalidate the ballot.

Petitioner failed to establish, or even allege, the presence of grave abuse of discretion with respect to the substance of the assailed Resolutions. Petitioner's silent stance on this point is an implied waiver of whatever infirmities or errors of law against the substantive aspect of the assailed Resolutions, for the Court abhors a piecemeal approach in the presentation of arguments and the adjudication thereof.

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[29] Vide *Manzala v. Commission on Elections*, G.R. No. 176211, May 8, 2007, 523 SCRA 31, 38.

[30] *Rollo*, p. 61.

WHEREFORE, the petition is *DISMISSED* for lack of merit. The July 17, 2008 Resolution and the January 26, 2009 Resolution of the Commission on Elections are *AFFIRMED*.

SO ORDERED.

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

Brion, J., on official leave.

EN BANC

[A.M. No. RTJ-09-2175. July 28, 2009]

VENANCIO INONOG, *complainant, vs.* **JUDGE FRANCISCO B. IBAY, Presiding Judge, Regional Trial Court, Branch 135, Makati City,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS: JUDGES; THE ALLEGED INCIDENT IS TOO FLIMSY AND INCONSEQUENTIAL TO BE THE BASIS OF AN INDIRECT CONTEMPT PROCEEDING; THE ACT OF THE COMPLAINANT IS NOT CONTRARY OR CLEARLY PROHIBITED BY AN ORDER OF THE COURT. —** The phrase "improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice" is so broad and general that it encompasses wide spectrum of acts that could constitute indirect contempt. However, the act of complainant in parking his car in a slot allegedly reserved for respondent judge does not fall under this category. There was no showing that he acted with malice and/or bad faith or that he was improperly motivated to delay the proceedings of

the court by making use of the parking slot supposedly reserved for respondent judge. We cannot also say that the said act of complainant constitutes disrespect to the dignity of the court. In sum, the incident is too flimsy and inconsequential to be the basis of an indirect contempt proceeding. In *Lu Ym v. Mahinay,* we held that an act, to be considered contemptuous, must be clearly contrary or prohibited by the order of the Court. A person cannot, for disobedience, be punished for contempt unless the act which is forbidden or required to be done is clearly and exactly defined, so that there can be no reasonable doubt or uncertainty as to what specific act or thing is forbidden or required. Here, the act of complainant is not contrary or clearly prohibited by an order of the court.

2. **ID.; ID.; ID.; ID.; RESPONDENT JUDGE'S ACT OF UNCEREMONIOUSLY CITING COMPLAINANT IN CONTEMPT IS A CLEAR EVIDENCE OF HIS UNJUSTIFIED USE OF AUTHORITY VESTED UPON HIM BY LAW; RESPONDENT SHOULD NOT HAVE ALLOWED HIMSELF TO BE ANNOYED TO A POINT THAT HE WOULD EVEN WASTE VALUABLE COURT TIME AND RESOURCES ON A TRIVIAL MATTER. —** The power to punish for contempt is inherent in all courts so as to preserve order in judicial proceedings as well as to uphold the administration of justice. The courts must exercise the power of contempt for purposes that are impersonal because that power is intended as a safeguard not for the judges but for the functions they exercise. Thus, judges have, time and again, been enjoined to exercise their contempt power judiciously, sparingly, with utmost restraint and with the end in view of utilizing the same for correction and preservation of the dignity of the court, not for retaliation or vindication. Respondent judge's act of unceremoniously citing complainant in contempt is a clear evidence of his unjustified use of the authority vested upon him by law. Besides possessing the requisite learning in the law, a magistrate must exhibit that hallmark of judicial temperament of utmost sobriety and self-restraint which are indispensable qualities of every judge. Respondent judge himself has characterized this incident as a "petty disturbance" and he should not have allowed himself to be annoyed to a point that he would even waste valuable court time and resources on a trivial matter.

3. ID.; ID.; ID.; ID.; APPROPRIATE PENALTY CONSIDERING RESPONDENT JUDGE'S PREVIOUS SIMILAR INFRACTION. — As for the appropriate penalty to be imposed, we note that this is not the first time respondent judge was charged with grave abuse of authority in connection with his misuse of his contempt power. In A.M. No. RTJ-06-1972 entitled *Panaligan v. Ibay*, the Court in its Decision dated June 21, 2006 resolved to impose a fine of ₱5,000.00 on respondent judge for improperly citing therein complainant for contempt and ordering his detention without sufficient legal basis. He was warned not to repeat the same or similar offense, lest a more severe penalty shall be imposed. In *Macrohon v. Ibay,* respondent judge was also found guilty of the same offense and ordered to pay a fine of ₱25,000.00. In the recent case of *Nuñez v. Ibay,* which involved a very similar incident regarding inadvertent usurpation of respondent judge's parking slot, the Court likewise found respondent judge guilty of grave abuse of authority for citing complainant therein in contempt of court without legal basis. In *Nuñez*, we ordered respondent judge to pay a fine in the amount of ₱40,000.00 to be deducted from his retirement benefits, since said respondent judge opted to avail of Optional Retirement under R.A. No. 910 (as amended by R.A. No. 5095 and P.D. No. 1438) effective August 18, 2007. Considering that this is not the first time that respondent judge committed the same offense and in *Nuñez*, which had similar factual antecedents as the case at bar, the Court already saw fit to impose upon him a fine in the amount of ₱40,000.00, it is proper to impose on him the same penalty in this case.

APPEARANCES OF COUNSEL

Apolonio A. Padua, Jr. and *Manuel B. Tomacruz* for respondent.

D E C I S I O N

LEONARDO-DE CASTRO, *J*.:

The present administrative case stemmed from the *Sinumpaang Salaysay*[1] of Venancio P. Inonog, filed with the Office of the

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

Court Administrator (OCA) on April 26, 2005, charging Judge Francisco B. Ibay of the Regional Trial Court (RTC), Branch 135, Makati City with gross abuse of authority. The complaint involved an incident in the Makati City Hall basement parking lot for which respondent judge cited complainant in contempt of court because complainant parked his superior's vehicle at the parking space reserved for respondent judge.

Respondent judge initiated the proceeding for indirect contempt by issuing an order dated March 18, 2005 in Criminal Case Nos. 02-1320, 02-3046, 02-3168-69, and 03-392-393, entitled *People v. Glenn Fernandez, et al.*, directing the complainant to show cause why he should not be punished for contempt. The said order read:

ORDER

For intentionally parking car with plate no. WDH 804 at the parking space reserved for the undersigned Presiding Judge, thereby causing the delay in the promulgation of the Decisions in the above-entitled cases driver Butch Inonog, c/o Permit Division, this City, is hereby ordered to appear before this Court at 10:30 A.M., March 18, 2005 and show cause why he should not be cited for Contempt for delaying the administration of justice.

SO ORDERED.

Makati City, 18 March 2005.

That same day, respondent judge issued another order, finding complainant guilty of contempt. To quote from the second order:

ORDER

For failure to appear of respondent Venancio Inonog *alias* Butch Inonog at today's hearing and show cause why he should not be cited for contempt, the Court finds him GUILTY OF CONTEMPT OF COURT, and hereby sentences him to suffer imprisonment for a period of five (5) days and to pay a fined [sic] of ₱1,000.00.

Let a warrant issue for his arrest furnishing copies thereof to the Director General Philippine National Police, the Director of the

National Bureau of Investigation, and the Station Commander of Makati Police Station.

SO ORDERED.

Makati City, 18 March 2005.

The relevant facts, culled from the records, follow:

Complainant alleged that he is the security-driver of the Chief of the Business Permit Division of Makati City. According to complainant, at around 1:00 a.m. of March 18, 2005, he parked the vehicle that he drives for his boss in a vacant parking space at the basement of the Makati City Hall because the slot where he usually parked was already occupied. At the time, the parking slots at the basement of the Makati City Hall were indicated only by numbers and not by names of officials to whom they were assigned. Thereafter, complainant notified his superior that he will not be reporting for work for the rest of that day, March 18, 2005, because he was not feeling well. Thus, he left the vehicle in the said basement parking area and went home to Tanay, Rizal.

Later that morning, complainant received a call from his brother, also an employee of the City Government of Makati, informing him that he should appear before the sala of respondent judge at 10:30 a.m. to explain/show cause why he should not be cited for contempt of court for parking his vehicle at the space reserved for respondent judge. He was informed that the respondent judge blamed the usurpation of the said parking space for the delay in the promulgation of the decision in Criminal Case Nos. 02-1320, 02-3046, 02-3168-69, and 03-392-393 scheduled at 8:00 a.m. of March 18, 2005 because the latter had a hard time looking for another parking space. Complainant was also informed that if he failed to appear at the hearing, a warrant for his arrest will be issued.

Complainant immediately left his home in Tanay to go to Makati City Hall even though he was not feeling well. However, due to the distance involved and the time consumed by using various modes of public transportation, he arrived there only at around 1:00 p.m. He found out that by then he had already

been adjudged guilty of contempt of court by respondent judge for delaying in the administration of justice. He was sentenced to suffer imprisonment for five (5) days and to pay a fine of one thousand pesos (₱1,000.00). A warrant for his arrest was also issued.[2]

On March 21, 2005, complainant through counsel filed an Urgent Motion for Reconsideration and/or to Lift Order of Arrest, but said motion was denied. Subsequently, complainant filed an Amended Urgent Motion for Reconsideration and/or To Lift the Order of Arrest, attaching proof of payment of the fine in the amount of one thousand pesos (₱1,000.00). In his motions, complainant explained that he did not know that the parking space was reserved for the respondent judge. He also begged for forgiveness and promised not to repeat the incident. Acting on the said amended motion, respondent judge issued an Order dated March 30, 2005 finding complainant's explanation to be unsatisfactory. However, respondent judge modified his previous order by deleting the sentence for imprisonment for five (5) days but the fine of ₱1,000.00 was increased to ₱2,000.00, with a stern warning that a repetition of the same offense will be dealt with more severely. In compliance, complainant paid the additional amount of ₱1,000.00 as fine.

Aggrieved by the said orders of respondent judge, complainant filed the instant administrative complaint.

In his Comment dated June 10, 2005, respondent judge explained that on March 18, 2005, he proceeded to the court at around 7:00 a.m. to finalize the decision in Criminal Case Nos. 02-1320, 02-3046, 02-3168-69 and 03-392-393, all entitled *People v. Glenn Fernandez, et al*., which were to be promulgated on the first hour of the same day. Upon reaching his parking slot, he found complainant's vehicle parked there. As a result, he had a hard time looking for his own parking space. Hence, the promulgation of the decision was delayed.

According to respondent judge, complainant knew that the parking slot was reserved for him because it bore his name. He

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[2] *Id.* at 5.

emphasized that prior to the incident, he already had his name indicated at the said slot precisely because there had been previous occasions when other vehicles would occupy his parking space and he had been forced to park at the public parking area.

Respondent judge added that he ordered the complainant to appear before him for the hearing at 10:30 a.m. of March 18, 2005, but, complainant refused, thus, he declared him in contempt of court.

Respondent judge also averred that he neither took advantage nor exercised arbitrarily the power of the court as in fact, complainant was given a chance to be represented by a counsel of his own choice and was given an opportunity to explain his position which the latter seriously considered.

Respondent judge explained that his acts were brought about by his deep concern with the disposition of the cases assigned to him within the prescribed period. To accomplish this, he came to office at 7:00 a.m. and worked on his cases not only in his office, but even at home. Respondent judge mentioned that he was able to dispose 349 cases leaving only 171 cases pending as of December 31, 2004. He pointed out that he was able to further reduce his docket to 23 civil cases and 29 criminal cases as of May 31, 2005. Thus, he ranked 3rd among judges in the RTC, Makati with respect to disposition of cases.

Respondent judge added that petty disturbances, like the incident involved in the instant administrative complaint, were annoying to him since they interfered in the performance of his judicial function. Nevertheless, he did not lose his objectivity, probity, equanimity, integrity and impartiality and reacted to these incidents within the limits and boundaries of the law and justice.

On November 15, 2005, the OCA made the following evaluation and recommendation:

EVALUATION: This administrative complaint came about when Judge Francisco B. Ibay cited complainant in contempt of court simply because the latter parked his vehicle at the parking space served (sic) for him. In the exercise of his contempt power, not only did respondent

deny the complainant his right to be heard but also convicted him in contempt of court based on a very loose and flimsy reason.

Contempt of court has been defined as a defiance of the authority, justice or dignity of the court; such conduct as tends to bring the authority and administration of the law into disrespect or to interfere with or prejudice parties litigant or their witnesses during litigation (*Halili vs. Court of Industrial Relations,* 136 SCRA 57).

Under the Rules of Court, contempt is classified into direct and indirect. Direct contempt, which is summary, is committed in the presence of or so near a court as to obstruct or interrupt the proceedings before the same, including disrespect toward the court, offensive personalities toward others, or refusal to be sworn or to answer as a witness, or to subscribe an affidavit or deposition when lawfully required to do so (Section 1, Rule 71).

Indirect contempt, on the other hand, is not committed in the presence of the court and can be punished only after notice and hearing (*Zarate v. Balderian*, 329 SCRA 558). Undoubtedly, Judge Ibay cited the complainant for indirect contempt of court since the subject incident transpired not in the court's presence.

In the instant case, there was no defiance of authority on the part of the complainant when he parked his vehicle at the spot reserved for the respondent judge. The incident is too flimsy to be a basis of a contempt proceedings. At most, the act resulted to a minor inconvenience on the part of the respondent but it was unlikely that it delayed the administration of justice. Besides, it was not shown that complainant parked his vehicle at the spot intentionally to show disrespect to Judge Ibay. Respondent Judge Ibay acted precipitously in citing complainant in contempt of court in a manner which obviously smacks of retaliation rather than upholding of the court's honor.

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Assuming, without conceding, that the complainant had committed indirect contempt of court, he was nonetheless entitled to be charged in writing and given an opportunity to be heard by himself or counsel. Section 3, Rule 71 of the Rules of Court specifically outlines the procedural requisites before a person may be punished for indirect contempt, thus: (1) a complaint in writing which may either be a motion for contempt filed by a party or an order issued by the court requiring a person to appear and explain his conduct; and, (2) an opportunity for the person charged to appear and explain his conduct

(*Pacuribot v. Lim, Jr*., 275 SCRA 543). Proceedings against persons charged with contempt of court are commonly treated as criminal in nature, thus this mode of procedure should be strictly followed.

Records failed to show that complainant was properly notified of Judge Ibay's order directing the former to appear and explain why he should not be cited in contempt of court. The hearing was set at 10:30 A.M. or only about two and a half hours after respondent judge found that his parking space was occupied. The lack of notice accounts for the complainant's failure to appear at the hearing. Verily, complainant was not given a reasonable opportunity to be heard and submit evidence in support of his defense.

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RECOMMENDATION: In view of the foregoing, it is respectfully submitted to the Honorable Court our recommendations that this instant I.P.I. be REDOCKETED as a regular administrative matter and Judge Francisco B. Ibay, Regional Trial Court, Branch 35, Makati City, be penalized to pay a FINE in the amount of Five Thousand Pesos (₱5,000.00) with a STERN WARNING that a repetition of the same or similar act in the future shall be dealt with more severely.

The Court agrees with the findings of the OCA but deems it proper to impose a penalty different from the OCA's recommendation.

Rule 71 of the Rules of Court prescribes the rules and procedure for indirect contempt. Sections 3 and 4 of the said rule read as follows:

SEC. 3. *Indirect contempt to be punished after charge and hearing*.—After a charge in writing has been filed, and an opportunity given to the respondent to comment thereon within such period as may be fixed by the court and to be heard by himself or counsel, a person guilty of any of the following acts may be punished for indirect contempt:

(a) Misbehavior of an officer of a court in the performance of his official duties or in his official transactions;

(b) Disobedience of or resistance to a lawful writ, process, order, or judgment of a court, including the act of a person who, after being dispossessed or ejected from any real property by the judgment or process of any court of competent jurisdiction, enters or attempts

or induces another to enter into or upon such real property, for the purpose of executing acts of ownership or possession, or in any manner disturbs the possession given to the person adjudged to be entitled thereto;

(c) Any abuse of or any unlawful interference with the processes or proceedings of a court not constituting direct contempt under section 1 of this Rule;

(d) Any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice;

(e) Assuming to be an attorney or an officer of a court, and acting as such without authority;

(f) Failure to obey a subpoena duly served;

(g) The rescue, or attempted rescue, of a person or property in the custody of an officer by virtue of an order or process of a court held by him. xxx xxx xxx

SEC. 4. *How proceedings commenced*.—Proceedings for indirect contempt may be initiated *motu proprio* by the court against which the contempt was committed by an order or any other formal charge requiring the respondent to show cause why he should not be punished for contempt. xxx xxx xxx

The phrase "improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice" is so broad and general that it encompasses wide spectrum of acts that could constitute indirect contempt. However, the act of complainant in parking his car in a slot allegedly reserved for respondent judge does not fall under this category. There was no showing that he acted with malice and/or bad faith or that he was improperly motivated to delay the proceedings of the court by making use of the parking slot supposedly reserved for respondent judge. We cannot also say that the said act of complainant constitutes disrespect to the dignity of the court. In sum, the incident is too flimsy and inconsequential to be the basis of an indirect contempt proceeding.

In *Lu Ym v. Mahinay,*[3] we held that an act, to be considered contemptuous, must be clearly contrary or prohibited by the order

[3] G.R. No. 169476, June 16, 2006, 491 SCRA 253, 263-264.

of the Court. A person cannot, for disobedience, be punished for contempt unless the act which is forbidden or required to be done is clearly and exactly defined, so that there can be no reasonable doubt or uncertainty as to what specific act or thing is forbidden or required. Here, the act of complainant is not contrary or clearly prohibited by an order of the court.

The power to punish for contempt is inherent in all courts so as to preserve order in judicial proceedings as well as to uphold the administration of justice. The courts must exercise the power of contempt for purposes that are impersonal because that power is intended as a safeguard not for the judges but for the functions they exercise. Thus, judges have, time and again, been enjoined to exercise their contempt power judiciously, sparingly, with utmost restraint and with the end in view of utilizing the same for correction and preservation of the dignity of the court, not for retaliation or vindication.[4] Respondent judge's act of unceremoniously citing complainant in contempt is a clear evidence of his unjustified use of the authority vested upon him by law.

Besides possessing the requisite learning in the law, a magistrate must exhibit that hallmark of judicial temperament of utmost sobriety and self-restraint which are indispensable qualities of every judge.[5] Respondent judge himself has characterized this incident as a "petty disturbance" and he should not have allowed himself to be annoyed to a point that he would even waste valuable court time and resources on a trivial matter.

As for the appropriate penalty to be imposed, we note that this is not the first time respondent judge was charged with grave abuse of authority in connection with his misuse of his contempt power. In A.M. No. RTJ-06-1972 entitled *Panaligan v. Ibay*,[6] the Court in its Decision dated June 21, 2006 resolved to impose a fine of ₱5,000.00 on respondent judge for improperly citing therein complainant for contempt and ordering his detention

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[4] *Torcende v. Sardido*, A.M. No. MTJ-99-1238, January 24, 2003, 396 SCRA 11, 21-22.

[5] *Id.* at 25.

[6] 491 SCRA 545.

without sufficient legal basis. He was warned not to repeat the same or similar offense, lest a more severe penalty shall be imposed. In *Macrohon v. Ibay,*[7] respondent judge was also found guilty of the same offense and ordered to pay a fine of ₱25,000.00. In the recent case of *Nuñez v. Ibay,*[8] which involved a very similar incident regarding inadvertent usurpation of respondent judge's parking slot, the Court likewise found respondent judge guilty of grave abuse of authority for citing complainant therein in contempt of court without legal basis. In *Nuñez*, we ordered respondent judge to pay a fine in the amount of ₱40,000.00 to be deducted from his retirement benefits, since said respondent judge opted to avail of Optional Retirement under R.A. No. 910 (as amended by R.A. No. 5095 and P.D. No. 1438) effective August 18, 2007.

Considering that this is not the first time that respondent judge committed the same offense and in *Nuñez*, which had similar factual antecedents as the case at bar, the Court already saw fit to impose upon him a fine in the amount of ₱40,000.00, it is proper to impose on him the same penalty in this case.

WHEREFORE, in view of the foregoing, respondent Judge Francisco B. Ibay is found guilty of grave abuse of authority. He is ordered to pay a *FINE* of Forty Thousand Pesos (₱40,000.00) to be deducted from his retirement benefits.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Corona, Carpio Morales, Chico-Nazario, Nachura, Peralta, and *Bersamin, JJ.,* concur.

*Velasco, Jr. (Chairperson), J.,*no part. Participated as then Court Administrator.

Brion, J., on official leave.

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[7] A.M. No. RTJ-06-1970, November 30, 2006, 509 SCRA 75.

[8] A.M. No. RTJ-06-1984, June 30, 2009.

FIRST DIVISION

[G.R. No. 166705. July 28, 2009]

MANTLE TRADING SERVICES, INCORPORATED AND/ OR BOBBY DEL ROSARIO, *petitioners, vs.* **NATIONAL LABOR RELATIONS COMMISSION and PABLO S. MADRIAGA,** *respondents.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; REQUIREMENTS OF A VALID DISMISSAL. —** It is settled that to effect a valid dismissal, the law requires that a) there be just and valid cause as provided under Article 282 of the Labor Code; and b) the employee be afforded an opportunity to be heard and to defend himself. The two-notice requirement must be complied with, to wit: a) a written notice containing a statement of the cause for the termination to afford the employee ample opportunity to be heard and defend himself with the assistance of his representative, if he so desires; and b) if the employer decides to terminate the services of the employee, the employer must notify him in writing of the decision to dismiss him, stating clearly the reason therefore.
2. **ID.; ID.; ID.; ID.; EMPLOYEE VALIDLY DISMISSED BUT DUE PROCESS RIGHT WAS VIOLATED; CASE OF *AGABON,* APPLICABLE. —** The case of ***Agabon v. NLRC, et al.*** applies to the case at bar. In ***Agabon****,* the dismissal was found by the Court to be based on a just cause because the employee abandoned his work. But it also found that the employer did not follow the notice requirement demanded by due process. It ruled that this violation of due process on the part of the employer did not nullify the dismissal, or render it illegal, or ineffectual. Nonetheless, the employer was ordered to indemnify the employee for the violation of his right to due process. It further held that the penalty should be in the nature of indemnification, in the form of nominal damages and should depend on the facts of each case, taking into special consideration the gravity of the due process violation of the employer. The amount of such damages is addressed to the

sound discretion of the court, considering the relevant circumstances. Thus, in ***Agabon***, the Court ordered the employer to pay the employee nominal damages in the amount of ₱30,000.00.

3. ID.; ID.; ID.; ID.; ID.; AMOUNT OF NOMINAL DAMAGES IS DETERMINED BY THE CAUSES FOR A VALID DISMISSAL; CASE AT BAR. — We stress that though the Court is given the latitude to determine the amount of nominal damages to be awarded to an employee who was validly dismissed but whose due process rights were violated, a distinction should be made between a valid dismissal due to just causes under Article 282 of the Labor Code and those based on authorized causes, under Article 283. xxx Since in the case of ***JAKA***, the employee was terminated for authorized causes as the employer was suffering from serious business losses, the Court fixed the indemnity at a higher amount of ₱50,000.00. In the case at bar, the cause for termination was abandonment, thus it is due to the employee's fault. It is equitable under these circumstances to order the petitioner company to pay nominal damages in the amount of ₱30,000.00, similar to the case of ***Agabon***.

4. ID.; ID.; ID.; ID.; ID.; AWARD OF SALARY DIFFERENTIALS, 13TH MONTH PAY AND HOLIDAY PAY, PROPER. — We affirm the award of salary differentials, 13th month pay and holiday pay, awarded by the NLRC and the Court of Appeals. We note that although petitioner company had cause to terminate Madriaga, this has no bearing on the issue of award of salary differentials, holiday pay and 13th month pay because prior to his valid dismissal, he performed work as a regular employee of petitioner company, and he is entitled to the benefits provided under the law. Thus, in the case of ***Agabon*****,** even while the Court found that the dismissal was for a just cause, the employee was still awarded his monetary claims.

5. REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF; BURDEN RESTS ON EMPLOYER TO PROVE PAYMENT; CASE AT BAR. — As a general rule, one who pleads payment has the burden of proving it. Even where the employee must allege nonpayment, the general rule is that the burden rests on the employer to prove payment, rather than on the employee to prove nonpayment. The reason for the rule is that the pertinent personnel files, payrolls, records, remittances and other similar

documents — which will show that overtime, differentials, service incentive leave and other claims of workers have been paid — are not in the possession of the employee but in the custody and absolute control of the employer. Since in the case at bar petitioner company has not shown any proof of payment of the correct amount of salary, holiday pay and 13th month pay, we affirm the award of Madriaga's monetary claims.

APPEARANCES OF COUNSEL

De Borja Lamorena & Duano Law Offices for petitioners.
The Solicitor General for public respondent.
Public Attorney's Office for private respondent.

D E C I S I O N

PUNO, *C.J.*:

This petition for review seeks to reverse the Decision[1] of the Court of Appeals in C.A.-G.R. SP No. 84796 which nullified and set aside the Decision[2] and Resolution of the National Labor Relations Commission (NLRC) in NLRC NCR CA No. 034291-03 which modified an earlier decision by the Labor Arbiter holding that respondent Pablo S. Madriaga (Madriaga) was illegally dismissed.

Petitioner company, Mantle Trading Services, Inc., is engaged in the fishing business.[3] Sometime in June 1989, Madriaga was hired by petitioner company as a "*batilyo*" or fish hauler. Subsequently, he became a "*tagapuno*" (someone who filled

[1] Penned by Justice Magdangal M. De Leon, with Justices Romeo A. Brawner and Mariano C. Del Castillo concurring; promulgated on August 31, 2004.

[2] Penned by Presiding Commissioner Lourdes C. Javier, with Commissioners Ernesto C. Verceles and Tito F. Genilo concurring; promulgated on January 30, 2004.

[3] Co-petitioner Bobby del Rosario was alleged by the respondent as part of the employers. However, the Labor Arbiter and the NLRC both found that Mantle Trading Services, Inc. has in its incorporators and officers no person by the name of "Bobby del Rosario."

up tubs with fish). He worked from 6:00 p.m. up to 6:00 a.m. the following day with a daily pay of ₱150.00.

On August 10, 1999, Madriaga was reported by one Henry Gallos, a fish broker, to have received money from a fish trader, Mr. Edwin Alfaro. As consideration, Madriaga would put more fish in Alfaro's tubs. On August 25, 1999, Madriaga was again reported to have received money from Alfaro for the same illicit purpose. In both incidents, formal incident reports were submitted to the petitioner company.[4]

On September 11, 1999, Madriaga was allegedly barred by the payroll master, Mr. Charlie Baqued, from reporting for work. Petitioner company, on the other hand, alleged that Madriaga abandoned his work when he was about to be investigated for the two incident reports.

On February 7, 2001, Madriaga filed a complaint with the Regional Office of the Department of Labor and Employment (DOLE)—National Capital Region (NCR) against petitioners, for illegal dismissal, underpayment of wages and nonpayment of holiday pay, 13th month pay, overtime pay, service incentive leave pay and night shift differential pay.

On June 20, 2001, the DOLE-NCR Regional Office endorsed the complaint to the NCR Arbitration Branch. Petitioner company alleged, among others, that Madriaga was a seasonal employee and he was not dismissed. In a decision rendered on August 26, 2002, Labor Arbiter Melquiades Sol D. Del Rosario found Madriaga to be a regular employee who was illegally dismissed. The dispositive portion states, *viz.*:

> CONFORMABLY WITH THE FOREGOING, judgment is hereby rendered finding complainant to have been illegally dismissed. Respondent Mantle Trading Services, Inc. is hereby ordered to pay complainant the sums computed in the body of this decision, which dispositions are made a part hereof.
>
> SO ORDERED.[5]

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[4] CA *rollo*, p. 30; Annexes B & C, Mantle's Original NLRC Position Paper.

[5] *Id.* at pp. 66-78, Decision of the Labor Arbiter, dated August 26, 2002.

The Labor Arbiter ruled that Madriaga was a regular employee because "the nature of [Madriaga's] work is filling tubs with fish everytime the fishing vessel would come to port, and that the business of respondent is the disposition of fish catch."[6] He found that since the signing of the employment agreement with petitioner company on August 1, 1996, Madriaga had been working as "*tagapuno*" continuously.[7] He held that Madriaga's work was necessary or desirable in the usual business or trade of the petitioner company.[8] The Labor Arbiter concluded that Madriaga could not have been a project worker as alleged by the petitioner company because there is no specific project that appeared on the contract and neither was there a statement as to the specific period of time when that the project will be completed.

The Labor Arbiter also faulted the petitioner company in failing to comply with the requirement of notice before dismissing an employee. He held that the employer must furnish the employee, sought to be dismissed, with two (2) written notices before termination can be legally effected: *first,* there must be a notice which apprises the employee of the particular acts or omissions for which the dismissal is sought; and *second,* a subsequent notice which informs the employee of the employer's decision to dismiss him.[9] The Labor Arbiter held that even if the ground of dismissal is abandonment of work, there must still be a notice to be served at the employee's last known address.[10]

The Labor Arbiter awarded Madriaga with backwages to be paid not from the date he was dismissed, on September 11, 1999, but on February 7, 2001 "as a matter of penalty for dilly-dallying in the filing of the case."[11]As of June 11, 2002, respondent's backwages amounted to ₱82,368.00. In addition,

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[6] *Rollo*, p. 142.

[7] *Id.*

[8] *Id.* at 143.

[9] *Id.* at 46.

[10] Citing *Labor Congress of the Philippines v. NLRC, et al.*, G.R. No. 123938, May 21, 1998, 290 SCRA 509.

[11] *Rollo*, p. 47.

the Labor Arbiter awarded Madriaga ₱15,444.00 as separation pay, ₱24,240.00 for underpayment of wages, ₱1,980.00 for unpaid holiday pay, or the total amount of ₱124,032.00.[12]

Petitioner company appealed to the NLRC. It charged that the Labor Arbiter committed grave abuse of discretion in holding that: (1) Madriaga was a regular and not a contractual employee; (2) he was illegally dismissed; and (3) his money claims were granted.

On January 30, 2004, the NLRC **modified** the decision of the Labor Arbiter. It affirmed the Labor Arbiter's ruling that Madriaga was a regular employee but it held that Madriaga was not illegally dismissed, *viz.*:

As regards the second issue, respondent [Mantle] contends that [Madriaga] was not illegally dismissed because being a contractual/seasonal/project employee, his employment was terminated at the end of the undertaking or at the latest, at the end of the fishing season for 1999, hence, there was no need to comply with the two-notice requirement under the law. It claims that when the incidents of August 10 and August 25, 1999 were about to be investigated, complainant [Madriaga] disappeared from the fish port and abandoned his work, only to surface again when this complaint was heard. It avers that complainant committed serious misconduct since by the account of his co-workers, he received money from a fish trader to intentionally injure the interest of the respondent.

We find that complainant was neither dismissed by the respondent nor did he abandon his work. Based on the records, no notice of termination was sent to the complainant by the respondent company, much less was complainant verbally told by any officer of the respondent not to report for work. Complainant's allegation that he was barred by the payroll master from reporting for work has not been substantiated. In any case, even if it were true, the act of the payroll master in preventing the complainant from reporting for work cannot be deemed respondent's act in the absence of evidence that said payroll

[12] CA *Rollo,* pp. 76-77.

master had the authority to dismiss employees. ***What appears to have happened here is that complainant was not dismissed by the respondent company but the complainant without ascertaining the authority of the payroll master, heeded the latter's order for him not to report for work.***[13]

The NLRC rejected petitioner company's contention that Madriaga abandoned his work. It ruled that mere absence is not sufficient. There must be proof that there was deliberate and unjustified refusal on the part of the employee to resume his employment without any intention of returning.

Thus, the dispositive portion of the NLRC decision held:

Wherefore, the Decision dated August 26, 2002 is MODIFIED. Complainant is declared not illegally dismissed and directed to report for work. Respondent is directed to accept complainant back to work and to pay complainant the amount of twenty four thousand two hundred forty pesos (₱24,240.00) as salary differentials, five thousand one hundred forty eight pesos (₱5,148.00) as 13th month pay and one thousand nine hunded eighty pesos (₱1,980.00) as holiday pay, or the aggregate sum of thirty one thousand three hundred twenty eight pesos (₱31,328.00).

SO ORDERED.[14]

Both petitioner company and respondent filed their respective motions for reconsideration. Petitioner company contended that the NLRC erred when it found Madriaga to have been employed since 1989 and not 1999. It reiterated its argument that Madriaga was not a regular employee and that he abandoned his work. Respondent, on the other hand, insisted he was illegally dismissed. On March 31, 2004, their motions for reconsideration were denied for lack of merit.

Petitioner company sought recourse with the Court of Appeals through a **Petition for *Certiorari***. It alleged that the NLRC committed grave abuse of discretion amounting to lack or excess

[13] *Rollo,* pp. 102-103. NLRC NCR CA No. 034291-03, dated January 30, 2004, pp. 5-6 (emphasis supplied).

[14] Decision of the Third Division, National Labor Relations Commission, dated January 30, 2004.

of jurisdiction in ruling that: (1) Madriaga was a regular employee; (2) his employment commenced in 1989 as testified to by the employee and not 1999 as stated in their employment contract; and (3) he did not abandon his work.

On August 31, 2004, the Court of Appeals affirmed the finding of the Labor Arbiter and the NLRC that Madriaga was a regular employee. It held that Madriaga's work as *tagapuno* may be likened to the work of a *cargador* which is directly related, necessary and vital to the operations of the employer's business.[15] It ruled that the distribution of the day's catch to the tubs of different fish traders has a reasonable connection to the fishing business of petitioner company.

The Court of Appeals also sustained the ruling that Madriaga began work in 1989 and not in 1999. It affirmed the joint finding of the Labor Arbiter and the NLRC based on the testimony of the employee that he began work in 1989 as opposed to the questionable employee contract dated 1999.

The Court of Appeals, however, reversed the Labor Arbiter and the NLRC on the issue of abandonment of work. It held that there was a causal connection between the charge against Madriaga of having received money from a fish trader and his failure to seek his immediate reinstatement. It ruled that Madriaga abandoned his work as it was only invoked two years after his alleged dismissal. However, despite the finding that Madriaga abandoned his work, the Court of Appeals held that "[c]onsidering that petitioner has not established the compliance with **due process** in terminating respondent's employment, it is still considered to have committed illegal dismissal."[16] The dispositive portion of its Decision held:

> WHEREFORE, the *Decision* dated January 30, 2004 of the National Labor Relations Commission is ***ANNULLED*** and ***SET ASIDE.*** Accordingly, the *Decision* dated August 26, 2002 of the Labor Arbiter finding private respondent to have been illegally dismissed is ***REINSTATED.***

[15] Citing *Caurdanetaan Piece Workers Union v. Laguesma*, G.R. No. 113542, February 24, 1998, 286 SCRA 401.

[16] *Rollo*, p. 37.

SO ORDERED.[17]

Petitioner company filed a Motion for Reconsideration and a Supplemental Motion for Reconsideration, which were both denied in a Resolution dated January 13, 2004.[18]

It now comes before this Court raising the following issues:

I.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED WHEN IT WENT BEYOND THE SCOPE OF A WRIT OF *CERTIORARI* IN RESOLVING THAT PRIVATE RESPONDENT WAS ILLEGALLY DISMISSED ALTHOUGH SUCH ISSUE WAS NOT RAISED [IN] THE PETITION FOR *CERTIORARI*.

II.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED WHEN IT HELD THAT PRIVATE RESPONDENT WAS ILLEGALLY DISMISSED BECAUSE PETITIONER DID NOT COMPLY WITH THE NOTICE REQUIREMENT DESPITE ITS FINDING OF ABANDONMENT OF WORK.

The first ground patently lacks merit. Petitioner company raised three (3) assignment of errors before the Court of Appeals, *i.e.*, whether the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction: (1) in ruling that Madriaga is a regular employee; (2) in holding that Madriaga's employment commenced in 1989; and (3) in concluding that respondent did not abandon his work. All these issues cannot be divorced from the question of whether Madriaga was illegally dismissed by the petitioner company. More specifically, the issue of abandonment is inextricably linked with the issue of the validity of the dismissal.[19] Indeed, the illegal dismissal of Madriaga was the subject of his complaint that was resolved by the Labor Arbiter, the NLRC and the Court of Appeals. It is the heart of the case at bar.

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[17] *Id.* at 37.

[18] *Id.* at 40.

[19] See *RBC Cable Master System, et al. v. Marcial Baluyot,* G.R. No. 172670, January 20, 2009.

We now come to the ruling of the Court of Appeals that Madriaga who abandoned his work was nevertheless illegally dismissed for non-compliance by the petitioner company with the notice requirement. It is settled that to effect a valid dismissal, the law requires that a) there be just and valid cause as provided under Article 282 of the Labor Code; and b) the employee be afforded an opportunity to be heard and to defend himself. The two-notice requirement must be complied with, to wit: a) a written notice containing a statement of the cause for the termination to afford the employee ample opportunity to be heard and defend himself with the assistance of his representative, if he so desires; and b) if the employer decides to terminate the services of the employee, the employer must notify him in writing of the decision to dismiss him, stating clearly the reason therefore.[20]

The case of ***Agabon v. NLRC, et al.***[21] applies to the case at bar. In ***Agabon***, the dismissal was found by the Court to be based on a just cause because the employee abandoned his work. But it also found that the employer did not follow the notice requirement demanded by due process. It ruled that this violation of due process on the part of the employer did not nullify the dismissal, or render it illegal, or ineffectual. Nonetheless, the employer was ordered to indemnify the employee for the violation of his right to due process. It further held that the penalty should be in the nature of indemnification, in the form of nominal damages and should depend on the facts of each case, taking into special consideration the gravity of the due process violation of the employer.[22] The amount of such damages is addressed to the sound discretion of the court, considering the relevant circumstances.[23] Thus, in ***Agabon***, the Court ordered the employer to pay the employee nominal damages in the amount of ₱30,000.00.

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[20] *Shoppes Manila, Inc. v. NLRC*, G.R. No. 147125, January 14, 2004, 419 SCRA 354; *R Transport Corp. v. Rogelio Ejandra*, G.R. No. 148508, May 20, 2004, 428 SCRA 75.

[21] G.R. No. 158693, November 17, 2004, 442 SCRA 573.

[22] *Id.*

[23] *Id.*

Again, we stress that though the Court is given the latitude to determine the amount of nominal damages to be awarded to an employee who was validly dismissed but whose due process rights were violated, a distinction should be made between a valid dismissal due to just causes under Article 282 of the Labor Code and those based on authorized causes, under Article 283. The two causes for a valid dismissal were differentiated in the case of ***JAKA Food Processing Corporation v. Pacot***[24] where the Court held that:

> A dismissal for just cause under Article 282 implies that the employee concerned has committed, or is guilty of, some violation against the employer, *i.e.* the employee has committed some serious misconduct, is guilty of some fraud against the employer, or, as in Agabon, he has neglected his duties. Thus, it can be said that the employee himself initiated the dismissal process.
>
> On another breath, a dismissal for an authorized cause under Article 283 does not necessarily imply delinquency or culpability on the part of the employee. Instead, the dismissal process is initiated by the employer's exercise of his management prerogative, *i.e.* when the employer opts to install labor saving devices, when he decides to cease business operations or when, as in this case, he undertakes to implement a retrenchment program.
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> x x x x x x x x x
>
> Accordingly, it is wise to hold that: (1) if the dismissal is based on a just cause under Article 282 but the employer failed to comply with the notice requirement, the sanction to be imposed upon him should be tempered because the dismissal process was, in effect, initiated by an act imputable to the employee; and (2) if the dismissal is based on an authorized cause under Article 283 but the employer failed to comply with the notice requirement, the sanction should be stiffer because the dismissal process was initiated by the employer's exercise of his management prerogative.[25]

Since in the case of **JAKA**, the employee was terminated for authorized causes as the employer was suffering from serious business losses, the Court fixed the indemnity at a higher amount

[24] G.R. No. 151378, March 28, 2005, 454 SCRA 119.

[25] *Id.* at 124-126.

of ₱50,000.00. In the case at bar, the cause for termination was abandonment, thus it is due to the employee's fault. It is equitable under these circumstances to order the petitioner company to pay nominal damages in the amount of ₱30,000.00, similar to the case of ***Agabon***.

We affirm the award of salary differentials, 13th month pay and holiday pay, awarded by the NLRC and the Court of Appeals. We note that although petitioner company had cause to terminate Madriaga, this has no bearing on the issue of award of salary differentials, holiday pay and 13th month pay because prior to his valid dismissal, he performed work as a regular employee of petitioner company, and he is entitled to the benefits provided under the law. Thus, in the case of ***Agabon*****,** even while the Court found that the dismissal was for a just cause, the employee was still awarded his monetary claims.

An employee should be compensated for the work he has rendered in accordance with the minimum wage, and must be appropriately remunerated when he was suffered to work on a regular holiday during the time he was employed by the petitioner company. As regards the 13th month pay, an employee who was terminated at any time before the time for payment of the 13th month pay is entitled to this monetary benefit in proportion to the length of time he worked during the year, reckoned from the time he started working during the calendar year up to the time of his termination from the service.[26]

As a general rule, one who pleads payment has the burden of proving it. Even where the employee must allege nonpayment, the general rule is that the burden rests on the employer to prove payment, rather than on the employee to prove nonpayment. The reason for the rule is that the pertinent personnel files, payrolls, records, remittances and other similar documents — which will show that overtime, differentials, service incentive leave and other claims of workers have been paid — are not in the possession of the employee but in the custody and absolute

[26] REVISED GUIDELINES ON THE IMPLEMENTATION OF THE 13TH MONTH PAY LAW, November 16, 1987.

control of the employer.[27] Since in the case at bar petitioner company has not shown any proof of payment of the correct amount of salary, holiday pay and 13th month pay, we affirm the award of Madriaga's monetary claims.

IN VIEW WHEREOF, the petition is *DENIED.* The decision of the Court of Appeals in C.A.-G.R. SP No. 84796, dated August 31, 2004, annulling and setting aside the Decision of the NLRC dated January 30, 2004 and reinstating the Decision dated August 26, 2002 of the Labor Arbiter finding respondent Pablo S. Madriaga a regular employee and ordering the petitioner company to pay the amount of twenty-four thousand, two hundred forty pesos (₱24,240.00) as salary differentials, five thousand, one hundred forty-eight pesos (₱5,148.00) as 13th month pay, and one thousand, nine hundred eighty pesos (₱1,980.00) as holiday pay, is hereby *AFFIRMED.* In accordance with the ruling in *Agabon,* the award for backwages is deleted, but in addition, the amount of thirty thousand pesos as nominal damages (₱30,000.00) is awarded to the respondent. The aggregate sum of the award to Madriaga shall be the total of sixty-one thousand, three hundred twenty-eight pesos (₱61,328.00).

No costs.

SO ORDERED.

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

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[27] *Villar v. NLRC*, G.R. No. 130935, May 11, 2000, 331 SCRA 686, 695.

THIRD DIVISION

[G.R. No. 179674. July 28, 2009]

PYRO COPPER MINING CORPORATION, *petitioner, vs.* **MINES ADJUDICATION BOARD-DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, MINES AND GEO-SCIENCES BUREAU DIRECTOR HORACIO C. RAMOS, REGIONAL DIRECTOR SAMUEL T. PARAGAS, REGIONAL PANEL OF ARBITRATORS ATTY. CLARO E. RAMOLETE, JR., ATTY. JOSEPH ESTRELLA and ENGR. RENATO RIMANDO, and MONTAGUE RESOURCES PHILIPPINES CORPORATION,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS FROM THE COURT OF TAX APPEALS AND QUASI-JUDICIAL AGENCIES TO THE COURT OF APPEALS; CONTENTS OF PETITION; SWORN CERTIFICATION AGAINST FORUM SHOPPING; A CERTIFICATION NOT SIGNED BY A DULY AUTHORIZED PERSON RENDERS THE PETITION SUBJECT TO DISMISSAL. — Section 6(d), Rule 43 in relation to Section 2, Rule 42 of the 1997 Revised Rules of Civil Procedure mandates that a petition for review shall contain a sworn certification against forum shopping, in which the petitioner shall attest that he has not commenced any other action involving the same issues in this 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; and if he should thereafter learn that a similar action or proceeding has been filed or is pending before this Court, the Court of Appeals, or different divisions thereof, or any other tribunal or agency, he undertakes to promptly inform the aforesaid courts and other tribunal or agency thereof within five days therefrom. For failure to comply with this mandate, Section 7, Rule 43 of the 1997 Revised Rules of Civil Procedure. The requirement that petitioner should sign the Certification against Forum Shopping applies even to corporations, the Rules of Court making no

distinction between natural and juridical persons. A corporation, however, exercises its powers through its board of directors and/or its duly authorized officers and agents. Physical acts, like the signing of documents, can be performed only by natural persons duly authorized for the purpose by corporate by-laws or by a specific act of the board of directors. *The signatory, therefore, in the case of the corporation should be "a duly authorized director or officer of the corporation" who has knowledge of the matter being certified.* If the petitioner is a corporation, a board resolution authorizing a corporate officer to execute the Certification against Forum Shopping is necessary. **A certification not signed by a duly authorized person renders the petition subject to dismissal.**

2. **ID.; ID.; ID.; ID.; ID.; THERE IS NOTHING TO JUSTIFY THE ARGUMENT OF PETITIONER THAT THE AUTHORITY TO SIGN GRANTED TO ONE OF ITS BOARD MEMBER, EXTENDED TO ALL PLEADINGS SUBSEQUENT TO THE MOTION FOR EXTENSION. —** It can be gleaned from the Resolution of the board of directors of petitioner that the authority granted to Atty. Acsay was to make and sign the pleading entitled "Motion for Extension of Time to File Petition for Review under Rule 43 of the Rules of Court," but not the Petition for Review itself. The wordings of the board Resolution are so explicit that they cannot be interpreted otherwise. There is nothing to justify the argument of petitioner that the authority to sign granted to Atty. Acsay by the said board Resolution extended to all other pleadings subsequent to the Motion for Extension. Other than the Minutes of the Special Meeting held on 22 January 2007 by the board of directors of petitioner, which the Court deemed unsatisfactory, no other proof of Atty. Acsay's purported authority to sign the Verification and Certification against Forum Shopping for the Petition for Review in CA-G.R. SP No. 97663 was presented. Absent proof of such authority, then the reasonable conclusion is that there is actually none. Given that a certification not signed by a duly authorized person renders the petition subject to dismissal, the Court of Appeals did not err in finally dismissing in its Resolution dated 6 September 2007 the Petition of petitioner in CA-G.R. SP No. 97663.

3. **ID.; ID.; ID.; ID.; ID.; RELAXATION OF THE RULE ON VERIFICATION AND CERTIFICATION AGAINST**

FORUM SHOPPING CANNOT BE APPLIED IN CASE AT BAR; PETITIONER NEVER OFFERED ANY SATISFACTORY EXPLANATION FOR ITS STUBBORN NON-COMPLIANCE WITH OR DISREGARD OF THE RULES. — Although the Court has previously relaxed the rules on verification and certification against forum shopping in some instances, it cannot do so here.From the very beginning, petitioner failed to attach to its Petition for Review before the Court of Appeals the relevant documents required by Section 6, Rule 43 of the 1997 Revised Rules of Procedure. Petitioner had two opportunities to comply with the requisites, *i.e*., when it filed its Motion for Reconsideration of the 23 February 2007 Resolution of the Court of Appeals and when it submitted its compliance with the 8 June 2007 Resolution of the appellate court; yet, petitioner still failed to do so. Petitioner never offered any satisfactory explanation for its stubborn non-compliance with or disregard for the rules of procedure. It is true that a litigation is not a game of technicalities, and that the rules of procedure should not be strictly enforced at the cost of substantial justice. However, it does not mean that the Rules of Court may be ignored at will and at random, to the prejudice of the orderly presentation and assessment of the issues and their just resolution. It must be emphasized that procedural rules should not be belittled or dismissed simply because their non-observance may have resulted in prejudice to a party's substantial rights. Like all rules, they are required to be followed except only for the most persuasive of reasons.

4.**ID.; ID.; CONSIDERING THAT THE RULES ON PLEADINGS, PRACTICE AND PROCEDURE BEFORE THE PANEL OF ARBITRATORS AND MINES ADJUDICATION BOARD ARE BEREFT OF ANY PROVISION REGARDING THE COMPUTATION OF TIME AND THE MANNER OF FILING, THE COURT MAY REFER TO SECTION 1, RULE 22 AND SECTION 3, RULE 13, OF THE 1997 REVISED RULES OF CIVIL PROCEDURE; CASE AT BAR.** — Considering that the Rules on Pleadings, Practice and Procedure before the Panel of Arbitrators and MAB are bereft of any provision regarding the computation of time and the manner of filing, the Court may refer to Section 1, Rule 22 and Section 3, Rule 13 of the 1997 Revised Rules of Civil Procedure. In the present case, notices of the Application for

Exploration Permit of private respondent were published in newspapers, announced on the radio, and posted in public places. The posting was done the latest, so we reckon the last possible date petitioner could have validly filed its Verified Petition/ Opposition with the Panel of Arbitrators therefrom. The notices of the Application for Exploration Permit of private respondent were posted on the bulletin boards of the Office of the Municipal Mayor of Dasol, Pangasinan on 16 to 31 March 2005; Office of the Municipal Mayor of Mabini, Pangasinan on 16 to 31 March 2005; Office of the Pangasinan Provincial Environment and Natural Resources on 17 March 2005 to 2 April 2005; Office of the DENR Provincial Environment and Natural Resources-Pangasinan on 15 March 2005 to 6 April 2005; Office of the DENR Community Environment and Natural Resources-Alaminos City on 17 March 2005 to 5 April 2005; Offices of the Punong Barangays of Malimpin, San Pedro, Barlo, San Vicente, and Alilao on 16 to 31 March 2005; and MGB on 14 to 28 July 2005. Since the notice of the Application for Exploration Permit of private respondent was last posted on **28 July 2005**, the 30-day reglementary period for filing any adverse claim/protest/opposition thereto ended on **27 August 2005.** As petitioner explained, however, 27 August 2005 was a Saturday; and 29 August 2005, Monday, was declared a national holiday, so the next working day was **30 August 2005**, Tuesday. Petitioner did send its Verified Protest/Opposition, through registered mail, on 30 August 2005, as evidenced by the Affidavit of Service of even date and Registry Receipts No. 10181; No. 10182; No. 10183; and No. 10184. Nevertheless, the Court still could not consider the Verified Protest/Opposition of petitioner as having been filed within the reglementary period.

5. **ID.; ID.; PRESCRIBED DOCKET FEE WAS PAID BEYOND THE REGLEMENTARY PERIOD; THE RULES REQUIRE THAT ANY ADVERSE CLAIM/PROTEST/OPPOSITION SHOULD BE ACCOMPANIED BY THE PAYMENT OF THE PRESCRIBED DOCKET FEE FOR THE SAME TO BE ACCEPTED FOR FILING.** — Section 21 of DAO No. 96-40, fixing the 30-day reglementary period for filing any adverse claim/protest/opposition to an application for exploration permit, must be read in relation to Section 204 of DAO No. 96-40, which reads: Section 204. *Substantial Requirements for Adverse Claims, Protest and Oppositions.* No adverse claim, protest or opposition involving mining rights

shall be accepted for filing **unless verified and accompanied by the prescribed docket fee and proof of services to the respondent(s), either personally or by registered mail**: Provided, That the requirement for the payment of docket fees shall not be imposed on pauper litigants[;] and Section 7, Rule III of the Rules on Pleadings, Practice and Procedure before the Panel of Arbitrators and MAB, which states that: **Section 7. Form and Contents of Adverse Claims, Protest or Opposition.** No adverse claim, petition, protest or opposition involving mining rights shall be accepted for filing **unless verified and accompanied by the prescribed docket fee and proof of services to the respondent(s), either personally or by registered mail**: Provided, That the requirement for the payment of docket fees shall not be imposed on pauper litigants. Section 204 of DAO No. 96-40 and Section 7, Rule III of the Rules on Pleadings, Practice and Procedure before the Panel of Arbitrators and MAB explicitly require that the adverse claim/protest/opposition be accompanied by the payment of the prescribed docket fee for the same to be accepted for filing. Upon a careful examination of the records of this case, it appears that the docket fee was paid only on **6 September 2005**, as evidenced by Official Receipt (O.R.) No. 7478283 B. Although petitioner avers that it paid the docket fee through postal money order – in which case, the date of mailing would be deemed the date of payment – such averment is unsubstantiated. The Court finds no evidence to prove that petitioner actually sent the purported postal money order for the payment of the docket fee. Petitioner submits the following evidence to prove payment of the docket fee: (a) a Prudential Bank Check in the amount of ₱5,020.00 dated 1 September 2005; (b) O.R. No. 7478283 B dated 6 September 2005 issued by MGB Region I, San Fernando City; and (c) several registry return receipts. But these pieces of evidence do not establish at all that the docket fee was paid by postal money order; or indicate the postal money order number and the date said postal money order was sent. Without any evidence to prove otherwise, the Court presumes that the docket fee was paid on the date the receipt for the same was issued, *i.e.*, 6 September 2005. Based on the foregoing, the Verified Protest/Opposition of petitioner to the Application for Exploration Permit of respondent is deemed filed with the Panel of Arbitrators only upon payment of the prescribed docket fee on 6 September

2005, clearly beyond the reglementary period, which ended on 30 August 2005.

6. **ID.; ID.; THE REQUIREMENT BY THE PANEL OF ARBITRATORS AND THE MINES ADJUDICATION BOARD THAT A CERTIFICATION AGAINST FORUM SHOPPING BE ATTACHED TO INITIATORY PLEADINGS FILED BEFORE THEM, TO ASCERTAIN THAT NO SIMILAR ACTIONS HAVE BEEN FILED BEFORE OTHER COURTS, TRIBUNALS, OR QUASI-JUDICIAL BODIES, IS NOT ARBITRARY OR BASELESS. —** Petitioner filed a Verified Protest/Opposition before the Panel of Arbitrators to oppose the Application for Exploration Permit filed by private respondent with the MGB. The Verified Protest/Opposition of petitioner constitutes an initiatory pleading before the Panel of Arbitrators, for which a certification against forum shopping may be required. Truly, DAO No. 96-40 is bereft of any provision requiring that a certification against forum shopping be attached to the adverse claim/protest/opposition. However, Section 4, Rule 1 of the Rules on Pleading, Practice and Procedure before the Panel of Arbitrators and the MAB allows the application of the pertinent provisions of the Rules of Court by analogy or in a suppletory manner, in the interest of expeditious justice and whenever practical and convenient; and, according to Section 5, Rule 7 of the Revised Rules of Court. Hence, the requirement by the Panel of Arbitrators and the MAB that a certification against forum shopping be attached to initiatory pleadings filed before them, to ascertain that no similar actions have been filed before other courts, tribunals, or quasi-judicial bodies, is not arbitrary or baseless. The lack of such a certification is a ground for the dismissal of the Verified Protest/Opposition of petitioner.

7. **ID.; ID.; WHEN THE APPLICATION WAS APPROVED AND THE EXPLORATION PERMIT ISSUED TO PRIVATE RESPONDENT, PETITIONER HAD NOTHING MORE TO PROTEST/OPPOSE RENDERING THE VERIFIED PROTEST/OPPOSITION MOOT AND ACADEMIC. —** It must be stressed that the cancellation of MPSA No. 153-2000-1 of petitioner by the DENR Secretary in DMO No. 2005-03 is already the subject of separate proceedings. The Court cannot touch upon it in the Petition at bar. Also worth stressing is that petitioner filed a **Verified Protest/Opposition**

to the **Application for Exploration Permit** of private respondent. When the application was approved and the exploration permit issued to private respondent, petitioner had nothing more to protest/oppose. More importantly, with the issuance by MGB of EP No. 05-001 to private respondent, the remedy of petitioner is to seek the cancellation thereof, over which, as subsequently discussed herein, the Panel of Arbitrators would have no jurisdiction. The Panel of Arbitrators cannot simply consider or convert the Verified Protest/ Opposition of petitioner to the Application for Exploration Permit of private respondent as a petition for the cancellation of EP No. 05-001. Since the Panel of Arbitrators can no longer grant petitioner any actual substantial relief by reason of the foregoing circumstances, then the Verified Protest/Opposition of petitioner was appropriately dismissed for being moot and academic.

8. ID.; ID.; THE AUTHORITY TO DENY, REVOKE, OR CANCEL EP NO. 05-001 OF PRIVATE RESPONDENT IS LODGED WITH MINES AND GEO-SCIENCES BUREAU AND NOT WITH THE PANEL OF ARBITRATORS. — It is clear from the ruling of the Court in *Olympic Mines* and *Celestial Nickel* Mining that the Panel of Arbitrators only has jurisdiction over adverse claims, conflicts, and oppositions relating to applications for the grant of mineral rights, but not over cancellation of mineral rights already granted and existing. As to who has jurisdiction to cancel an existing exploration permit, Section 28 of DAO NO. 96-40 explicitly provides: *Section 28. Cancellation of an Exploration Permit.* – The Director/concerned Regional Director may cancel the Exploration Permit for failure of the Permittee to comply with any of the requirements and for violation(s) of the terms and conditions under which the Permit is issued. For renewed Exploration Permits, the Secretary upon the recommendation of the Director shall cause the cancellation of the same. According to Section 5 of DAO No. 96-40, "Director" means the Director of the MGB Central Office, while "Regional Director" means the Regional Director of any MGB Regional Office. As the authority to issue an Exploration Permit is vested in the MGB, then the same necessarily includes the corollary power to revoke, withdraw or cancel the same. Indisputably, the authority to deny, revoke, or cancel EP No. 05-001 of private respondent is already lodged with the MGB, and not with the Panel of Arbitrators.

APPEARANCES OF COUNSEL

Acsay Pascual Capellan and Associates Law Office for petitioner.

Valenton and Valenton Law Offices for Montague Resources Philippine Corporation.

D E C I S I O N

CHICO-NAZARIO, *J.*:

Before this Court is a Petition for Review on *Certiorari*, under Rule 45 of the 1997 Revised Rules of Civil Procedure, seeking to reverse the Resolutions dated 23 February 2007[1] and 6 September 2007[2] of the Court of Appeals in **CA-G.R. SP No. 97663**. The appellate court, in its assailed Resolution dated 23 February 2007, dismissed the Petition for Review, under Rule 43 of the 1997 Revised Rules of Civil Procedure, of herein petitioner Pyro Copper Mining Corporation, for failure of petitioner to attach pertinent and relevant documents thereto.[3] The appellate court, in its other assailed Resolution dated 6 September 2007, denied the Motion for Reconsideration of petitioner for lack of merit and for failure to show the authority of Atty. Vicente R. Acsay (Atty. Acsay), one of the members of the Board of Directors of petitioner, to sign the Verification and Certification against Forum Shopping accompanying the Petition.

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[1] Penned by Associate Justice Aurora Santiago-Lagman with Associate Justices Bienvenido L. Reyes and Apolinario D. Bruselas, Jr., concurring; *rollo,* pp. 53-54.

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

[3] The pertinent and relevant documents which the petitioner failed to attach in its Petition before the Court of Appeals are the following: (1) Verified Protest/Opposition mentioned in the Order dated 14 September 2005 of the DENR-Panel of Arbitrators; (2) Motion for Reconsideration and Opposition to Motion for Reconsideration; and (3) Memorandum, all mentioned in the Order dated 27 December 2005 of the DENR Panel of Arbitrators.

Petitioner additionally prays for the setting aside or reversal of the Decision[4] dated 28 December 2006 of the Department of Environment and Natural Resources (DENR)-Mines Adjudication Board (MAB) in MAB Case No. 0147-06, which affirmed the Orders dated 14 September 2005[5] and 27 December 2005[6] of the DENR-Panel of Arbitrators, Region 1, San Fernando City, La Union (Panel of Arbitrators), in Case No. 2005-00012-I, dismissing the Verified Protest/Opposition of petitioner to the Application for Exploration Permit of private respondent Montague Resources Philippines Corporation. Ultimately, petitioner seeks the denial of the mining claim and the revocation/cancellation of the Exploration Permit, EXPA No. 21 dated 12 September 2003, of private respondent.

The factual antecedents of this case are as follows:

Petitioner is a corporation duly organized and existing under Philippine laws engaged in the business of mining. On 31 March 2000, petitioner's Application for Mineral Production Sharing Agreement (MPSA), identified as APSA-SF-000089, with the Mines and Geo-Sciences Bureau (MGB) of the DENR, Regional Office No. 1, San Fernando City in La Union, for the exploration, development and commercial utilization of certain pyrite ore and other mineral deposits in a 4,360.71-hectare land in Dasol, Pangasinan, was approved and MPSA No. 153-2000-1 was issued in its favor.

Private respondent is also a corporation organized and existing under the laws of the Philippines and engaged in the business of mining. On 12 September 2003, private respondent filed an Application for Exploration Permit[7] with MGB covering the same properties covered by and during the subsistence of APSA-

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[4] Signed by Chairman Angelo T. Reyes, Armi Jane Roa-Borje and Michelle Angelica D. Go; *rollo*, pp. 170-173.

[5] Signed by Chairman Atty. Claro E. Ramolete, Jr., Atty. Joseph T.D. Estrella and Engr. Renato Rimando; *id*. at 163-166.

[6] *Id*. at 167-168.

[7] *Id*. at 149-151.

SF-000089 and MPSA No. 153-2000-1[8] of petitioner. In turn, petitioner filed a Verified Protest/Opposition to the Application for Exploration Permit of the private respondent. It was allegedly filed with the Panel of Arbitrators[9] on 30 August 2005 and was received by the latter on 5 September 2005. The case was **docketed as Case No. 2005-00012-I.**

Prior, however, to petitioner's filing of its Verified Protest/ Opposition to the private respondent's Application for Exploration Permit, petitioner's MPSA No. 153-2000-1 was cancelled per

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[8] The private respondent initiated an action before the Panel of Arbitrators for the annulment and/or cancellation of APSA-SF-000089 and MPSA No. 153-2000-1 of petitioner. The case was docketed as **RPA Case No. 2004-000010-1.** In a Decision dated 6 August 2004, the Panel of Arbitrators cancelled/ revoked APSA-SF-000089 and MPSA No. 153-2000-1 of petitioner for the failure of the latter to comply with the mandatory requirements provided under the law for over five (5) years after its issuance in 2000. At the same time, the Panel of Arbitrators allowed the processing of the Application for Exploration Permit of private respondent. (See *rollo*, pp. 443-457.) The petitioner appealed the 6 August 2004 Decision of the Panel of Arbitrators to the MAB, which docketed it as **MAB Case No. 0142-04.**

The MAB rendered its Decision in **MAB Case No. 0142-04** on 19 May 2005, ruling that the DENR Secretary, and not the Panel of Arbitrators, had the power to cancel MPSA No. 153-2000-1. However, since DMO No. 2005-03, issued by the DENR Secretary, already canceled MPSA No. 153-2000-1, the 6 August 2004 Decision of the Panel of Arbitrators had become moot and academic. (See *rollo*, pp. 222-230.) The Motion for Partial Reconsideration of the petitioner was also denied in a Resolution dated 16 January 2006. Petitioner no longer questioned the latest action of the MAB. Resultantly, the MAB Decision dated 19 May 2005 and Resolution dated 16 January 2006 became final and executory, as evidenced by an Order of Finality dated 7 December 2006. (See *rollo*, pp. 699-700.)

[9] Sec. 77. Panel of Arbitrators. – x x x. Within thirty (30) working days, after the submission of the case by the parties for decision, **the panel shall have exclusive and original jurisdiction to hear and decide on the following:**

a. Disputes involving rights to mining areas;

b. Disputes involving mineral agreements or permits;

c. Disputes involving surface owners, occupants and claimholders/ concessionaires; and

d. Disputes pending before the Bureau and the Department at the date of the effectivity of this Act. (Emphasis supplied.)

DENR Memorandum Order (DMO) No. 2005-03[10] issued by the DENR Secretary Michael Defensor on 1 February 2005. Petitioner moved for the reconsideration of DMO No. 2005-03, which the DENR Secretary denied in its Decision[11] dated 14 June 2005.[12]

On 1 September 2005,[13] the MGB issued EP No. 05-001 to private respondent.

In an Order dated 14 September 2005, the Panel of Arbitrators dismissed motu proprio the Verified Protest/Opposition of petitioner for the following reasons: (1) the instant pleading was filed out of time; (2) in view of the issuance of EP No. 05-001 to private respondent, the Verified Protest/Opposition of petitioner to the Application for Exploration Permit of private respondent was rendered moot and academic; (3) the Panel of Arbitrators had no authority/jurisdiction to cancel, deny and/or revoke EP No. 05-001 of private respondent, the same being lodged with the MGB, the issuing authority; and (4) petitioner failed to include a certification against forum shopping.[14] Petitioner

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[10] *Rollo*, pp. 547-565.

[11] *Id*. at 252-260.

[12] Petitioner filed a Petition for Review with the Office of the President (OP) challenging the 14 June 2005 Decision of the DENR Secretary. The case was **docketed as O.P. Case No. 05-G-232**. On 23 November 2005, the OP issued an Order (see *rollo*, pp. 378-379) dismissing O.P. Case No. 05-G-232 for failure of petitioner to remit ₱500.00 as appeal fee. The Motion for Reconsideration of the said Order was denied by the OP in its Decision dated 8 March 2006. (See *rollo*, pp. 701-708.) Additionally, the OP found that the tenement covered by MPSA No. 153-2000-1 was non-performing, and it was not registered with the MGB-Regional Office as required under Section 43, Chapter VI of DENR Administrative Order No. 96-40 (DAO No. 96-40).

The petitioner appealed the aforesaid 8 March 2006 Decision of the OP to the Court of Appeals *via* Petition for Review under Rule 43 of the 1997 Revised Rules of Civil Procedure, docketed as **CA-G.R. SP No. 93857**. The said appeal is **still pending before the appellate court.**

[13] *Rollo*, pp. 154-157.

[14] *Id*. at 165-166.

moved for its reconsideration, but the Panel of Arbitrators denied the same in its Order dated 27 December 2005.[15]

Petitioner elevated by appeal to the MAB the Orders dated 14 September 2005 and 27 December 2005 of the Panel of Arbitrators, docketed as **MAB Case No. 0147-06.**

Subsequently, in a Decision[16] dated 28 December 2006 in MAB Case No. 0147-06, the MAB dismissed the appeal of petitioner, on the following grounds: (a) the Verified Protest/Opposition of petitioner to the Application for Exploration Permit of private respondent was filed beyond the reglementary period; and (b) the Verified Protest/Opposition of petitioner did not include a certification against forum shopping.[17]

Petitioner filed with the Court of Appeals a Petition for Review under Rule 43 of the 1997 Revised Rules of Civil Procedure, which was docketed as **CA-G.R. SP No. 97663**.

In a Resolution dated 23 February 2007, the Court of Appeals dismissed the said Petition, pursuant to Section 7, Rule 43, of the 1997 Revised Rules of Civil Procedure,[18] for failure of petitioner to attach thereto some pertinent and relevant documents required under Section 6 of the same Rule.[19]

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[15] *Id.* at 167-168.

[16] *Id.* at 170-173.

[17] *Id.* at 172-173.

[18] **SEC. 7.** *Effect of failure to comply with requirements.* – The failure of the petitioner to comply with any of the foregoing requirements regarding the payment of the docket and other lawful fees, the 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.

[19] **SEC. 6.** *Contents of the petition*. – The petition for review shall (a) state the full names of the parties to the case, without impleading the court or agencies either as petitioners or respondents; (b) contain a concise statement of the facts and issues involved and the grounds relied upon for the review; (c) be accompanied by a clearly legible duplicate original or a certified true copy of the award, judgment, final order or resolution appealed from, together with certified true copies of such material portions of the record referred to therein and other supporting papers; and (d) contain a sworn certification against forum shopping as provided in the last paragraph of Section 2, Rule 42. The

Petitioner filed a Motion for Reconsideration of the 23 February 2007 Resolution, together with the required documents. Private respondent, however, in its Comment,[20] still prayed for the dismissal of the Petition in CA-G.R. SP No. 97663 for failure of petitioner to submit Atty. Acsay's authority to sign the Verification and Certification against Forum Shopping.

Petitioner was given an opportunity to submit Atty. Acsay's written authority, but failed to do so. Consequently, the Court of Appeals issued a Resolution dated 6 September 2007, denying for lack of merit the Petition in CA-G.R. SP No. 97663.

Hence, this Petition.

The petitioner raises the following issues for this Court's Resolution:

I. WHETHER OR NOT THE [COURT OF APPEALS] DEPARTED FROM THE RULES AND ESTABLISHED JURISPRUDENCE WHEN IT DISMISSED THE PETITION [*A QUO*] DESPITE FAITHFUL COMPLIANCE WITH THE RULES ON DISCLOSURE AS INCORPORATED IN THE VERIFICATION AND CERTIFICATION PORTION OF THE MOTION FOR EXTENSION [OF] TIME AND PETITION *A QUO*.

II. WHETHER OR NOT THE [COURT OF APPEALS] DEPARTED FROM THE RULES AND ESTABLISHED JURISPRUDENCE WHEN IT DISMISSED THE PETITION *A QUO* DESPITE THE ATTACHMENT AND SUBMISSION OF THE REQUISITE AUTHORITY TO MAKE AND SIGN VERIFICATIONS AND SUBSEQUENTLY REQUIRED PLEADINGS.

III. WHETHER OR NOT THE [COURT OF APPEALS] REFUSED TO ADJUDICATE THE PETITION *A QUO* DESPITE THE ATTENDANCE OF A CLEARLY EXCEPTIONAL CHARACTER AND PARAMOUNT PUBLIC INTEREST INVOLVED AS WELL AS THE

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petition shall state the specific material dates showing that it was filed within the period fixed therein.

[20] *Rollo*, pp. 579-593.

NECESSITY FOR A RULING TO PUT AN END TO UNSCRUPULOUS ISSUANCE OF MINING CLAIMS.

IV. WHETHER OR NOT PUBLIC RESPONDENTS IN THE DENR COMMITTED SERIOUS ERROR AND GRAVE ABUSE OF DISCRETION IN DECLARING THAT: (A) THE VERIFIED PROTEST/OPPOSITION WAS FILED OUT OF TIME; (B) THE ISSUANCE OF THE EXPLORATION PERMIT IN FAVOR OF [PRIVATE RESPONDENT] ON [1 SEPTEMBER 2005] AND THE UNILATERAL CANCELLATION OF THE MPSA BY THE DENR-SECRETARY RENDERED THE VERIFIED PROTEST/OPPOSITION MOOT AND ACADEMIC; (C) THE [PANEL OF ARBITRATORS] HAVE NO JURISDICTION TO CANCEL, DENY AND/OR REVOKE THE EXPLORATION PERMIT OF [PRIVATE RESPONDENT]; AND (D) THE VERIFIED PROTEST/ OPPOSITION DOES NOT CONTAIN A CERTIFICATION AGAINST FORUM SHOPPING.[21]

To resolve the foregoing issues, the Court must address the more specific issues below:

I. Whether the subsequently attached Minutes of the Special Meeting dated 22 January 2007 of the Board of Directors of petitioner sufficiently granted Atty. Acsay authority to sign the Verification and Certification against Forum Shopping which accompanied the Petition in CA-G.R. SP No. 97663.

II. Whether the Verified Protest/Opposition of petitioner to the Application for Exploration Permit of private respondent was filed out of time.

III. Whether the Verified Protest/Opposition of petitioner filed before the MAB needs to be accompanied by a Certification against Forum Shopping.

IV. Whether the issuance by the DENR Secretary of DMO No. 2005-03 on 1 February 2005 which cancelled MPSA No. 153-2000-1 of petitioner and the issuance by MGB of EP No. 05-001 in favor of private respondent on 1 September 2005 rendered the Verified Protest/Opposition of petitioner moot and academic.

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[21] *Id*. at 792-793.

V. Whether the Panel of Arbitrators has jurisdiction to cancel, deny and/or revoke EP No. 05-001 issued by MGB to private respondent.

The Court finds no merit in the present Petition.

I

Petitioner maintains that there are special circumstances and basic considerations in support of Atty. Acsay's authority to execute and sign the Verification and Certification against Forum Shopping which accompanied its Petition in CA-G.R. SP No. 97663. *Firstly,* Atty. Acsay is an incorporator, stockholder, member of the board of directors, corporate secretary, and legal counsel of petitioner. *Secondly,* he was the authorized representative of petitioner in the signing of MPSA No. 153-2000-1. Therefore, Atty. Acsay is the best legally suitable person to make the required sworn disclosures in the Verification and Certification against Forum Shopping in the Petition of petitioner in CA-G.R. SP No. 97663.

Petitioner also contends that the Minutes of the Meeting held on 22 January 2007 by the board of directors of petitioner, bestowing upon Atty. Acsay the authority to make and sign the Verification for the Motion for Extension of Time to File Petition for Review under Rule 43 of the 1997 Revised Rules of Civil Procedure, must be construed in its entirety. According to the Minutes, Atty. Acsay was granted authority by the board to sign even verifications, which may be required in subsequent pleadings filed by petitioner. The reference in the Minutes to the Motion for Extension of Time to File Petition for Review is not meant to be restrictive or qualifying, as to exclude other pleadings.

With the foregoing, petitioner firmly argues that it has substantially complied with the requirements for the execution of the Verification and Certification against Forum Shopping, which accompanied its Petition in CA-G.R. SP No. 97663.

Section 6(d), Rule 43[22] in relation to Section 2, Rule 42[23] of the 1997 Revised Rules of Civil Procedure mandates that a petition for review shall contain a sworn certification against forum shopping, in which the petitioner shall attest that he has not commenced any other action involving the same issues in this 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; and if he should thereafter learn that a similar action or proceeding has been filed or is pending before this Court, the Court of Appeals, or different divisions thereof, or any other tribunal or agency, he undertakes to promptly inform the aforesaid courts and other tribunal or agency thereof within five days therefrom.[24]

For failure to comply with this mandate, Section 7, Rule 43 of the 1997 Revised Rules of Civil Procedure provides:

SEC. 7. *Effect of failure to comply with requirements.* – The failure of the petitioner to comply with any of the foregoing requirements regarding the payment of the docket and other lawful

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[22] **SEC. 6.** *Contents of the petition.* – x x x (d) contain a sworn certification against forum shopping as provided in the last paragraph of Section 2, Rule 42. The petition shall state the specific material dates showing that it was filed within the period fixed herein.

[23] **SEC 2.** *Form and contents.* – The petition shall be filed in seven (7) legible copies, with the original copy intended for the court being indicated as such by the petitioner, and shall (a) state the full names of the parties to the case, without impleading the lower courts or judges thereof either as petitioners or respondents; (b) indicate the specific material dates showing that it was filed on time; (c) set forth concisely a statement of the matters involved, the issues raised, the specification of errors of fact or law, or both, allegedly committed by the Regional Trial Court, and the reasons or arguments relied upon for the allowance of the appeal; (d) be accompanied by clearly legible duplicate originals or true copies of the judgments or final orders of both lower courts, certified correct by the clerk of court of the Regional Trial Court, the requisite number of plain copies thereof and of the pleadings and other material portions of the record as would support the allegations of the petition.

[24] *Pascual and Santos, Inc. v. The Members of Tramo Wakas Neighborhood Association, Inc.*, G.R. No. 144880, 17 November 2004, 442 SCRA 438, 445-446.

fees, the 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.**

The requirement that petitioner should sign the Certification against Forum Shopping applies even to corporations, the Rules of Court making no distinction between natural and juridical persons.[25] A corporation, however, exercises its powers through its board of directors and/or its duly authorized officers and agents. Physical acts, like the signing of documents, can be performed only by natural persons duly authorized for the purpose by corporate by-laws or by a specific act of the board of directors.[26] *The signatory, therefore, in the case of the corporation should be "a duly authorized director or officer of the corporation" who has knowledge of the matter being certified.*[27]

If the petitioner is a corporation, a board resolution authorizing a corporate officer to execute the Certification against Forum Shopping is necessary. **A certification not signed by a duly authorized person renders the petition subject to dismissal.**[28]

To recall, the Court of Appeals initially dismissed, in its Resolution dated 23 February 2007, the Petition for Review in CA-G.R. SP No. 97663, for failure of petitioner to submit pertinent and relevant documents required under Section 6, Rule 43 of the 1997 Revised Rules of Civil Procedure. The petitioner filed a Motion for Reconsideration, attaching thereto the required documents, except the proof of Atty. Acsay's authority to sign the Verification and Certification against Forum Shopping for the Petition. Instead of immediately dismissing the Motion for Reconsideration of petitioner, however, the Court of Appeals, in its Resolution dated 8 June 2007, gave petitioner five days

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[25] *Gonzales v. Climax Mining Ltd.*, G.R. No. 161957, 28 February 2005, 452 SCRA 607, 619.

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

[27] *Gonzales v. Climax Mining Ltd.*, *supra* note 25.

[28] *Id*.

from receipt thereof to submit such proof. The petitioner then submitted the Minutes of the Special Meeting held on 22 January 2007 by its board of directors, adopting a Resolution to the following effect:

> RESOLVED, that [Atty. Acsay], Director and Corporate Secretary of [herein petitioner] be, as he hereby is, authorized to make and sign the verification of the pleading filed by [petitioner] entitled "Motion for Extension of Time to File Petition for Review under Rule 43 of the Rules of Court."[29]

It can be gleaned from the afore-quoted Resolution of the board of directors of petitioner that the authority granted to Atty. Acsay was to make and sign the pleading entitled "Motion for Extension of Time to File Petition for Review under Rule 43 of the Rules of Court," but not the Petition for Review itself. The wordings of the board Resolution are so explicit that they cannot be interpreted otherwise. There is nothing to justify the argument of petitioner that the authority to sign granted to Atty. Acsay by the said board Resolution extended to all other pleadings subsequent to the Motion for Extension.

Other than the Minutes of the Special Meeting held on 22 January 2007 by the board of directors of petitioner, which the Court deemed unsatisfactory, no other proof of Atty. Acsay's purported authority to sign the Verification and Certification against Forum Shopping for the Petition for Review in CA-G.R. SP No. 97663 was presented. Absent proof of such authority, then the reasonable conclusion is that there is actually none. Given that a certification not signed by a duly authorized person renders the petition subject to dismissal,[30] the Court of Appeals did not err in finally dismissing in its Resolution dated 6 September 2007 the Petition of petitioner in CA-G.R. SP No. 97663.

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[29] *Rollo*, p. 110.

[30] *Gonzales v. Climax Mining Ltd.*, *supra* note 25.

[31] Some instances wherein this Court has relaxed the rule on verification

Although the Court has previously relaxed the rules on verification and certification against forum shopping in some instances,[31] it cannot do so here.

From the very beginning, petitioner failed to attach to its Petition for Review before the Court of Appeals the relevant documents required by Section 6, Rule 43 of the 1997 Revised Rules of Procedure. Petitioner had two opportunities to comply with the requisites, *i.e.*, when it filed its Motion for Reconsideration of the 23 February 2007 Resolution of the Court of Appeals and when it submitted its compliance with the 8 June 2007 Resolution of the appellate court; yet, petitioner still failed to do so. Petitioner never offered any satisfactory explanation for its stubborn non-compliance with or disregard for the rules of procedure.

It is true that a litigation is not a game of technicalities, and that the rules of procedure should not be strictly enforced at the cost of substantial justice. However, it does not mean that

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and certification of non-forum shopping, to wit: (1) In *HLC Construction and Development Corporation v. Emily Homes Subdivision Homeowners Association* [458 Phil. 392, 399 (2003)], it was held that the signature of only one of the petitioners in the certification against forum shopping substantially complied with rules because all the petitioners shared a common interest and invoked a common cause of action or defense; (2) In *Cavile v. Heirs of Cavile* [448 Phil. 302, 311 (2003)], because the lone petitioner who executed the certification of non-forum shopping was a relative and co-owner of the other petitioners with whom he shared a common interest; (3) In *Ateneo De Naga University v. Manalo* [G.R. No. 160455, 9 May 2005, 458 SCRA 325-336-337] this Court acknowledged that it had relaxed, under justifiable circumstances, the rule requiring the submission of these certifications and had applied the rule of substantial compliance under justifiable circumstances with respect to the contents of the certification. It also conceded that if this Court had allowed the belated filing of the certification against forum shopping for compelling reasons in previous rulings, with more reason should it sanction the timely submission of such certification though the proof of the signatory's authority submitted thereafter; (4) In *Sy Chin v. Court of Appeals* [399 Phil. 442 (2000)], the Court also upheld substantial justice and ruled that the failure of the parties to sign the certification may be overlooked, as the parties' case was meritorious; and (5) In *Pascual & Santos, Inc. v. The Members of Tramo Wakas Neighborhood Association, Inc.* [G.R. No. 144880, 17 November 2004, 442 SCRA 438] the subsequent submission of proof of authority to act on behalf of a petitioner corporation justified the relaxation of the Rules for the purpose of allowing the petition to be given due course.

the Rules of Court may be ignored at will and at random, to the prejudice of the orderly presentation and assessment of the issues and their just resolution. It must be emphasized that procedural rules should not be belittled or dismissed simply because their non-observance may have resulted in prejudice to a party's substantial rights. Like all rules, they are required to be followed except only for the most persuasive of reasons.[32]

II

Even assuming *arguendo* that Atty. Acsay did have the authority to sign the Verification and Certification against Forum Shopping for the Petition for Review of petitioner in CA-G.R. SP No. 97663, and the Court of Appeals erred in dismissing said Petition, the Court still cannot grant the prayer of petitioner herein to reverse the actions undertaken by the DENR as regards the cancellation of its MPSA No. 153-2000-1 and the issuance of EP No. 05-001 to private respondent.

Petitioner insists that it filed its Verified Protest/Opposition to the Application for Exploration Permit of private respondent within the reglementary period. Based on the records of MGB, the Notice of Application for Exploration Permit of private respondent was actually posted from 14 July 2005 to 28 July 2005. Applying the 30-day reglementary period, the last date on which to file any adverse claim, protest or opposition to the said application was 27 August 2005, a Saturday. Since 29 August 2005, Monday, was declared a national holiday, the next business day was 30 August 2005, Tuesday. This very well explains why the Verified Protest/Opposition of petitioner was filed on 30 August 2005. Petitioner further avows that it paid the required legal fees through postal money order. The issuance of the official receipt only after the filing, through registered mail, of its Verified Protest/Opposition, does not erase the fact that the docket fees were paid to and received by the government.

Section 21 of DAO No. 96-40 mandates:

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[32] *Teoville Homeowners Association, Inc. v. Ferreira,* G.R. No. 140086, 8 June 2005, 459 SCRA 459, 471.

Section 21. *Publication/Posting/Radio Announcement of an Exploration Permit Application.* - x x x Any adverse claim, protest or opposition shall be filed directly, within **thirty (30) calendar days** from the last date of publication/posting/radio announcement, with the concerned Regional Office or through any concerned PENRO or CENRO for filing in the concerned Regional Office for purposes of its resolution by the Panel of Arbitrators pursuant to the provisions of the Act and these implementing rules and regulations. x x x.

Considering that the Rules on Pleadings, Practice and Procedure before the Panel of Arbitrators and MAB are bereft of any provision regarding the computation of time and the manner of filing, the Court may refer to Section 1, Rule 22 and Section 3, Rule 13 of the 1997 Revised Rules of Civil Procedure,[33] which state:

Section 1. *How to compute time.* – In computing any period of time prescribed or allowed by these Rules, or by order of the court, or by any applicable statute, the day of the act or event from which the designated period of time begins to run is to be excluded and the date of performance included. **If the last day of the period,** as thus computed, **falls on a Saturday, a Sunday, or a legal holiday** in the place where the court sits, **the time shall not run until the next working day.** (Emphasis supplied.)

Section 3. *Manner of filing.* - The filing of pleadings, appearances, motions, notices, orders, judgments and all other papers shall be made by presenting the original copies thereof, plainly indicated as such, personally to the clerk of court or by sending them by registered mail. In the first case, the clerk of court shall endorse on the pleading the date and hour of filing. In the second case, **the date of the mailing of motions, pleadings, or any other papers or payments or deposits, as shown by the post office stamp on the envelope**

[33] Section 4, Rule I of the Rules on Pleadings, Practice and Procedure before the Panel of Arbitrators and MAB reads:

Section 4. Nature of the Proceedings. Subject to the basic requirements of due process, proceeding's before the Panel of Arbitrators and the Mines Adjudication Board shall be summary in nature. The technical rules on evidence obtaining in courts of law shall not be binding upon the same, in the absence of any applicable provision in these Rules and in order to effectuate the objectives of the Mining Act, **the pertinent provisions of the Rules of Court may, in the interest of expeditious justice and only whenever practical and convenient, be applied by analogy or in a suppletory manner.** Representation of a party in mining cases by legal counsel shall be optional. (Emphases supplied.)

or the registry receipt, shall be considered as the date of their filing, payment or deposit in court. The envelope shall be attached to the record of the case. (Emphasis supplied.)

In the present case, notices of the Application for Exploration Permit of private respondent were published in newspapers,[34] announced on the radio,[35] and posted in public places. The posting was done the latest, so we reckon the last possible date petitioner could have validly filed its Verified Petition/Opposition with the Panel of Arbitrators therefrom.

The notices of the Application for Exploration Permit of private respondent were posted on the bulletin boards of the Office of the Municipal Mayor of Dasol, Pangasinan on 16 to 31 March 2005; Office of the Municipal Mayor of Mabini, Pangasinan on 16 to 31 March 2005; Office of the Pangasinan Provincial Environment and Natural Resources on 17 March 2005 to 2 April 2005; Office of the DENR Provincial Environment and Natural Resources-Pangasinan on 15 March 2005 to 6 April 2005; Office of the DENR Community Environment and Natural Resources-Alaminos City on 17 March 2005 to 5 April 2005; Offices of the Punong Barangays of Malimpin, San Pedro, Barlo, San Vicente, and Alilao on 16 to 31 March 2005; and MGB on 14 to 28 July 2005.[36]

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[34] The Daily Tribune (*rollo*, p. 309) on 21 March 2008 and The Regional *Diaryo* (*id*. at 310) on 28 March 2005. Reckoned from 28 March 2005, the 30-day period ended on 27 April 2005.

[35] Announced in DWLU-FM once a day between 1:00 p.m. and 2:00 p.m. from Monday to Sunday on 15-31 March 2005, as evidenced by a Certificate of Performance [*id*. at 311] dated 1 April 2005. Reckoned from 31 March 2005, the 30-day period ended on 30 April 2005.

[36] As stated in the 28 December 2006 Decision of MAB in MAB Case No. 0147-06, *rollo*, p. 172. The Panel of Arbitrators' Certification dated 30 August 2005 evidencing the aforesaid dates of posting of notices of the private respondent's Application for Exploration Permit was not attached to the records of this case. However, the last date of posting, which was 14-28 July 2005, was never controverted by the petitioner. In fact, the petitioner itself admitted that the actual posting was made on 14-28 July 2005; thus, the last date of posting was 28 July 2005.

Since the notice of the Application for Exploration Permit of private respondent was last posted on **28 July 2005**, the 30-day reglementary period for filing any adverse claim/protest/opposition thereto ended on **27 August 2005**. As petitioner explained, however, 27 August 2005 was a Saturday; and 29 August 2005, Monday, was declared a national holiday,[37] so the next working day was **30 August 2005**, Tuesday. Petitioner did send its Verified Protest/Opposition, through registered mail, on 30 August 2005, as evidenced by the Affidavit of Service[38] of even date and Registry Receipts No. 10181; No. 10182; No. 10183; and No. 10184.[39] Nevertheless, the Court still could not consider the Verified Protest/Opposition of petitioner as having been filed within the reglementary period.

Section 21 of DAO No. 96-40, fixing the 30-day reglementary period for filing any adverse claim/protest/opposition to an application for exploration permit, must be read in relation to Section 204 of DAO No. 96-40, which reads:

> *Section 204. Substantial Requirements for Adverse Claims, Protest and Oppositions.* No adverse claim, protest or opposition involving mining rights shall be accepted for filing **unless verified and accompanied by the prescribed docket fee and proof of services to the respondent(s), either personally or by registered mail**: Provided, That the requirement for the payment of docket fees shall not be imposed on pauper litigants[;] (Emphasis supplied.)

and Section 7, Rule III of the Rules on Pleadings, Practice and Procedure before the Panel of Arbitrators and MAB, which states that:

> **Section 7. Form and Contents of Adverse Claims, Protest or Opposition.** No adverse claim, petition, protest or opposition involving mining rights shall be accepted for filing **unless verified and accompanied by the prescribed docket fee and proof of services to the respondent(s), either personally or by registered mail**: Provided, That the requirement for the payment of docket fees shall not be imposed on pauper litigants. (Emphasis supplied.)

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[37] By virtue of Proclamation No. 901.

[38] MAB Records, Vol. I, pp. 75-76.

[39] *Rollo,* p. 220.

Section 204 of DAO No. 96-40 and Section 7, Rule III of the Rules on Pleadings, Practice and Procedure before the Panel of Arbitrators and MAB explicitly require that the adverse claim/protest/opposition be accompanied by the payment of the prescribed docket fee for the same to be accepted for filing.

Upon a careful examination of the records of this case, it appears that the docket fee was paid only on **6 September 2005**, as evidenced by Official Receipt (O.R.) No. 7478283 B.[40] Although petitioner avers that it paid the docket fee through postal money order – in which case, the date of mailing would be deemed the date of payment – such averment is unsubstantiated. The Court finds no evidence to prove that petitioner actually sent the purported postal money order for the payment of the docket fee. Petitioner submits the following evidence to prove payment of the docket fee: (a) a Prudential Bank Check in the amount of ₱5,020.00 dated 1 September 2005;[41] (b) O.R. No. 7478283 B dated 6 September 2005 issued by MGB Region I, San Fernando City; and (c) several registry return receipts.[42] But these pieces of evidence do not establish at all that the docket fee was paid by postal money order; or indicate the postal money order number and the date said postal money order was sent. Without any evidence to prove otherwise, the Court presumes that the docket fee was paid on the date the receipt for the same was issued, *i.e.*, 6 September 2005.

Based on the foregoing, the Verified Protest/Opposition of petitioner to the Application for Exploration Permit of respondent is deemed filed with the Panel of Arbitrators only upon payment of the prescribed docket fee on 6 September 2005, clearly beyond the reglementary period, which ended on 30 August 2005.

III

The Panel of Arbitrators denied the Verified Protest/Opposition of petitioner in Case No. 2005-00012-I for another procedural lapse, the lack of a certification against forum shopping.

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[40] MAB Records, Vol. III, pp. 17-18.

[41] *Id.* at 18.

[42] *Id.* at 19-22.

Petitioner argues that a Verified Protest/Opposition does not require a certification against forum shopping. According to it, Section 204 of DAO No. 96-40 identifies the substantial requirements of a mining adverse claim/ protest/opposition, and a certification against forum shopping is not among them; the Panel of Arbitrators has no power and authority to impose additional requirements for the filing and service of pleadings; the Panel of Arbitrators also does not have the authority to promulgate rules and regulations involving the practice, pleadings, litigation and disposition of cases before it, for the same only belongs to the MAB, pursuant to Section 207 of DAO No.96-40.

The arguments of petitioner have no merit.

Petitioner filed a Verified Protest/Opposition before the Panel of Arbitrators to oppose the Application for Exploration Permit filed by private respondent with the MGB. The Verified Protest/ Opposition of petitioner constitutes an initiatory pleading before the Panel of Arbitrators, for which a certification against forum shopping may be required. Truly, DAO No. 96-40 is bereft of any provision requiring that a certification against forum shopping be attached to the adverse claim/protest/opposition. However, Section 4, Rule 1 of the Rules on Pleading, Practice and Procedure before the Panel of Arbitrators and the MAB allows the application of the pertinent provisions of the Rules of Court by analogy or in a suppletory manner, in the interest of expeditious justice and whenever practical and convenient; and, according to Section 5, Rule 7 of the Revised Rules of Court:

SEC. 5. *Certification against forum shopping.* – The plaintiff or principal party shall certify under oath in the **complaint or other initiatory pleading asserting a claim for relief,** or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) 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 (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be **cause for the dismissal of the case** without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions.

Hence, the requirement by the Panel of Arbitrators and the MAB that a certification against forum shopping be attached to initiatory pleadings filed before them, to ascertain that no similar actions have been filed before other courts, tribunals, or quasi-judicial bodies, is not arbitrary or baseless. The lack of such a certification is a ground for the dismissal of the Verified Protest/Opposition of petitioner.

IV

The Panel of Arbitrators dismissed the Verified Protest/Opposition of petitioner for a third reason: that the same has become moot and academic, given that the DENR Secretary already issued DMO No. 2005-03 on 1 February 2005 canceling MPSA No. 153-2000-1 and MGB issued EP No. 05-001 to private respondent on 1 September 2005.

However, petitioner asserts that MPSA No. 153-2000-1 has not been finally cancelled or revoked, considering the pendency of the legal remedies it availed itself of for DMO No. 2005-03. The issuance of DMO No. 2005-03 by the DENR Secretary, and of EP No. 05-001 by MGB pursuant thereto, should not render the Verified Protest/Opposition of petitioner moot and academic.

The position of petitioner is untenable.

It must be stressed that the cancellation of MPSA No. 153-2000-1 of petitioner by the DENR Secretary in DMO No. 2005-03 is already the subject of separate proceedings. The Court cannot touch upon it in the Petition at bar.

Also worth stressing is that petitioner filed a **Verified Protest/ Opposition** to the **Application for Exploration Permit** of private respondent. When the application was approved and the exploration permit issued to private respondent, petitioner had nothing more to protest/oppose. More importantly, with the issuance by MGB of EP No. 05-001 to private respondent, the remedy of petitioner is to seek the cancellation thereof, over which, as subsequently discussed herein, the Panel of Arbitrators would have no jurisdiction. The Panel of Arbitrators cannot simply consider or convert the Verified Protest/Opposition of petitioner to the Application for Exploration Permit of private respondent as a petition for the cancellation of EP No. 05-001. Since the Panel of Arbitrators can no longer grant petitioner any actual substantial relief by reason of the foregoing circumstances, then the Verified Protest/Opposition of petitioner was appropriately dismissed for being moot and academic.

V

Finally, petitioner posits that Section 77 of Republic Act No. 7942 and Sections 202 to 203 of its Implementing Rules vest the Panel of Arbitrators with the jurisdiction to entertain and accept any claim, protest or opposition filed directly with its office. In the discharge thereof, the office and function bestowed upon the Panel of Arbitrators include the power and authority to deny clearances, exclude exploration permits, and not to accept or entertain the same.

The Court disagrees.

Section 77 of Republic Act No. 7942 establishes the jurisdiction of the Panel of Arbitrators, thus:

Sec. 77. *Panel of Arbitrators.* – x x x. Within thirty (30) working days, after the submission of the case by the parties for decision, **the panel shall have exclusive and original jurisdiction to hear and decide on the following:**

a. Disputes involving rights to mining areas;

b. Disputes involving mineral agreements or permits;

c. Disputes involving surface owners, occupants and claimholders/concessionaires; and

d. Disputes pending before the Bureau and the Department at the date of the effectivity of this Act. (Emphasis supplied.)

In *Olympic Mines and Development Corporation v. Platinum Group Metals Corporation*[43] citing *Celestial Nickel Mining Exploration Corporation v. Macroasia Corporation*,[44] this Court made the following pronouncements as regards paragraphs (a) and (b) of Section 77 of Republic Act No. 7942:

In *Celestial Nickel Mining Exploration Corporation v. Macroasia Corporation, et al.*, this Court speaking through Justice Velasco, specified the kind of disputes that fall under Section 77(a) of the Mining Act:

> The phrase "disputes involving rights to mining areas" refers to any **adverse claim, protest, or opposition to an application for a mineral agreement.**
>
> x x x x x x x x x
>
> [T]he power of the POA to resolve any adverse claim, opposition, or protest relative to mining rights under Section 77 (a) of RA 7942 is confined only to **adverse claims, conflicts, and oppositions *relating* to applications for the grant of mineral rights.** x x x. Clearly, **POA's jurisdiction over "disputes involving rights to mining areas" has nothing to do with the cancellation of *existing* mineral agreements.** (Emphases supplied.)

x x x x x x x x x

Parenthetically, the "permit" referred to in Section 77(b) of the Mining Act pertains to **exploration permit**, quarry permit, and other mining permits recognized in Chapters IV, VIII, and IX of the Mining Act. An operating agreement, not being among those listed, cannot be considered as a "mineral permit" under Section 77 (b). (Emphases supplied.)

It is clear from the ruling of the Court in *Olympic Mines* and *Celestial Nickel Mining* that the Panel of Arbitrators only has

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[43] G.R. Nos. 178188, 180674, 181141 and 183527, 8 May 2009.

[44] G.R. Nos. 169080, 172936, 176226 and 176319, December 19, 2007, 541 SCRA 166.

jurisdiction over adverse claims, conflicts, and oppositions relating to applications for the grant of mineral rights, but not over cancellation of mineral rights already granted and existing.

As to who has jurisdiction to cancel an existing exploration permit, Section 28 of DAO NO. 96-40 explicitly provides:

> *Section 28. Cancellation of an Exploration Permit.* – The Director/ concerned Regional Director may cancel the Exploration Permit for failure of the Permittee to comply with any of the requirements and for violation(s) of the terms and conditions under which the Permit is issued. For renewed Exploration Permits, the Secretary upon the recommendation of the Director shall cause the cancellation of the same.

According to Section 5 of DAO No. 96-40, "Director" means the Director of the MGB Central Office, while "Regional Director" means the Regional Director of any MGB Regional Office. As the authority to issue an Exploration Permit is vested in the MGB, then the same necessarily includes the corollary power to revoke, withdraw or cancel the same.[45] Indisputably, the authority to deny, revoke, or cancel EP No. 05-001 of private respondent is already lodged with the MGB, and not with the Panel of Arbitrators.

WHEREFORE, premises considered, the instant Petition for Review on *Certiorari* of petitioner Pyro Copper Mining Corporation is hereby *DENIED*. The Resolutions dated 23 February 2007 and 6 September 2007 of the Court of Appeals in CA-G.R. SP No. 97663 are hereby *AFFIRMED*. Costs against the petitioner.

SO ORDERED.

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

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[45] *Acebedo Optical Company, Inc. v. Court of Appeals*, 385 Phil. 956, 978 (2000).

THIRD DIVISION

[G.R. No. 181393. July 28, 2009]

GRANDTEQ INDUSTRIAL STEEL PRODUCTS, INC. and ABELARDO M. GONZALES, *petitioners, vs.* **EDNA MARGALLO,** *respondent.*

SYLLABUS

1. CIVIL LAW; CONTRACTS; SUBJECT PROVISIONS OF THE LOAN AGREEMENT ARE CONTRARY TO THE FUNDAMENTAL PRINCIPLES OF JUSTICE AND FAIRNESS; THE INEQUITABLENESS IS HEIGHTENED BY THE FACT THAT AFTER PETITIONER EMPLOYER REGAINED POSSESSION OF THE CAR, THEY RESOLD THE SAME TO ANOTHER EMPLOYEE UNDER A SIMILAR CONTRACT BEARING THE SAME TERMS AND CONDITIONS. — Generally speaking, contracts are respected as the law between the contracting parties. The contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order or public policy. The questionable provision in the car loan agreement between Grandteq and Margallo provides: "In case of resignation, of the personnel from the company, all payments made by the personnel shall be forfeited in favor of the company." Connected thereto is the provision in the same car loan agreement, which reads: 1. The COMPANY shall have the right to regain the possession of the car before the expiration of the term of the loan in the event of any of the following: a. The PERSONNEL resigns from the COMPANY during the effectivity of this agreement. Said provisions plainly are contrary to the fundamental principles of justice and fairness. It must be remembered that Margallo herself paid for the down payment and her share in the monthly amortization of the car. However, she did not get to leave with the car when she resigned from Grandteq. In effect, Margallo parted with her hard-earned money for nothing, being left, as she is, with an empty bag. The inequitableness in the conduct of Grandteq and Gonzales is heightened by the fact that after they regained possession of

the car, they resold the same to another employee under a similar contract bearing the same terms and conditions signed by Margallo.

2. **ID.; HUMAN RELATIONS; UNJUST ENRICHMENT; THERE IS UNJUST ENTRICHMENT WHEN A PERSON UNJUSTLY RETAINS A BENEFIT AT THE LOSS OF ANOTHER, OR WHEN A PERSON RETAINS THE MONEY OR PROPERTY OF ANOTHER AGAINST THE FUNDAMENTAL PRINCIPLES OF JUSTICE, EQUITY AND GOOD CONSCIENCE. —** The principle that no person may unjustly enrich oneself at the expense of another (*Nemo cum alteris detrimento locupletari potest)* is embodied in Article 22 of the New Civil Code, to wit: ART. 22. Every person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him. The above-quoted article is part of the chapter of the Civil Code on Human Relations, the provisions of which were formulated as "basic principles to be observed for the rightful relationship between human beings and for the stability of the social order; designed to indicate certain norms that spring from the fountain of good conscience; [are] guides for human conduct that should run as golden threads through society to the end that law may approach its supreme ideal, which is the sway and dominance of justice." There is unjust enrichment when a person unjustly retains a benefit at the loss of another, or when a person retains the money or property of another against the fundamental principles of justice, equity and good conscience.

3. **ID.; ID.; THE PRINCIPLE AGAINST UNJUST ENRICHMENT OBLIGES PETITIONER EMPLOYER TO REFUND TO RESPONDENT THE CAR LOAN PAYMENTS SHE HAD MADE, SINCE SHE HAS NOT ACTUALLY ACQUIRED THE CAR. —** As can be gleaned from the foregoing, there is unjust enrichment when (1) a person is unjustly benefited, and (2) such benefit is derived at the expense of or with damages to another. The main objective of the principle of unjust enrichment is to prevent one from enriching oneself at the expense of another. It is commonly accepted that this doctrine simply means that a person shall not be allowed to profit or enrich himself inequitably at another's expense. One condition

for invoking this principle is that the aggrieved party has no other action based on a contract, quasi-contract, crime, quasi-delict, or any other provision of law. This is not a case of equity overruling or supplanting a positive provision of law or judicial rule. Rather, equity is exercised in this case "as the complement of legal jurisdiction [that] seeks to reach and to complete justice where courts of law, through the inflexibility of their rules and want of power to adapt their judgments to the special circumstances of cases, are incompetent to do so." The principle against unjust enrichment obliges Grandteq and Gonzales to refund to Margallo the car loan payments she had made, since she has not actually acquired the car. To relieve Grandteq and Gonzales of their obligation to reimburse Margallo would, indeed, be to sanction unjust enrichment in favor of the first two and cause unjust poverty to the latter.

4. **LABOR AND SOCIAL LEGISLATION; ALTHOUGH NOT STRICTLY A LABOR CONTRACT, THE CAR LOAN AGREEMENT IN CASE AT BAR INVOLVES A BENEFIT EXTENDED BY AN EMPLOYER TO THEIR EMPLOYEE, AND AS SUCH, IT SHOULD BENEFIT AND NOT UNDULY BURDEN THE EMPLOYEE. —** The Court rigorously disapproves contracts that demonstrate a clear attempt to exploit the employee and deprive him of the protection sanctioned by both the Constitution and the Labor Code. The Constitution and the Labor Code mandate the protection of labor. Hence, as a matter of judicial policy, this Court has, in a number of instances, leaned backwards to protect labor and the working class against the machinations and incursions of their more financially entrenched employers. Although not strictly a labor contract, the car loan agreement herein involves a benefit extended by the employers, Grandteq and Gonzales, to their employee, Margallo. It should benefit, and not unduly burden, Margallo. The Court cannot, in any way, uphold a car loan agreement that threatens the employee with the forfeiture of all the car loan payments he/she had previously made, plus loss of the possession of the car, should the employee wish to resign; otherwise, said agreement can then be used by the employer as an instrument to either hold said employee hostage to the job or punish him/her for resigning.

5. ID.; PETITIONER EMPLOYER HAS THE BURDEN OF PROOF TO SHOW BY SUBSTANTIAL EVIDENCE THAT RESPONDENT IS NOT ENTITLED TO SALES COMMISSION; FAILURE OF EMPLOYERS TO SUBMIT NECESSARY DOCUMENTS THAT ARE IN THEIR POSSESSION GIVES RISE TO THE PRESUMPTION THAT PRESENTATION THEREOF IS PREJUDICIAL TO ITS CAUSE; CASE AT BAR. — The Court further finds no error in the grant by the Court of Appeals and the NLRC of Margallo's claim for sales commission. In cases involving money claims of employees, the employer has the burden of proving that the employees did receive their wages and benefits and that the same were paid in accordance with law. It is settled that once the employee has set out with particularity in his complaint, position paper, affidavits and other documents the labor standard benefits he is entitled to, and which the employer allegedly failed to pay him, it becomes the employer's burden to prove that it has paid these money claims. One who pleads payment has the burden of proving it; and even where the employees must allege nonpayment, the general rule is that the burden rests on the defendant to prove payment, rather than on the plaintiff to prove nonpayment. Under the terms and conditions of Margallo's employment with Grandteq, it is provided that she "will do field sales with commission on sales made after a month's training." On this basis, Margallo's entitlement to sales commission is unrebutted. Hence, it was actually the Labor Arbiter who erred in denying Margallo's claim for sales commission "for failure to state the particulars to substantiate the same." Grandteq and Gonzales have the burden of proof to show, by substantial evidence, their claim that Margallo was not entitled to sales commissions because the sales made by the latter remained outstanding and unpaid, rendering these sales as bad debts and thus nullifying Margallo's right to this monetary benefit. Grandteq and Gonzales could have presented pertinent company records to prove this claim. It is a rule that failure of employers to submit the necessary documents that are in their possession as employers gives rise to the presumption that the presentation thereof is prejudicial to its cause.

APPEARANCES OF COUNSEL

Galarrita & Arboleda for petitioners.
Capoquian & Nueva Law Offices for respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the Decision[1] dated 21 January 2008 of the Court of Appeals in CA-G.R. SP No. 100012, which affirmed the Decision[2] dated 18 October 2006, as modified by the Resolution[3] dated 21 May 2007, of the National Labor Relations Commission (NLRC) in NLRC NCR CA No. 045888-05. The NLRC effectively reversed the Decision[4] dated 11 July 2005 of the Labor Arbiter in NLRC NCR Case No. 00-09-10803-04, which entirely dismissed the Complaint filed by respondent Edna Margallo (Margallo) against petitioners Grandteq Industrial Steel Products, Inc. (Grandteq) and Abelardo M. Gonzales (Gonzales); and, instead, ordered Grandteq and Gonzales to refund to Margallo her car loan payments, as well as to pay the latter sales commission and attorney's fees.

Grandteq is a domestic corporation engaged in the business of selling welding electrodes, alloy steels, aluminum and copper alloys.[5] Gonzales is the President/Owner of Grandteq.[6] Grandteq employed Margallo as Sales Engineer beginning 3 August 1999.[7]

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[1] Penned by Associate Justice Celia C. Librea-Leagogo with Associate Justices Regalado E. Maambong and Sixto C. Marella, Jr., concurring; *rollo,* pp. 313-326.

[2] *Rollo,* pp. 67-71.

[3] CA *rollo,* pp. 154-156.

[4] *Rollo,* pp. 63-66.

[5] *Rollo*, p. 52.

[6] *Id.* at 10.

[7] *Id.* at 41.

Margallo claimed that on an unstated date, she availed herself of the car loan program offered to her by Grandteq as a reward for being "Salesman of the Year." She paid the down payment on a brand new Toyota Corolla,[8] amounting to ₱201,000.00, out of her own pocket. The monthly amortization for the car was ₱10,302.00, of which ₱5,302.00 was to be her share and ₱5,000.00 was to be the share of Grandteq.

On 29 December 2003, Margallo received a letter[9] signed by Gonzales and Rolando de Leon (De Leon), Vice-President for Administration of Grandteq, which reads:

Mrs. Edna E. Margallo
c/o Grandteq Industrial
Steel Products, Inc.
#2 Cooper St., cor. Benitez
SFDM, Quezon City

Dear Mrs. Margallo:

This is to inform you that our records show the following:

1) That, last December 18, 2003, you instructed our company driver and helper to load 4 pcs. tool steel to be delivered at circle freight.

2) That together with Mr. Steve Rivera, on or about 12:00 noon, you went at (sic) Eagle Global Logistics at Circle Freight, NAIA, Parañaque City to ship the following items to Moog Control Corp. Phils. Branch located at Baguio Ecozone, Baguio City, using the Sales Invoice of JVM Industrial Supply and Allied Services.

a) 2 pcs. tool steel 4140 – ¾" x 2'x 3'

b) 2 pcs. tool steel 4140 – 1"x 2' x 3'

3) That you are working with JVM Industrial Supply and Allied Services concurrent with your being employed with Grandteq Industrial Steel Products, Inc.

4) That JVM Industrial Supply and Allied Services are supplying steel products to Moog Control Corp. Phils. Branch which

[8] *Id.* at 60.

[9] *Id.* at 30.

is also a client of Grandteq and which you are the authorized salesman of the company.

Because of this, you are given a (sic) twenty-four (24) hours upon receipt of this letter to submit a written explanation on why you should not be given a disciplinary action for allegedly violating/ committing:

a) Moonlighting

b) Sabotage

c) Breach of trust and confidence (labor code).

You are also invited to attend a meeting with regards to the allegations on Jan. 5, 2004 at 10:00 a.m. You may bring with you a lawyer or any representative to assist you on (sic) the said meeting.

Failure on your part to submit a written explanation on the specified period and failure to attend the hearing would mean that you are waiving your rights to be heard and the appropriate action will be taken against you.

Moreover, to protect the evidences and witnesses against you, management has decided to place you under preventive suspension effective December 29, 2003.

Very truly yours,

(Signed)

Abelardo M. Gonzales
President

(Signed)

Ronaldo A. de Leon
VP – Administration

Responding to the foregoing letter, Margallo wrote the following letter-reply dated 30 December 2003:

December 30, 2003

To: Mr. Abelardo M. Gonzales
President

Thru: Mr. Ronald A. de Leon
VP – Administration

Dear Sir,

Last December 18, 2003, Mr. Steve D. Rivera instructed me to tell to our delivery people to bring the said item to circle freight.

Which I did that (sic) I thought it was ok because it was inside the company. Sir I was just following orders from Mr. D. Rivera who is one of my boss (sic). Sir, what I did is the same thing that I've been doing with my other bosses. That i[f] they instructed me to do things I immediately follow. Because I am only an employee. Sir never that I work with JVM (sic).

Sir im (sic) sorry if I did wrong by not asking what to do. Which I think an ordinary employee like me would do is to follow orders from my superiors.

IM SO SORRY SIR IF I FAIL YOU.

(Signed)
Edna E. Margallo[10]

Margallo then averred that in January 2004, De Leon asked her to just resign, promising that if she did, she would still be paid her commissions and other benefits, as well as be reimbursed her car loan payments. Relying on De Leon's promise, Margallo tendered on 13 January 2004, her irrevocable resignation, effective immediately.[11]

Margallo, however, alleged that she was never paid her money claims. Grandteq failed to pay her commissions in the sum of ₱87,508.00, equivalent to 5% of the total sales that she collected as of January 2004, which amounted to ₱1,750,148.84. Grandteq likewise failed to refund the "sales accommodations" or advances she gave her customers. In addition, after Margallo's resignation, Grandteq sold her car to Annaliza Estrella, another employee, for ₱550,000.00.[12] These events prompted her to file before the Labor Arbiter a Complaint[13] against Grandteq and Gonzales, for recovery of sales commission, cash incentive and car loan payment, damages and attorney fees, which was docketed as NLRC Case No. 0009-108-03-04.

Grandteq and Gonzales opposed Margallo's claims. They maintained that Margallo was not entitled to sales commissions

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[10] *Id.* at 31.

[11] *Id.* at 32.

[12] *Id.* at 33.

[13] *Id.* at 36.

because the computation thereof, according to company policy, should be based on actual collections within 180 days from invoice date. All of Margallo's credit sales transactions were unpaid, outstanding, and past due. Margallo was also not entitled to any sales incentive, because said benefit was intended for customers, and not for the sales personnel.[14] Grandteq and Gonzales further insisted that Margallo had no right to the refund of her car loan payments under the car loan agreement she executed with Grandteq, which expressly provided that in the event that Margallo resigned or was terminated for cause during the effectivity of said agreement, her car loan payments would be forfeited in favor of Grandteq, and Grandteq would regain possession of the car.

The Labor Arbiter rendered a Decision on 11 July 2005, dismissing all of Margallo's claims, thus:

> WHEREFORE, premises considered, judgment is hereby rendered dismissing the instant case for lack of merit.[15]

The Labor Arbiter held that Margallo was not able to prove by substantial evidence her entitlement to the sales commission:

> After a careful review of the records, this Office finds that considering [Margallo] already receives a basic salary plus allowances, her claim for sales commission is therefore an added benefit wholly dependent upon her sales performance based on existing company policy. As such, it is an affirmative allegation or claim that is not normally included in the regular course of business and for which law presumes that an employee is generally not entitled to. Thus, it behooves, upon the employee to prove that he is entitled to said affirmative allegations and the onus is upon him to establish his right thereto (see *Eternit Employees and Workers Unions vs. De Veyra*, 189 SCRA 752 and *Nucum vs. Inciong*, 204 SCRA 697).
>
> In the instant case, this Office finds [Margallo] to have failed to substantially discharge her burden of proving that she is entitled to the ₱87,508.00 in sales commissions since other than her bare allegations, [Margallo] did not show any other proof, including prior payment of said sales commissions, to justify her claim.

[14] *Id.* at 52.

[15] *Id.* at 66.

And, quite noteworthy too is that under the [Grandteq]'s policy, rules and regulations on the grant of sales commissions, the computation thereof shall be based on actual collection against all sales on credit and the validity of the said commission shall be 180 days from invoice dates; otherwise, the salesman shall not be entitled thereto and forfeits any right to demand payment of the commission thereon as the sales are considered bad debts as uncollectible. Since the records of [Grandteq] showed that [Margallo]'s credit sales remain unpaid and outstanding for over 180 days, [Margallo] is therefore not entitled to sales commissions.

No denial whatsoever of the above-discussed company policy was made by [Margallo] in her Reply.

Thus, having failed to establish entitlement to said sales commission, the same is hereby denied.[16]

For a similar reason, the Labor Arbiter denied Margallo's claim for payment of cash incentive:

As regards to cash incentives, once again this Office finds that the same is also an affirmative allegation and the burden of proving entitlement thereto rests upon the employee. And having failed to even mention how much of the alleged cash incentive she is entitled to in Annexes "A" and "2-a" of her position paper, the same is hereby denied.[17]

Finally, the Labor Arbiter found that Margallo had no right to the reimbursement of her car loan payments under her car loan agreement with Grandteq:

And as regards of (sic) the car loan, the same should be governed by the undisputed terms and conditions of the Agreement between complainant and respondent company (Annex "A" of respondents' position paper). And page 2 of said Agreement clearly stipulates that in case of resignation, all payments made by the personnel shall be forfeited in favor of the company. Thus, the claim for refund of the car loan should likewise be denied.[18]

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[16] *Id.* at 64-65.

[17] *Id.* at 66.

[18] *Id.*

Margallo filed an appeal with the NLRC, docketed as NLRC NCR CA No. 045888-05. Although the NLRC, in its Decision dated 18 October 2006, stated that it merely "modified" the Decision dated 11 July 2005 of the Labor Arbiter, it effectively reversed the same by granting Margallo her claims for sales commission, reimbursement of her car loan payments, and attorney's fees. The *fallo* of the NLRC Decision is quoted below:

> WHEREFORE, the decision appealed from is hereby MODIFIED. [Herein petitioners] Grandteq Industrial Products, Inc. and/or its President/General Manager, [petitioner] Abelardo M. Gonzales, are hereby ordered to refund to the [herein respondent Margallo] her car loan payments amounting to ₱217,815.94 and to pay her the amount of ₱10,870.79 representing her unpaid sales commissions plus ten percent (10%) of the total monetary award as attorney's fees.[19]

In ordering that Grandteq and Gonzales reimburse the car loan payments made by Margallo, the NLRC reasoned:

> It is unlikely for an employee who has invested his time and industry in a particular job to simply give it up after being accused of violating company rules and regulations. It is more likely that he did so upon the expectation that she would derive a certain benefit from it. Thus, the claim that the [herein respondent Margalllo] resigned because she was promised that she would be paid her money claims if she did, is more credible than the contention that she did so without any prodding from the [herein petitioners Grandteq and Gonzales].
>
> It would therefore appear that the provision, in the agreement (records, pp. 32-340) executed by the parties, that "in case of resignation of the PERSONNEL from the COMPANY, all payments made by the PERSONNEL shall be forfeited in favor of the COMPANY" has been superseded by the above-mentioned subsequent agreement between the parties.
>
> Besides, it is uncontroverted that the car loan program was offered to the complainant as a reward for being the "Salesman of the Year." Moreover, nowhere in their pleadings did the [petitioners Grandteq and Gonzales] controvert the claim that the [respondent Margallo] paid the down payment, entire first amortization, insurance, and her

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[19] *Id.* at 70.

share in the monthly amortizations for seventeen months, or the total amount of ₱214,395.90 for the car. It is also uncontroverted that after the [respondent Margallo]'s negotiated resignation, her car was resold to another employee for the original price. Under the circumstances, the above-quoted contractual provision is null and void for being contrary to morals, good customs, and public policy. The law overrides contracts which are prepared by employers to circumvent the rights of their employees (*Baguio Country Club vs. NLRC*, 206 SCRA 643). Thus, the above-quoted contractual provision does not bar the [respondent Margallo] from recovering her car loan payments from the [petitioners Grandteq and Gonzales].[20]

As for Margallo's other claims, the NLRC affirmed her entitlement to the unpaid sales commission, but not to the cash incentive:

Insofar as the [respondent Margallo]'s claim for unpaid sales commission is concerned, it is noteworthy that in the list (records, pp. 16-18) of sales she adduced in evidence, the column bearing the heading "collected" indicates that, as of January 2004, the total collections from her sales amount to only ₱217,815.94. Since it is undisputed hat her sales commission are equivalent to 5% of her collections, she may recover unpaid sales commissions amounting to ₱10,890.79. Finally, since there is no showing that the [respondent Margallo]'s claim for cash incentive is based on a particular contract or company practice, it was correctly dismissed for lack of merit.[21]

Grandteq and Gonzales filed a Motion for Reconsideration,[22] while Margallo also filed an Omnibus Motion for Partial Reconsideration and Issuance of Subpoena.[23] The NLRC denied the Motions for Reconsideration of all parties in a Resolution dated 21 May 2007, but modified the NLRC Decision dated 18 October 2006 by slightly reducing the amount of car loan payments to be refunded to Margallo:

WHEREFORE, the Motions for Reconsideration are hereby DENIED for lack of merit. However, the dispositive portion of

[20] *Id.* at 69-70.

[21] *Id.* at 70.

[22] *Id.* at 72-81.

[23] *Id.* at 82.

this Commission's (2nd Division) October 18, 2006 Decision is hereby corrected to read:

> WHEREFORE, the decision appealed from is hereby MODIFIED. [Herein petitioners] Grandteq Industrial Products, Inc. and/or its President/General Manager, [petitioner] Abelardo M. Gonzales, are hereby ordered to refund to [herein respondent Margallo] her car loan payments amounting to ₱214,395.90 and to pay her the amount of ₱10,870.79 representing her unpaid sales commissions plus ten percent (10%) of the total monetary award as attorney's fees.[24]

Grandteq and Gonzales elevated the case to the Court of Appeals by way of a Petition for *Certiorari*, under Rule 65 of the Rules of Court, which was docketed as CA-G.R. SP No. 100012.

In its Decision dated 21 January 2008, the Court of Appeals agreed with the NLRC, dismissing the therein Petition of Grandteq and Gonzales in this wise:

> WHEREFORE, premises considered, the Petition is DENIED for lack of merit. Costs against petitioners.[25]

Like the NLRC, the Court of Appeals found that Margallo had a right to be reimbursed her car loan payments, and the terms of the car loan agreement between Margallo and Grandteq should not be applied for being highly prejudicial to the employee's interest:

> Truly, the contracting parties may establish such stipulations, clauses, terms and conditions as they want, and their agreement would have the force of law between them. However, those terms and conditions agreed upon must not be contrary to law, morals, customs, public policy or public order. Precisely, the law overrides such conditions which are prejudicial to the interest of the worker. The law affords protection to an employee, and it will not countenance any attempt to subvert its spirit and intent. The sheer inequality that characterizes employer-employee relations, where the scales generally tip against the employee, often scarcely provides him real

[24] CA *rollo*, p. 156.

[25] *Rollo*, p. 325.

and better options. Moreover, in controversies between a laborer and his master, doubts reasonably arising from the evidence, or in the interpretation of agreements and writing should be resolved in the former's favor.[26]

The Court of Appeals likewise affirmed the order of the NLRC that Grandteq and Gonzales pay Margallo her sales commission, placing the burden upon the employer to prove that the employee's money claims had been paid:

With respect to the unpaid sales commissions of ₱10,870.79 to be paid by petitioners in favor of private respondent, it is incumbent upon petitioner employer to prove that said money claim has been paid. This is in tune with the general precept that: "one who pleads payment has the burden of proving it, and even where the employees must allege nonpayment, the general rule is that the burden rests on the defendant to prove (payment), rather than on the plaintiff to prove non-payment." The reason for the rule is that the pertinent personnel files, payrolls, records, remittances and other similar documents – which will show that overtime, differentials, service incentive leave and other claims of workers have been paid – are not in the possession of the worker but in the custody and absolute control of the employer. In the present case, petitioners [Grandteq and Gonzales] failed to discharge the burden of proving that the amount of ₱10,870.79 representing [herein respondent Margallo]'s sales commissions has already been paid to the latter. Thus, the NLRC (Second Division) did not commit grave abuse of discretion in awarding said money claim in favor of [respondent Margallo].[27]

Assiduous, Grandteq and Gonzales are now before this Court *via* the Petition at bar.

Grandteq and Gonzales assert that the Court of Appeals erred in declaring the car loan agreement between Grandteq and Margallo, particularly the provision therein on the forfeiture of car loan payments in favor of Grandteq should Margallo resign from the company, as null and void.[28]

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[26] *Id.* at 324.

[27] *Id.*

[28] *Id.* at 374.

The Court, however, is in agreement with the Court of Appeals and the NLRC.

Generally speaking, contracts are respected as the law between the contracting parties. The contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order or public policy.[29]

The questionable provision in the car loan agreement between Grandteq and Margallo provides: "In case of resignation, of the personnel from the company, all payments made by the personnel shall be forfeited in favor of the company."[30] Connected thereto is the provision in the same car loan agreement, which reads:

1. The COMPANY shall have the right to regain the possession of the car before the expiration of the term of the loan in the event of any of the following:

a. The PERSONNEL resigns from the COMPANY during the effectivity of this agreement.[31]

Said provisions plainly are contrary to the fundamental principles of justice and fairness. It must be remembered that Margallo herself paid for the down payment and her share in the monthly amortization of the car. However, she did not get to leave with the car when she resigned from Grandteq. In effect, Margallo parted with her hard-earned money for nothing, being left, as she is, with an empty bag. The inequitableness in the conduct of Grandteq and Gonzales is heightened by the fact that after they regained possession of the car, they resold the same to another employee under a similar contract bearing the same terms and conditions signed by Margallo.

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[29] Article 1306 of the Civil Code states:

ART. 1306. The contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy. (*California Bus Lines, Inc. v. Court of Appeals*, G.R. No. 145408, 20 August 2008, 562 SCRA 403, 419.)

[30] *Rollo*, p. 139.

[31] *Id.* at 140.

The principle that no person may unjustly enrich oneself at the expense of another (*Nemo cum alteris detrimento locupletari potest)* is embodied in Article 22 of the New Civil Code, to wit:

> ART. 22. Every person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him.

The above-quoted article is part of the chapter of the Civil Code on Human Relations, the provisions of which were formulated as "basic principles to be observed for the rightful relationship between human beings and for the stability of the social order; designed to indicate certain norms that spring from the fountain of good conscience; [are] guides for human conduct that should run as golden threads through society to the end that law may approach its supreme ideal, which is the sway and dominance of justice." There is unjust enrichment when a person unjustly retains a benefit at the loss of another, or when a person retains the money or property of another against the fundamental principles of justice, equity and good conscience.[32]

As can be gleaned from the foregoing, there is unjust enrichment when (1) a person is unjustly benefited, and (2) such benefit is derived at the expense of or with damages to another. The main objective of the principle of unjust enrichment is to prevent one from enriching oneself at the expense of another. It is commonly accepted that this doctrine simply means that a person shall not be allowed to profit or enrich himself inequitably at another's expense. One condition for invoking this principle is that the aggrieved party has no other action based on a contract, quasi-contract, crime, quasi-delict, or any other provision of law.

This is not a case of equity overruling or supplanting a positive provision of law or judicial rule. Rather, equity is exercised in this case "as the complement of legal jurisdiction [that] seeks to reach and to complete justice where courts of law, through the inflexibility of their rules and want of power to adapt their

[32] *Hulst v. PR Builders, Inc.*, G.R. No. 156364, 3 September 2007, 532 SCRA 74, 96.

judgments to the special circumstances of cases, are incompetent to do so."[33]

The principle against unjust enrichment obliges Grandteq and Gonzales to refund to Margallo the car loan payments she had made, since she has not actually acquired the car. To relieve Grandteq and Gonzales of their obligation to reimburse Margallo would, indeed, be to sanction unjust enrichment in favor of the first two and cause unjust poverty to the latter.[34]

The Court rigorously disapproves contracts that demonstrate a clear attempt to exploit the employee and deprive him of the protection sanctioned by both the Constitution and the Labor Code.

The Constitution and the Labor Code mandate the protection of labor. Hence, as a matter of judicial policy, this Court has, in a number of instances, leaned backwards to protect labor and the working class against the machinations and incursions of their more financially entrenched employers.[35]

Although not strictly a labor contract, the car loan agreement herein involves a benefit extended by the employers, Grandteq and Gonzales, to their employee, Margallo. It should benefit, and not unduly burden, Margallo. The Court cannot, in any way, uphold a car loan agreement that threatens the employee with the forfeiture of all the car loan payments he/she had previously made, plus loss of the possession of the car, should the employee wish to resign; otherwise, said agreement can then be used by the employer as an instrument to either hold said employee hostage to the job or punish him/her for resigning.

The Court further finds no error in the grant by the Court of Appeals and the NLRC of Margallo's claim for sales commission.

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

[34] *Chieng v. Santos,* G.R. No. 169647, 31 August 2007, 531 SCRA 730, 747-748.

[35] *Pier 8 Arrastre and Stevedoring Services, Inc. v. Boclot,* G.R. No. 173849, 28 September 2007, 534 SCRA 431, 442-447.

In cases involving money claims of employees, the employer has the burden of proving that the employees did receive their wages and benefits and that the same were paid in accordance with law.[36]

It is settled that once the employee has set out with particularity in his complaint, position paper, affidavits and other documents the labor standard benefits he is entitled to, and which the employer allegedly failed to pay him, it becomes the employer's burden to prove that it has paid these money claims. One who pleads payment has the burden of proving it; and even where the employees must allege nonpayment, the general rule is that the burden rests on the defendant to prove payment, rather than on the plaintiff to prove nonpayment.[37]

Under the terms and conditions of Margallo's employment with Grandteq, it is provided that she "will do field sales with commission on sales made after a month's training."[38] On this basis, Margallo's entitlement to sales commission is unrebutted.

Hence, it was actually the Labor Arbiter who erred in denying Margallo's claim for sales commission "for failure to state the particulars to substantiate the same." Grandteq and Gonzales have the burden of proof to show, by substantial evidence, their claim that Margallo was not entitled to sales commissions because the sales made by the latter remained outstanding and unpaid, rendering these sales as bad debts and thus nullifying Margallo's right to this monetary benefit. Grandteq and Gonzales could have presented pertinent company records to prove this claim. It is a rule that failure of employers to submit the necessary documents that are in their possession as employers gives rise to the presumption that the presentation thereof is prejudicial to its cause.[39]

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[36] *Arco Metal Products Co., Inc. v. Samahan ng mga Manggagawa sa Arco Metal-NAFLU (SAMARM-NAFLU)*, G.R. No. 170734, 14 May 2008, 554 SCRA 110, 120.

[37] *De Guzman v. National Labor Relations Commission,* G.R. No. 167701, 12 December 2007, 540 SCRA 21, 35.

[38] Records, p. 60.

[39] *National Semiconductor (HK) Distribution, Ltd. v. National Labor Relations Commission,* 353 Phil. 551, 558 (1998).

WHEREFORE, premises considered, the Petition is *DENIED* for lack of merit. The Decision dated 21 January 2008 of the Court of Appeals in CA-GR SP No. 100012 is *AFFIRMED.* Costs against petitioners Grandteq Industrial Steel Products, Inc. and Abelardo M. Gonzales.

SO ORDERED.

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

THIRD DIVISION

[A.M. No. P-06-2217. July 30, 2009]
(Formerly OCA IPI No. 06-2375-P)

CONCERNED EMPLOYEES OF THE MUNICIPAL TRIAL COURT OF MEYCAUAYAN, BULACAN, *complainants, vs.* **LARIZZA PAGUIO-BACANI, Branch Clerk of Court II, Municipal Trial Court of Meycauayan, Bulacan,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS; CLERKS OF COURT; SHOULD BE THE ROLE MODEL FOR ALL COURT EMPLOYEES UNDER THEIR SUPERVISION. —** As Clerk of Court, respondent must be reminded of the constitutional provision that a public office is a public trust, and all public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency. Every government employee, especially of the judiciary, should be an example of integrity and proper behavior. Being Branch Clerk of Court, respondent is the role model for all court employees under her supervision, and her position requires

competence and efficiency to insure the public's confidence in the administration of justice.

2. **ID.; ID.; ID.; ID.; DISHONESTY AND FALSIFICATION; RESPONDENT MADE IT APPEAR THAT SHE RENDERED SERVICE ON THE DATES IN QUESTION. —** The Court believes that respondent indeed made it appear that she rendered service on the dates in question. The discovery of a discrepancy in the attendance records of respondent gave rise to a presumption that the latter falsified her attendance and/or leave records and, therefore, the burden to overcome this presumption fell upon respondent. However, respondent was not able to adequately explain how such discrepancy occurred. She merely denied the contents of said Certification without clarifying how the Leave Division could have issued information different from that of her DTR and the attendance logbook when, in fact, it was respondent's office which supplied the Leave Division with their attendance and leave records. Moreover, the Court ascribes greater weight to the records of the Leave Division, for its act of certifying the attendance of government employees is considered an official duty performed with regularity, which again, respondent failed to disprove.

3. **ID.; ID.; ID.; ID.; ID.; RESPONDENT'S ACT OF FALSIFYING HER DAILY TIME RECORDS AMOUNT TO DISHONESTY WHICH CARRIES THE EXTREME PENALTY OF DISMISSAL. —** Under Section 52(A)(1) of the Uniform Rules on Administrative Cases in the Civil Service Commission, respondent's act of falsifying her DTRs amounts to dishonesty, which carries the extreme penalty of dismissal from the service. In conjunction with this Rule, violation of reasonable office rules and regulations is classified as a light offense under Section 52(C)(3) of the same Rules. The Court has penalized court employees who have traveled abroad without the requisite authority to travel. In *Malayo v. Cruzat*, respondent clerk of court was severely reprimanded for conduct unbecoming of a public officer and member of the Judiciary, and suspended for one (1) month without pay for travelling to Hong Kong without the required authority therefor. In *Request of Judge Eduardo F. Cartagena*, respondent Judge was found guilty of gross misconduct and dismissed from the service when he left for the USA without the knowledge or permission of the Court. In *Reyes v. Bautista*, respondent stenographer left the country

for Dubai to work overseas without securing the necessary permission for travel, but stated in her leave application that her vacation would be spent in the Philippines; she was, likewise, dismissed from the service for dishonesty, gross neglect of duty and violation of Court administrative circulars. Also, in previous cases wherein court employees falsified their DTRs, the Court ordered them to pay a fine ranging from ₱2,000.00 to ₱5,000.00, or sentenced them to a suspension ranging from three (3) to six (6) months.

4. **ID.; ID.; ID.; ID.; ID.; SUSPENSION FROM SERVICE FOR ONE (1) YEAR WITHOUT PAY METED ON RESPONDENT IN LIEU OF DISMISSAL FROM SERVICE TAKING INTO ACCOUNT HER LENGTH OF SERVICE AND THE FACT THE OFFENSE COMMITTED WAS HER FIRST INFRACTION. —** Although dishonesty through falsification of DTRs is punishable by dismissal, such an extreme penalty cannot be inflicted on an errant employee such as herein respondent, especially so in cases where there exist mitigating circumstances which could alleviate her culpability. Respondent has been Branch Clerk of Court for about ten (10) years and this is her first administrative complaint. The OCA recommended that respondent be suspended from the service for one (1) year without pay, with a warning that a repetition of the same or similar act will be dealt with more severely. The conduct of court personnel should be geared towards maintaining the prestige and integrity of the court, for the image of the 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 imperative and sacred duty of each and everyone in the court to maintain its good name and standing as a temple of justice.

D E C I S I O N

PERALTA, *J.*:

Before this Court is an anonymous letter complaint[1] to the Office of the Court Administrator (OCA) dated September 7, 2005 from the concerned employees of the Municipal Trial Court

[1] *Rollo,* pp. 6-7.

(MTC) of Meycauayan, Bulacan, alleging that Branch Clerk of Court II, respondent Larizza Paguio-Bacani, falsified her attendance and/or leave records. Complainants averred that it was doubtful whether respondent complied with the requirements for her travels abroad, and claimed that respondent's staff would sign for her in the attendance logbook even when she was absent.

Complainants attached to their complaint a Travel Information document[2] issued by the Bureau of Immigration and Deportation (BID) which showed that one Larizza Paguio traveled abroad on the following dates: February 9, 2005, May 19, 1999, December 12, 2003, and June 29, 2003.

In a telegram[3] dated July 4, 2005, the Leave Division, Office of Administrative Services (OAS), Office of the Court Administrator (OCA) of this Court requested confirmation from Judge Eranio Cedillo, Sr. of the MTC of Meycauayan, Bulacan about respondent's travel abroad from February 8 to June 11, 2005.

On July 28, 2005, Judge Cedillo forwarded to the Leave Division respondent's explanation letter[4] dated July 26, 2005.

In the said letter, respondent explained that she had to leave for the United States of America (USA) to attend to her husband, who had to undergo an aortic valve operation. She claimed that she applied for vacation leave from February 14-25, 2005, but was not able to obtain the required clearance and authority to travel because of the urgency of the situation. Respondent averred that before she left, she designated an officer-in-charge to attend to her duties in her absence and to act as authorized signatory for the court's deposits and withdrawals of cash bonds with the Land Bank, Meycauayan Branch.

The Leave Division then issued a Certification[5] dated September 14, 2005, attesting that the following were the data on record of said office relative to the attendance of respondent:

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[2] *Id.* at 8.

[3] *Id.* at 9.

[4] *Id.* at 11-13.

[5] *Id.* at 5.

1999	May 19	-	applied for enrollment leave
2003	June 29	-	has rendered service
	December 12	-	has rendered service
2005	February 8-24	-	with leave application but did not specify what type of leave being applied for.

In a Memorandum[6] to the OCA dated January 25, 2006, the Legal Office, to which the matter was referred to by the Leave Division, recommended that the Complaint against respondent for violation of reasonable office rules and regulations be docketed for initial preliminary investigation and that respondent be made to comment on the instant complaint against her before the same would be evaluated and submitted for the Court's decision.

In its 1st Indorsement dated February 13, 2006, the OCA required respondent to comment on said complaint.

In her undated Comment[7] received by the OCA on March 16, 2006, respondent admitted that the entries in the travel information provided by the BID were true. As to the first entry, respondent explained that on February 9, 2005, she had to leave for the USA without a travel authority because her husband's life was at stake and the latter had to undergo an aortic valve operation, for which her consent was necessary. For the second entry, May 19, 1999, respondent went to Hong Kong. Respondent's mother and her friends had requested respondent to canvass a cheap package tour to Hong Kong for fifteen persons so that the travel expense for the sixteenth person would be free of charge. The sixteenth slot was intended for their parish priest but two days before the flight, he got sick and did not want to go, so it was suggested that respondent take his place. Respondent claimed that because the incident happened so fast and due to the excitement of having a free trip to Hong Kong, she was not able to acquire a travel authority. She did, however, file an application for leave. For the third

[6] *Id.* at 1-3.

[7] *Id.* at 37-41.

entry, December 12, 2003, as it had been long planned, respondent was able to apply for and acquire a travel authority from the Supreme Court but, unfortunately, failed to keep a copy of the same. She asserted that it could be checked with the Court. As to the last entry, June 29, 2003, respondent narrated that, two days before the flight, a travel agency staff went to her house and gave her a ticket to the USA, which was a surprise gift from her husband in the USA. Respondent averred that her husband wanted to celebrate his birthday with her and bought the ticket two weeks before the scheduled flight, but the travel agency brought her the ticket only two days before said flight. She proceeded with the trip although she had no time to secure a travel authority, because her husband had been in the USA since the year 2000, and wanted to see her. Respondent did file for a leave of absence.

Respondent further averred that all four entries appearing in the BID information regarding her travels were made in good faith without any intention of violating the reasonable rules and policies of the Supreme Court. She added that she had written to ask the permission of her immediate supervisor, Judge Cedillo, and filed an application for leave. She claimed that, as clerk of court for about ten years, she had not been remiss in her duties, and denied that she had trusted staff to log her in and out in the attendance logbook whenever she was absent.

In its Report[8] dated July 3, 2006, the OCA gave the following evaluation and recommendation:

> **EVALUATION:** In view of respondent's admission that she traveled abroad on three occasions without the required authority to travel from the Court, she should be held administratively liable for violation of reasonable office rules and regulations. Under OCA Circular No. 49-2003, in relation to A.M. No. 99-12-08-SC, dated 06 November 2000, "*all foreign travels of judges and court personnel regardless of the number of days, must be with prior permission from the Supreme Court through the Chief Justice and the Chairmen of the Divisions*." The same Circular likewise expressly provides that judges and personnel, who shall leave the country without

[8] *Id.* at 61-65.

travel authority issued by Office of the Court Administrator, shall be subject to disciplinary action.

In the instant case, respondent clearly violated the aforesaid circular. She admitted that the four entries in the travel information attached to the complaint are all true and correct and that in three (3) of her foreign travels, she did not secure the necessary authority from the court. Despite her explanation, respondent cannot be exempted from liability, considering that she did said prohibited acts more than once, thus, reflecting her wanton disregard of said Court Circular.

As to the charge that respondent may be liable for falsification of her daily time records since her alleged trusted staff signs the attendance logbook for her whenever she is absent to make it appear that she reported for work, the same should be investigated as there are reasons to suspect that there is truth to said allegation. While respondent claims in her Comment that she filed and applied for a leave on 29 June 2003, which is one of the departure dates reflected in the travel information, the OAS-OCA Certification dated 14 September 2005 shows that she rendered service on said date. Verification with the Leave Division-OCA also reveals that respondent did not file a leave of absence on said date.

In the same Certification, it is also shown that respondent rendered service on 12 December 2003, when said date is also one of the entries in the travel information of her departure from the Philippines which respondent admitted to be true and correct. However, these pieces of information are insufficient to pin her down for falsification of her daily time records for the exact time of her departure on those dates mentioned are not available to the Office to determine whether it is physically possible for her to still report for work.

RECOMMENDATION: Respectfully submitted for the consideration of the Honorable Court is our recommendation that:

[1] the instant complaint be RE-DOCKETED as regular administrative matter;

[2] respondent be found guilty of violation of SC office rules and regulations and be SEVERELY REPRIMANDED for such violation;

[3] the charge of falsification of daily time record/leave record against respondent be REFERRED to the Executive Judge of RTC, Malolos, Bulacan, for investigation, report

and recommendation within sixty (60) days from receipt of records.

In its Resolution[9] dated August 2, 2006, the Court, acting upon the recommendation of the OCA, re-docketed the instant complaint as a regular administrative matter and referred the same to the Executive Judge of the RTC, Malolos, Bulacan, for investigation, report and recommendation within ninety (90) days from receipt of records.

The administrative matter was set for initial hearing on November 27, 2006, and reset several times. Upon failure of complainants to appear in court despite due notice, respondent was allowed to present her evidence.

In her Explanation[10] dated March 20, 2007, respondent denied having violated reasonable office rules and regulations by alleging that she reported for work on June 29, 2003 and December 12, 2003, when she was already on leave on the latter date. She stated that June 29, 2003 was a Sunday, hence, a non-working day, thus, there was no need to apply for leave. She attached a certified photocopy of a calendar for the year 2003 to support her claim. As for December 12, 2003, respondent vehemently denied having rendered service on said date. She attached a duplicate copy of her Daily Time Record (DTR) for December 2003, as well as a certified photocopy of their attendance logbook, both signed and certified by Judge Cedillo to show that she was on leave on said date. Respondent further averred that she did not have any intention of violating the Supreme Court Circular in question and, had she done so, the same was not intentional but made owing to the urgency of her situation. She maintained that she still filed the necessary application for leave, and left instructions with her designated officer-in-charge.

In her Final Report[11] dated August 31, 2007, Judge Petrita Braga Dime observed that:

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[9] *Id.* at 66.

[10] *Id.* at 84-85.

[11] *Id.* at 97-99.

x x x x x x x x x

Discussion:

The two (2) questioned dates are June 29, 2003 and December 12, 2003.

June 29, 2003, as shown by the calendar for the year 2003, was a Sunday and, therefore, a non-working day.

December 13, 2003 (sic) was a Friday, but the copy of the Daily Time Record respondent submitted shows that respondent was on leave on said date. There was no evidence, however, submitted by her that this is a copy of the Daily Time Record she submitted to the Supreme Court.

With respect to the charge that her alleged trusted staff signs the attendance logbook, no evidence was presented by the complainants to substantiate the same.

Settled is [the] rule that in administrative cases, complainants bear the onus of establishing their averments by substantial evidence. (*Cruz v. Iturralde*, 422 SCRA 65)

In view of the foregoing, the undersigned hereby recommends that this complaint be dismissed for insufficiency of evidence.

In its Resolution[12] dated October 15, 2007, the Court referred the instant administrative matter to the OCA for evaluation, report and recommendation within thirty (30) days from notice.

In its Memorandum[13] dated January 3, 2008, the OCA submitted its findings, the pertinent portions of which are quoted as follows:

Reviewing the records of this case, the Office of the Court Administrator in its Agenda Report dated July 3, 2006, found respondent guilty of violating OCA Circular No. 49-2003. However, the Office likewise recommended that the instant administrative matter be referred to the Executive Judge of Malolos City, Bulacan to clarify the fact of inconsistency in the record of this Office and that of the Travel Information of the Bureau of Immigration and Deportation (BID). x x x

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[12] *Id.* at 109.

[13] *Id.* at 110-114. (Citations omitted.)

The investigation report of the Executive Judge throws new light on the charge of falsification of respondent as it appears that on December 12, 2003, a Friday, respondent alleges that she was on vacation leave on the subject date. She presented a copy of her alleged Daily Time Record on the subject month, marked as Annex "B", which was also signed by Judge Eranio G. Cedillo, Sr., presiding judge of MTC, Meycauayan, Bulacan. The said daily time record was not the same or even a certified copy of the DTR she submitted to the Office of the Administrative Services of the Office of the Court Administrator. This piece of evidence, however, contradicts the certification of the OAS-OCA that respondent was present and rendered service on the subject date, December 12, 2003. Respondent could not have been present in her work station and at the same time on vacation leave abroad. She could not be at two different places at the same time.

The undersigned finds respondent also liable for dishonesty.

Section 52, Rule IV of the Revised Uniform Rules on Administrative Cases in the Civil Service provides:

> Section 52. *Classification of Offenses*. — Administrative offenses with corresponding penalties are classified into grave, less grave or light, depending on their gravity or depravity and effects on the government service.
>
> A. The following are grave offenses with their corresponding penalties:
>
> 1. Dishonesty - 1st Offense - Dismissal
> 2. Gross Neglect of Duty - 1st Offense - Dismissal
> 3. Grave Misconduct - 1st Offense - Dismissal

Under the foregoing Section of the Civil Service Rules, respondent's offense is classified as a serious offense and that the penalty for the first offense is dismissal from the service. However, this Office believes that the penalty of dismissal would be too harsh as a penalty, considering that [it is] respondent's first offense. In fact, the Honorable Court, in several cases, refrained from imposing the extreme penalty of dismissal from the service where the erring employee has not been previously charged with an administrative offense. x x x In several cases, the fact that respondent was not previously charged with any [other] administrative complaint operates as a mitigating circumstance to lower the penalty of dismissal imposed on respondents. x x x

IN VIEW OF THE FOREGOING, the undersigned respectfully recommends to the Honorable Court our recommendation that respondent Larriza Paguio-Bacani, Clerk of Court, Municipal Trial Court, Meycauayan, Bulacan, having been found guilty of violation of reasonable office rules (OCA Circular No. 49-2003 in relation to A.M. No. 99-12-08-SC dated 06 November 2000) and dishonesty, be **SUSPENDED** from the service for one (1) year without pay, with a warning that a repetition of the same or similar act will be dealt with more severely.

The Court agrees with the finding of the OCA that respondent is guilty of violation of reasonable office rules in failing to secure a travel authority, and of dishonesty in falsifying her attendance and/or leave records.

Respondent admitted that she had left the country without securing a travel authority for the three, out of the four, travel dates (*i.e.*, May 19, 1999, June 29, 2003, December 12, 2003, and February 8, 2005) provided by the BID in violation of OCA Circular No. 6-2003 dated January 9, 2003. The said Circular states that judges and court personnel who intend to travel abroad must observe the following guidelines:

VI. Leave to be Spent Abroad.

All foreign travels of judges and court personnel, regardless of the number of days, must be with prior permission from the Supreme Court through the Chief Justice and the Chairmen of the Divisions pursuant to the resolution in A.M. 99-12-08-SC (Memorandum Order No. 14-2000 dated 6 November 2000). In line with the policy, the judge or court personnel concerned must submit the following:

x x x x x x x x x

For Court Personnel:

a. application or request addressed to the Court Administrator, stating therein the purpose of the travel abroad;

b. application for leave covering the period of the travel abroad duly recommended by the Executive Judge/Presiding Judge;

c. clearance as to money and property accountability;

d. clearance as to pending criminal and administrative case filed against him/her, if any; and

e. for court stenographer, clearance as to pending stenographic notes for transcription from his/her court and from the Court of Appeals.

OCA Circular No. 49-2003[14] also states:

B. Vacation Leave to be Spent Abroad.

Pursuant to the resolution in A.M. No. 99-12-08-SC dated 6 November 2000, all foreign travels of judges and court personnel, regardless of the number of days, must be with prior permission from the Supreme Court through the Chief Justice and the Chairmen of the Divisions.

1. Judges and court personnel who wish to travel abroad must secure a travel authority from the Office of the Court Administrator. x x x

Corollarily, Section 67 of the Omnibus Rules on Leave[15] provides that any violation of the leave laws, rules or regulations, or any misrepresentation or deception in connection with an application for leave shall be a ground for disciplinary action.

As Clerk of Court, respondent must be reminded of the constitutional provision that a public office is a public trust, and all public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency. Every government employee, especially of the judiciary, should be an example of integrity and proper behavior.[16] Being Branch Clerk of Court, respondent is the role model for all court employees under her supervision, and her position requires competence and efficiency to insure the public's confidence in the administration of justice.[17]

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[14] Dated May 20, 2003.

[15] As amended by CSC MC Nos. 41, s. 1998; 6, 14 and 24, s .1999, dated November 23, 1999.

[16] *Malayo v. Cruzat*, A.M. No. P-02-1639, September 18, 2002, 389 SCRA 296.

[17] *Office of the Court Administrator v. Judge Bagundang*, A.M. No. RTJ-05-1937 and *Office of the Court Administrator v. Silongan*, A.M. No. P-06-2267, January 22, 2008, 542 SCRA 153.

Anent the issue of falsification of attendance and/or leave records, Section 4, Rule XVII of the Omnibus Rules on Leave[18] provides:

> SEC. 4. Falsification or irregularities in the keeping of time records will render the guilty officer or employee administratively liable without prejudice to criminal prosecution as the circumstances warrant.

In *Office of the Court Administrator v. Balisi*,[19] the Court held that falsification of daily time records — to cover up for absenteeism and/or tardiness — shall constitute gross dishonesty and serious misconduct, which it further reiterated in Administrative Circular No. 14-2002.[20]

Complainants alleged that, on certain occasions, respondent's staff signed for her in the attendance logbook whenever she was absent. Although complainants failed to categorically specify the dates when such incidents occurred, the investigations of both the Investigating Judge and the OCA revealed that there were discrepancies between the Certification dated September 14, 2005 issued by the Leave Division of the OCA and the DTR submitted by respondent. According to the Certification, respondent rendered service on June 29 and December 12 for the year 2003. On the other hand, respondent denied having rendered service on the dates in question, claiming that June 29, 2003 was a Sunday and a non-working day, and that she was on leave on December 12, 2003. Further, it could not be determined whether respondent submitted the same DTR to the MTC and the OCA.

In light of such findings, the Court believes that respondent indeed made it appear that she rendered service on the dates in question. The discovery of a discrepancy in the attendance records of respondent gave rise to a presumption that the latter falsified

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[18] *Supra* note 15.

[19] *Office of the Court Administrator v. Myrene C. Balisi*, A.M. No. 08-1-11-MeTC, August 11, 2008.

[20] Dated March 18, 2002.

her attendance and/or leave records and, therefore, the burden to overcome this presumption fell upon respondent. However, respondent was not able to adequately explain how such discrepancy occurred. She merely denied the contents of said Certification without clarifying how the Leave Division could have issued information different from that of her DTR and the attendance logbook when, in fact, it was respondent's office which supplied the Leave Division with their attendance and leave records. Moreover, the Court ascribes greater weight to the records of the Leave Division, for its act of certifying the attendance of government employees is considered an official duty performed with regularity,[21] which again, respondent failed to disprove.

Under Section 52(A)(1) of the Uniform Rules on Administrative Cases in the Civil Service Commission,[22] respondent's act of falsifying her DTRs amounts to dishonesty, which carries the extreme penalty of dismissal from the service.[23]

In conjunction with this Rule, violation of reasonable office rules and regulations is classified as a light offense under Section 52(C)(3) of the same Rules[24] which states:

> Section 52. ***Classification of Offenses. –*** Administrative offenses with corresponding penalties are classified into grave, less grave or light, depending on their gravity or depravity and effects on the government service.
>
> x x x x x x x x x
>
> C. The following are *Light Offenses* with corresponding penalties:
>
> x x x x x x x x x
>
> 3. Violation of reasonable office rules and regulations.

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[21] Rules of Court, Rule 131, Sec. 3(m).

[22] 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.

[23] *Re: Falsification of Daily Time Records of Maria Fe P. Brooks, et al.*, A.M. No. P-05-2086, October 20, 2005, 473 SCRA 483.

[24] *Id.*

1st Offense – Reprimand
2nd Offense – Suspension 1-30 days
3rd Offense – Dismissal

x x x x x x x x x

The Court has penalized court employees who have traveled abroad without the requisite authority to travel. In *Malayo v. Cruzat*,[25] respondent clerk of court was severely reprimanded for conduct unbecoming of a public officer and member of the Judiciary, and suspended for one (1) month without pay for travelling to Hong Kong without the required authority therefor. In *Request of Judge Eduardo F. Cartagena*,[26] respondent Judge was found guilty of gross misconduct and dismissed from the service when he left for the USA without the knowledge or permission of the Court. In *Reyes v. Bautista*,[27] respondent stenographer left the country for Dubai to work overseas without securing the necessary permission for travel, but stated in her leave application that her vacation would be spent in the Philippines; she was, likewise, dismissed from the service for dishonesty, gross neglect of duty and violation of Court administrative circulars.

Also, in previous cases wherein court employees falsified their DTRs, the Court ordered them to pay a fine ranging from ₱2,000.00 to ₱5,000.00,[28] or sentenced them to a suspension ranging from three (3) to six (6) months.[29]

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[25] *Supra* note 16.

[26] A.M. No. 95-9-98-MCTC, December 4, 1997, 282 SCRA 370.

[27] A.M. No. P-04-1873, January 13, 2005, 448 SCRA 95.

[28] *In Re: Irregularities in the Use of Logbook and Daily Time Records by Clerk of Court Raquel D.J. Razon, et al.,* A.M. No. P-06-2243, September 26, 2006, 503 SCRA 52; *Reyes-Domingo v. Morales*, 396 Phil. 150, 165-166 (2000); *Office of the Court Administrator v. Saa*, 457 Phil. 25 (2003).

[29] *Re: Falsification of Daily Time Records of Maria Fe P. Brooks, et al., supra* note 22; *Re: Failure of Jose Dante E. Guerrero to Register His Time In and Out in the Chronolog Time Recorder Machine on Several Dates*, A.M. No. 2005-07-SC, April 19, 2006, 487 SCRA 352.

Although dishonesty through falsification of DTRs is punishable by dismissal, such an extreme penalty cannot be inflicted on an errant employee such as herein respondent, especially so in cases where there exist mitigating circumstances which could alleviate her culpability.[30] Respondent has been Branch Clerk of Court for about ten (10) years and this is her first administrative complaint. The OCA recommended that respondent be suspended from the service for one (1) year without pay, with a warning that a repetition of the same or similar act will be dealt with more severely.

The conduct of court personnel should be geared towards maintaining the prestige and integrity of the court, for the image of the 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 imperative and sacred duty of each and everyone in the court to maintain its good name and standing as a temple of justice.[31]

WHEREFORE, respondent Larizza Paguio-Bacani, Branch Clerk of Court II of the Municipal Trial Court of Meycauayan, Bulacan, is found *GUILTY* of dishonesty through falsification of her Daily Time Records and leaving the country without the requisite travel authority, and is *SUSPENDED* from the service for one (1) year without pay, with a warning that a repetition of the same or similar act shall be dealt with more severely.

SO ORDERED.

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

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[30] *Office of the Court Administrator v. Sirios*, A.M. No. P-02-1659, August 28, 2003, 410 SCRA 35.

[31] *Supra* note 16.

THIRD DIVISION

[A.M. No. P-09-2644. July 30, 2009]
(Formerly OCA IPI No. 08-2787-P)

EDGARDO A. QUILO, *complainant, vs.* **ROGELIO G. JUNDARINO, SHERIFF III, METROPOLITAN TRIAL COURT, BRANCH 19, MANILA,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; NO *RES JUDICATA* IN CASE AT BAR; NO IDENTITY OF CAUSES OF ACTION BETWEEN A.M. NO. P-09-2664 AND OCA I.P.I NO. 08-2078-MTJ. —** The doctrine of *res judicata* applies and treats the final determination of the action as speaking the infallible truth as to the rights of the parties as to the entire subject of the controversy, and such controversy and every part of it must stand irrevocably closed by such determination. The sum and substance of the whole doctrine is that a matter once judicially decided is finally decided. *Res judicata* is based on the ground that the party to be affected, or some other with whom he is in privity, has litigated the same matter in the former action in a court of competent jurisdiction, and should not be permitted to litigate it again. This principle frees the parties from undergoing all over again the rigors of unnecessary suits and repetitious trials. At the same time, it prevents the clogging of court dockets. Equally important, *res judicata* stabilizes rights and promotes the rule of law. The requisites of *res judicata* are: (1) there must be a former final judgment rendered on the merits; (2) the court must have had jurisdiction over the subject matter and the parties; and (3) there must be identity of parties, subject matters and causes of action between the first and second actions. There is no *res judicata* herein, given that there is no identity of the causes of action between A.M. No. P-09-2644 and A.M. OCA I.P.I. No. 08-2078-MTJ.

2. **ID.; ID.; ID.; ESSENTIAL DIFFERENCES BETWEEN THE TWO COMPLAINTS. —** The Court, however, takes note of two essential differences between Quilo's two Complaints. *First*, Quilo's Complaint in A.M. No. P-09-2644 provides more

details on the Sheriff Jurandino's purported visits on 12 February 2008 and 27 March 2008 to the former's residence. It particularly sets forth Sheriff Jurandino's alleged statements and deportment during said visits. Such details are not mentioned in Quilo's Complaint in A.M. OCA I.P.I. No. 08-2078-MTJ. *Second*, Quilo's Complaint in A.M. No. P-09-2644 ends with the allegation that after Sheriff Jundarino's visit to Quilo's residence on 27 March 2008, Quilo filed an Affidavit before the MeTC in support of his earlier Motion to Quash Writ of Execution And Recall of the Notice to Pay/Vacate And Demolish Premises in Civil Case No. 158273-CV. On the other hand, Quilo's Complaint in A.M. OCA I.P.I. No. 08-2078-MTJ alleged events which transpired thereafter, *i.e.*, Judge Cacanindin's denial of Quilo's Motion to Quash Writ of Execution, as well as the latter's subsequent Motion for Reconsideration; Sheriff Jundarino's service upon Quilo on 29 August 2008 of the second Notice to Pay/Vacate And Demolish Premises; Quilo's filing with the RTC of a Petition for *Certiorari* and Prohibition on 1 September 2008 challenging Judge Cacanindin's denial of his aforementioned Motions; and Sheriff Jundarino's demolition of Quilo's residence on 4 September 2008.

3. ID.; ID.; ID.; THE TWO COMPLAINTS ARE BASED ON TWO CAUSES OF ACTION, ONE IS JUDICIAL IN NATURE WHICH OUGHT TO BE THRESHED OUT IN A JUDICIAL PROCEEDING AND THE OTHER IS AN ADMINISTRATIVE MATTER WITHIN THE COURT'S JURISDICTION TO DECIDE IN EXERCISE OF ITS AUTHORITY TO DISCIPLINE JUDICIAL EMPLOYEES. — These differences between Quilo's Complaints in A.M. No. P-09-2644 and A.M. OCA I.P.I. No. 08-2078-MTJ support the fact that said Complaints are based on two different causes of action. Quilo's Complaint in A.M. No. P-09-2644 assails Sheriff Jundarino's abrasive words and actions during his alleged visits to the former's residence on 12 February 2008 and 27 March 2008 to implement the Writ of Execution in Civil Case No. 158273-CV; while his Complaint in A.M. OCA I.P.I. No. 08-2078-MTJ attributes gross ignorance to Judge Cacanindin, for his refusal to quash the Writ of Execution in Civil Case No. 158273-CV, and to Sheriff Jundarino, for his persistence in implementing said Writ, in obvious partiality to Bajao and in disregard of Quilo's pending Petition for *Certiorari* and

Prohibition before the RTC. The Court dismissed Quilo's Complaint in A.M. OCA I.P.I. No. 08-2078-MTJ through its Resolution dated 16 February 2009, on the ground that it was judicial in nature. It is conceded that the determination of whether Quilo's residence is the same property subject of Civil Case No. 158273-CV and whether it should be demolished pursuant to the judgment in said case, is a matter best left to the determination of the trial court in appropriate judicial proceedings. Questions judicial in nature ought to be threshed out in a judicial proceeding and definitely not in an administrative one. An administrative complaint is not a valid substitute for a judicial action. In fact, Quilo himself alleged that he had already filed a Petition for *Certiorari* and Prohibition with the RTC of Manila, Branch 17, on 1 September 2008. The same cannot be said for A.M. No. P-09-2644, the present Complaint. As to whether Sheriff Jundarino exercised proper decorum and followed established procedure when he served upon Quilo and the latter's wife and neighbors, on 12 February 2008 and 27 March 2008, a copy of the Writ of Execution and the Notice to Pay/Vacate and Demolish Premises issued by the MeTC in Civil Case No. 158273-CV, is evidently an administrative matter, within the jurisdiction of this Court to decide in exercise of its authority to discipline judicial employees.

4. **POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS; SHERIFFS; RESPONDENT SHERIFF IS GUILTY OF SIMPLE MISCONDUCT. —** Sheriff Jundarino's duty is to implement the Writ of Execution dated 28 November 2007 at **No. 2519** Granate St., **Sta.Ana**, Manila. Given Quilo's assertions that his residence was actually at **No. 2518** Granate St., **San Andres Bukid,** Manila, and that he was not even a party to Civil Case No. 158273-CV, the more prudent course of action for Sheriff Jundarino was to defer implementation of the said Writ until a determination by the MeTC of Quilo's Motion to Quash the same. It bears to stress that said Motion was already scheduled for hearing on 28 March 2008, just a day after Sheriff Jundarino's second visit to Quilo's residence on 27 March 2008. Without even considering whether Quilo's residence is the same as the property involved in Civil Case No. 158273-CV, the Court finds that Sheriff Jundarino's acts herein – *i.e.*, his rude and inappropriate remarks and aggressive behavior during his visits to Quilo's residence on 12 February

2008 and 27 March 2008 to implement the Writ of Execution issued in the aforementioned case; as well as his unreasonable insistence on implementing the said Writ on 27 March 2008 despite the fact that Quilo's Motion to Quash the same was already set to be heard the very next day, 28 March 2008 – constitute simple misconduct.

5. **ID.; ID.; ID.; ID.; AGENTS OF THE LAW SHOULD REFRAIN FROM THE USE OF LANGUAGE THAT IS ABUSIVE, OFFENSIVE, SCANDALOUS, MENACING OR OTHERWISE IMPROPER; RESPONDENT SHERIFF'S UTTERANCES TO COMPLAINANT WHILE EFFECTING THE WRIT OF EXECUTION WAS EVIDENT VIOLATION OF THE RULES OF CONDUCT FOR JUDICIAL EMPLOYEES .—** Time and time again, this Court has emphasized that the conduct or behavior of all officials and employees of an agency involved in the administration of justice, from the presiding judge to the most junior clerk, should be circumscribed with the heavy burden of responsibility. Their conduct must at all times be characterized by, among others, strict propriety and decorum in order to earn and maintain the respect of the public for the judiciary. Part of this stringent requirement is that agents of the law should refrain from the use of language that is abusive, offensive, scandalous, menacing or otherwise improper. Judicial employees are expected to accord every due respect, not only to their superiors, but also to others and their rights at all times. Their every act and word should be characterized by prudence, restraint, courtesy and dignity. Sheriff Jundarino's utterance of "*ikaw ang una kong tatrabahuin at ipapademolis sa sandaling magmatigas pa kayo sa pagbalik ko*" to Quilo, while effecting the Writ of Execution, was an evident violation of the foregoing rules of conduct for judicial employees. All employees in the judiciary should be examples of responsibility, competence, and efficiency. As officers of the court and agents of the law, they must discharge their duties with due care and utmost diligence. Any conduct they exhibit tending to diminish the faith of the people in the judiciary will not be condoned.

6. **ID.; ID.; ID.; ID.; AS AN OFFICER OF THE COURT AND THEREFORE AN AGENT OF THE LAW, RESPONDENT SHERIFF IS MANDATED TO DISCHARGE HIS DUTIES WITH DUE CARE AND UTMOST DILIGENCE; IN**

SERVING THE COURT'S WRITS AND PROCESSES AND IN IMPLEMENTING ITS LAWFUL ORDERS, SHERIFF CANNOT AFFORD TO ERR WITHOUT AFFECTING THE ADMINISTRATION OF JUSTICE. — The Court has even higher expectations from its sheriffs. Sheriffs play an important role in the administration of justice, and they should always invigorate and hold in violate the tenet that a public office is a public trust. Being at the grassroots of our judicial machinery, sheriffs and deputy sheriffs are in close contact with the litigants; hence, their conduct should all the more maintain the prestige and the integrity of the court. By the very nature of their functions, sheriffs must conduct themselves with propriety and decorum, so as to be above suspicion. Sheriffs cannot afford to err in serving court writs and processes and in implementing court orders, lest they undermine the integrity of their office and the efficient administration of justice. The Court reiterates that a sheriff, who is an officer of the court upon whom the execution of a final judgment depends, must be circumspect in his behavior. As an officer of the court and therefore agent of the law, Sheriff Jundarino is mandated to discharge his duties with due care and utmost diligence because, in serving the court's writs and processes and in implementing its lawful orders, he cannot afford to err without affecting the administration of justice. Any method of execution falling short of the requirement of the law deserves reproach and should not be countenanced. In *Office of the Court Administrator v. Judge Octavio A. Fernandez,* the Court defined misconduct as any unlawful conduct, on the part of a person concerned in the administration of justice, prejudicial to the rights of parties or to the right determination of the cause. It generally means wrongful, improper, unlawful conduct motivated by a premeditated, obstinate or intentional purpose.

D E C I S I O N

CHICO-NAZARIO, *J.*:

Before this Court is an administrative Complaint[1] for Grave Misconduct, Oppression, Coercion, and Harassment, filed by Edgardo A. Quilo (Quilo) against respondent Rogelio G. Jundarino

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

(Sheriff Jundarino), Sheriff III of the Metropolitan Trial Court (MeTC) of Manila, Branch 18.

Teodula Bajao (Bajao) filed an Unlawful Detainer Case against Eduardo Saclag, Zoilo Fulong, Alena Bertos and Talia Saclag (Saclag, *et al.*), before the MeTC, docketed as Civil Case No. 158273-CV.

On 20 November 1998, the MeTC rendered a Decision in Bajao's favor, ordering Saclag, *et al.*:

1. to vacate the premises and surrender possession thereof peacefully to the plaintiff [Bajao];
2. to demolish any structure built on the said property;
3. to pay attorney's fees in the amount of ₱20,000.00; and
4. pay the costs of suit.[2]

Saclag, *et al.,* appealed to the Regional Trial Court (RTC) of Manila, Branch 19. In its Decision dated 13 September 1999, the RTC affirmed with modification the MeTC Decision dated 20 November 1998, thus:

> WHEREFORE, the appealed judgment is hereby AFFIRMED but MODIFIED to read, thus:
>
> WHEREFORE, Judgment is hereby rendered in favor of [Bajao] ordering [Saclag, *et al.*] and all persons claiming rights under them:
>
> a) to vacate the premises located at **2519 Granate St., Sta.Ana, Manila** and surrender possession thereof to [Bajao];
>
> b) to demolish all structures built on the parcel of land;
>
> c) to pay [Bajao] the sum of ₱20,000.00 for attorney's fees; and
>
> d) to pay the cost of suit.
>
> [Saclag, *et al.*'s] counterclaim is denied for lack of merit.[3] (Emphasis ours.)

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[2] *Id.* at 6.

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

Once again, Saclag, *et al*. sought relief from the Court of Appeals by filing an appeal, docketed as CA-G.R. SP No. 55448. In a Resolution dated 26 November 1999, the Court of Appeals denied the appeal of Saclag, *et al*., for having been filed out of time.

The Court of Appeals similarly denied the Motion for Reconsideration of Saclag, *et al.,* in its Resolution dated 13 July 1998.

Refusing to give up, Saclag, *et al*., filed an appeal before this Court, docketed as G.R. No. 142592. However, this Court denied the appeal in a Resolution dated 14 June 2000, for failure of Saclag, *et al*., to show that any reversible error had been committed by the Court of Appeals.

The 14 June 2000 Resolution of this Court, denying the appeal of Saclag, *et al*., in G.R. No. 142592, became final and executory on 28 July 2000, and was accordingly recorded in the Book of Entries of Judgments.

Upon Bajao's motion, a Writ of Execution was issued by MeTC Judge Felicitas O. Laron-Cacanindin (Judge Cacanindin) on 28 November 2007. The writ commanded the MeTC Sheriff:

1. to cause the immediate surrender of the physical possession of the subject premises located at **2519 Granate St., Sta.Ana**, Manila by the defendants [Saclag, *et al.*] and all persons claiming rights under them and turn-over the peaceful possession of the same to the plaintiff [Bajao];

2. to demolish all structures built on the parcel of land subject thereon;

3. that of the goods and chattels of the defendants [Saclag, *et al*.], you cause to be made the sum of ₱20,000.00 for and as attorney's fees;

4. plus costs, together with your lawful fees for the service of this execution and that you render the same to the plaintiff [Bajao] aside from your own fees on this execution.[4] (Emphasis ours.)

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[4] *Id.* at 8.

It was in implementing the aforementioned Writ of Execution in Civil Case No. 158273-CV that Sheriff Jundarino's path crossed Quilo's.

On 9 April 2008, Quilo filed a Complaint before the Office of the Court Administrator (OCA) charging Sheriff Jundarino with Grave Misconduct, Oppression, Coercion, and Harassment, docketed as A.M. No. MTJ-08-2787. Quilo made the following allegations in his Complaint:

1. *Na noong ika-12 ng Pebrero 2008, sa pagitan ng alas-10:00 at alas 11:00 ng umaga ang nabanggit na si Sheriff Rogelio Jundarino kasama ang isang pang Sheriff ng MeTC Branch 19 na hindi nagpakilala ay nagtungo sa aming tirahan sa 2518 Granate St., San Andres Bukid, Maynila dala ang nilagdaan niyang Notice To Pay/Vacate and Demolish Pr[e]mises na may lakip (attachment) na Writ of Execution na may lagda naman ni MeTC Presiding Judge Felicitas O. Laron-Cacanindin (dito ay nakalakip bilang Annexes "A" at "A-1");*

2. *Na dahil sa wala naman akong nalalaman na may nagdemanda laban sa akin at hindi naman sa akin nakapangalan ang nasabing Notice/Writ, maliban pa sa hindi rin sa akin naka-address (2519 Granate St., San Andres, Manila) ito, kung kaya tinanggihan ko itong tanggapin mula kay Sheriff Rogelio Jundarino. Subalit pilit pa rin niya itong ibinibigay sa akin, at nang mabatid ni Sheriff na hindi ko talaga ito kukunin ay iniwan nya na lamang ito sa semento sa harapan ng aking bahay at sabay ng pasigaw na pagsasabi ni sheriff sa akin na "ikaw ang una kong tatrabahuin at ipapademolis sa sandaling magmatigas pa kayo sa pagbabalik ko!" Na narinig mismo ng aking asawang si Zenaida Quilo at ilan pang mga kapitbahay na naroon ng oras na iyon.*

3. *Na dahil sa pangyayaring iyon, ako at ang aking asawa na si Zenaida Quilo ay halos hindi na makatulog at makakain dahil sa pag-aalala na baka nga gibain ang aming tirahan at wala na kaming masisilungan.*

4. *Na noong ika-3 ng Marso 2008, ako at ang isang kapitbahay na si Ednaloy Villahermosa ay kumausap sa isang kaibigan na siya namang tumulong sa amin upang*

maikonsulta nga ang nasabing pangyayari sa isang abogado na nagresulta sa pagsasagawa ng isang Mosyon upang mapigilan nga ang binabalak na pagdedemolis sa aming tirahan.

5. *Noong ika-5 ng Marso 2008, ako at si Ednaloy Villahermosa (isa ring actual occupant) sa nasabing lupain na may katulad kong address ay pormal na ngang lumagda at nagsumite ng Motion To Quash Writ of Execution And Recall of the Notice to Pay/Vacate And Demolish Premises (dito ay inilakip bilang Annex "B") sa MeTC Branch 19, Manila upang maipatigil ang bantang demolisyon sa aming lugar. Ang nasabing Mosyon ay may nakatakdang petsa ang pagdinig sa Marso 28, 2007;*

6. *Na habang ako ay nasa Davao noong ika-27 ng Marso 2008, sa pagitan ng alas 2:00 at 2:30 ng hapon, si Sheriff Rogelio Jundarino ay muling nagtungo at sapilitang pumasok sa loob ng aming bahay sa 2518 Granate St., San Andres Bukid, Maynila kasama ang nagpakilalang Plaintiff na si Teodula Bajao, dalawang (2) kamag-anak nito (isang apo at isang anak). Samantalang napansin naman ng aking mga kapitbahay na sa harapan ng aming lugar ang humigit-kumulang ay mga labinlimang (15) kalalakihan na pawang may mga dalang kagamitan/ instrumento na pandemolis ng bahay (na kasama ngang dumating ni Sheriff Rogelio Jundarino ng oras ding iyon), at isang lalaki na mukhang abogado na hindi naman nagpakilala.*

7. *Na ayon pa sa aking asawang si Zenaida Quilo, habang nasa loob na ng aming bahay ang apat (4) na sina Sheriff Rogelio Jundarino, Teodula Bajao, apo at anak ni Teodula Bajao, ay pilit na ngang inutusan ni Sheriff Rogelio Jundarino ang aking asawa na simulan ng gibain ang aming bahay at ilabas ang lahat ng aming kagamitan sa loob ng bahay dahil nga sa nakatakda na raw niyang (Sheriff Rogelio Jundarino) ipademolis ito sa araw ding iyon, at ayon pa kay Sheriff Jundarino, siya ay binibigyan lamang ng pitumpu't dalawang oras (72) upang maipatupad ang kautusang ng korte na idemolis ang aming kabahayan.*

8. *Na sa kabila ng kawalan ng Special Order of Demolition (na isang rekisitos sa kasong Ejectment bago magsagawa ng Demolisyon) at pakiusap ng aking asawa at iba pang naninirahan sa lugar na iyon na mayroon pang nakabinbing "Motion to Quash Writ of Execution…na diringgin kinabukasan Marso 28, 2008," si Sheriff Jundarino ay nagmatigas at ipinakita sa lahat ng naroon na determinado niyang ipatutupad ang Writ of Execution at nagbanta pa si Sheriff Jundarino na kukumpiskahin ang aming kagamitan gaya ng TV set at Refrigerator. At sinabi rin ni Sheriff na tanging Temporary Restraining Order lamang ang makakapigil sa kanyang huwag ipatupad ang demolisyon o kaya'y gumawa na lamang ng isang kasulatan na nagsasaad na kusang loob na aalis at gigibain ng mga naninirahan dito ang mga kabahayan.*

9. *Na dahil sa naramdamang takot mula sa nakaambang demolisyon at pagbabanta ng pagkumpiska ng aming mga kagamitan mula kay Sheriff Rogelio Jundarino ng araw na iyon, at sa patuloy na pamimilit ni Sheriff Jundarino na sumulat na lamang sa isang papel na nagsasaad na humihingi nga kami ng palugit na araw sa Plaintiff, kung kaya't ang aking asawa ay gumawa nga ng kasulatan na nagsasabing humihingi ng hanggang Abril 10 na palugit upang boluntaryong idemolis ang aming istruktura.*

10. *Na ang nasabing kasulatang iyon ay nilagdaan ng aking asawa ng labag sa kanyang kalooban.*

11. *Na ang nasabing kasulatan iyon ay kinuha rin ni Sheriff Rogelio Jundarino at hindi binigyan ng kahit isang kopya ang lahat ng lumagda sa kasulatang nabanggit dahil tanging siya lang daw dapat ang may hawak nito upang patunayan niya (Sheriff Rogelio Jundarino) na mayroon na ngang napagkasunduan na boluntaryo naming lilisanin ang lugar na kinatitirikan ng aming mga bahay sa araw o bago dumating ang Abril 10.*

12. *Na ako ay nagsumite din sa kagagalang-galang na korte (MeTC Branch 19) ng aking sinumpaang salaysay (Affidavit) upang suportahan ang nauna ko ng ipinahayag sa aming Motion to Quash Writ of Execution And Recall*

> *Of The Notice To Pay/Vacate And Demolish Premises (dito ay nakalakip bilang Annex "C").*[5]

Quilo requested in his Complaint that an investigation of the incidents of 12 February 2008 and 27 March 2008 be conducted and that Sheriff Jundarino be meted the appropriate administrative penalty.

The OCA, thru then Court Administrator Zenaida Elepaño, required[6] Sheriff Jundarino to comment on Quilo's Complaint within 10 days.

In his Comment,[7] Sheriff Jundarino denied having gone to Quilo's house on 12 February 2008, but admitted to going there on 27 March 2008, together with the MeTC process server, Bajao, and Bajao's relatives, for the sole purpose of serving the Notice to Pay/Vacate and Demolish Premises. Quilo refused to accept the said Notice.

Sheriff Jundarino likewise averred that there was no truth to Quilo's allegation that Sheriff Jundarino and his companions forcibly entered the premises. On the contrary, Sheriff Jundarino went inside the premises with the prior permission and authority of the residents thereof. He was very civil with the residents and even advised them to consult a lawyer. Moreover, it was because of the request/plea for an extension made by Quilo's wife that the execution of the judgment in Civil Case No. 158273-CV was temporarily suspended. Sheriff Jundarino acceded to the extension when the residents signified their willingness to voluntarily vacate the premises before 10 April 2008.

Sheriff Jundarino further denied that he uttered, "*ikaw ang una kong tatrabahuin* x x x" and that he was only given 72 hours within which to implement the writ of the court. Sheriff Jundarino maintained that these statements attributed to him were fabricated. Sheriff Jundarino also argued that if indeed the claims of Quilo and his neighbor Ednaloy Villahermosa

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[5] *Id.* at 2-3.

[6] *Id.* at 22.

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

(Villahermosa) – that they were not parties to Civil Case No. 158273-CV and that they were residing at an address different from the subject of said civil case – were true, then what were they afraid of and why did they seek the quashal of the writ of execution? There was no clear reason why Quilo and Villahermosa needed to ask for the quashal of the writ, which would only delay the implementation thereof.

Sheriff Jundarino asserted that Quilo was blatantly lying when the latter denied any knowledge of Civil Case No. 158273-CV. Sheriff Jundarino attempted to establish that Quilo was claiming rights under one of the defendants in Civil Case No. 158273-CV, namely, Talia Saclag. Sheriff Jundarino pointed out that Quilo admitted in his Affidavit, executed on 8 April 2008, that he was renting the premises from one Domeriano Gealogo, somehow related to Cristina F. Gealogo, who was the sister of Talia Saclag. In fact, Sheriff Jundarino claimed, it was Cristina F. Gealogo who received the summons in Civil Case No. 158273-CV on behalf of her sister, Talia Saclag, enabling the latter to file her Answer to Bajao's Complaint in said case.

In the end, Sheriff Jundarino prayed for the dismissal of Quilo's Complaint for being false, baseless, fabricated, and a mere product of the wild imagination of Quilo or by other person/s using him, to delay or prevent the implementation of a lawful order of the court.

Quilo insisted in his Reply[8] that he could not be wrong in his recollection that Sheriff Jundarino went to his house on 12 February 2008 to tender a copy of the Notice to Pay/Vacate and Demolish Premises, because the incident was so terrifying and shocking and he and his family even suffered serious anxieties and sleepless nights due to the threat of demolition. Quilo believes that Sheriff Jundarino's acts on 27 March 2008 were meant to render moot and academic the pending Motion to Quash Writ of Execution of Quilo and Villahermosa, by compelling Quilo's wife to sign an agreement to voluntarily vacate the premises.

[8] *Id.* at 40-44.

After the foregoing exchange of pleadings, the OCA submitted its Report[9] on 14 April 2009, with the following recommendations:

> In view of the foregoing, we respectfully submit for the consideration of the Honorable Court the following recommendations:
>
> (1) That the instant administrative complaint be RE-DOCKETED as a regular administrative matter; and
>
> (2) That Rogelio G. Jundarino, Sheriff III, Metropolitan Trial Court, Branch 19, Manila be found GUILTY of simple misconduct and be imposed the penalty of FINE in the amount equivalent to his THREE MONTHS SALARY, with a STERN WARNING that a repetition of the same or similar act shall be dealt with more severely.

Following the recommendation of the OCA, the Court ordered on 29 June 2009 that the administrative case be re-docketed as a regular administrative matter.

In the meantime, during the pendency of the present administrative matter, A.M. No. P-09-2644, the Court issued a Resolution dated 16 February 2009, dismissing another administrative Complaint filed by Quilo, this time against Judge Cacanindin and Sheriff Jundarino, docketed as A.M. No. MTJ-08-2078. According to the Court, the Complaint therein was judicial in nature.

There is no res judicata

Before the Court can proceed to rule herein on A.M. No. P-09-2644, it must first determine that it is not barred from doing so by *res judicata*, given the 16 February 2009 Resolution of this Court in A.M. No. MTJ-08-2078.

The doctrine of *res judicata* applies and treats the final determination of the action as speaking the infallible truth as to the rights of the parties as to the entire subject of the controversy, and such controversy and every part of it must stand irrevocably closed by such determination. The sum and substance of the

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

whole doctrine is that a matter once judicially decided is finally decided.[10]

Res judicata is based on the ground that the party to be affected, or some other with whom he is in privity, has litigated the same matter in the former action in a court of competent jurisdiction, and should not be permitted to litigate it again. This principle frees the parties from undergoing all over again the rigors of unnecessary suits and repetitious trials. At the same time, it prevents the clogging of court dockets. Equally important, *res judicata* stabilizes rights and promotes the rule of law.[11]

The requisites of *res judicata* are: (1) there must be a former final judgment rendered on the merits; (2) the court must have had jurisdiction over the subject matter and the parties; and (3) there must be identity of parties, subject matters and causes of action between the first and second actions.[12]

There is no *res judicata* herein, given that there is no identity of the causes of action between A.M. No. P-09-2644 and A.M. OCA I.P.I. No. 08-2078-MTJ.

Quilo alleged in his Complaint against Judge Cacanindin and Sheriff Jundarino in A.M. OCA I.P.I. No. 08-2078-MTJ that:

1. We are accusing Judge Felicitas O. Laron-Canindin ("respondent Judge") and Sheriff Rogelio G. Jundarino ("respondent Sheriff"), both of the Metropolitan Trial Court in Cities-Branch XIX, Manila City with the administrative offenses of Ignorance of the law, Grave Misconduct, Abuse of Authority and violations of Republic Act No. 3019 and Republic Act No. 6713.

2. We are actual occupants of houses located at 2518 Granate St., San Andres Bukid, Manila, for a period of not less than thirty (30) years.

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[10] *Nabus v. Court of Appeals*, G.R. No. 91670, 7 February 1991, 193 SCRA 732, 738-739.

[11] *Basilla v. Becamon*, A.M. No. MTJ-02-1404, 14 December 2004, 446 SCRA 264, 269.

[12] *Cayana v. Court of Appeals*, 469 Phil. 830, 843 (2004).

3. Other than our houses on the aforesaid lot, we do not own any real property. Should our houses and structures be demolished, we would be rendered homeless citizens. Moreover, we are underprivileged citizens and our respective incomes do not exceed that of the poverty line, thus considering our status as poor citizens, we cannot afford to build and/or acquire new shelters for a decent living. We are indigent citizens who deserve utmost protection of the law. Attached are the Certificates of Indigency issued by the *Brgy*. Chairman of Barangay 766-Zone 83, 5th District, Manila, marked as Annexes A and B.

4. Sometime on February [12], 2008, we were shocked when the respondent sheriff attempted to serve to us a Notice to Pay/Vacate and Demolish Premises, directing us to vacate our place and remove our houses therefrom. We refused to receive the said notice as we had not been a part of any case whatsoever, but later, for our protection, we secured a copy of the same hereto attached as Annex C. The said Notice states that it was issued by virtue of the **Writ of Execution issued on November 28, 2007**.

5. Without wasting time, we inquired and became aware that the said Notice to Pay/Vacate and Demolish Premises were issued pursuant to a Decision dated November 20, 1998 of the Metropolitan Trial Court of Manila, Branch XIX, pursuant to the Complaint for Ejectment filed by one Teodula Bajao against Eduardo Saclag, Zoilo Fulong, Alena Bertol and Talia Saclag. Copies of the said Decision and Complaint are hereto attached as Annexes D and E, respectively.

6. The subject of the Complaint for ejectment is a parcel of land located at **2519 Granate Street, Sta. Ana, Manila**.

7. We do not know the said Teodula Bajao (plaintiff in the ejectment case). Neither do we know the defendants in the said ejectment case, they do not also live in 2519 Granate Street, Sta. Ana, Manila, but in **2518 Granate Street, San Andres Bukid, Manila**.

8. Immediately, we filed on March 5, 2008 a Motion to quash Writ of Execution and Recall of the Notice to Pay/Vacate and Demolish Premises on the ground, among others, that the writ was issued against a wrong party, a stranger to the action, the writ of execution is based on a vague and indefinite judgment, and decision is null and void for having been rendered by a court without jurisdiction. A copy of the said Motion is attached as Annex F.

9. Even with the filing and pendency of the aforesaid Motion, the respondent Sheriff on March 27, 2008 went back to our place, accompanied by a person who introduced herself as Teodula Bajao and several demolition men armed with demolition tools ready to effect the demolition of our houses, but we successfully resisted the said attempt.

10. We then filed on April 9, 2008 a Supplemental Motion amplifying the grounds relied upon in our earlier motion, a copy of which is attached as Annex G.

11. On June 26, 2008, the respondent Judge denied our Motion and supplemental Motion but contradicted herself when she stated that the writ of execution is binding on persons who occupy the premises known as 2519 Granate Street, Sta. Ana, Manila, whether impleaded as a party or not. A copy of the said Order is attached as Annex H.

12. Within the reglementary period, we filed on July 7, 2008 a Motion for Reconsideration, a copy of which is attached as Annex I.

13. On July 29, 2008, respondent Judge issued an Order denying our Motion for Reconsideration, a copy of which is attached as Annex J, which we received on August 18, 2008.

14. On August 29, 2008, the respondent Sheriff served a 2nd Final Notice to Pay/Vacate and to Demolish Premises, giving us three (3) days to vacate the premises and demolish our houses. Otherwise, he will forcefully us (sic) and demolish our houses. A copy of the said Notice is attached as Annex K.

15. Aggrieved, we filed a Petition for *Certiorari* and Prohibition on September 1, 2008 with the Regional Trial Court-Branch 17, Manila City, assailing the aforesaid Orders of the respondent Judge;

16. Despite the pendency of our petition and application for injunctive writs, the respondent Sheriff, aided by a number of demolition men, demolished our houses on September 4, 2008. Pictures of our demolished houses are attached as Annex L-series.

17. The acts of the respondent Judge and respondent Sheriff reflect gross ignorance of the law, amounting to grave misconduct, and depict manifest partiality to the plaintiff in the ejectment suit in violation of the standards provided in Republic Act Nos. 3019 and 6713.[13]

True, paragraphs no. 1 to no. 12 of Quilo's Complaint in A.M. No. P-09-2644 contains essentially the same allegations in paragraphs no. 1 to no. 10 of his Complaint in A.M. OCA I.P.I. No. 08-2078-MTJ. The Court, however, takes note of two essential differences between Quilo's two Complaints.

First, Quilo's Complaint in A.M. No. P-09-2644 provides more details on the Sheriff Jundarino's purported visits on 12 February 2008 and 27 March 2008 to the former's residence. It particularly sets forth Sheriff Jurandino's alleged statements and deportment during said visits. Such details are not mentioned in Quilo's Complaint in A.M. OCA I.P.I. No. 08-2078-MTJ.

Second, Quilo's Complaint in A.M. No. P-09-2644 ends with the allegation that after Sheriff Jundarino's visit to Quilo's residence on 27 March 2008, Quilo filed an Affidavit before the MeTC in support of his earlier Motion to Quash Writ of Execution And Recall of the Notice to Pay/Vacate And Demolish Premises in Civil Case No. 158273-CV. On the other hand, Quilo's Complaint in A.M. OCA I.P.I. No. 08-2078-MTJ alleged events which transpired thereafter, *i.e.*, Judge Cacanindin's denial of Quilo's Motion to Quash Writ of Execution, as well as the latter's

[13] Affidavit-Complaint (*Rollo* of A.M. OCA I.P.I. No. 08-2078-MTJ), pp. 1-3.

subsequent Motion for Reconsideration; Sheriff Jundarino's service upon Quilo on 29 August 2008 of the second Notice to Pay/Vacate And Demolish Premises; Quilo's filing with the RTC of a Petition for *Certiorari* and Prohibition on 1 September 2008 challenging Judge Cacanindin's denial of his aforementioned Motions; and Sheriff Jundarino's demolition of Quilo's residence on 4 September 2008.

These differences between Quilo's Complaints in A.M. No. P-09-2644 and A.M. OCA I.P.I. No. 08-2078-MTJ support the fact that said Complaints are based on two different causes of action. Quilo's Complaint in A.M. No. P-09-2644 assails Sheriff Jundarino's abrasive words and actions during his alleged visits to the former's residence on 12 February 2008 and 27 March 2008 to implement the Writ of Execution in Civil Case No. 158273-CV; while his Complaint in A.M. OCA I.P.I. No. 08-2078-MTJ attributes gross ignorance to Judge Cacanindin, for his refusal to quash the Writ of Execution in Civil Case No. 158273-CV, and to Sheriff Jundarino, for his persistence in implementing said Writ, in obvious partiality to Bajao and in disregard of Quilo's pending Petition for *Certiorari* and Prohibition before the RTC.

The Court dismissed Quilo's Complaint in A.M. OCA I.P.I. No. 08-2078-MTJ through its Resolution dated 16 February 2009, on the ground that it was judicial in nature. It is conceded that the determination of whether Quilo's residence is the same property subject of Civil Case No. 158273-CV and whether it should be demolished pursuant to the judgment in said case, is a matter best left to the determination of the trial court in appropriate judicial proceedings. Questions judicial in nature ought to be threshed out in a judicial proceeding and definitely not in an administrative one. An administrative complaint is not a valid substitute for a judicial action.[14] In fact, Quilo himself alleged that he had already filed a Petition for *Certiorari* and Prohibition with the RTC of Manila, Branch 17, on 1 September 2008.

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[14] *Lumibao v. Panal*, 377 Phil. 157, 175 (1999).

The same cannot be said for A.M. No. P-09-2644, the present Complaint. As to whether Sheriff Jundarino exercised proper decorum and followed established procedure when he served upon Quilo and the latter's wife and neighbors, on 12 February 2008 and 27 March 2008, a copy of the Writ of Execution and the Notice to Pay/Vacate and Demolish Premises issued by the MeTC in Civil Case No. 158273-CV, is evidently an administrative matter, within the jurisdiction of this Court to decide in exercise of its authority to discipline judicial employees.

Sheriff Jundarino is guilty of simple misconduct.

After a thorough review of the records of this case, the Court agrees in the finding of the OCA that Sheriff Jundarino is guilty of simple misconduct.

Sheriff Jundarino's main defense against Quilo's Complaint herein is denial. Sheriff Jundarino denies that he went to Quilo's residence on 12 February 2008. Although Sheriff Jundarino admits being at Quilo's residence on 27 March 2008, the former again denies that he and his company forcibly entered the premises without Quilo's permission. Sheriff Jundarino also denies that he coerced Quilo's wife and neighbors to signing a document to the effect that they would voluntarily vacate the premises by 10 April 2008. Sheriff Jundarino further denies that he uttered to Quilo on 12 February 2008, "*ikaw ang una kong tatrabahuin at ipapademolis sa sandaling magmatigas pa kayo sa pagbalik ko*"; or that he said to Quilo's wife on 27 March 2008 that he was only given 72 hours within which to implement the order of the court.

It is settled that denial is inherently a weak defense. To be believed, it must be buttressed by strong evidence of non-culpability; otherwise, such denial is purely self-serving and is with nil evidentiary value. Like the defense of alibi, denial crumbles in the light of positive declarations.[15]

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[15] *Jugueta v. Estacio,* A.M. No. CA-04-17-P, 25 November 2004, 444 SCRA 10, 16.

Sheriff Jundarino undeniably failed to substantiate the allegations in his Comment. He could have easily submitted evidence in support of his defense – such as affidavits of people who could attest as to where he was on 12 February 2008, or of people who were with him during his 27 March 2008 visit to Quilo's residence – but he utterly failed to do so. The basic rule is that mere allegation is not evidence and is not equivalent to proof.[16]

Sheriff Jundarino's duty is to implement the Writ of Execution dated 28 November 2007 at **No. 2519** Granate St., **Sta.Ana**, Manila. Given Quilo's assertions that his residence was actually at **No. 2518** Granate St., **San Andres Bukid**, Manila, and that he was not even a party to Civil Case No. 158273-CV, the more prudent course of action for Sheriff Jundarino was to defer implementation of the said Writ until a determination by the MeTC of Quilo's Motion to Quash the same. It bears to stress that said Motion was already scheduled for hearing on 28 March 2008, just a day after Sheriff Jundarino's second visit to Quilo's residence on 27 March 2008.

Without even considering whether Quilo's residence is the same as the property involved in Civil Case No. 158273-CV, the Court finds that Sheriff Jundarino's acts herein – *i.e.*, his rude and inappropriate remarks and aggressive behavior during his visits to Quilo's residence on 12 February 2008 and 27 March 2008 to implement the Writ of Execution issued in the aforementioned case; as well as his unreasonable insistence on implementing the said Writ on 27 March 2008 despite the fact that Quilo's Motion to Quash the same was already set to be heard the very next day, 28 March 2008 – constitute simple misconduct.

Time and time again, this Court has emphasized that the conduct or behavior of all officials and employees of an agency involved in the administration of justice, from the presiding judge to the most junior clerk, should be circumscribed with the heavy burden of responsibility.[17] Their conduct must at all

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[16] *Navarro v. Cerezo,* 492 Phil. 19, 22 (2005).

[17] *Biag v. Gubatanga*, 376 Phil. 870, 876 (1999); *Gacho v. Fuentes*, 353

times be characterized by, among others, strict propriety and decorum in order to earn and maintain the respect of the public for the judiciary.[18]

Part of this stringent requirement is that agents of the law should refrain from the use of language that is abusive, offensive, scandalous, menacing or otherwise improper. Judicial employees are expected to accord every due respect, not only to their superiors, but also to others and their rights at all times. Their every act and word should be characterized by prudence, restraint, courtesy and dignity.[19] Sheriff Jundarino's utterance of "*ikaw ang una kong tatrabahuin at ipapademolis sa sandaling magmatigas pa kayo sa pagbalik ko*" to Quilo, while effecting the Writ of Execution, was an evident violation of the foregoing rules of conduct for judicial employees.

All employees in the judiciary should be examples of responsibility, competence, and efficiency. As officers of the court and agents of the law, they must discharge their duties with due care and utmost diligence. Any conduct they exhibit tending to diminish the faith of the people in the judiciary will not be condoned.[20]

The Court has even higher expectations from its sheriffs. Sheriffs play an important role in the administration of justice, and they should always invigorate and hold in violate the tenet that a public office is a public trust.[21] Being at the grassroots of our judicial machinery, sheriffs and deputy sheriffs are in close contact with the litigants; hence, their conduct should all the more maintain the prestige and the integrity of the court.[22]

Phil. 665, 672 (1998); *Office of the Court Administrator v. Alvarez*, 350 Phil. 771, 777 (1998).

[18] *Alawi v. Alauya*, 335 Phil. 1096, 1104 (1997); *Quiroz v. Orfila*, 338 Phil. 828, 834 (1997).

[19] *Alawi v. Alauya*, *id.* at 1105.

[20] *Philippine Bank of Communications v. Torio*, A.M. No. P-98-1260, 14 January 1998, 284 SCRA 67, 77-78.

[21] *Ventura v. Concepcion*, 399 Phil. 566, 571 (2000).

[22] *Cabanatan v. Molina*, 423 Phil. 637, 663 (2001).

By the very nature of their functions, sheriffs must conduct themselves with propriety and decorum, so as to be above suspicion.[23] Sheriffs cannot afford to err in serving court writs and processes and in implementing court orders, lest they undermine the integrity of their office and the efficient administration of justice.[24]

The Court reiterates that a sheriff, who is an officer of the court upon whom the execution of a final judgment depends, must be circumspect in his behavior.[25]As an officer of the court and therefore agent of the law, Sheriff Jundarino is mandated to discharge his duties with due care and utmost diligence because, in serving the court's writs and processes and in implementing its lawful orders, he cannot afford to err without affecting the administration of justice.[26]Any method of execution falling short of the requirement of the law deserves reproach and should not be countenanced.[27]

In *Office of the Court Administrator v. Judge Octavio A. Fernandez,*[28] the Court defined misconduct as any unlawful conduct, on the part of a person concerned in the administration of justice, prejudicial to the rights of parties or to the right determination of the cause. It generally means wrongful, improper, unlawful conduct motivated by a premeditated, obstinate or intentional purpose.

Under Section 52, B(2), Rule IV of the Revised Uniform Rules on Administrative Cases in the Civil Service, simple misconduct is punishable by suspension for one (1) month and one (1) day to six (6) months for the first offense, and dismissal for the second offense. Since this is Sheriff Jundarino's first infraction in his 16 years of service in the Judiciary, and he has

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[23] *Tan v. Dael*, 390 Phil. 841, 850-851 (2000).

[24] *Torres v. Cabesuela*, 418 Phil. 445, 450 (2001).

[25] *Caseñares v. Almeida, Jr.,* 381 Phil. 377, 385 (2000).

[26] *Lumanta v. Tupas,* 452 Phil. 950, 956 (2003).

[27] *Biglete v. Maputi, Jr.,* 427 Phil. 221, 227 (2002).

[28] 480 Phil. 495 (2004), citing *Yap v. Inopiquez, Jr.*, 451 Phil. 183 (2003).

not been previously administratively faulted;[29] and so as not to hamper the performance of the duties of his office, the Court; instead of suspending Sheriff Jundarino, is imposing upon him a fine in an amount equivalent to his three (3) months' salary.

WHEREFORE, respondent Rogelio G. Jundarino, Sheriff III, Metropolitan Trial Court of Manila, Branch 19, is hereby found *LIABLE* for simple misconduct and is ordered to pay a *FINE* in an amount equivalent to his three (3) months' salary with a warning that a repetition of the same or similar infraction shall be dealt with more severely.

SO ORDERED.

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

THIRD DIVISION

[A.M. No. RTJ-08-2158. July 30, 2009]
(Formerly OCA IPI No. 04-2018-RTJ)

ALFREDO FAVOR, *complainant, vs.* **JUDGE CESAR O. UNTALAN, Regional Trial Court, Branch 149, Makati City,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; TRESPASS TO DWELLING; ELEMENTS OF THE CRIME; NOT ESTABLISHED IN CASE AT BAR. — Trespass to dwelling is penalized under Article 280 of the Revised Penal Code, the elements of which are: (1) the offender

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[29] The only other administrative charge against him was Quilo's Complaint for gross ignorance of the law, gross misconduct, abuse of authority, and violations of Republic Act No. 3019 and Republic Act No. 6713 in A.M. No. 08-2078-MTJ, but it was dismissed by the Court in its resolution dated 16 Feb. 2009.

is a private person; (2) he enters the dwelling of another; and (3) such entrance is against the latter's will. While it is true that the act of putting one's foot inside the door constitutes entry against the implied prohibition of the occupant, complainant's allegation unfortunately remains uncorroborated. It is a settled rule in administrative proceedings that the complainant has the burden of proving by substantial evidence the allegations of his complaint. As complainant has failed to submit proof of his statement, his testimony deserves scant consideration as compared with that of respondent Judge, which was supported by the affidavits of Sta. Maria and Guillarte categorically stating that the respondent Judge did not need to push open the door, because they were ushered inside by a young woman. Moreover, complainant failed to immediately report the incident to the authorities, which creates doubt as to what really occurred at his mother-in-law's house. Had he been the "disturbed person" he described himself to be in his complaint, the reasonable thing to do would have been to call the attention of the *barangay tanod* or at least have the incident recorded in the police blotter.

2. **JUDICIAL ETHICS; JUDGES; RECORDS DOES NOT SHOW THAT RESPONDENT JUDGE COMMITTED AN ACT OF HARASSMENT OR COERCION TOWARD COMPLAINANT.—** There is nothing from the records to show that respondent Judge committed an act of harassment or coercion toward complainant. Harassment has been defined as words, gestures and actions which tend to annoy, alarm and abuse (verbally) another person, while coercion is synonymous to compulsion, constraint, a compelling by force or arms or threat. In the present case, going over to one's house and informing him that he is living at the wrong address could hardly be construed as harassment or coercion. It is hard to believe that respondent Judge forced his way into the house, harassed and coerced complainant into accepting a settlement, and yet respondent Judge and his companions were able to stay at the house for an hour. The Court gives greater credence to the explanation of respondent Judge that he had merely accompanied Sta. Maria and Guillarte to the house occupied by complainant with the purpose of offering the occupant the sum of ₱100,000.00 from Lozada to vacate the lot.

3. ID.; ID.; ID.; BY USING HIS POSITION TO HELP PRIVATE PERSONS SETTLE A LEGAL DISPUTE, RESPONDENT JUDGE IS ADMINISTRATIVELY LIABLE UNDER 2.03 OF THE CODE OF JUDICIAL CONDUCT; RESPONDENT JUDGE SHOULD BE MINDFUL TO CONDUCT HIMSELF IN A MANNER THAT GIVES NO GROUND FOR REPROACH AND FREE FROM ANY APPEARANCE OF IMPROPRIETY. — Canon 2 of the Code of Judicial Conduct states that a judge should avoid impropriety and the appearance of impropriety in all activities. The following are likewise pertinent to the present case: Rule 2.01. – A judge should so behave at all times as to promote public confidence in the integrity and impartiality of the judiciary. Rule 2.03. – A judge shall not allow family, social, or other relationships to influence judicial conduct or judgment. The prestige of judicial office shall not be used or lent to advance the private interests of others, nor convey or permit others to convey the impression that they are in a special position to influence the judge. By using his position to help private persons settle a legal dispute, respondent Judge is administratively liable under Rule 2.03 of the Code of Judicial Conduct. His intentions may have been noble as he sought to make complainant realize that he had been occupying by mistake the property subject of the dispute, but respondent Judge should be mindful to conduct himself in a manner that gives no ground for reproach. The Court held in *Miranda v. Judge Mangrobang, Sr.,* that a judge's private life cannot be dissociated from his public life and it is, thus, important that his behavior both on and off the bench be free from any appearance of impropriety.

4. ID.; ID.; ID.; RESPONDENT JUDGE SHOULD BE MORE PRUDENT IN THE OBSERVATION OF HIS DEALINGS WITH THE PUBLIC TO OBVIATE THE MISTAKEN IMPRESSION OF IMPROPRIETY IN THAT HE IS PROBABLY USING HIS POSITION AS A JUDGE TO IMPOSE IMPROPER PRESSURE OR EXERT UNDUE INFLUENCE SO AS TO OBTAIN THE DESIRED RESULT IN A GIVEN SITUATION. — The Court has previously reprimanded judges who have used their office for private interests. In the aforecited case of *Miranda v. Judge Mangrobang, Sr.*, the respondent judge who engaged in business and in private practice of law was reprimanded and warned that a repetition of the same or similar acts in the future would be

dealt with more severely. In *Marces, Sr. v. Arcangel*, the respondent judge was also reprimanded for attending *barangay* conciliation proceedings at the request of one of the parties, and for introducing himself as an Executive Judge of the RTC. In the present case, the Investigating Justice recommended that respondent Judge be admonished, with a warning that a repetition of the same or similar act shall warrant a more severe penalty. While there was no categorical finding of bad faith or malice on the part of respondent Judge, who was motivated by the noble intention of settling the property dispute between Lozada and Abando, however, he must bear in mind that his office demands an exacting standard of decorum to promote public confidence in the integrity and impartiality of the judiciary. Respondent Judge should be more prudent in the observance of his dealings with the public to obviate the mistaken impression of impropriety in that he is probably using his position as a judge to impose improper pressure or exert undue influence so as to obtain the desired result in a given situation. Thus, considering that respondent Judge violated Rule 2.03 of the Code of Judicial Conduct, the Court deems it appropriate to impose a stiffer penalty of a fine of ₱5,000.00 with stern a warning so as to deter him from committing the same or similar acts in the future.

D E C I S I O N

PERALTA, *J.*:

Before this Court is a verified complaint[1] dated May 10, 2004 filed by complainant Alfredo Favor with the Office of the Court Administrator (OCA), charging respondent Judge Cesar Untalan[2] of the Metropolitan Trial Court (MeTC) Branch 39, of Quezon City with: (1) illegal trespass to dwelling; (2) taking advantage of his office and position to act as an agent to sell real property; (3) assisting a private individual to settle a case; (4) harassment/coercion; and (5) violation of Rule 3.09 of the Code of Judicial Conduct.

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

[2] Now Presiding Judge of the Regional Trial Court (RTC), Branch 149, Makati City.

Consolacion Abando was the registered owner of Lots 7, 8 and 9 at Halcon Street, Mandaluyong City. She mortgaged two of these lots to Francisco Lozada by way of accommodation for the principal debtor. Lozada eventually foreclosed Lots 8 and 9. Abando, instead of occupying Lot 7, which had not been foreclosed, took up residence at Lot 9.

Manolita Sta. Maria and Rosalina Guillarte were real estate agents who responded to an advertisement put up by Lozada for the sale of Lots 8 and 9. When Sta. Maria and Guillarte learned that Abando hailed from Pangasinan, they thought of asking respondent Judge, who was also from Pangasinan, to help them convince Abando to exchange Lot 9, which was in her possession, with Lot 7, which was in Lozada's possession. They asked respondent Judge to accompany them to the residence of Abando and persuade her to agree to exchange said lots for ₱100,000.00.

On October 6, 2001, at around 1:30 p.m., respondent Judge, Sta. Maria and Guillarte went to Abando's house at 516 Halcon Street, Mandaluyong City, where complainant Alfredo Favor, who was Abando's son-in-law, also resided.

In his Complaint, complainant alleged that respondent Judge pushed open the door of the house and placed his right foot inside so complainant could not close the door. Respondent Judge inquired if complainant was Alfredo Favor, to which complainant replied yes. Respondent Judge then told him, "Mr. Favor, *mali ang tinitirahan niyo* (you are living at the wrong address)." While saying this, respondent Judge, Sta. Maria and Guillarte entered the house and sat on the sofa.

Complainant averred that respondent Judge asked him to sit beside him, then told him to vacate the house because Sheriff Doblada and Lozada made a mistake in ejecting complainant and his family from their former residence. Complainant told him that it was no longer their fault, because they were made to transfer to their present house after the enforcement of the writ in the ejectment case. Respondent Judge said that he was only doing Lozada a favor, and asked complainant to talk to his

in-laws about leaving the house, even writing his name and telephone number on a piece of paper.

Complainant claimed that, on October 7, 2001,[3] at around 7:40 a.m., he and respondent Judge talked on the telephone and arranged to meet at the latter's office at the Quezon City Hall at 1:00 p.m. Complainant was accompanied by Sheriff Cesar Abacahin of the Regional Trial Court (RTC) of Pasig, Branch 69, and Sheriff Mario Pangilinan of the Office of the Clerk of Court of RTC Pasig City. During their meeting, respondent Judge told complainant that Lozada had rejected their demand and would not pay them. Respondent Judge informed complainant that they would be ejected from their house in two months' time, and then asked complainant for his telephone number.

On July 7, 2003, complainant filed a Complaint[4] against respondent Judge, Sta. Maria and Guillarte with the Office of the City Prosecutor of Mandaluyong City. While filing his complaint, complainant saw respondent Judge, who asked him about the *estafa* case[5] filed by Lozada against the complainant. Complainant also alleged that respondent Judge offered him ₱100,000.00.

On the other hand, respondent Judge denied the allegations of complainant. He alleged that, while it was true that he, Sta. Maria and Guillarte went to the house at Halcon Street, Mandaluyong City in October 2001, respondent did not push open the door, because a young girl had opened the gate to let them in. He said that his companions had requested him to accompany them to that house for the purpose of offering the occupants therein the sum of ₱100,000.00 from Lozada for them to vacate the lot in question.[6]

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[3] In his testimony dated August 5, 2005, complainant said he made a mistake in the date and changed it to October 8, 2001 (TSN, August 5, 2005, p. 8).

[4] Docketed as Invoice Slip No. 03-56286-G; *rollo,* p. 5.

[5] Docketed as Invoice Slip No. 03-55308-E.

[6] Counter-Affidavit dated July 30, 2003, *rollo,* pp. 15-16.

Respondent Judge pointed out that, if the claim of trespassing and violation of domicile were true, complainant should have reported it to the *barangay* or to the police authorities. He reasoned that the complaint had been filed only on July 7, 2003, almost two years after the incident occurred.[7]

He likewise refuted complainant's claim that they talked on the telephone on October 7, 2001 at 7:40 a.m., because such date was the first Sunday of the month. Respondent Judge said that every first Sunday of the month, he left the house before 7:30 a.m. for the prayer assembly meeting of the Elder's Core Group of the Couples for Christ. He added that even if complainant went to respondent Judge's house on a Monday, the latter would not have been there, because he left the house every Monday at 7:00 a.m. in time for the flag ceremony at 8:00 a.m.[8]

Respondent Judge also maintained that he had only come to know of the case Lozada filed against complainant through the Judge's co-respondents in the complaint for violation of domicile. He explained that he had gone to complainant's house in October 2001 only to reconcile people, as it was his nature to mediate controversies of his neighbors. When the complaint against him was filed, he stopped assisting them.[9]

On September 1, 2004, the Office of the City Prosecutor of Mandaluyong City dismissed the complaint filed by complainant against respondent Judge, holding that:

> After a careful perusal of the contending allegations of the parties of the instant case, we find the evidence for the respondents to be more credible and reliable as against that of the complainant who waited for the lapsed (sic) of more than two years after the incident to file a complaint, if indeed he was really wronged by the respondents. This alone created a cloud of doubt as to his real intentions and motive which appears to be a clear afterthought of the charge of Estafa that was recently filed against him.

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[7] Letter to the OCA dated July 5, 2004, *id.* at 12-14.

[8] *Id.*

[9] *Id.*

WHEREFORE, for lack of probable cause, it is most respectfully recommended that the instant case be DISMISSED.

RESPECTFULLY SUBMITTED.

City of Mandaluyong.
1 September 2004.[10]

In its Report[11] dated January 7, 2005, the OCA recommended that the instant complaint be referred to an Associate Justice of the Court of Appeals (CA) for investigation, report and recommendation within sixty (60) days from receipt of records.

In its Resolution[12] dated February 16, 2005, the Court referred the administrative complaint to Associate Justice Mario Guariña of the CA for investigation, report and recommendation within sixty (60) days from receipt of records.

In an Order[13] dated May 13, 2005, Associate Justice Guariña directed respondent Judge to answer the complaint in the instant administrative matter within fifteen (15) days from receipt, and set the hearing for June 15 and 17, 2005 at 10:00 a.m.

On May 26, 2005, respondent Judge submitted his Answer[14] in which he reiterated his denial of complainant's allegations. He further averred that it was only a coincidence that he met respondent at the Fiscal's Office of Mandaluyong City on July 7, 2003, where he went to pay a courtesy call to the new city prosecutor. Also, he denied that the ₱100,000.00 he offered complainant was bribe money.

Complainant, on the other hand, filed his Reply[15] on June 29, 2005. He explained that he did not report the incident which occurred on October 6, 2001 to the police because he believed

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

[11] *Id.* at 27-28.

[12] *Id.* at 29.

[13] *Id.* at 31.

[14] *Id.* at 32-37.

[15] *Id.* at 60-61.

that respondent Judge was outside the jurisdiction of the *barangay*. He only decided to file the complaint for violation of domicile when he saw respondent Judge making a follow-up of the case at the fiscal's office.

In an Order[16] dated August 17, 2005, the Investigating Justice gave the parties twenty (20) days therefrom to file their memoranda, after which the case would be deemed submitted.

In his Report and Recommendation dated December 2, 2005, the Investigating Justice made the following findings:

Against this conflicting backdrop, we now come to evaluate the administrative charges of Favor against Judge Untalan.

a) Trespass to dwelling as defined in the Revised Penal Code.

The gravamen of the felony of trespass to dwelling under Article 280 of the Revised Penal Code is entering the dwelling of another against the latter's will. While it is arguable that as the complainant charged, putting one's foot inside the door to prevent the complainant from closing it is entering against the will of the owner of the dwelling, the respondent denies that he did this. He is supported in his testimony by his companion Sta. Maria who was emphatic that they were allowed to enter the house by the persons who met them at the gate. They entered an open door and were already inside the house when the complainant appeared. This incident has been the subject of a criminal complaint filed by the complainant against them two years later before the Mandaluyong City Prosecutor's Office. The complaint was dismissed by the fiscal on this ground: *We find the evidence for the respondents to be more credible and reliable as against that of the complainant who waited for the lapse of more than two years after the incident to file a complaint. This alone created a closed* (sic) *of doubt as to his real intentions and motive which appears to be a clear afterthought of the charge of estafa that was recently filed against him.*

We believe that the charge of trespass to dwelling even if resurrected as an administrative case cannot stand. The testimony of the complainant is uncorroborated and devoid of support from any other evidence on the record. It has also been rendered improbable by his own actuations. He did not make any seasonable complaint

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[16] *Id.* at 173.

to the *barangay* or police authorities. Instead, he took the initiative of visiting the respondent at his office to pursue further negotiations with him. This cannot be the reaction of one who has been aggrieved by the unwanted and unwelcome visit of another. He then waited for two years before filing the case against the respondent, and after he was himself charged by a person whom he thought the respondent was acting for. His reason for filing the trespass to dwelling case against the respondent is suspect. It is likely that he concocted a charge against the respondent and the two lady real estate agents as a leverage in the case filed against him by the person whom he believed they represented. The truth would under this scenario be compromised.

b) harassment/coercion

We entertain the same doubts with respect to this accusation. The complainant makes it appear that once inside his house, the respondent harassed and coerced him into accepting a settlement. The testimony is not confirmed by any witness to the occasion, and there is nothing on the record from which we can draw, circumstantially or otherwise, that this was in fact what happened. The respondent and his companion have sworn to a totally difficult (sic) account of the events that took place. The complainant tries to capitalize on the fact that it was through his door and not the door of his mother-in-law that the respondent entered. But as the respondent points out, whether they entered the door of the complainant or that of his mother-in-law, they were allowed to enter, and having been led into the house, they comported themselves in a proper and civilized manner.

The complainant has failed to meet the test of substantial evidence in proposing a version that is supported only by his lone testimony, is refuted by the testimonies of the other persons present on the occasion, and is not attended by any established fact or circumstance that might lend credibility to it.

c) Taking advantage of his office to act as an agent to sell real property.

This charge is totally negated by the evidence. The respondent was not acting as Lozada's agent to sell property. He accompanied his lady friends to the complainants' mother-in-law not to sell property to her but to convince her to swap lots as a way of correcting the error in the sheriff's execution. The respondent denies knowing

Lozada personally, and there is no evidence that he was acting as a real estate agent to sell Lozada's property.

d) Violation of Rule 3.09 of the Code of Judicial Conduct.

This charge is misplaced. As pointed out by the respondent, this provision has to do only with the supervision of court personnel.

e) Assisting a private individual to settle a case.

This, more or less, encapsulates the action of the respondent as he himself admits. As a leftover from the days when he was an official of the Mandaluyong city government entrusted with the duty of settling land disputes, he continued as a judge to assist neighbors and friends in settling their land differences. He admitted to the Investigating Justice that in view of the events that happened, it was a mistake on his part to have gone to the house of the complainant's mother-in-law.

From our review of the provisions of the Canons of Judicial Ethics and Code of Judicial Conduct then applicable, we find that this behavior may fall under the most general terms of provisions that regulate the activities of a judge out of court. Thus:

Canon 3, Canons of Judicial Ethics: A judge's…personal behavior, not only upon the bench and in the performance of judicial duties, but also in his everyday life should be beyond reproach.

Rule 2.01, Code of Judicial Conduct: A judge shall so behave at all times as to promote public confidence in the integrity and impartiality of the judiciary.

Rule 2.03. Code of Judicial Conduct. The prestige of judicial office shall not be used or lent to advance the private interests of others, nor convey or permit others to carry the impression that they are in a special position to influence the judge.

The respondent must understand that he cannot divorce himself, whether in and out of court, from his public persona as a judge. Thus, he must comport himself at all times in accordance with the canons of judicial ethics. Like a religious ministry, the judicial office imposes a demand on the lifestyle of the occupant, and anyone who accepts a judicial appointment must be deemed to have agreed to such imposition.

As we view this case in its entirety, the action of the respondent, even unwittingly, in helping private persons settle a legal dispute

may result in allowing the prestige of judicial office to be used to advance the private interests of others. This is a situation that judges must seek to avoid. The present Section 4, Canon 1 of the new Code of Judicial Conduct continues to caution against it.

Since it appears that the respondent did not act with malice but with the best of intentions, failing only to foresee the consequences of his action, we believe that justice is served by admonishing the respondent, with a warning that a repetition of the act may warrant a more severe penalty.[17]

The Court finds the recommendation of the Investigating Justice to be amply justified.

Complainant alleged that respondent Judge committed trespass to dwelling when the latter and his companions entered the house of complainant's mother-in-law. He claimed that respondent Judge put his foot inside the door to prevent complainant from closing it, and once inside the house, harassed and coerced complainant into accepting a settlement.

Trespass to dwelling is penalized under Article 280 of the Revised Penal Code, the elements of which are: (1) the offender is a private person; (2) he enters the dwelling of another; and (3) such entrance is against the latter's will.[18]

While it is true that the act of putting one's foot inside the door constitutes entry against the implied prohibition of the occupant, complainant's allegation unfortunately remains uncorroborated. It is a settled rule in administrative proceedings that the complainant has the burden of proving by substantial evidence the allegations of his complaint.[19] As complainant has failed to submit proof of his statement, his testimony deserves scant consideration as compared with that of respondent Judge, which was supported by the affidavits of Sta. Maria and Guillarte categorically stating that the respondent Judge did not need to

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[17] Report and Recommendation dated December 2, 2005, pp. 22-25.

[18] *Marzalado, Jr. v. People of the Philippines*, G.R. No. 152997, November 10, 2004, 441 SCRA 595, 603.

[19] *Santos v. Judge Lacurom*, A.M. No. RTJ-04-1823, August 28, 2006, 499 SCRA 639.

push open the door, because they were ushered inside by a young woman. Moreover, complainant failed to immediately report the incident to the authorities, which creates doubt as to what really occurred at his mother-in-law's house. Had he been the "disturbed person" he described himself to be in his complaint, the reasonable thing to do would have been to call the attention of the *barangay tanod* or at least have the incident recorded in the police blotter.

Likewise, there is nothing from the records to show that respondent Judge committed an act of harassment or coercion toward complainant. During trial, complainant himself recounted what happened when respondent Judge went to his mother-in-law's house on October 6, 2001. He testified:

JUSTICE GUARIÑA III:

You said that your address is 516 Halcon Street, Brgy.?

COMPLAINANT:

Yes, your honor.

Q: That is actually part of Mandaluyong City?

A: Yes, Your Honor.

Q: Is this the same place where you said Judge Untalan visited you in the afternoon of October 6?

A: Yes, Your Honor.

Q: Was that the first time you met Judge Untalan?

A: Yes, Your Honor.

Q: Did you know him already to be Judge Untalan?

A: No, Your Honor.

Q: Why did you say that when Judge Untalan stepping to your house holding papers in his right hand on October 6, you said that *"Ikaw si Atty. Untalan"* how did you come to presume that he was Atty. Untalan?

A: I said you are the lawyer and he replied, Untalan.

Q: So it was Judge Untalan who mentioned his own name?

A: Yes, Your Honor.

Q: Was he with other persons at that time?

A: He was with the two lady companions, Your Honor.

Q: Who were these two lady companions?

A: Mrs. Sta. Maria and Mrs. Guillarte, Your Honor.

Q: Did you already know these two persons at that time?

A: I only knew Mrs. Sta. Maria, Your Honor.

Q: Now you said that Judge Untalan told you "Mr. Favor, *mali ang tinitirhan nyo*," did you understand then what he was talking about?

A: Yes, Your Honor.

Q: Did you understand what he was talking about?

A: *Iyon nga po* he said "your (sic) are Mr. Favor," then I replied, "yes sir," and he told me, "you are residing in the wrong address."

Q: Did you ask him why does he think that way?

A: I asked him why and he told me that *"nagkamali sila ng* ejectment *sa iyo,"* I said that the Sheriff placed me in possession of the premises.

Q: Who is the owner of that house where you were staying on October 6?

A: My mother-in-law.

Q: Was she there at that time?

A: She was at the other door.

Q: Do you know a certain Francisco Lozada, can you tell the Court who is Francisco Lozada?

A: He was one of those who acquired title from my mother-in-law, your honor.

Q: You are referring to the title of the house where you were staying on October 6?

A: That is what we know, your honor, because we were placed in possession of the premises by the Sheriff and Lozada.

Q: How long did Judge Untalan stay in your house that afternoon?

A: Almost one hour.

Q: At that time you were inside your house?

A: I was there because I was about to go out but Judge Untalan came in.

Q: And you really saw Judge Untalan, he was with these two persons, Sta. Maria and Guillarte?

A: Yes, your honor.[20]

Harassment has been defined as words, gestures and actions which tend to annoy, alarm and abuse (verbally) another person,[21] while coercion is synonymous to compulsion, constraint, a compelling by force or arms or threat.[22] In the present case, going over to one's house and informing him that he is living at the wrong address could hardly be construed as harassment or coercion. It is hard to believe that respondent Judge forced his way into the house, harassed and coerced complainant into accepting a settlement, and yet respondent Judge and his companions were able to stay at the house for an hour. The Court gives greater credence to the explanation of respondent Judge that he had merely accompanied Sta. Maria and Guillarte to the house occupied by complainant with the purpose of offering the occupant the sum of ₱100,000.00 from Lozada to vacate the lot.

Equally implausible are the contentions of complainant that respondent Judge took advantage of his office to act as an agent to sell real property, and that he violated Rule 3.09 of the Code of Judicial Conduct. Of the first, complainant again failed to substantiate such claim to prove that respondent Judge had in fact represented himself as acting on behalf of Lozada. Anent the second charge, the Investigating Justice correctly concluded that the Code of Judicial Conduct governs the supervision of court personnel, and is, therefore, inapplicable to the present case.

What therefore remains to be determined is whether respondent Judge assisted a private individual to settle a case.

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[20] TSN, August 5, 2005, pp. 4-6.

[21] *Black's Law Dictionary Abridged Fifth Ed.*, p. 365.

[22] *Id.* at 135.

Respondent Judge himself admitted that he went with Sta. Maria and Guillarte to help them convince Abando to exchange Lot 9, which was in her possession, with Lot 7, which was in Lozada's possession, for ₱100,000.00. He testified:

ATTY. PARAISO:

Q: Judge Untalan, who are these two ladies that you are talking about?

RESPONDENT:

A: I am referring to Chit Guillarte and Manolita Sta. Maria, sir.

Q: And why are you with them?

A: As I said earlier, they requested me to accompany them to the house of Mrs. Abando so that the problem of their client, I may be able to assist them.

JUSTICE GUARIÑA III:

Q: At that time you were already a City Judge?

A: MTC Judge of Quezon City, your honor.

Q: And you agreed to the request to accompany them to the house of Mrs. Abando?

A: Yes your honor, because as I have said, your honor, when there are emergencies in family life these two ladies help me.

Q: What did they really request you to do when they asked you to accompany them to the house?

A: To help them convince Mrs. Abando to agree to their proposal for an exchange of the lot with an offer of ₱100,000.00 and all the expenses of the exchange of the lot will be shouldered by Mr. Lozada.

Q: Expenses for?

A: For exchange of lots, your honor.

Q: And you agreed to their request that is why you accompanied them?

A: Yes, your honor.

Q: Did it not occur to you at that time that your access might be misinterpreted since you are already a judge?

A: No your honor because when I was the Chief of the State Management Development Office of Mandaluyong, basically that was my job to patch up problems and to settle squatters and arrange for land disputes, your honor. I usually arbitrate land dispute of Mandaluyong so maybe because of that I was able to successfully mediate so many land disputes in Mandaluyong and they were beneficiaries also of the land-owner that they have been selling and because of this I stopped now that is why most of my neighbors say I became difficult to reach now because of this problem presented by Mr. Favor.

Q: Are you suggesting Judge that prior to this incident even as a judge you are still engaged in disputes between people there in your place?

A: I choose, your honor, if the one requesting is close to me, then I call them to my house then I will try to explain to them that its better to agree now on a settlement rather than you go to Court because its difficult to go to Court and its too expensive so I call the parties.

Q: And you were explaining to both parties?

A: Yes, your honor, I always see to it that both parties are present.

Q: How did these conferences turn out?

A: Usually it turn (*sic*) out successful. I will request now to go to the barangay and execute the necessary agreement that we may have.

Q: It was with that intention that you accompanied these two ladies on October 6, 2001 in the house of Mrs. Abando?

A: Yes, your honor.[23]

Canon 2 of the Code of Judicial Conduct[24] states that a judge should avoid impropriety and the appearance of impropriety in all activities. The following are likewise pertinent to the present case:

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[23] TSN, August 12, 2005, pp. 13-15.

[24] Promulgated September 5, 1989, effective October 20, 1989.

Rule 2.01. – A judge should so behave at all times as to promote public confidence in the integrity and impartiality of the judiciary.

Rule 2.03. – A judge shall not allow family, social, or other relationships to influence judicial conduct or judgment. The prestige of judicial office shall not be used or lent to advance the private interests of others, nor convey or permit others to convey the impression that they are in a special position to influence the judge.

By using his position to help private persons settle a legal dispute, respondent Judge is administratively liable under Rule 2.03 of the Code of Judicial Conduct. His intentions may have been noble as he sought to make complainant realize that he had been occupying by mistake the property subject of the dispute, but respondent Judge should be mindful to conduct himself in a manner that gives no ground for reproach. The Court held in *Miranda v. Judge Mangrobang, Sr.,*[25] that a judge's private life cannot be dissociated from his public life and it is, thus, important that his behavior both on and off the bench be free from any appearance of impropriety.

The Court has previously reprimanded judges who have used their office for private interests. In the aforecited case of *Miranda v. Judge Mangrobang, Sr.*,[26] the respondent judge who engaged in business and in private practice of law was reprimanded and warned that a repetition of the same or similar acts in the future would be dealt with more severely. In *Marces, Sr. v. Arcangel*,[27] the respondent judge was also reprimanded for attending *barangay* conciliation proceedings at the request of one of the parties, and for introducing himself as an Executive Judge of the RTC.

In the present case, the Investigating Justice recommended that respondent Judge be admonished, with a warning that a repetition of the same or similar act shall warrant a more severe penalty. While there was no categorical finding of bad faith or malice on the part of respondent Judge, who was motivated by the noble intention of settling the property dispute between Lozada

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[25] A.M. No. RTJ-01-1665, November 29, 2001, 371 SCRA 20, 25.

[26] *Supra.*

[27] 328 Phil. 1 (1996).

and Abando, however, he must bear in mind that his office demands an exacting standard of decorum to promote public confidence in the integrity and impartiality of the judiciary. Respondent Judge should be more prudent in the observance of his dealings with the public to obviate the mistaken impression of impropriety in that he is probably using his position as a judge to impose improper pressure or exert undue influence so as to obtain the desired result in a given situation. Thus, considering that respondent Judge violated Rule 2.03 of the Code of Judicial Conduct, the Court deems it appropriate to impose a stiffer penalty of a fine of ₱5,000.00 with stern a warning so as to deter him from committing the same or similar acts in the future.

WHEREFORE, respondent Judge Cesar Untalan of the Regional Trial Court, Branch 149, Makati City, is found *GUILTY* of violation of Rule 2.03 of the Code of Judicial Conduct and ordered to pay a *FINE* of ₱5,000.00 with a stern warning that a repetition of the same or similar acts in the future shall be dealt with more severely.

SO ORDERED.

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

Brion, J.,[*] on official leave.

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[*] Designated as an additional member in lieu of Associate Justice Presbitero J. Velasco, Jr., per raffle dated July 13, 2009; On official leave.

FIRST DIVISION

[G.R. No. 150228. July 30, 2009]

BANK OF AMERICA NT & SA, *petitioner, vs.* **PHILIPPINE RACING CLUB,** *respondent.*

SYLLABUS

1. MERCANTILE LAW; NEGOTIABLE INSTRUMENTS LAW; MATERIAL ALTERATION; THE PRESENCE OF IRREGULARITIES IN EACH OF THE TWO CHECKS SHOULD HAVE ALERTED PETITIONER BANK TO BE CAUTIOUS BEFORE PROCEEDING TO ENCASH THEM WHICH IT DID NOT DO. — There is no dispute that the signatures appearing on the subject checks were genuine signatures of the respondent's authorized joint signatories; namely, Antonia Reyes and Gregorio Reyes who were respondent's President and Vice-President for Finance, respectively. Both pre-signed the said checks since they were both scheduled to go abroad and it was apparently their practice to leave with the company accountant checks signed in black to answer for company obligations that might fall due during the signatories' absence. It is likewise admitted that neither of the subject checks contains any material alteration or erasure. However, on the blank space of each check reserved for the payee, the following typewritten words appear: "ONE HUNDRED TEN THOUSAND PESOS ONLY." Above the same is the typewritten word, "CASH." On the blank reserved for the amount, the same amount of One Hundred Ten Thousand Pesos was indicated with the use of a check writer. The presence of these irregularities in each check should have alerted the petitioner to be cautious before proceeding to encash them which it did not do. It is well-settled that banks are engaged in a business impressed with public interest, and it is their duty to protect in return their many clients and depositors who transact business with them. They have the obligation to treat their client's account meticulously and with the highest degree of care, considering the fiduciary nature of their relationship. The diligence required of banks, therefore, is more than that of a good father of a family.

2. ID.; ID.; ID.; ALTHOUGH NOT IN THE STRICT SENSE "MATERIAL ALTERATIONS," THE MISPLACEMENT OF THE TYPEWRITTEN ENTRIES FOR THE PAYEE AND THE AMOUNT ON THE SAME BLANK AND THE REPETITION OF THE AMOUNT USING A CHECK WRITER WERE GLARINGLY OBVIOUS IRREGULARITIES ON THE FACE OF THE CHECK. — We do not agree with petitioner's myopic view and carefully crafted defense. Although not in the strict sense "material alterations," the misplacement of the typewritten entries for the payee and the amount on the same blank and the repetition of the amount using a check writer were glaringly obvious irregularities on the face of the check. Clearly, someone made a mistake in filling up the checks and the repetition of the entries was possibly an attempt to rectify the mistake. Also, if the check had been filled up by the person who customarily accomplishes the checks of respondent, it should have occurred to petitioner's employees that it would be unlikely such mistakes would be made. All these circumstances should have alerted the bank to the possibility that the holder or the person who is attempting to encash the checks did not have proper title to the checks or did not have authority to fill up and encash the same. As noted by the CA, petitioner could have made a simple phone call to its client to clarify the irregularities and the loss to respondent due to the encashment of the stolen checks would have been prevented.

3. ID.; ID.; ID.; THE CONFLUENCE OF THE IRREGULARITIES ON THE FACE OF THE CHECKS AND CIRCUMSTANCES THAT DEPART FROM USUAL BANKING PRACTICE OF RESPONDENT SHOULD HAVE PUT PETITIONER BANK'S EMPLOYEES ON GUARD THAT THE CHECKS WERE POSSIBLY NOT ISSUED BY RESPONDENT IN DUE COURSE OF BUSINESS; PETITIONER BANK PLAINLY FAILED TO ADHERE TO THE HIGH STANDARD OF DILIGENCE EXPECTED OF IT AS A BANKING INSTITUTION. — [E]xtraordinary diligence demands that petitioner should have ascertained from respondent the authenticity of the subject checks or the accuracy of the entries therein not only because of the presence of highly irregular entries on the face of the checks but also of the decidedly unusual circumstances surrounding their encashment. Respondent's witness testified that for checks in amounts greater than Twenty Thousand Pesos (₱20,000.00) it is the company's

practice to ensure that the payee is indicated by name in the check. This was not rebutted by petitioner. Indeed, it is highly uncommon for a corporation to make out checks payable to "CASH" for substantial amounts such as in this case. If each irregular circumstance in this case were taken singly or isolated, the bank's employees might have been justified in ignoring them. However, the confluence of the irregularities on the face of the checks and circumstances that depart from the usual banking practice of respondent should have put petitioner's employees on guard that the checks were possibly not issued by the respondent in due course of its business. Petitioner's subtle sophistry cannot exculpate it from behavior that fell extremely short of the highest degree of care and diligence required of it as a banking institution. Indeed, taking this with the testimony of petitioner's operations manager that in case of an irregularity on the face of the check (such as when blanks were not properly filled out) the bank may or may not call the client depending on how busy the bank is on a particular day, we are even more convinced that petitioner's safeguards to protect clients from check fraud are arbitrary and subjective. Every client should be treated equally by a banking institution regardless of the amount of his deposits and each client has the right to expect that every centavo he entrusts to a bank would be handled with the same degree of care as the accounts of other clients. Perforce, we find that petitioner plainly failed to adhere to the high standard of diligence expected of it as a banking institution.

4. **ID.; ID.; ID.; RESPONDENT'S PRACTICE OF PRE-SIGNING BLANK CHECKS IS DEEMED A SERIOUS NEGLIGENT BEHAVIOR AND A HIGHLY RISKY MEANS OF PURPORTEDLY ENSURING THE EFFICIENT OPERATION OF BUSINESS. —** [W]e do agree with petitioner that respondent's officers' practice of pre-signing of blank checks should be deemed seriously negligent behavior and a highly risky means of purportedly ensuring the efficient operation of businesses. It should have occurred to respondent's officers and managers that the pre-signed blank checks could fall into the wrong hands as they did in this case where the said checks were stolen from the company accountant to whom the checks were entrusted.

5. **ID.; ID.; ID.; ASSUMING THAT BOTH PARTIES WERE GUILTY OF NEGLIGENT ACTS THAT LED TO THE LOSS, PETITIONER BANK WILL STILL EMERGE AS THE**

PARTY FOREMOST LIABLE, APPLYING THE DOCTRINE OF LAST CLEAR CHANCE. — [E]ven if we assume that both parties were guilty of negligent acts that led to the loss, petitioner will still emerge as the party foremost liable in this case. In instances where both parties are at fault, this Court has consistently applied the doctrine of last clear chance in order to assign liability. In *Westmont Bank v. Ong,* we ruled: …[I]t is petitioner [bank] which had the last clear chance to stop the fraudulent encashment of the subject checks had it exercised due diligence and followed the proper and regular banking procedures in clearing checks. As we had earlier ruled, **the one who had a last clear opportunity to avoid the impending harm but failed to do so is chargeable with the consequences thereof.**

6. **ID.; ID.; ID.; PETITIONER BANK HAS THE LAST CLEAR CHANCE TO AVOID THE LOSS BY FAILING TO MAKE THE NECESSARY VERIFICATION. —** [P]etitioner cannot evade responsibility for the loss by attributing negligence on the part of respondent because, even if we concur that the latter was indeed negligent in pre-signing blank checks, the former had the last clear chance to avoid the loss. To reiterate, petitioner's own operations manager admitted that they could have called up the client for verification or confirmation before honoring the dubious checks. Verily, petitioner had the final opportunity to avert the injury that befell the respondent. Failing to make the necessary verification due to the volume of banking transactions on that particular day is a flimsy and unacceptable excuse, considering that the "banking business is so impressed with public interest where the trust and confidence of the public in general is of paramount importance such that the appropriate standard of diligence must be a high degree of diligence, if not the utmost diligence." Petitioner's negligence has been undoubtedly established and, thus, pursuant to Art. 1170 of the NCC, it must suffer the consequence of said negligence.

7. **CIVIL LAW; EXTRA CONTRACTUAL OBLIGATIONS; QUASI-DELICTS; RESPONDENT'S OWN NEGLIGENCE SHOULD BE CONSIDERED IN THE INTEREST OF FAIRNESS TO MITIGATE PETITIONER BANK'S LIABILITY. —** In the interest of fairness, however, we believe it is proper to consider respondent's own negligence to mitigate petitioner's liability. Article 2179 of the Civil Code provides: Art. 2179. When the plaintiff's own negligence was the immediate and proximate

cause of his injury, he cannot recover damages. But if his negligence was only contributory, the immediate and proximate cause of the injury being the defendant's lack of due care, the plaintiff may recover damages, but the courts shall mitigate the damages to be awarded. Explaining this provision in *Lambert v. Heirs of Ray Castillon*, the Court held: The underlying precept on contributory negligence is that a plaintiff who is partly responsible for his own injury should not be entitled to recover damages in full but must bear the consequences of his own negligence. The defendant must thus be held liable only for the damages actually caused by his negligence. x x x As we previously stated, respondent's practice of signing checks in blank whenever its authorized bank signatories would travel abroad was a dangerous policy, especially considering the lack of evidence on record that respondent had appropriate safeguards or internal controls to prevent the pre-signed blank checks from falling into the hands of unscrupulous individuals and being used to commit a fraud against the company. We cannot believe that there was no other secure and reasonable way to guarantee the non-disruption of respondent's business. As testified to by petitioner's expert witness, other corporations would ordinarily have another set of authorized bank signatories who would be able to sign checks in the absence of the preferred signatories. Indeed, if not for the fortunate happenstance that the thief failed to properly fill up the subject checks, respondent would expectedly take the blame for the entire loss since the defense of forgery of a drawer's signature(s) would be unavailable to it.

8. **ID.; ID.; ID.; THE FACT THAT THE PERSON WHO STOLE THE PRE-SIGNED CHECKS IS AN EMPLOYEE IN RESPONDENT'S ACCOUNTING DEPARTMENT CANNOT BE IGNORED; AS THE EMPLOYER OF THE "THIEF," RESPONDENT SUPPOSEDLY HAD CONTROL AND SUPERVISION OVER ITS OWN EMPLOYEES WHICH JUSTIFIES THE COURT IN ALLOCATING PART OF THE LOSS TO RESPONDENT. —** Considering that respondent knowingly took the risk that the pre-signed blank checks might fall into the hands of wrongdoers, it is but just that respondent shares in the responsibility for the loss. We also cannot ignore the fact that the person who stole the pre-signed checks subject of this case from respondent's accountant turned out to be another employee, purportedly a clerk in respondent's accounting department. As the employer of the "thief," respondent supposedly

had control and supervision over its own employee. This gives the Court more reason to allocate part of the loss to respondent. Following established jurisprudential precedents, we believe the allocation of sixty percent (60%) of the actual damages involved in this case (represented by the amount of the checks with legal interest) to petitioner is proper under the premises. Respondent should, in light of its contributory negligence, bear forty percent (40%) of its own loss.

9. **ID.; DAMAGES; ATTORNEY'S FEES; NOT JUSTIFIED IN CASE AT BAR. —** [W]e find that the awards of attorney's fees and litigation expenses in favor of respondent are not justified under the circumstances and, thus, must be deleted. The power of the court to award attorney's fees and litigation expenses under Article 2208 of the NCC demands factual, legal, and equitable justification. An adverse decision does not *ipso facto* justify an award of attorney's fees to the winning party. Even when a claimant is compelled to litigate with third persons or to incur expenses to protect his rights, still attorney's fees may not be awarded where no sufficient showing of bad faith could be reflected in a party's persistence in a case other than an erroneous conviction of the righteousness of his cause.

APPEARANCES OF COUNSEL

Sycip Salazar Hernandez & Gatmaitan for petitioner.
Reyno Tiu Domingo & Santos for respondent.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court from the Decision[1] promulgated on July 16, 2001 by the former Second Division of the Court of Appeals (CA), in *CA-G.R. CV No. 45371* entitled "*Philippine Racing Club, Inc. v. Bank of America NT & SA*," affirming the Decision[2] dated March 17, 1994 of the Regional Trial Court (RTC) of

[1] *Rollo*, pp. 80-87.

[2] *Id.* at 122-126.

Makati, Branch 135 in *Civil Case No. 89-5650*, in favor of the respondent. Likewise, the present petition assails the Resolution[3] promulgated on September 28, 2001, denying the Motion for Reconsideration of the CA Decision.

The facts of this case as narrated in the assailed CA Decision are as follows:

> Plaintiff-appellee PRCI is a domestic corporation which maintains several accounts with different banks in the Metro Manila area. Among the accounts maintained was Current Account No. 58891-012 with defendant-appellant BA (Paseo de Roxas Branch). The authorized joint signatories with respect to said Current Account were plaintiff-appellee's President (Antonia Reyes) and Vice President for Finance (Gregorio Reyes).
>
> On or about the 2nd week of December 1988, the President and Vice President of plaintiff-appellee corporation were scheduled to go out of the country in connection with the corporation's business. In order not to disrupt operations in their absence, they pre-signed several checks relating to Current Account No. 58891-012. The intention was to insure continuity of plaintiff-appellee's operations by making available cash/money especially to settle obligations that might become due. These checks were entrusted to the accountant with instruction to make use of the same as the need arose. The internal arrangement was, in the event there was need to make use of the checks, the accountant would prepare the corresponding voucher and thereafter complete the entries on the pre-signed checks.
>
> It turned out that on December 16, 1988, a John Doe presented to defendant-appellant bank for encashment a couple of plaintiff-appellee corporation's checks (Nos. 401116 and 401117) with the indicated value of ₱110,000.00 each. It is admitted that these 2 checks were among those presigned by plaintiff-appellee corporation's authorized signatories.
>
> The two (2) checks had similar entries with similar infirmities and irregularities. On the space where the name of the payee should be indicated (Pay To The Order Of) the following 2-line entries were instead typewritten: on the upper line was the word "CASH" while the lower line had the following typewritten words, viz: "ONE HUNDRED TEN THOUSAND PESOS ONLY." Despite the highly

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[3] *Id.* at 89.

irregular entries on the face of the checks, defendant-appellant bank, without as much as verifying and/or confirming the legitimacy of the checks considering the substantial amount involved and the obvious infirmity/defect of the checks on their faces, encashed said checks. A verification process, even by was of a telephone call to PRCI office, would have taken less than ten (10) minutes. But this was not done by BA. Investigation conducted by plaintiff-appellee corporation yielded the fact that there was no transaction involving PRCI that call for the payment of P220,000.00 to anyone. The checks appeared to have come into the hands of an employee of PRCI (one Clarita Mesina who was subsequently criminally charged for qualified theft) who eventually completed without authority the entries on the pre-signed checks. PRCI's demand for defendant-appellant to pay fell on deaf ears. Hence, the complaint.[4]

After due proceedings, the trial court rendered a Decision in favor of respondent, the dispositive portion of which reads:

PREMISES CONSIDERED, judgment is hereby rendered in favor of plaintiff and against the defendant, and the latter is ordered to pay plaintiff:

(1) The sum of Two Hundred Twenty Thousand (₱220,000.00) Pesos, with legal interest to be computed from date of the filing of the herein complaint;
(2) The sum of Twenty Thousand (₱20,000.00) Pesos by way of attorney's fees;
(3) The sum of Ten Thousand (₱10,000.00) Pesos for litigation expenses, and
(4) To pay the costs of suit.

SO ORDERED.[5]

Petitioner appealed the aforesaid trial court Decision to the CA which, however, affirmed said decision *in toto* in its July 16, 2001 Decision. Petitioner's Motion for Reconsideration of the CA Decision was subsequently denied on September 28, 2001.

Petitioner now comes before this Court arguing that:

I. The Court of Appeals gravely erred in holding that the proximate cause of respondent's loss was petitioner's encashment of the checks.

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[4] *Id.* at 81-82.

[5] *Id.* at 126.

A. The Court of Appeals gravely erred in holding that petitioner was liable for the amount of the checks despite the fact that petitioner was merely fulfilling its obligation under law and contract.

B. The Court of Appeals gravely erred in holding that petitioner had a duty to verify the encashment, despite the absence of any obligation to do so.

C. The Court of Appeals gravely erred in not applying Section 14 of the Negotiable Instruments Law, despite its clear applicability to this case;

II. The Court of Appeals gravely erred in not holding that the proximate cause of respondent's loss was its own grossly negligent practice of pre-signing checks without payees and amounts and delivering these pre-signed checks to its employees (other than their signatories).

III. The Court of Appeals gravely erred in affirming the trial court's award of attorney's fees despite the absence of any applicable ground under Article 2208 of the Civil Code.

IV. The Court of Appeals gravely erred in not awarding attorney's fees, moral and exemplary damages, and costs of suit in favor of petitioner, who clearly deserves them.[6]

From the discussions of both parties in their pleadings, the key issue to be resolved in the present case is whether the proximate cause of the wrongful encashment of the checks in question was due to (a) petitioner's failure to make a verification regarding the said checks with the respondent in view of the misplacement of entries on the face of the checks or (b) the practice of the respondent of pre-signing blank checks and leaving the same with its employees.

Petitioner insists that it merely fulfilled its obligation under law and contract when it encashed the aforesaid checks. Invoking Sections 126[7] and 185[8] of the Negotiable Instruments Law (NIL),

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

[7] Sec. 126. *Bill of exchange defined.* – A bill of exchange is an unconditional order in writing addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to order or to bearer.

[8] Sec. 185. *Check defined.* — A check is a bill of exchange drawn on a

petitioner claims that its duty as a drawee bank to a drawer-client maintaining a checking account with it is to pay orders for checks bearing the drawer-client's genuine signatures. The genuine signatures of the client's duly authorized signatories affixed on the checks signify the order for payment. Thus, pursuant to the said obligation, the drawee bank has the duty to determine whether the signatures appearing on the check are the drawer-client's or its duly authorized signatories. If the signatures are genuine, the bank has the unavoidable legal and contractual duty to pay. If the signatures are forged and falsified, the drawee bank has the corollary, but equally unavoidable legal and contractual, duty not to pay.[9]

Furthermore, petitioner maintains that there exists a duty on the drawee bank to inquire from the drawer before encashing a check only when the check bears a material alteration. A material alteration is defined in Section 125 of the NIL to be one which changes the date, the sum payable, the time or place of payment, the number or relations of the parties, the currency in which payment is to be made or one which adds a place of payment where no place of payment is specified, or any other change or addition which alters the effect of the instrument in any respect. With respect to the checks at issue, petitioner points out that they do not contain any material alteration.[10] This is a fact which was affirmed by the trial court itself.[11]

There is no dispute that the signatures appearing on the subject checks were genuine signatures of the respondent's authorized joint signatories; namely, Antonia Reyes and Gregorio Reyes who were respondent's President and Vice-President for Finance, respectively. Both pre-signed the said checks since they were both scheduled to go abroad and it was apparently their practice to leave with the company accountant checks signed in black to answer for company obligations that might fall due during

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bank payable on demand. Except as herein otherwise provided, the provisions of this act applicable to a bill of exchange payable on demand apply to a check.

[9] *Rollo*, pp. 296-297.

[10] *Id.* at 298.

[11] *Id.* at 125.

the signatories' absence. It is likewise admitted that neither of the subject checks contains any material alteration or erasure.

However, on the blank space of each check reserved for the payee, the following typewritten words appear: "ONE HUNDRED TEN THOUSAND PESOS ONLY." Above the same is the typewritten word, "CASH." On the blank reserved for the amount, the same amount of One Hundred Ten Thousand Pesos was indicated with the use of a check writer. The presence of these irregularities in each check should have alerted the petitioner to be cautious before proceeding to encash them which it did not do.

It is well-settled that banks are engaged in a business impressed with public interest, and it is their duty to protect in return their many clients and depositors who transact business with them. They have the obligation to treat their client's account meticulously and with the highest degree of care, considering the fiduciary nature of their relationship. The diligence required of banks, therefore, is more than that of a good father of a family.[12]

Petitioner asserts that it was not duty-bound to verify with the respondent since the amount below the typewritten word "CASH," expressed in words, is the very same amount indicated in figures by means of a check writer on the amount portion of the check. The amount stated in words is, therefore, a mere reiteration of the amount stated in figures. Petitioner emphasizes that a reiteration of the amount in words is merely a repetition and that a repetition is not an alteration which if present and material would have enjoined it to commence verification with respondent.[13]

We do not agree with petitioner's myopic view and carefully crafted defense. Although not in the strict sense "material alterations," the misplacement of the typewritten entries for the payee and the amount on the same blank and the repetition of the amount using a check writer were glaringly obvious irregularities on the face of the check. Clearly, someone made

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[12] *Samsung Construction Company Philippines, Inc. v. Far East Bank and Trust Company, Inc.*, G.R. No. 129015, August 13, 2004, 436 SCRA 402, 421.

[13] *Id.* at 299.

a mistake in filling up the checks and the repetition of the entries was possibly an attempt to rectify the mistake. Also, if the check had been filled up by the person who customarily accomplishes the checks of respondent, it should have occurred to petitioner's employees that it would be unlikely such mistakes would be made. All these circumstances should have alerted the bank to the possibility that the holder or the person who is attempting to encash the checks did not have proper title to the checks or did not have authority to fill up and encash the same. As noted by the CA, petitioner could have made a simple phone call to its client to clarify the irregularities and the loss to respondent due to the encashment of the stolen checks would have been prevented.

In the case at bar, extraordinary diligence demands that petitioner should have ascertained from respondent the authenticity of the subject checks or the accuracy of the entries therein not only because of the presence of highly irregular entries on the face of the checks but also of the decidedly unusual circumstances surrounding their encashment. Respondent's witness testified that for checks in amounts greater than Twenty Thousand Pesos (₱20,000.00) it is the company's practice to ensure that the payee is indicated by name in the check.[14] This was not rebutted by petitioner. Indeed, it is highly uncommon for a corporation to make out checks payable to "CASH" for substantial amounts such as in this case. If each irregular circumstance in this case were taken singly or isolated, the bank's employees might have been justified in ignoring them. However, the confluence of the irregularities on the face of the checks and circumstances that depart from the usual banking practice of respondent should have put petitioner's employees on guard that the checks were possibly not issued by the respondent in due course of its business. Petitioner's subtle sophistry cannot exculpate it from behavior that fell extremely short of the highest degree of care and diligence required of it as a banking institution.

Indeed, taking this with the testimony of petitioner's operations manager that in case of an irregularity on the face of the check (such as when blanks were not properly filled out) the bank

[14] TSN, testimony of Carlos H. Reyes, October 1, 1991, p. 3.

may or may not call the client depending on how busy the bank is on a particular day,[15] we are even more convinced that petitioner's safeguards to protect clients from check fraud are arbitrary and subjective. Every client should be treated equally by a banking institution regardless of the amount of his deposits and each client has the right to expect that every centavo he entrusts to a bank would be handled with the same degree of care as the accounts of other clients. Perforce, we find that petitioner plainly failed to adhere to the high standard of diligence expected of it as a banking institution.

In defense of its cashier/teller's questionable action, petitioner insists that pursuant to Sections 14[16] and 16[17] of the NIL, it could validly presume, upon presentation of the checks, that the party who filled up the blanks had authority and that a valid

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[15] TSN, testimony of Rose Acuban, August 20, 1991, pp. 8-9.

[16] Sec. 14. *Blanks, when may be filled.* – Where the instrument is wanting in any material particular, the person in possession thereof has a *prima facie* authority to complete it by filling up the blanks therein. And a signature on a blank paper delivered by the person making the signature in order that the paper may be converted into a negotiable instrument operates as a *prima facie* authority to fill it up as such for any amount. In order, however, that any such instrument when completed may be enforced against any person who became a party thereto prior to its completion, it must be filled up strictly in accordance with the authority given and within a reasonable time. But if any such instrument, after completion, is negotiated to a holder in due course, it is valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up strictly in accordance with the authority given and within a reasonable time.

[17] Sec. 16, *Delivery; when effectual; when presumed.* – Every contract on a negotiable instrument is incomplete and revocable until delivery of the instrument for the purpose of giving effect thereto. As between immediate parties, and as regards a remote party other than a holder in due course, the delivery in order to be effectual, must be made either by or under the authority of the party making, drawing, accepting, or indorsing as the case may be; and in such case the delivery may be shown to have been conditional, or for a special purpose only, and not for the purpose of transferring the property in the instrument. But where the instrument is in the hands of a holder of a due course, a valid delivery thereof by all parties prior to him so as to make them liable to him is conclusively presumed. And where the instrument is no longer in the possession of a party whose signature appears thereon, a valid and intentional delivery by him is presumed until the contrary is proved.

and intentional delivery to the party presenting the checks had taken place. Thus, in petitioner's view, the sole blame for this debacle should be shifted to respondent for having its signatories pre-sign and deliver the subject checks.[18] Petitioner argues that there was indeed delivery in this case because, following American jurisprudence, the gross negligence of respondent's accountant in safekeeping the subject checks which resulted in their theft should be treated as a voluntary delivery by the maker who is estopped from claiming non-delivery of the instrument.[19]

Petitioner's contention would have been correct if the subject checks were correctly and properly filled out by the thief and presented to the bank in good order. In that instance, there would be nothing to give notice to the bank of any infirmity in the title of the holder of the checks and it could validly presume that there was proper delivery to the holder. The bank could not be faulted if it encashed the checks under those circumstances. However, the undisputed facts plainly show that there were circumstances that should have alerted the bank to the likelihood that the checks were not properly delivered to the person who encashed the same. In all, we see no reason to depart from the finding in the assailed CA Decision that the subject checks are properly characterized as incomplete and undelivered instruments thus making Section 15[20] of the NIL applicable in this case.

However, we do agree with petitioner that respondent's officers' practice of pre-signing of blank checks should be deemed seriously negligent behavior and a highly risky means of purportedly ensuring the efficient operation of businesses. It should have occurred to respondent's officers and managers that the pre-signed blank checks could fall into the wrong hands as they did in this case where the said checks were stolen from the company accountant to whom the checks were entrusted.

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[18] *Rollo*, p. 304.

[19] *Id.* at 306.

[20] Sec. 15. *Incomplete instrument not delivered.* – Where an incomplete instrument has not been delivered it will not, if completed and negotiated, without authority, be a valid contract in the hands of any holder, as against any person whose signature was placed thereon before delivery.

Nevertheless, even if we assume that both parties were guilty of negligent acts that led to the loss, petitioner will still emerge as the party foremost liable in this case. In instances where both parties are at fault, this Court has consistently applied the doctrine of last clear chance in order to assign liability.

In *Westmont Bank v. Ong,*[21] we ruled:

…[I]t is petitioner [bank] which had the last clear chance to stop the fraudulent encashment of the subject checks had it exercised due diligence and followed the proper and regular banking procedures in clearing checks. As we had earlier ruled, **the one who had a last clear opportunity to avoid the impending harm but failed to do so is chargeable with the consequences thereof**.[22] (emphasis ours)

In the case at bar, petitioner cannot evade responsibility for the loss by attributing negligence on the part of respondent because, even if we concur that the latter was indeed negligent in pre-signing blank checks, the former had the last clear chance to avoid the loss. To reiterate, petitioner's own operations manager admitted that they could have called up the client for verification or confirmation before honoring the dubious checks. Verily, petitioner had the final opportunity to avert the injury that befell the respondent. Failing to make the necessary verification due to the volume of banking transactions on that particular day is a flimsy and unacceptable excuse, considering that the "banking business is so impressed with public interest where the trust and confidence of the public in general is of paramount importance such that the appropriate standard of diligence must be a high degree of diligence, if not the utmost diligence."[23] Petitioner's negligence has been undoubtedly established and, thus, pursuant to Art. 1170 of the NCC,[24] it must suffer the consequence of said negligence.

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[21] G.R. No. 132560, January 30, 2002, 375 SCRA 212.

[22] *Id.* at 223, citing *Philippine Bank of Commerce v. CA*, G.R. No. 97626, 269 SCRA 695, 707-708.

[23] *Gempesaw v. CA*, G.R. No. 92244, February 9, 1993, 218 SCRA 682, 697.

[24] Art. 1170. Those who in the performance of their obligations are guilty

In the interest of fairness, however, we believe it is proper to consider respondent's own negligence to mitigate petitioner's liability. Article 2179 of the Civil Code provides:

> Art. 2179. When the plaintiff's own negligence was the immediate and proximate cause of his injury, he cannot recover damages. But if his negligence was only contributory, the immediate and proximate cause of the injury being the defendant's lack of due care, the plaintiff may recover damages, but the courts shall mitigate the damages to be awarded.

Explaining this provision in *Lambert v. Heirs of Ray Castillon*,[25] the Court held:

> The underlying precept on contributory negligence is that a plaintiff who is partly responsible for his own injury should not be entitled to recover damages in full but must bear the consequences of his own negligence. The defendant must thus be held liable only for the damages actually caused by his negligence. xxx xxx xxx

As we previously stated, respondent's practice of signing checks in blank whenever its authorized bank signatories would travel abroad was a dangerous policy, especially considering the lack of evidence on record that respondent had appropriate safeguards or internal controls to prevent the pre-signed blank checks from falling into the hands of unscrupulous individuals and being used to commit a fraud against the company. We cannot believe that there was no other secure and reasonable way to guarantee the non-disruption of respondent's business. As testified to by petitioner's expert witness, other corporations would ordinarily have another set of authorized bank signatories who would be able to sign checks in the absence of the preferred signatories.[26] Indeed, if not for the fortunate happenstance that the thief failed to properly fill up the subject checks, respondent

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of fraud, negligence, or delay, and those who in any manner contravene the tenor thereof, are liable for damages.

[25] G.R. No. 160709, February 23, 2005, 452 SCRA 285, 293.

[26] TSN, testimony of Gerardo Martin, a certified public accountant/auditor from Sycip Gorres & Velayo, February 25, 1992, p. 6.

would expectedly take the blame for the entire loss since the defense of forgery of a drawer's signature(s) would be unavailable to it. Considering that respondent knowingly took the risk that the pre-signed blank checks might fall into the hands of wrongdoers, it is but just that respondent shares in the responsibility for the loss.

We also cannot ignore the fact that the person who stole the pre-signed checks subject of this case from respondent's accountant turned out to be another employee, purportedly a clerk in respondent's accounting department. As the employer of the "thief," respondent supposedly had control and supervision over its own employee. This gives the Court more reason to allocate part of the loss to respondent.

Following established jurisprudential precedents,[27] we believe the allocation of sixty percent (60%) of the actual damages involved in this case (represented by the amount of the checks with legal interest) to petitioner is proper under the premises. Respondent should, in light of its contributory negligence, bear forty percent (40%) of its own loss.

Finally, we find that the awards of attorney's fees and litigation expenses in favor of respondent are not justified under the circumstances and, thus, must be deleted. The power of the court to award attorney's fees and litigation expenses under Article 2208 of the NCC[28] demands factual, legal, and equitable justification.

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[27] *Philippine Bank of Commerce v. Court of Appeals,* G.R. No. 97626, March 14, 1997, 269 SCRA 695; *Consolidated Bank and Trust Corporation v. Court of Appeals,* G.R. No. 138569, September 11, 2003, 410 SCRA 562.

[28] Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

(1) When exemplary damages are awarded;

(2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;

(3) In criminal cases of malicious prosecution against the plaintiff;

(4) In case of a clearly unfounded civil action or proceeding against the plaintiff;

An adverse decision does not *ipso facto* justify an award of attorney's fees to the winning party.[29] Even when a claimant is compelled to litigate with third persons or to incur expenses to protect his rights, still attorney's fees may not be awarded where no sufficient showing of bad faith could be reflected in a party's persistence in a case other than an erroneous conviction of the righteousness of his cause.[30]

WHEREFORE, the Decision of the Court of Appeals dated July 16, 2001 and its Resolution dated September 28, 2001 are *AFFIRMED* with the following *MODIFICATIONS*: (a) petitioner Bank of America NT & SA shall pay to respondent Philippine Racing Club sixty percent (60%) of the sum of Two Hundred Twenty Thousand Pesos (₱220,000.00) with legal interest as awarded by the trial court and (b) the awards of attorney's fees and litigation expenses in favor of respondent are deleted.

Proportionate costs.

SO ORDERED.

Puno, C.J.(Chairperson), Carpio , Corona, and *Bersamin, JJ.,* concur.

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(5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;

(6) In actions for legal support;

(7) In actions for the recovery of wages of household helpers, laborers and skilled workers;

(8) In actions for indemnity under workmen's compensation and employer's liability laws;

(9) In a separate civil action to recover civil liability arising from a crime;

(10) When at least double judicial costs are awarded;

(11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

In all cases, the attorney's fees and expenses of litigation must be reasonable.

[29] *"J" Marketing Corp. v. Sia, Jr.*, G.R. No. 127823, January 29, 1998, 285 SCRA 580, 584.

[30] *Felsan Realty & Development Corporation v. Commonwealth of Australia*, G.R. No. 169656, October 11, 2007, 535 SCRA 618, 632.

FIRST DIVISION

[G.R. No. 152496. July 30, 2009]

SPOUSES GERMAN ANUNCIACION and ANA FERMA ANUNCIACION and GAVINO G. CONEJOS, *petitioners, vs.* **PERPETUA M. BOCANEGRA and GEORGE M. BOCANEGRA,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; FINDINGS OF FACT; RULE; EXCEPTIONS TO THE RULE; APPLICABLE IN CASE AT BAR. —** While it is a settled doctrine that findings of fact of the CA are binding and not to be disturbed, they are subject to certain exceptions for very compelling reasons, such as when: (1) the conclusion is a finding grounded entirely on speculation, surmise and 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 of the CA are contrary to those of the trial court; (6) said findings of fact are conclusions without citation of specific evidence on which they are based; and (7) the findings of fact of the CA are premised on the supposed absence of evidence and contradicted by the evidence on record. The Court finds here cogent reason to take exception from the general rule.

2. **ID.; CIVIL PROCEDURE; SUMMONS; VOLUNTARY APPEARANCE; THE FILING OF THE MOTION TO DISMISS WITHOUT INVOKING THE LACK OF JURISDICTION OVER THE PERSON OF THE RESPONDENTS IS DEEMED A VOLUNTARY APPEARANCE ON THE PART OF THE RESPONDENTS UNDER SECTION 20, RULE 14 OF THE 1997 RULES OF CIVIL PROCEDURE. —** Respondents, through counsel, filed a motion to dismiss dated October 25, 2000, with only one ground, *i.e.*, *that the pleading asserting the claim "states no cause of action."* The filing of the above-mentioned Motion to Dismiss, without invoking the lack of jurisdiction over the person of the respondents, is deemed a voluntary appearance on the part of the respondents under the aforequoted provision of the Rules. The same conclusion can be drawn from the

filing of the Supplemental Motion to Dismiss and Reply to the Comment on the Motion to Dismiss dated November 13, 2000 which alleged, as an additional ground for the dismissal of petitioners' complaint, the failure of plaintiffs to pay the required filing fee again but failed to raise the alleged lack of jurisdiction of the court over the person of the respondents.

3. **ID.; ID.; ID.; THE DISMISSAL OF THE COMPLAINT ON THE GROUND OF LACK OF JURISDICTION OVER THE PERSON OF THE RESPONDENTS AFTER THEY HAD VOLUNTARILY APPEARED BEFORE THE TRIAL COURT CLEARLY CONSTITUTES GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION. —** It was only in respondents' ***Second*** Supplemental Motion to Dismiss dated November 27, 2000 that respondents for the first time raised the court's lack of jurisdiction over their person as defendants on the ground that summons were allegedly not properly served upon them. The filing of the said Second Supplemental Motion to Dismiss did not divest the court of its jurisdiction over the person of the respondents who had earlier voluntarily appeared before the trial court by filing their motion to dismiss and the supplemental motion to dismiss. The dismissal of the complaint on the ground of lack of jurisdiction over the person of the respondents after they had voluntarily appeared before the trial court clearly constitutes grave abuse of discretion amounting to lack of jurisdiction or in excess of jurisdiction on the part of the RTC.

4. **ID.; ID.; ID.; TRIAL COURTS SHOULD BE CAUTIOUS IN DISMISSING COMPLAINTS ON THE SOLE GROUND OF IMPROPER SERVICE OF SUMMONS CONSIDERING THAT IT IS WELL WITHIN THEIR DISCRETION TO ORDER THE ISSUANCE OF SERVICE OF *ALIAS* SUMMONS ON THE CORRECT PERSON IN THE INTEREST OF SUBSTANTIAL JUSTICE. —** Although the CA correctly observed that Atty. Pizarro, as the lawyer of the respondents in the demand letters, does not *per se* make him their representative for purposes of the present action, a scrutiny of the record shows that the address of Atty. Pizarro and Atty. Norby Caparas, Jr., (the counsel who eventually entered his appearance for respondents) is the same. This circumstance leads us to believe that respondents' belated reliance on the purported improper service of summons is a mere afterthought,

if not a bad faith ploy to avoid answering the complaint. At this point, we find it appropriate to cite *Philippine American Life & General Insurance Company v. Breva*, where this Court held that: The trial court did not commit grave abuse of discretion when it denied the motion to dismiss filed by the petitioner due to lack of jurisdiction over its person. In denying the motion to dismiss, the CA correctly relied on the ruling in *Lingner & Fisher GMBH vs. Intermediate Appellate Court*, thus: A case should not be dismissed simply because an original summons was wrongfully served. It should be difficult to conceive, for example, that when a defendant personally appears before a Court complaining that he had not been validly summoned, that the case filed against him should be dismissed. An *alias* summons can be actually served on said defendant. In the recent case of *Teh vs. Court of Appeals*, the petitioner therein also filed a motion to dismiss before filing his answer as defendant in the trial court on the ground of failure to serve the summons on him. In that case, the Court agreed with the appellate court's ruling that there was no abuse of discretion on the part of the trial court when the latter denied the petitioner's motion to dismiss the complaint and ordered the issuance of an *alias* summons. To be sure, a trial court should be cautious before dismissing complaints on the sole ground of improper service of summons considering that it is well within its discretion to order the issuance and service of *alias* summons on the correct person in the interest of substantial justice.

5. **ID.; ID.; MOTIONS; RESPONDENTS' FAILURE TO RAISE THE ALLEGED LACK OF JURISDICTION OVER THEIR PERSONS IN THEIR VERY FIRST MOTION TO DISMISS IS FATAL TO THEIR CAUSE AS THE SAME IS DEEMED A WAIVER OF THE PARTICULAR GROUND FOR DISMISSAL OF THE COMPLAINT. —** [R]espondents' failure to raise the alleged lack of jurisdiction over their persons in their very first motion to dismiss was fatal to their cause. They are already deemed to have waived that particular ground for dismissal of the complaint. The trial court plainly abused its discretion when it dismissed the complaint on the ground of lack of jurisdiction over the person of the defendants. Under the Rules, the only grounds the court could take cognizance of, **even if not pleaded** in the motion to dismiss or answer, are: (a) lack of jurisdiction over the subject matter; (b) existence

of another action pending between the same parties for the same cause; and (c) bar by prior judgment or by statute of limitations. We likewise cannot approve the trial court's act of entertaining supplemental motions to dismiss which raise grounds that are already deemed waived. To do so would encourage lawyers and litigants to file piecemeal objections to a complaint in order to delay or frustrate the prosecution of the plaintiff's cause of action.

APPEARANCES OF COUNSEL

Alexander the Great M. Del Prado for petitioners.
Norby C. Caparas, Jr. for respondents.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This is a petition for review on *certiorari*, assailing the Decision,[1] dated November 19, 2001, and the Resolution,[2] dated March 31, 2002 of the Court of Appeals (CA) in CA-G.R. SP No. 65516. The CA decision affirmed the Orders dated February 19, 2001[3] and May 16, 2001[4] of the Regional Trial Court (RTC) of Manila, Branch 40 in Civil Case No. 00-98813 which dismissed the complaint[5] for Quieting of Title and Cancellation of TCT No. 122452 of petitioner spouses German Anunciacion and Ana Ferma Anunciacion and their co-petitioner, Gavino G. Conejos.

The facts of the case are as follows:

On September 29, 2000, petitioners filed before the RTC, Manila, a complaint for Quieting of Title and Cancellation of TCT No. 122452, docketed as Civil Case No. 00-98813. The

[1] Penned by Associate Justice Jose L. Sabio, Jr. with Associate Justice Perlita J. T. Tria Tirona (ret.) and Associate Justice Mariano C. Del Castillo, concurring; *rollo*, pp. 6-13.

[2] *Id.* at 15.

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

[4] CA Record, p. 25.

[5] *Rollo,* pp. 45-51.

complaint averred that defendants (respondents) may be served with summons and legal processes through Atty. Rogelio G. Pizarro, Jr., with office address at 2830 Juan Luna St., Tondo, Manila.[6] The summons, together with the copies of the complaint, were then served on Atty. Pizarro. The record shows that before the filing of the said complaint, Atty. Pizarro wrote a demand letter[7] on behalf of respondents and addressed to petitioner German Anunciacion, among others, demanding that they vacate the land owned by his clients (respondents), who needed the same for their own use. The said demand letter reads:

2830 Juan Luna St.
Tondo, Manila
August 19, 2000

Mr. German Anunciacion,
Mesdames Liwayway Nava,
Evangeline Pineda, and Ana Ferma
2982 Rizal Ave. Ext.
Sta. Cruz, Manila

Dear Sir and Mesdames:

I write in behalf of my clients, MS. PERPETUA M. BOCANEGRA and MR. GEORGE M. BOCANEGRA, the registered owners of the parcel of land known as Lot 1-B (LRC) PSD-230517 located at 2982 Rizal Ave. Ext., Sta. Cruz, Manila, and duly covered by Transfer Certificate of Title No. 122452, which you are presently occupying.

I would like to inform you that your occupation and possession of the said land is based on mere tolerance of the owners, and without any payment on your part of any rental. Now, the owners need the subject property for their own use.

In view thereof, I hereby demand that you vacate the said land within a period of fifteen (15) days from receipt of this letter. Otherwise, much to our regret, I shall be constrained to institute the proper criminal and/or civil action against you.

Trusting that you will give this matter your most serious and preferential attention.

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[6] Paragraph 3 of the Complaint, *id.* at 45.

[7] *Id.* at 52.

Very truly yours,

ATTY. ROGELIO G. PIZARRO, JR.

On October 27, 2000, respondents, through their counsel, Atty. Norby C. Caparas, Jr., filed a Motion to Dismiss[8] on the ground that the complaint stated no cause of action. Petitioners filed their Comment on the Motion to Dismiss[9] on November 6, 2000.

A Supplemental Motion to Dismiss and Reply to the Comment on the Motion to Dismiss[10] dated November 13, 2000 was filed by respondents, alleging an additional ground that petitioners failed to pay the required filing fee. The petitioners filed, on November 27, 2000, their Opposition to the Supplemental Motion to Dismiss and Comment to the Reply to the Comment on the Motion to Dismiss.[11]

Thereafter, respondents filed a Second Supplemental Motion to Dismiss and Manifestation dated November 27, 2000,[12] citing the following grounds:

1.) That the court has no jurisdiction over the person of the defending party.

2.) That the court has no jurisdiction over the subject matter of the claim.

3.) That the pleading asserting the claim states no cause of action.

Petitioners then filed their Additional Comment on the Motion to Dismiss, Supplemental Motion to Dismiss and Comment on the Second Supplemental Motion to Dismiss.[13]

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[8] *Id.* at 53-60.

[9] *Id.* at 61-62.

[10] *Id.* at 63-65.

[11] *Id.* at 66-68.

[12] *Id.* at 69-73.

[13] *Id.* at 74-78.

In its order of February 19, 2001, the trial court sustained the respondents and dismissed the complaint for lack of jurisdiction over the persons of respondents as defendants. The trial court ruled as follows:

> However, the Court finds for the defendants on the Second Supplemental Motion.
>
> In point is Section 3, Rule 3 of the same Rules, which reads –
>
> "Where the action is allowed to be prosecuted or defended by a representative or someone acting in a fiduciary capacity, the beneficiary shall be included in the title of the case and shall be deemed to be the real party in interest. A representative may be a trustee of an express trust, a guardian, an executor or administrator, or a party authorized by law or these Rules. x x x"
>
> In the case at bar Atty. Pizarro, Jr., has not been shown to be a trustee of an express trust, a guardian, or any of the above for the action to be allowed to be defended by a representative.
>
> The fact that Atty. Pizarro, Jr., was the lawyer of the defendants in the demand letters do not *per se* make him their representative for purposes of the present action. To this effect, service on lawyer of defendant is an invalid service of summons. (*Cordova v. Provincial Sheriff of Iloilo*, 89 SCRA 59)
>
> Going to the other raised issue, Section 20, Rule 14 of the 1997 Rules of Civil Procedure provides –
>
>> "The defendant's voluntary appearance in the action shall be equivalent to service of summons. The inclusion in a motion to dismiss of other grounds aside from lack of jurisdiction over the person of the defendant shall not be deemed a voluntary appearance."
>
> The presentation of all objections then available as was done by the movants subserves the omnibus motion rule and the concomitant policy against multiplicity of suits.
>
> WHEREFORE, premises considered, on the ground that the Court has no jurisdiction over the persons of the defendants, the case is hereby DISMISSED.

The motion for reconsideration filed by the petitioners was denied for lack of merit.

Aggrieved, petitioners filed before the CA a Petition for *Certiorari*, seeking the nullification of the RTC Orders dated February 19, 2001 and May 16, 2001, on the ground that the said orders were issued with grave abuse of discretion.

On November 19, 2001, the CA dismissed the petition upon finding that there was no waiver of the ground of lack of jurisdiction on the part of respondents in the form of voluntary appearance. Applying Section 20, Rule 14 of the 1997 Rules of Civil Procedure, the CA held that although the grounds alleged in the two (2) earlier Motion to Dismiss and Supplemental Motion to Dismiss were lack of cause of action and failure to pay the required filing fee, the filing of the said motions did not constitute a waiver of the ground of lack of jurisdiction on their persons as defendants. The CA then concluded that there was no voluntary appearance on the part of respondents/defendants despite the filing of the aforesaid motions. The CA also rejected petitioners' contention that the service made to Atty. Rogelio Pizarro, Jr. was deemed service upon respondents/defendants, thus:

> First of all, Atty. Rogelio Pizarro cannot be considered as counsel of record wherein We could apply the jurisprudential rule that notice to counsel is notice to client. Atty. Pizarro cannot be deemed counsel on record since Defendants were not the one's (*sic*) who instituted the action, like plaintiffs who did the same thru counsel and therefore, obviously the one who signed the pleadings is the counsel on record. Sadly, the Motion to Dismiss filed by Private Respondents were signed not by Atty. Pizarro but by someone else. How then could Petitioners claim that Atty. Pizarro represents Private Respondents?
>
> Secondly, the fact that Atty. Pizarro was the one who wrote and signed the August 19, 2000 letter, on behalf of Private Respondents, demanding that Petitioners vacate the premises of the former's land does not fall under the substituted service rule. To be sure, Section 7 of Rule 14 of the 1997 Rules, provide thus:
>
>> Sec. 7. Substituted Services – If, for justifiable causes the defendant cannot be served within a reasonable time as provided in the preceding section; service maybe reflected (a) by leaving

copies of the summons at the defendants' residence with some person of suitable age and discretion then residing therein or (b) by leaving the copies at defendant *(sic)* office or regular place of business with some competent person in charge thereof.

In the case at bench, service upon Atty. Pizarro did not fall under the aforequoted rule and therefore cannot qualify as substituted service. Since the service made by Petitioners was defective, the Public Respondent court never did acquire jurisdiction over the persons of defendants and therefore correctly ordered the dismissal of the complaint.[14]

Petitioners moved for a reconsideration of the decision but it, too, was denied by the CA in its Resolution of March 31, 2002.

Hence, the instant petition which raises the following assignment of errors:

1. THAT THE HONORABLE COURT OF APPEALS ERRED ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION OR IN EXCESS OF JURISDICTION WHEN IT DID NOT CONSIDER THAT THE FILING OF THE MOTION TO DISMISS AND THE SUPPLEMENTAL MOTION TO DISMISS BY RESPONDENTS AMOUNTS TO VOLUNTARY APPEARANCE BEFORE THE REGIONAL TRIAL COURT AND THEREFORE CONFERS JURISDICTION OF THE REGIONAL TRIAL COURT ON THE PERSON OF RESPONDENTS.

2. THAT THE HONORABLE COURT OF APPEALS ERRED AND ACTED WITH GRAVE ABUSE OF DISCRETION WHEN IT DID NOT CONSIDER THAT THE SECOND SUPPLEMENTAL MOTION ALLEGING THAT THE HONORABLE TRIAL COURT HAD NO JURISDICTION OF THE PERSONS OF THE DEFENDANTS IS ALREADY LATE FOR THE FIRST MOTIONS, NAMELY, THE "MOTION TO DISMISS" AND THE "SUPPLEMENTAL MOTION TO DISMISS AND REPLY TO THE COMMENT TO THE MOTION TO DISMISS," WHICH HAD BEEN OPPOSSED, ONE AFTER THE OTHER, BY PETITIONERS, HAD ALREADY CONFERRED JURISDICTION OF THE HONORABLE TRIAL COURT ON THE PERSONS OF DEFENDANTS.

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[14] *Id.* at 11-13.

3. THAT THE HONORABLE COURT OF APPEALS ERRED AND ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT CONSIDERED THAT THESE 3 MOTIONS OF RESPONDENTS ARE BEING TREATED AS OMNIBUS MOTION AND ARE COVERED BY SECTION 20 RULE 14 OF THE 1997 RULES ON CIVIL PROCEDURE.

4. THAT THE HONORABLE COURT OF APPEALS ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT DID NOT CONSIDER ATTY. ROGELIO PIZARRO, JR., AS THE AUTHORIZED REPRESENTATIVE OF RESPONDENT TO RECEIVE THE SUMMONS AND COMPLAINT.

In the Resolution dated July 14, 2003, the Court gave due course to the petition and required the parties to submit their respective memoranda. In compliance, the respondents filed their Memorandum on September 8, 2003,[15] while the petitioners filed their Memorandum on September 24, 2003.[16]

We find merit in the petition.

While it is a settled doctrine that findings of fact of the CA are binding and not to be disturbed, they are subject to certain exceptions for very compelling reasons, such as when: (1) the conclusion is a finding grounded entirely on speculation, surmise and 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 of the CA are contrary to those of the trial court; (6) said findings of fact are conclusions without citation of specific evidence on which they are based; and (7) the findings of fact of the CA are premised on the supposed absence of evidence and contradicted by the evidence on record.[17] The Court finds here cogent reason to take exception from the general rule.

Respondents, through counsel, filed a motion to dismiss dated October 25, 2000,[18] with only one ground, *i.e.*, *that the pleading*

[15] *Id.* at 113-126.

[16] *Id.* at 127-132.

[17] *Danan v. Court of Appeals*, G.R. No. 132759, October 25, 2005, 474 SCRA 113, 124.

[18] *Supra* note 8.

asserting the claim "states no cause of action." Under this ground, respondents raised the issues quoted hereunder:

I. Defendants[19] anchored their complaint on a WRONG Decree of Registration;

II. The Government of the Republic of the Philippines has recognized the authenticity of TCT No. 122452; and

III. Plaintiffs do NOT have the legal personality to 'quiet the title' of the subject property.

Section 20, Rule 14 of the 1997 Rules of Civil Procedure (the Rules) states:

Sec. 20. Voluntary Appearance – The defendant's voluntary appearance in the action shall be equivalent to service of summons. **The inclusion in a motion to dismiss of other grounds aside from lack of jurisdiction over the person of the defendant shall not be deemed a voluntary appearance. (Underscoring ours)**

The filing of the above-mentioned Motion to Dismiss, without invoking the lack of jurisdiction over the person of the respondents, is deemed a voluntary appearance on the part of the respondents under the aforequoted provision of the Rules. The same conclusion can be drawn from the filing of the Supplemental Motion to Dismiss and Reply to the Comment on the Motion to Dismiss dated November 13, 2000 which alleged, as an additional ground for the dismissal of petitioners' complaint, the failure of plaintiffs to pay the required filing fee again but failed to raise the alleged lack of jurisdiction of the court over the person of the respondents.

It was only in respondents' ***Second*** Supplemental Motion to Dismiss dated November 27, 2000 that respondents for the first time raised the court's lack of jurisdiction over their person as defendants on the ground that summons were allegedly not properly served upon them. The filing of the said Second Supplemental Motion to Dismiss did not divest the court of its jurisdiction over the person of the respondents who had earlier voluntarily appeared before the trial court by filing their motion

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[19] Should be Plaintiffs.

to dismiss and the supplemental motion to dismiss. The dismissal of the complaint on the ground of lack of jurisdiction over the person of the respondents after they had voluntarily appeared before the trial court clearly constitutes grave abuse of discretion amounting to lack of jurisdiction or in excess of jurisdiction on the part of the RTC.

Quite apart from their voluntary appearance, respondents' Supplemental Motion to Dismiss and Second Supplemental Motion to Dismiss were clearly in violation of Rule 15, Section 8 in relation to Rule 9, Section 1 of the Rules.

Rule 15, Section 8 of the Rules provides:

> Sec. 8. *Omnibus motion*. – Subject to the provisions of Section 1 of Rule 9, a motion attacking a pleading, order, judgment, or proceeding **shall include all objections then available, and all objections not so included shall be deemed waived.** (emphasis ours)

Rule 9, Section 1, in turn, states:

> Sec. 1. *Defenses and objections not pleaded.* – **Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived.** However, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or that the action is barred by prior judgment or by statute of limitations, the court shall dismiss the claim. (emphasis ours)

Applying the foregoing rules, respondents' failure to raise the alleged lack of jurisdiction over their persons in their very first motion to dismiss was fatal to their cause. They are already deemed to have waived that particular ground for dismissal of the complaint. The trial court plainly abused its discretion when it dismissed the complaint on the ground of lack of jurisdiction over the person of the defendants. Under the Rules, the only grounds the court could take cognizance of, **even if not pleaded** in the motion to dismiss or answer, are: (a) lack of jurisdiction over the subject matter; (b) existence of another action pending between the same parties for the same cause; and (c) bar by

prior judgment or by statute of limitations.

We likewise cannot approve the trial court's act of entertaining supplemental motions to dismiss which raise grounds that are already deemed waived. To do so would encourage lawyers and litigants to file piecemeal objections to a complaint in order to delay or frustrate the prosecution of the plaintiff's cause of action.

Although the CA correctly observed that Atty. Pizarro, as the lawyer of the respondents in the demand letters, does not *per se* make him their representative for purposes of the present action, a scrutiny of the record shows that the address of Atty. Pizarro and Atty. Norby Caparas, Jr., (the counsel who eventually entered his appearance for respondents) is the same. This circumstance leads us to believe that respondents' belated reliance on the purported improper service of summons is a mere afterthought, if not a bad faith ploy to avoid answering the complaint.

At this point, we find it appropriate to cite *Philippine American Life & General Insurance Company v. Breva*,[20] where this Court held that:

> The trial court did not commit grave abuse of discretion when it denied the motion to dismiss filed by the petitioner due to lack of jurisdiction over its person. In denying the motion to dismiss, the CA correctly relied on the ruling in *Lingner & Fisher GMBH vs. Intermediate Appellate Court*, thus:
>
> > A case should not be dismissed simply because an original summons was wrongfully served. It should be difficult to conceive, for example, that when a defendant personally appears before a Court complaining that he had not been validly summoned, that the case filed against him should be dismissed. An *alias* summons can be actually served on said defendant.
>
> In the recent case of *Teh vs. Court of Appeals*, the petitioner therein also filed a motion to dismiss before filing his answer as defendant in the trial court on the ground of failure to serve the

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[20] G.R. No. 147937, November 11, 2004, 442 SCRA 217, 223.

summons on him. In that case, the Court agreed with the appellate court's ruling that there was no abuse of discretion on the part of the trial court when the latter denied the petitioner's motion to dismiss the complaint and ordered the issuance of an *alias* summons.

To be sure, a trial court should be cautious before dismissing complaints on the sole ground of improper service of summons considering that it is well within its discretion to order the issuance and service of *alias* summons on the correct person in the interest of substantial justice.

Accordingly, the Court finds that the CA erred in dismissing the petition and affirming the challenged orders of the RTC which dismissed the complaint on the ground of lack of jurisdiction over the person of the respondents who were the defendants.

WHEREFORE, the petition is hereby *GRANTED*. The CA's Decision dated November 19, 2001 and the Resolution dated March 31, 2002 in CA-G.R. SP No. 65516 affirming the Orders dated February 19, 2001 and May 16, 2001 of the RTC in Civil Case No. 00-98813 are reversed and set aside. Consequently, Civil Case No. 00-98813 is hereby ordered *REINSTATED.* Let the records of this case be remanded to the court of origin for further proceedings.

SO ORDERED.

Puno, C.J. (Chairperson), Carpio, Corona, and *Bersamin, JJ.,* concur.

THIRD DIVISION

[G.R. No. 160380. July 30, 2009]

SPOUSES EDUARDO and LETICIA MONTAÑO, *petitioners, vs.* **ROSALINA FRANCISCO, THE CITY GOVERNMENT OF ILOILO, ROMEO V. MANIKAN,**

City Treasurer of Iloilo City, and ERLINDA C. ZARANDIN, Head of the Treasurer's Enforcement Group, *respondents.*

SYLLABUS

1. **TAXATION; P.D. NO. 464 (REAL PROPERTY TAX CODE); ADVERTISEMENT OF SALE OF REAL PROPERTY AT PUBLIC AUCTION; ONLY THE REGISTERED OWNER OF THE PROPERTY IS ENTITLED TO A NOTICE OF TAX DELINQUENCY AND OTHER PROCEEDINGS RELATIVE TO THE TAX SALE. —** In *Talusan v. Tayag*, the Court held that for purposes of the collection of real property taxes, the registered owner of the property is considered the taxpayer. Hence, only the registered owner is entitled to a notice of tax delinquency and other proceedings relative to the tax sale. In this case, the Court of Appeals correctly held that the GSIS, as the registered owner of the subject property, was the taxpayer that was entitled to the notice of tax delinquency and that of the auction sale, as well as other related notices. It found that the GSIS was not deprived of its property without due process and that notice was regularly served. It pointed out that it had already upheld the validity of the assessment of the real property taxes upon GSIS and the auction sale proceedings in *GSIS v. City Assessor of Iloilo City*. It is important to note that both the GSIS, as the registered owner of the subject property, and herein petitioners Spouses Montaño separately questioned the validity of the auction sale of the subject property covered by TCT No. T-41681.

2. **ID.; ID.; ID.; THE FINDING OF THE COURT OF APPEALS IN REGARD TO THE VALIDITY OF THE AUCTION SALE PROCEEDINGS OF THE SUBJECT PROPERTY HAS LONG BEEN FINAL. —** The Court of Appeals mentioned in its Decision that there are two cases involving the same issue, namely, this action for declaration of nullity of sale and damages filed by the Spouses Montaño, and the petition for annulment of judgment filed by the GSIS, docketed as CA-G.R. SP No. 51149, entitled *GSIS v. City Assessor of Iloilo City, the Register of Deeds of Iloilo City and Rosalina Francisco (GSIS v. City Assessor of Iloilo City).* In *GSIS v. City Assessor of Iloilo City,* the GSIS assailed the Order dated April 29, 1993 of the

RTC of Iloilo City, Branch 36 and the Order dated November 8, 1994 of the RTC of Iloilo, Branch 31 in regard to the petition of herein respondent Rosalina Francisco for the entry of new transfer certificates of title in her name, which included TCT No. T-41681 covering the subject parcel of land in this case. The GSIS claimed that the assessment of real property taxes on the parcels of land was void because it was exempt from all forms of taxes under its charter, Republic Act No. 8291. The GSIS also claimed that it had no notice of the proceedings in the assessment and levy of the taxes, as well as the sale of the properties at public auction; hence, its right to due process was violated. In *GSIS v. City Assessor of Iloilo City,* the Court of Appeals upheld the findings of the lower courts that notices were sent to GSIS and the beneficial owners of the properties in question. It gave no credence to the arguments of GSIS and denied its petition. GSIS appealed the decision of the Court of Appeals before this Court via a petition for review on *certiorari*. In a Decision dated June 27, 2006 in G.R. No. 147192, this Court dismissed the GSIS' petition for review on *certiorari* of the Decision of the Court of Appeals in CA-G.R. SP No. 51149 dated August 8, 2000. Hence, the finding of the Court of Appeals in regard to the validity of the auction sale proceedings of the subject property has long been final.

APPEARANCES OF COUNSEL

Que Lebrilla Ausan & Sullano for petitioner.
City Legal Officer (Iloilo) for public respondents.
Law Offices of Galvez-Tormon & Associates for private respondent.

D E C I S I O N

PERALTA, *J*.:

This is a petition for review on *certiorari* of the Decision[1] dated April 24, 2003 of the Court of Appeals in CA-G.R. CV

[1] Penned by Associate Justice Remedios Salazar-Fernando, with Associate Justices Delilah Vidallon-Magtolis and Edgardo F. Sundiam, concurring; *rollo*, pp. 20-27.

No. 71004, and its Resolution dated August 20, 2003, denying petitioners' motion for reconsideration. The Court of Appeals Decision held that the tax delinquency proceedings involving the parcel of land covered by Transfer Certificate of Title (TCT) No. T-41681 is legal and with force and effect. It reversed and set aside the Decision[2] dated January 12, 2001 of the Regional Trial Court (RTC) of Iloilo City, Branch 23 (trial court).

The facts[3] are as follows:

Petitioners spouses Eduardo and Leticia Montaño established that on April 13, 1977, they executed a Deed of Conditional Sale[4] with the Government Service Insurance System (GSIS) covering a parcel of land situated at Block 2, Lot 6, Maharlika Homes, Jaro, Iloilo City, together with the house and improvements thereon. The lot was covered by TCT No. T-41681. The Montaños started paying the amortization in January 1979, and occupied the house and lot in 1980. However, in the summer of 1994, one Atty. Salvador Paja I went to their house and claimed that the lot was already owned by respondent Rosalina Francisco.

Leticia Montaño made inquiries regarding the alleged sale of the lot. She went to the Register of Deeds and discovered an annotation at the back of TCT No. T-41681,[5] under Entry No. 170334 dated July 17, 1991, stating that a Certificate of Sale of Delinquent Real Property dated June 28, 1991 was executed by the City Treasurer's Office in favor of Rosalina Francisco covering the parcel of land for the sum of ₱2,225.19 representing taxes, penalties and cost of sale pursuant to the provision of Section 76 of Presidential Decree (P.D.) No. 464.[6] It also appeared at the back of the same title, under Entry No.

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[2] Penned by Judge Tito G. Gustilo; *id.* at 40-50.

[3] As culled from the Decisions of the trial court and the Court of Appeals, and the records of the case.

[4] Exhibit "A", records, p. 226.

[5] Exhibit "2", *id.* at 70.

[6] The Real Property Tax Code.

201610 dated July 16, 1993, that Judge Quirico Defensor of the RTC of Iloilo City, Branch 36 issued an Order[7] dated April 29, 1993, directing the Register of Deeds of Iloilo City to issue a new owner's duplicate copy of the said certificate of title in the name of GSIS and declaring the lost copy as null and void.

June 13, 1994, Leticia Montaño requested the Register of Deeds of Iloilo City to annotate a Notice of Adverse Claim on TCT No. T-41681 to protect her right and interest in the subject property by virtue of the Deed of Conditional Sale executed by GSIS in her favor.

Leticia Montaño also went to the Office of the City Treasurer where she learned that respondent Francisco purchased the subject property in a public auction sale of delinquent real property conducted by public respondents on June 27, 1991. Petitioners averred that they were neither given any notice of tax delinquency nor informed of the schedule of the public auction sale. They were also not furnished a copy of the sale certificate. Moreover, they did not receive any notice of their right to redeem the subject property.

On July 11, 1994, the Montaños filed before the RTC of Iloilo City, Branch 23, an action for declaration of nullity of sale and damages against Rosalina Francisco, the City Government of Iloilo, the City Treasurer and the Head of the Treasurer's Enforcement Group. They caused a Notice of *Lis Pendens*[8] to be recorded, and paid the tax due by consignation,[9] pursuant to Section 267 of the Local Government Code of 1991.[10]

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[7] Exhibit "3", records, p. 71.

[8] Exhibit "B", *id.* at 236.

[9] Exhibit "C", *id.* at 236-A.

[10] Sec. 267. *Action Assailing Validity of Tax Sale*. — No court shall entertain any action assailing the validity of any sale at public auction of real property or rights therein under this Title until the taxpayer shall have deposited with the Court the amount for which the real property was sold, together with interest of two percent (2%) per month from the date of sale to the time of the institution of the action. The amount so deposited shall be paid to the purchaser at the auction sale if the deed is declared invalid but it shall be returned to the depositor if the action fails.

Benson Chin of the City Treasurer's Office, in compliance with the subpoena and subpoena *duces tecum* issued by the trial court, brought the record folder of the subject property in the name of Baldomero Dagdag. The property's records presented before the trial court consisted of the Notice of Sale of Delinquent Real Property;[11] the Certificate of Posting;[12] the Certification on the conduct of auction sale by crier held on June 10, 1991 at the terminal market, on June 11, 1991 at the La Paz Public Market and on June 14, 1991 at the Central Market;[13] proof of service;[14] the Certificate of Sale of Delinquent Property to the City;[15] the Report of Sale of Delinquent Property[16] dated July 2, 1991; the Notice of Right to Redeem[17] addressed to GSIS c/o Baldomero Dagdag dated July 12, 1991; and the Final Deed of Sale[18] dated July 17, 1992.

Public respondents City Treasurer of Iloilo City Romeo Manikan and Head of the Treasurer's Enforcement Group Erlinda Zarandin filed their Answer with Counterclaim,[19] alleging that petitioners were not notified because they had no right to be notified since the property was owned by the GSIS under the care of Baldomero Dagdag, who were notified in accordance with law. Moreover, petitioners had no cause of action insofar as they were concerned, and that they had no personality to sue.

Neither shall any court declare a sale at public auction invalid by reason of irregularities or informalities in the proceedings unless the substantive rights of the delinquent owner of the real property or the person having legal interest therein have been impaired.

[11] Exhibit "E", Records, p. 238.

[12] Exhibits "F", "F-I", "F-2", "F-3", "F-4", "F-5", "F-6", *id.* at 239-245.

[13] Exhibit "J", *id.* at 249.

[14] Exhibit "K", *id.* at 250.

[15] Exhibit "L", *id.* at 251.

[16] Exhibit "M", *id.* at 252

[17] Exhibit "N", *id.* at 253.

[18] Exhibit "O", *id.* at 254.

[19] Records, p. 25.

The evidence for private respondent Rosalina Francisco showed that Atty. Salvador Paja I, in whose favor respondent Francisco executed a Special Power of Attorney,[20] bought at a public auction sale held on June 27, 1991, a parcel of land known as Lot 6, Block 2, Phase 2144-B, located in Barangay Balabago, Jaro, Iloilo City, registered in the name of the GSIS, and covered by TCT No. T-41681.[21] The Certificate of Sale of Delinquent Real Property executed by the City Treasurer's Office in favor of respondent Francisco was annotated at the back of TCT No. T-41681 under Entry No. 170334.[22] Since no redemption had been made within the one year period, a Final Deed of Sale was executed.

On November 17, 1992, respondent Francisco, represented by Atty. Paja, filed a petition for the entry of new Certificate of Title in her favor with the RTC of Iloilo City, Branch 36. She sought the issuance of a new Owner's Duplicate Copy of Certificate of Title in the name of GSIS c/o Baldomero Dagdag to effect registration of the Final Deed of Sale. Absent any opposition, the RTC issued an Order[23] dated April 29, 1993 directing the Register of Deeds of Iloilo City "to issue a new owner's duplicate copy of Transfer Certificate of Title No. T-41681 in the name of GSIS c/o Baldomero Dagdag" and declaring the lost copy as null and void. The dispositive portion of the Order was annotated at the back of the Certificate of Title under Entry No. 201610.[24]

The main issue sought to be resolved was whether or not the tax delinquency proceedings made on the subject lot was regular and legal.

On January 12, 2001, the trial court rendered a Decision, holding that the failure of public respondent Iloilo City Treasurer

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[20] Exhibit "1", *id.* at 68.

[21] Exhibit "2", *id.* at 70.

[22] Exhibit "2-A", *id.*

[23] Exhibit "3", *id.* at 71.

[24] Exhibit "2-B", *id.* at 70.

to comply with the requirements as to the publication and notice of auction sale invalidated the auction sale. The dispositive portion of the Decision reads:

> WHEREFORE, in the light of the facts obtaining and the jurisprudence aforecited, judgment is hereby rendered in favor of the plaintiffs and against all the defendants, hereby:
>
> 1) Declaring the tax delinquency proceedings (the auction sale) on the lot subject of this case as illegal and without force and effect;
>
> 2) No costs.
>
> SO ORDERED.[25]

Respondent Francisco appealed the trial court's Decision to the Court of Appeals. In a Decision dated April 24, 2003, the appellate court reversed the decision of the trial court, the dispositive portion of which states:

> WHEREFORE, premises considered, the Decision dated January 12, 2001 of the Regional Trial Court, Branch 23, Iloilo City in Civil Case No. 21871 is hereby REVERSED and SET ASIDE.
>
> Accordingly, the tax delinquency proceedings involving the parcel of land (Lot No. 6) covered by TCT No. 41681 is declared legal and with force and effect.
>
> Defendant-appellant's claim for damages is denied for lack of merit.
>
> SO ORDERED.[26]

The Court of Appeals held that the GSIS, as the registered owner of the property, is the taxpayer entitled to the notice of tax delinquency. It found that GSIS was not deprived of its property without due process and that notice was regularly served. Under a contract to sell, the vendor retains the ownership of the property until after the same is fully paid by the vendee. Hence, when public respondents caused the service of the notice of sale to Baldomero Dagdag of the GSIS, the interest of the

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[25] *Rollo*, pp. 49-50.

[26] *Id.* at 27.

taxpayer was deemed to have been protected and the notice requirement was complied with.

As regards the alleged defect in publication, the Court of Appeals noted that per affidavit of the Editor-in-Chief of the Visayan Tribune, the notice was published thrice, as required by law. Citing *Talusan v. Tayag,*[27] the appellate court held that granting *arguendo* that the notice was published only twice instead of thrice, as required by law, the same is no longer material to the case since the interest of the taxpayer was protected by the service of personal notice to the registered owner of the property.

Further, the Court of Appeals pointed out that in *GSIS v. City Assessor of Iloilo City,*[28] it had already upheld the validity of the assessment of the real property taxes upon GSIS and the auction sale proceedings, as it sustained the finding of the lower courts that notices were sent to the GSIS and the beneficial owners of the properties in question, which includes the subject lot.

Petitioners' motion for reconsideration was denied by the Court of Appeals in a Resolution[29] dated August 20, 2003.

Hence, this petition.

The main issue raised is whether or not the tax delinquency proceedings conducted on the subject parcel of land situated at Block 2, Lot 6, Alta Tierra Village, Jaro, Iloilo City[30] was regular and legal.

Petitioners contend that the Court of Appeals erred in holding that the tax delinquency proceedings was legal and with force and effect, since the requirements regarding the publication and

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[27] 408 Phil. 373 (2001).

[28] Docketed as CA-G.R. SP No. 51149, dated August 8, 2000.

[29] *Rollo*, p. 32.

[30] Identified as Block 2, Lot 6, Maharlika Homes, Jaro, Iloilo City in the Deed of Conditional Sale (Exhibit "A").

notice of an auction sale under Section 73 of P.D. No. 464 were not complied with.

The petition is without merit.

The pertinent provision of law in this case is Section 73 of P.D. No. 464, thus:

SEC. 73. *Advertisement of sale of real property at public auction*. -After the expiration of the year for which the tax is due, the provincial or city treasurer shall advertise the sale at public auction of the entire delinquent real property, except real property mentioned in subsection (a) of Section forty hereof, to satisfy all the taxes and penalties due and the costs of sale. Such advertisement shall be made by posting a notice for three consecutive weeks at the main entrance of the provincial building and of all municipal buildings in the province, or at the main entrance of the city or municipal hall in the case of cities, and in a public and conspicuous place in the barrio or district wherein the property is situated, in English, Spanish and the local dialect commonly used, and by announcement at least three market days at the market by crier, and, in the discretion of the provincial or city treasurer, by publication once a week for three consecutive weeks in a newspaper of general circulation published in the province or city.

The notice, publication, and announcement by crier shall state the amount of the taxes, penalties and costs of sale; the date, hour, and place of sale; the name of the taxpayer against whom the tax was assessed; and the kind or nature of property and, if land, its approximate areas, lot number, and location stating the street and block number; district or barrio, municipality and the province or city where the property to be sold is situated.

Copy of the notice shall forthwith be sent either by registered mail or by messenger, or through the barrio captain, to the delinquent taxpayer, at his address as shown in the tax rolls or property tax records cards of the municipality or city where the property is located, or at his residence, if known to said treasurer or barrio captain: *Provided*, *however*, that a return of the proof of service under oath shall be filed by the person making the service with the provincial or city treasurer concerned.

In *Talusan v. Tayag*,[31] the Court held that for purposes of the collection of real property taxes, the registered owner of the property is considered the taxpayer. Hence, only the registered owner is entitled to a notice of tax delinquency and other proceedings relative to the tax sale.[32]

In this case, the Court of Appeals correctly held that the GSIS, as the registered owner of the subject property, was the taxpayer that was entitled to the notice of tax delinquency and that of the auction sale, as well as other related notices. It found that the GSIS was not deprived of its property without due process and that notice was regularly served. It pointed out that it had already upheld the validity of the assessment of the real property taxes upon GSIS and the auction sale proceedings in *GSIS v. City Assessor of Iloilo City*.[33]

It is important to note that both the GSIS, as the registered owner of the subject property, and herein petitioners Spouses Montaño separately questioned the validity of the auction sale of the subject property covered by TCT No. T-41681.

The Court of Appeals mentioned in its Decision that there are two cases involving the same issue, namely, this action for declaration of nullity of sale and damages filed by the Spouses Montaño, and the petition for annulment of judgment filed by the GSIS, docketed as CA-G.R. SP No. 51149, entitled *GSIS v. City Assessor of Iloilo City, the Register of Deeds of Iloilo City and Rosalina Francisco (GSIS v. City Assessor of Iloilo City).*

In *GSIS v. City Assessor of Iloilo City,* the GSIS assailed the Order dated April 29, 1993 of the RTC of Iloilo City, Branch 36 and the Order dated November 8, 1994 of the RTC of Iloilo, Branch 31 in regard to the petition of herein respondent Rosalina Francisco for the entry of new transfer certificates of title in her name, which included TCT No. T-41681 covering

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[31] *Supra* note 27.

[32] *Id.* at 388.

[33] *Supra* note 28.

the subject parcel of land in this case. The GSIS claimed that the assessment of real property taxes on the parcels of land was void because it was exempt from all forms of taxes under its charter, Republic Act No. 8291. The GSIS also claimed that it had no notice of the proceedings in the assessment and levy of the taxes, as well as the sale of the properties at public auction; hence, its right to due process was violated.

In *GSIS v. City Assessor of Iloilo City,* the Court of Appeals upheld the findings of the lower courts that notices were sent to GSIS and the beneficial owners of the properties in question. It gave no credence to the arguments of GSIS and denied its petition.

GSIS appealed the decision of the Court of Appeals before this Court via a petition for review on *certiorari*. In a Decision dated June 27, 2006 in G.R. No. 147192,[34] this Court dismissed the GSIS' petition for review on *certiorari* of the Decision of the Court of Appeals in CA-G.R. SP No. 51149 dated August 8, 2000. Hence, the finding of the Court of Appeals in regard to the validity of the auction sale proceedings of the subject property has long been final.

WHEREFORE, the petition is *DENIED.* The Decision dated April 24, 2003 and the Resolution dated August 20, 2003 of the Court of Appeals in CA-G.R. CV No. 71004 are hereby *AFFIRMED.*

No costs.

SO ORDERED.

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

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[34] *GSIS v. City Assessor of Iloilo City,* G.R. No. 147192, June 27, 2006, 493 SCRA 169.

FIRST DIVISION

[G.R. No. 162836. July 30, 2009]

CEFERINA ARGALLON-JOCSON and RODOLFO TUISING, *petitioners, vs.* **COURT OF APPEALS, HON. BONIFACIO T. ONG, in his capacity as the acting Presiding Judge of the Regional Trial Court of Roxas, Isabela, Branch 23, MARIA CRISTINA FERTILIZER CORP., and MARCELO STEEL CORP.,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEAL BY *CERTIORARI* TO THE SUPREME COURT; THE LACK OF CERTIFICATION AGAINST FORUM SHOPPING OR A DEFECTIVE CERTIFICATION IS GENERALLY NOT CURABLE BY ITS SUBSEQUENT SUBMISSION OR CORRECTION, UNLESS THERE IS A NEED TO RELAX THE RULE UNDER SPECIAL CIRCUMSTANCES OR FOR COMPELLING REASONS; NO COMPELLING REASON TO WARRANT A LIBERAL APPLICATION OF THE RULES IN CASE AT BAR. —** The Court notes that the petition supposedly filed by petitioners Jocson and Tuising was not signed by Jocson's counsel. It was Tuising's counsel who signed in behalf of Jocson's counsel. Tuising's counsel had no authority to sign the petition in behalf of Jocson. The records are bereft of any proof that Jocson ever authorized Tuising's counsel to be her counsel or to act in her behalf. Under Section 3, Rule 7 of the Rules of Civil Procedure, every pleading must be signed by the party or counsel representing him, otherwise the pleading produces no legal effect. Furthermore, only Tuising signed the Verification and Certification for Non-Forum Shopping. Jocson did not sign the Verification and Certification. Section 1, Rule 45 of the Rules of Civil Procedure requires the petition for review on *certiorari* to be verified. A pleading required to be verified which lacks proper verification shall be treated as an unsigned pleading. Although Tuising belatedly filed on 24 September 2004 a "Special Power of Attorney" allegedly signed by Jocson and authorizing Tuising to file the petition for review and to verify and to certify the petition, no explanation was

given by Tuising why the Special Power of Attorney was belatedly filed four months after the petition for review was filed on 12 May 2004. The lack of a certification against forum shopping or a defective certification is generally not curable by its subsequent submission or correction, unless there is a need to relax the rule under special circumstances or for compelling reasons. We find no compelling reason for a liberal application of the rules especially in this case where the petitioner who did not sign the verification and certification for non-forum shopping already filed with the trial court a *Motion for Issuance of Alias Writ of Execution*. By filing the *Motion for Issuance of Alias Writ of Execution*, Jocson was in effect abiding by the Court of Appeals' Decision dated 16 January 2004.

2. **ID.; ID.; ID.; INSTANT PETITION FOR REVIEW IS INCOMPATIBLE WITH THE MOTION FOR ISSUANCE OF AN *ALIAS* WRIT OF EXECUTION PREVIOUSLY FILED WITH THE TRIAL COURT; PARTIES TO A CASE SHOULD NOT BE ALLOWED TO ABUSE AND MAKE A MOCKERY OF THE JUDICIAL PROCESS BY PURSUING SIMULTANEOUS AND INCOMPATIBLE REMEDIES IN DIFFERENT COURTS. —** In *Athena Computers, Inc. v. Reyes*, the Court held that the appellate court was correct in dismissing the petition where the verification and certification for non-forum shopping were signed by only one of the two petitioners. In this case, the flaw is fatal considering that Jocson, the co-petitioner who did not sign the verification and certification of non-forum shopping and whose counsel did not sign the petition, was the principal party in the original case. Jocson was the plaintiff in the trial court who sought reconveyance of her properties while her co-petitioner Tuising was not a party in the original case but was merely the highest bidder in the execution sale which was declared void by the trial court. The certification of non-forum shopping is rooted in the principle that a party-litigant should not be allowed to pursue simultaneous remedies in different fora, such act being detrimental to an orderly judicial procedure. The petition, signed only by Tuising's counsel, conveniently failed to mention the fact that on 23 February 2004, prior to the filing of the petition, Jocson already filed with the trial court a *Motion for Issuance of Alias Writ of Execution.* Clearly, such an action

is incompatible with this petition for review. Even at the appellate court's level, the Motion for Reconsideration supposedly filed by petitioners Jocson and Tuising on 3 February 2004 was also signed by Tuising's counsel only. Jocson's filing of a *Motion for Issuance of Alias Writ of Execution* to implement the decision as against MCFC clearly indicates that she already acceded to the Court of Appeals' Decision dated 16 January 2004 and no longer intended to move for its reconsideration, much less appeal to this Court. Besides, a party should not be allowed to abuse and make a mockery of the judicial process by pursuing simultaneous and incompatible remedies in different courts.

APPEARANCES OF COUNSEL

Basilio R. Rupisan for Ceferina Argallos-Jocson.

Heinrich V. Garena and *Vejerano Law Office* for Rodolfo Tuising.

Magdaleno B. Cortez for Marcelo Steel Corporation.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition for review[1] of the Decision[2] dated 16 January 2004 and the Resolution dated 25 March 2004 of the Court of Appeals in CA-G.R. SP No. 79179. The Court of Appeals affirmed the Order dated 14 April 2003 of the Regional Trial Court of Roxas, Isabela, Branch 23 (trial court), in Civil Case No. Br. 23-377.

The Facts

On 10 August 1992, petitioner Ceferina Argallon-Jocson (Jocson) filed a complaint for Reconveyance and Damages against Marcelo Steel Corporation and Maria Cristina Fertilizer Corporation

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

[2] Penned by Associate Justice Andres B. Reyes, Jr. with Associate Justices Buenaventura J. Guerrero and Regalado E. Maambong, concurring.

(MCFC), which were represented by Jose Marcelo as president of both companies.

On 24 February 1999, the trial court rendered a decision, the dispositive portion of which reads:

> AS A CONSEQUENCE OF ALL THE FOREGOING, judgment is hereby rendered in favor of the plaintiff [Jocson] and against the defendants [Marcelo Steel Corporation and MCFC]: (1) Ordering the defendants to pay the plaintiff the balance of ₱2,004,810.42, with legal interest from 1976 up to the present; (2) attorney's fees in the amount of ₱20,000.00; and (3) to pay the costs.[3]

Marcelo Steel Corporation and MCFC (private respondents) appealed to the Court of Appeals, which affirmed the trial court's decision. Private respondents did not appeal the Court of Appeals' decision, which became final and executory. Jocson then filed a Motion for Issuance of a Writ of Execution. On 9 December 2002, the trial court issued an order for the issuance of a writ of execution in accordance with the tenor of the decision.

On 20 December 2002, a Writ of Execution[4] (writ) was issued to the Sheriff of the Office of the Clerk of Court of Manila, commanding the Sheriff to implement the writ upon private respondents in accordance with the tenor of the decision. The writ was indorsed to Sheriffs Levy Duka, Luis Alina, Andreil Garcia, and Nathaniel Abaya, who levied upon the properties of Marcelo Steel Corporation in full satisfaction of the judgment debt. The execution sale was then scheduled on 17 February 2003. On 14 February 2003, Midas International Development Corporation (Midas Corp.) filed a third-party claim, alleging that some of the levied properties were previously mortgaged to Midas Corp. The execution sale was postponed to 21 February 2003. On 20 February 2003, Jocson posted a ₱36 million indemnity bond[5] so that the levied properties would not be released to claimant Midas Corp. The Sheriffs then proceeded with the

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[3] *Rollo,* p. 174.

[4] *Id.* at 62-63; CA *rollo*, pp. 32-33.

[5] *Rollo,* pp. 66-67.

execution sale on 21 February 2003 and sold the properties of Marcelo Steel Corporation for the full satisfaction of the judgment against private respondents. A certificate of sale[6] was issued to petitioner Rodolfo Tuising (Tuising), who was the highest bidder at the auction sale for ₱9.9 million.

On 28 February 2003, Jocson filed with the trial court a *Very Urgent Ex-Parte Motion for Issuance of a Break-Open Order and Petition for Contempt of Court*.[7] On 3 March 2003, Marcelo Steel Corporation filed an *Extremely Urgent Omnibus Motion*,[8] praying for the annulment of the execution sale and for the issuance of an order directing the Sheriffs not to deliver the properties sold to Tuising pending resolution of Marcelo Steel Corporation's motion. Marcelo Steel Corporation alleged that its obligation was merely joint with MCFC and that the total price of the properties sold on execution was unconscionably inadequate.

On 14 April 2003, the trial court issued an order, the dispositive portion of which reads:

> WHEREFORE, premises considered, the execution sale of the properties of the defendant Marcelo Steel Corporation, namely: Seven (7) dilapidated warehouses, detachable metal structural steel with scattered machineries, metal scraps, metal G.I. Pipes, wires and post, held on February 21, 2003, is hereby declared null and void and the Certificate of Sale dated February 21, 2003 issued pursuant thereto is hereby set aside and cancelled.
>
> The motion for the issuance of a break-open order is hereby denied for lack of merit and basis.[9]

Jocson moved for reconsideration of the trial court's order, claiming that the nature of the obligation to pay the balance of the purchase price was solidary. Tuising filed a *Motion for Intervention with Leave of Court with Motion for Reconsideration*

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[6] *Id.* at 69.

[7] *Id.* at 72-74.

[8] *Id.* at 77-89.

[9] *Id.* at 52.

and Entry of Appearance. On the other hand, Marcelo Steel Corporation filed, on 7 May 2003, a *Manifestation and Motion on Satisfaction of Judgment*, depositing with the trial court a Manager's Check in the amount of ₱4,260,198.11 representing full satisfaction of Marcelo Steel Corporation's obligation to Jocson. On 14 July 2003, the trial court denied Jocson's motion for reconsideration and Tuising's motion for intervention and reconsideration, and granted Marcelo Steel Corporation's prayer for entry of satisfaction of judgment on its behalf.[10]

On 18 August 2003, Jocson filed with the trial court a Notice of Appeal, which she later withdrew on 4 September 2003, and in lieu thereof, petitioners Jocson and Tuising filed a Petition for *Certiorari* with the Court of Appeals.[11] The Court of Appeals dismissed the petition for lack of merit. Jocson and Tuising filed a motion for reconsideration,[12] which the Court of Appeals denied on 25 March 2004. Hence, this petition.

Meanwhile, on 23 February 2004, Jocson filed with the trial court a *Motion for Issuance of Alias Writ of Execution* to implement the decision as against MCFC, stating that in view of the Court of Appeals' decision, there is a need to execute the decision as against the other defendant MCFC.[13]

The Trial Court's Ruling

In its Order dated 14 April 2003, the trial court ruled that the liability of Marcelo Steel Corporation was limited to its proportional share in the entire money judgment. Considering that the dispositive portion of the Decision dated 24 February 1999 in this case did not state that the obligation of private respondents was solidary, then their obligation was merely joint. Citing the case of *PH Credit Corporation v. Court of Appeals*,[14]

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[10] *Id.* at 233-235.

[11] *Id.* at 236.

[12] CA *rollo*, pp. 340-348. The Motion for Reconsideration was signed only by Tuising's counsel, who also signed the motion in behalf of Jocson's counsel.

[13] *Rollo,* p. 311.

[14] 421 Phil. 821 (2001).

the trial court held that "being made to pay for an obligation in its entirety when one's liability is merely for a portion is a sufficient ground to contest an execution sale. It would be the height of inequity if we allow judgment obligors to shoulder entire monetary judgments when their legal liabilities are limited only to their proportionate shares in the entire obligation."

The Court of Appeals' Ruling

The Court of Appeals held that in consonance with Section 1, Rule 65 of the Rules of Civil Procedure,[15] *certiorari* is not a substitute for lost appeal. Moreover, the Court of Appeals found that the assigned issues were factual issues not proper in a petition for *certiorari*, which is limited to the issues of jurisdiction and grave abuse of discretion.

The Court of Appeals found no grave abuse of discretion on the part of the respondent judge. On the merits of the case, the Court of Appeals held that the obligation of private respondents to Jocson was merely joint. The Court of Appeals noted that the trial court's Decision dated 24 February 1999 was silent as to the nature of the liability. Solidary obligations are not presumed in the absence of an express determination thereof in the judgment. When the judgment does not provide that the defendants are liable to pay jointly and severally a certain amount of money, none of them may be compelled to satisfy in full said judgment.

The Court of Appeals found that the Sheriffs disregarded the trial court's 24 February 1999 Decision, and deviated from the trial court's Order dated 9 December 2002 and the writ of

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[15] Section 1, Rule 65 of the Rules of Civil Procedure provides:

Section 1. *Petition for Certiorari*. – When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

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execution dated 20 December 2002, which directed them to execute the writ in accordance with the tenor of the decision.

The Issues

Petitioners contend that:

1. THE HONORABLE COURT OF APPEALS ERRED IN DECIDING THAT PETITIONERS' WITHDRAWAL OF THEIR NOTICE OF APPEAL AND SUBSTITUTING IT BY PETITION FOR *CERTIORARI* IS PROCEDURALLY IMPERMISSIBLE.

2. THE HONORABLE COURT OF APPEALS ERRED IN NOT DECIDING THAT THE RESPONDENT JUDGE GRAVELY ABUSED HIS DISCRETION WHEN HE DECLARED THE OBLIGATION OF THE DEFENDANTS IN CIVIL CASE NO. 23-377 AS JOINT AND NOT SOLIDARY.

3. THE HONORABLE COURT OF APPEALS ERRED IN [NOT] DECIDING THAT THE RESPONDENT JUDGE GRAVELY ABUSED HIS DISCRETION IN DENYING THE MOTION FOR A BREAK-OPEN AND DECLARING THE EXECUTION SALE CONDUCTED ON FEBRUARY 21, 2003 NULL AND VOID AND THE CERTIFICATE OF SALE AWARDED TO PETITIONER TUISING CANCELLED.

4. THE HONORABLE COURT OF APPEALS ERRED IN NOT DECIDING THAT THE RESPONDENT JUDGE GRAVELY ABUSED HIS DISCRETION IN GRANTING THE PRAYER FOR SATISFACTION OF JUDGMENT DESPITE RECEIPT OF PETITIONER JOCSON OF THE PROCEEDS OF THE SALE AS EVIDENCED BY THE ACKNOWLEDGMENT RECEIPT.

5. THE HONORABLE COURT OF APPEALS ERRED IN NOT DECIDING THAT THE RESPONDENT JUDGE GRAVELY ABUSED HIS DISCRETION IN DENYING THE MOTION FOR INTERVENTION AND IN NOT CONSIDERING THE SAME AS PRO *INTERESSE SUO*.[16]

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[16] *Rollo, pp. 15-16.*

The Ruling of the Court

We find the petition without merit.

At the outset, the Court notes that the petition supposedly filed by petitioners Jocson and Tuising was not signed by Jocson's counsel. It was Tuising's counsel who signed in behalf of Jocson's counsel. Tuising's counsel had no authority to sign the petition in behalf of Jocson. The records are bereft of any proof that Jocson ever authorized Tuising's counsel to be her counsel or to act in her behalf. Under Section 3, Rule 7 of the Rules of Civil Procedure,[17] every pleading must be signed by the party or counsel representing him, otherwise the pleading produces no legal effect.

Furthermore, only Tuising signed the Verification and Certification for Non-Forum Shopping. Jocson did not sign the Verification and Certification. Section 1, Rule 45 of the Rules of Civil Procedure requires the petition for review on *certiorari* to be verified.[18] A pleading required to be verified which lacks proper verification shall be treated as an unsigned pleading.[19] Although Tuising belatedly filed on 24 September 2004 a "Special

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[17] Section 3, Rule 7 of the Rules of Civil Procedure reads:

SEC. 3. *Signature and address*. – Every pleading must be signed by the party or counsel representing him, stating in either case his address which should not be a post office box.

The signature of the counsel constitutes a certificate by him that he has read the pleading, that to the best of his knowledge, information, and belief there is good ground to support it and that it is not interposed for delay.

An unsigned pleading produces no legal effect. However, the court may, in its discretion, allow such deficiency to be remedied if it shall appear that the same was due to mere inadvertence and not intended for delay. Counsel who deliberately files an unsigned pleading, or signs a pleading in violation of this Rule, or alleges scandalous or indecent matter therein, or fails to promptly report to the court a change of his address, shall be subject to appropriate disciplinary action.

[18] Section 1, Rule 45 of the Rules of Civil Procedure, as amended by A.M. No. 07-7-12-SC, reads:

SECTION 1. *Filing of petition with Supreme Court*. – A party desiring to appeal by *certiorari* from a judgment or final order or resolution of the

Power of Attorney" allegedly signed by Jocson and authorizing Tuising to file the petition for review and to verify and to certify the petition, no explanation was given by Tuising why the Special Power of Attorney was belatedly filed four months after the petition for review was filed on 12 May 2004. The lack of a certification against forum shopping or a defective certification is generally not curable by its subsequent submission or correction, unless there is a need to relax the rule under special circumstances or for compelling reasons.[20] We find no compelling reason for a liberal application of the rules especially in this case where the petitioner who did not sign the verification and certification for non-forum shopping already filed with the trial court a *Motion for Issuance of Alias Writ of Execution*. By filing the *Motion for Issuance of Alias Writ of Execution*, Jocson was in effect abiding by the Court of Appeals' Decision dated 16 January 2004.

Court of Appeals, the Sandiganbayan, the Court of Tax Appeals, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a **verified petition for review on *certiorari***. The petition may include an application for a writ of preliminary injunction or other provisional remedies and shall raise only questions of law, which must be distinctly set forth. The petitioner may seek the same provisional remedies by verified motion filed in the same action or proceeding at any time during its pendency. (Emphasis supplied)

[19] Section 4, Rule 7 of the Rules of Civil Procedure, as amended by A.M. No. 00-2-10-SC, reads:

SEC. 4. *Verification*. – Except when otherwise specifically required by law or rule, pleading need not be under oath, verified or accompanied by affidavit.

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.

A pleading required to be verified which contains a verification based on "information and belief," or upon "knowledge, information and belief," or lacks proper verification, shall be treated as an unsigned pleading.

[20] *Altres v. Empleo,* G.R. No. 180986, 10 December 2008; *Tible & Tible Company, Inc. v. Royal Savings and Loan Association,* G.R. No. 155806, 8 April 2008, 550 SCRA 562; *Clavecilla v. Quitain,* G.R. No. 147989, 20 February 2006, 482 SCRA 623.

In *Athena Computers, Inc. v. Reyes*,[21] the Court held that the appellate court was correct in dismissing the petition where the verification and certification for non-forum shopping were signed by only one of the two petitioners. The Court held:

> The verification of the petition and certification on non-forum shopping before the Court of Appeals were signed only by Jimenez. There is no showing that he was authorized to sign the same by Athena, his co-petitioner.
>
> Section 4, Rule 7 of the Rules states that a pleading is verified by an affidavit that the affiant has read the pleading and that the allegations therein are true and correct to his knowledge and belief. Consequently, the verification should have been signed not only by Jimenez but also by Athena's duly authorized representative.
>
> In *Docena v. Lapesura,* we ruled that the certificate of non-forum shopping should be signed by all the petitioners or plaintiffs in a case, and that the signing by only one of them is insufficient. The attestation on non-forum shopping requires *personal knowledge* by the party executing the same, and the lone signing petitioner cannot be presumed to have personal knowledge of the filing or non-filing by his co-petitioners of any action or claim the same as similar to the current petition.[22]

In this case, the flaw is fatal considering that Jocson, the co-petitioner who did not sign the verification and certification of non-forum shopping and whose counsel did not sign the petition, was the principal party in the original case. Jocson was the plaintiff in the trial court who sought reconveyance of her properties while her co-petitioner Tuising was not a party in the original case but was merely the highest bidder in the execution sale which was declared void by the trial court.

The certification of non-forum shopping is rooted in the principle that a party-litigant should not be allowed to pursue simultaneous remedies in different fora, such act being detrimental to an orderly judicial procedure.[23] The petition, signed only by

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[21] G.R. No. 156905, 5 September 2007, 532 SCRA 343.

[22] *Id.* at 350-351.

[23] *People v. De Grano*, G.R. No. 167710, 5 June 2009.

Tuising's counsel, conveniently failed to mention the fact that on 23 February 2004, prior to the filing of the petition, Jocson already filed with the trial court a *Motion for Issuance of Alias Writ of Execution* which reads:

MOTION FOR ISSUANCE OF *ALIAS* WRIT OF EXECUTION

PLAINTIFF, by counsel, respectfully states:

1. The Court of Appeals had ruled finally that the DECISION can be implemented only as against defendant Marcelo Steel Corporation and the RTC Sheriff of Manila, in levying the properties of the two defendant corporations, violated the dispositive portion of the decision because there is no showing that their liability is solidary. (CA-G.R. SP-No. 79179);

2. There is need, therefore, to execute the decision as against the other defendant MARIA CRISTINA FERTILIZER CORPORATION.

WHEREFORE, premises considered, it is respectfully prayed that an *ALIAS* WRIT OF EXECUTION be issued to implement the decision as against defendant MARIA CRISTINA FERTILIZER CORPORATION.[24]

Clearly, such an action is incompatible with this petition for review. Even at the appellate court's level, the Motion for Reconsideration[25] supposedly filed by petitioners Jocson and Tuising on 3 February 2004 was also signed by Tuising's counsel only.[26] Jocson's filing of a *Motion for Issuance of Alias Writ of Execution* to implement the decision as against MCFC clearly indicates that she already acceded to the Court of Appeals' Decision dated 16 January 2004 and no longer intended to move for its reconsideration, much less appeal to this Court. Besides,a party should not be allowed to abuse and make a mockery of the judicial process by pursuing simultaneous and incompatible remedies in different courts.

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[24] *Rollo,* p. 311.

[25] CA *rollo*, pp. 340-348.

[26] *Id.* at 347.

WHEREFORE, we *DENY* the petition. We *AFFIRM* the Decision dated 16 January 2004 and the Resolution dated 25 March 2004 of the Court of Appeals in CA-G.R. SP No. 79179.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 164244. July 30, 2009]

NATIONAL HOUSING AUTHORITY, *petitioner, vs.* **REYNALDO MAGAT,** *respondent.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; PARTIES TO CIVIL ACTION; REAL PARTY IN INTEREST; ELUCIDATED; NATIONAL HOUSING AUTHORITY (NHA) IS NOT A REAL PARTY IN INTEREST IN CASE AT BAR. — The fact that the petitioner here (NHA) is different from the petitioner in G.R. No. 164162 (De Guzman) is immaterial. The NHA is not a real party in interest in this case since it is the administrative agency from where this case originated and which initially determined who has a better right between De Guzman and Magat over the subject property. Under Section 2, Rule 3 of the 1997 Rules of Civil Procedure, "every action must be prosecuted or defended in the name of the real party in interest." To qualify a person to be a real party in interest in whose name an action must be prosecuted, he must appear to be the present real owner of the right sought to be enforced. 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 remedies under the suit. *Interest* within the meaning of the Rules refers to

material interest or an interest in issue to be affected by the decree or judgment of the case. One having no material interest to protect cannot invoke the jurisdiction of the court as the plaintiff (or petitioner) in an action. Indisputably, being the administrative agency which resolved the conflicting claims of De Guzman and Magat over the subject property, the NHA does not stand to be benefited or injured by the judgment in this case. It does not have any material interest over the subject property to protect or defend. In other words, the NHA does not have a cause of action against Magat precisely because the real parties in interest in the present case are De Guzman and Magat, who are both claiming the subject property.

APPEARANCES OF COUNSEL

Mario P. Escober and *Marko C. Callanta* for petitioner.
Hao Dasal Dionola and Associates for respondent.

R E S O L U T I O N

CARPIO, *J.*:

The Case

Before the Court is a petition for review[1] of the 27 February 2004 Decision[2] and 1 June 2004 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 78306. The Court of Appeals set aside the Resolutions of the Office of the President dated 26 November 2002[4] and 29 May 2003, as well as the Memorandum[5] of petitioner National Housing Authority (NHA)[6] dated 26 June 1998.

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

[2] *Rollo*, pp. 7-13. Penned by Associate Justice Conrado M. Vasquez, Jr. with Associate Justices Bienvenido L. Reyes and Arsenio J. Magpale, concurring.

[3] *Id.* at 14.

[4] *Id.* at 47-48. Signed by Deputy Executive Secretary Arthur P. Autea, by authority of the President.

[5] *Id.* at 44-46. The Court of Appeals termed this as a Resolution.

[6] Signed by Mario P. Escober, Manager of NHA's Legal Department.

The Antecedents

On 26 June 1998, the NHA issued a Memorandum resolving the conflict of claims over the subject property between Armando De Guzman (De Guzman) and Reynaldo Magat (Magat). The NHA recommended that Lot 53, Block 1, Peñafrancia ZIP Project be awarded solely to De Guzman.[7]

Magat appealed the Memorandum of the NHA to the Office of the President, which sustained the same in a Resolution dated 26 November 2002, thus:

> WHEREFORE, premises considered, the instant appeal is hereby DISMISSED and the questioned NHA Letter-Resolution dated 26 June 1998 AFFIRMED *in toto*.
>
> Parties are required to INFORM this Office, within five (5) days from notice, of the dates of their receipt of this Resolution.
>
> SO ORDERED.[8]

Magat moved for reconsideration, which was denied by the Office of the President in an Order dated 29 May 2003.

The Ruling of the Court of Appeals

Magat filed an appeal with the Court of Appeals which set aside the 26 November 2002 and 29 May 2003 Resolutions of the Office of the President, including the 26 June 1998 Memorandum of the NHA, to wit:

> We find the NHA ruling to be contrary to evidence on record. Consider:
>
> (a) Magat is admittedly also a censused renter in the Peñafrancia ZIP Project;
>
> (b) He is occupying, under a contract of lease, a structure owned by Clarita Punzalan standing on Lot 53, Block 1 in the same project at Paco, Manila, and paid rentals thereon as shown by receipts attached as Annexes "G", "G-1", "G-2" and "G-3" of Memorandum of Appeal.

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[7] *Rollo*, p. 46.

[8] *Id.* at 48.

(c) The structure that Armando De Guzman purchased is separate and distinct from that being leased by the petitioner, the same being owned by Bonifacio Punzalan. This will explain the fact that Bonifacio could not sell the structure being occupied by the petitioner;

(d) The two (2) structures in one lot covered by a single Tag No. 254 will readily explain, and common logic dictates, that even after the purchase of De Guzman, another lease contract was executed by Clarita Punzalan in favor of petitioner Magat over the other structure.

Obviously, the above established facts were misappreciated, overlooked or were not given the proper evidentiary interpretation in the NHA Resolution. Summing them up, the facts stated above will show that there exists two (2) structures in the lot sold to De Guzman. Said established facts readily entitles petitioner as a censused renter and had the right to own the portion being occupied by the house he was renting from Clarita Punzalan. To exclude him therefrom would be violative of the very purpose for which the ZIP Project was established which is to upgrade the environmental, legal, social and economic condition of the slum residents within Metro Manila, and contravene the ZIP Project aim to distribute land to the landless in the spirit of constitutional provision guaranteeing housing and decent quality of life for every Filipino.

All told, the NHA committed a serious palpable error and grave abuse of discretion in not giving petitioner Magat his rightful priority to own that portion over which his rented structure is standing.

IN VIEW OF ALL THE FOREGOING, the instant petition is hereby GRANTED, and the challenged Resolutions RECALLED and SET ASIDE, together with the NHA Resolution dated June 26, 1998 awarding the whole Lot 53, Block 1, Penafrancia ZIP Project solely to respondent Armando De Guzman, and a new one entered GIVING petitioner the right to purchase the portion being occupied by the structure he is presently occupying. No cost.

SO ORDERED.[9]

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[9] *Id.* at 11-13.

The NHA and De Guzman filed their respective motions for reconsideration,[10] which were both denied by the Court of Appeals in a Resolution dated 1 June 2004.

Hence, this petition.

Meanwhile, on 13 August 2004, De Guzman filed with this Court a petition for review, docketed as G.R. No. 164162, assailing the decision and resolution in CA-G.R. SP No. 78306, the same decision and resolution subject of the instant petition for review.

In a Resolution dated 22 November 2004,[11] the Court resolved to deny the petition in G.R. No. 164162 for failure of De Guzman to sufficiently show that the Court of Appeals committed any reversible error in the challenged decision and resolution as to warrant the exercise by the Court of its discretionary appellate jurisdiction.

No motion for reconsideration was filed by De Guzman rendering the Resolution in G.R. No. 164162 final and executory on 14 January 2005.

The Ruling of this Court

We deny the petition.

As stated above, the Court has already declared in G.R. No. 164162 that the Court of Appeals committed no reversible error in its decision and resolution in CA-G.R. SP No. 78306, involving the same decision and resolution subject of this petition for review. This Resolution in G.R. No. 164162 has become final and executory on 14 January 2005. The finality of the Resolution in G.R. No. 164162 disposing of the same decision and resolution of the Court of Appeals being challenged in this case clearly renders the present petition moot.

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[10] CA *rollo*, pp. 201-210 and 212-218.

[11] *Id.* at 231.

The fact that the petitioner here (NHA) is different from the petitioner in G.R. No. 164162 (De Guzman) is immaterial. The NHA is not a real party in interest in this case since it is the administrative agency from where this case originated and which initially determined who has a better right between De Guzman and Magat over the subject property.

Under Section 2, Rule 3 of the 1997 Rules of Civil Procedure, "every action must be prosecuted or defended in the name of the real party in interest." To qualify a person to be a real party in interest in whose name an action must be prosecuted, he must appear to be the present real owner of the right sought to be enforced.[12] 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 remedies under the suit.[13]

Interest within the meaning of the Rules refers to material interest or an interest in issue to be affected by the decree or judgment of the case.[14] One having no material interest to protect cannot invoke the jurisdiction of the court as the plaintiff (or petitioner) in an action.[15]

Indisputably, being the administrative agency which resolved the conflicting claims of De Guzman and Magat over the subject property, the NHA does not stand to be benefited or injured by the judgment in this case. It does not have any material interest over the subject property to protect or defend. In other words,

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[12] *Shipside, Inc. v. Court of Appeals*, 404 Phil. 981, 998 (2001), citing *Pioneer Insurance & Surety Corporation v. Court of Appeals*, G.R. No. 84197, 28 July 1989, 175 SCRA 668.

[13] *Travel Wide Associated Sales (Phils.), Inc. v. Court of Appeals*, G.R. No. 77356, 15 July 1991, 199 SCRA 205, 209.

[14] *Oco v. Limbaring*, G.R. No. 161298, 31 January 2006, 481 SCRA 348, 358, citing *Abella, Jr. v. Civil Service Commission*, G.R. No. 152574, 17 November 2004, 442 SCRA 507, 521; *Mathay, Jr. v. Court of Appeals*, 378 Phil. 466, 482 (1999); *Rebollido v. Court of Appeals*, 252 Phil. 831, 838 (1989).

[15] *Id.*, citing *Abella, Jr. v. Civil Service Commission*, G.R. No. 152574, 17 November 2004, 442 SCRA 507, 521; *Borlongan v. Madrideo*, 380 Phil. 215, 224 (2000); *Ralla v. Ralla*, G.R. No. 78646, 23 July 1991, 199 SCRA 495, 499.

the NHA does not have a cause of action against Magat precisely because the real parties in interest in the present case are De Guzman and Magat, who are both claiming the subject property.

Considering the foregoing, the Court sees no reason to discuss the issues raised by the NHA.

WHEREFORE, we *DENY* the petition.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 166553. July 30, 2009]

REPUBLIC OF THE PHILIPPINES represented by the NATIONAL POWER CORPORATION, *petitioner, vs.* **SPOUSES RUPERTO LIBUNAO and SONIA P. SANOPO & HEIRS OF BENITA DOMINGO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PETITION FOR REVIEW ON *CERTIORARI*; QUESTION OF FACT IS NOT PROPER FOR A PETITION FOR REVIEW. — x x x [W]hether petitioner should pay just compensation for the entire area of respondents' properties or only an easement fee of 10% of the market value of the properties traversed by the transmission lines is a factual matter which is not proper for a petition for review. In *National Power Corporation v. Purefoods Corporation,* the Court held: There is a question of law when the issue does not call for an examination of the probative value of the evidence presented, the truth or falsehood of facts being admitted and the doubt concerns the correct application of law and jurisprudence on the matter. On the other

hand, there is a question of fact when the doubt or controversy arises as to the truth or falsity of the alleged facts. When there is no dispute as to fact, the question of whether or not the conclusion drawn therefrom is correct is a question of law. **The issue raised by petitioner of whether or not only an easement fee of 10% of the market value of the expropriated properties should be paid to the affected owners is a question of law.** This issue does not call for the reevaluation of the probative value of the evidence presented but rather the determination of whether the pertinent laws cited by NAPOCOR in support of its argument are applicable to the instant case.

2. **ID.; SPECIAL CIVIL ACTIONS; EXPROPRIATION; PROPERTY OWNERS ARE ENTITLED TO JUST COMPENSATION BASED ON THE FULL MARKET VALUE OF THE AFFECTED PROPERTIES; EXPLAINED.** — x x x [T]he Court finds no reversible error committed by the CA in affirming the RTC's conclusion that the payment of just compensation should be for the entire area of respondents' subject properties. Petitioner's argument that it should only be required to pay an easement fee of 10% of the market value of the properties since it simply needed a right-of-way easement on the aerial space above respondents' properties for the passage of its transmission lines has long been found unmeritorious by the Court. In *National Power Corporation v. Manubay Agro-Industrial Development Corporation,* a case involving an easement of a right-of-way over a parcel of land that would be traversed by high-powered transmission lines, just like the situation obtaining in the instant petition, the Court held that the nature and effect of the installation of power lines and the limitations on the use of the land for an indefinite period should be considered, as the owners of the properties would be deprived of the normal use of their properties. For this reason, the property owners are entitled to the payment of just compensation based on the full market value of the affected properties. x x x In its complaint for expropriation, petitioner sought authority to enter and take possession and control over the subject properties, together with the improvements, and to demolish all improvements existing thereon to commence and undertake the construction of its transmission line project. In fact, petitioner had already taken possession of the subject properties and had demolished the plants, trees and crops found in the subject properties as

evidenced by checks payments for the damaged improvements. The overhead transmission lines which traverse respondents' properties could be considered indefinite in nature. Moreover, the high-tension electric current passing through the transmission line would expose respondents' lives and limbs to danger. Thus, the expropriation would in fact not be limited to an easement of right-of-way only.

3. **ID.; CIVIL PROCEDURE; APPEALS; AN ISSUE NOT RAISED IN THE TRIAL COURT CANNOT BE CONSIDERED FOR THE FIRST TIME ON APPEAL. —** Petitioner's allegation that it had conducted relevant studies and initiated safety nets to guarantee that the transmission lines are technically safe and would cause least injury to the affected areas was not raised at all in the RTC as correctly argued by respondents Heirs of Domingo, thus, could no longer be considered on appeal.

4. **ID.; SPECIAL CIVIL ACTIONS; EXPROPRIATION; DETERMINATION OF JUST COMPENSATION IS A JUDICIAL FUNCTION. —** Petitioner's reliance on Section 3-A of R.A. 6395, as amended, is misplaced. While Section 3-A of R.A. 6395 indeed states that only 10% of the market value of the property is due to the owner of the property subject to an easement of right-of-way, said rule is not binding on the Court. It has been reiterated that the determination of "just compensation" in eminent domain cases is a judicial function. Any valuation for just compensation laid down in the statutes may serve only as a guiding principle or one of the factors in determining just compensation, but it may not substitute the court's own judgment as to what amount should be awarded and how to arrive at such amount.

5. **ID.; ID.; ID.; PROPERTY OWNERS ARE ENTITLED TO THE PAYMENT OF LEGAL INTEREST ON THE COMPENSATION FOR THE SUBJECT LANDS FROM THE TIME OF THE TAKING OF THEIR POSSESSION UP TO THE TIME THAT FULL PAYMENT IS MADE. —** Petitioner's claim that it should not be ordered to pay interest to be reckoned from the date of taking until the full payment of the value of the subject properties deserves scant consideration. Section 10, Rule 67 of the Rules of Court provides: SEC. 10. *Rights of plaintiff after judgment and payment*. - Upon payment by the plaintiff to the defendant of the compensation fixed by the judgment, with legal interest

thereon from the taking of the possession of the property, or after tender to him of the amount so fixed and payment of the costs, the plaintiff shall have the right to enter upon the property expropriated and to appropriate it for the public use or purpose defined in the judgment, or to retain it should he have taken immediate possession thereof under the provision of Section 2 hereof. x x x. Clearly, respondents are entitled to the payment of legal interest on the compensation for the subject lands from the time of the taking of their possession up to the time that full payment is made by petitioner. In accordance with jurisprudence, the legal interest allowed in payment of just compensation for lands expropriated for public use is six percent (6%) per annum.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Rodolfo C. Beltran for Sps. Ruperto Libunao and Sonia P. Sanopo.
Katigbak Dimailig & Kahayon for Heirs of Benita Domingo.

D E C I S I O N

PERALTA, *J.*:

Assailed in this petition for review on *certiorari* filed by the petitioner National Power Corporation is the Decision[1] dated April 30, 2004 and the Resolution[2] dated January 3, 2005 of the Court of Appeals (CA) in CA-G.R. CV No. 70582 entitled, "National Power Corporation v. Spouses Ruperto Libunao and Sonia P. Sanopo and Heirs of Benita Domingo."

The antecedents, as summarized by the Regional Trial Court (RTC) and adopted by the CA, are as follows:

This is an action for Eminent Domain filed by the plaintiff National Power Corporation, a government-owned and controlled corporation,

[1] Penned by Associate Justice Vicente S.E. Veloso, with Associate Justices Rodrigo V. Cosico and Amelita G. Tolentino, concurring; *rollo*, pp. 9-22.

[2] *Id.* at 30-31.

created and existing by virtue of Rep. Act No. 6395, as amended, against the defendants spouses Ruperto Libunao and Sonia P. Sanopo, and the defendants heirs of Benita Domingo, namely: spouses Antonio Apacible & Clarita Sioson and spouses Eligio Garcia & Salud Sioson, represented by Clarita S. Apacible.

The plaintiff is seeking to expropriate the following properties:

1. Lot No. 1277-A-3-A covered by Transfer Certificate of Title 52726, under Tax Declaration No. 05203-00456, located at Sumacab Norte, Cabanatuan City, with an area of 1,212 square meters registered in the name of Sonia P. Sanopo, married to Ruperto Libunao, issued by the Register of Deeds of Cabanatuan City;

2. A portion of 4,380 square meters of Lot No. 1236 covered by Transfer Certificate of Title No. 889 issued by the Register of Deeds of Cabanatuan City, with a total area of 113,745 square meters in the name of Heirs of Benita Domingo, namely: Clarita Sioson, married to Antonio Apacible, and Salud Sioson, married to Eligio Garcia, covered by Tax Declaration No. 05201-00207, located at Sumacab Norte, Cabanatuan City;

in order to construct and maintain its Cabanatuan-Talavera 69 KV Transmission Line Project for public purpose, hence, the need to acquire an easement of right- of- way over the affected portions of the above-described parcels of land.

The defendants, through their lawyers filed their answers to the plaintiff's complaint.

Upon motion of the plaintiff, a writ of possession was issued by the court and on January 7 and 8, 1998, the plaintiff was placed in possession of the properties in question.

Upon motion of Atty. Marianito Bote, Reynaldo Joson, Pablo Mamaclay and Clodualdo Adao were allowed to intervene by the Court.

This Court, upon motion of the parties and pursuant to Sec. 5, Rule 67 of the Rules of Court created a Commission or Committee composed of a Chairman and two members. The City Assessor of Cabanatuan, Lorenza Esguerra, was appointed as Chairwoman and the members are Oligario B. Enrile for the defendants and Atty.

Manuel Bugayon and Atty. Henry Alog for the plaintiff. The Chairman and the members took their oaths of office.

A City Appraisal Committee was likewise formed composed of City Assessor Lorenza Esguerra as Chairwoman and City Treasurer Bernardo C. Pineda and City Engineer Mac Arthur S. Yap, all of Cabanatuan City as members.

The aforesaid City Appraisal Committee of Cabanatuan issued Resolution No. 07-[S]-2000 dated March 22, 2000 whereby it resolved that Lot No. 1277-A-3-A with an area of 1,212 square meters registered in the name of defendant Sonia Sanopo, married to Ruperto Libunao has a current and fair market value which may be appraised at ₱2,200 per square meter.

Likewise, said Appraisal Committee issued Resolution No. 08-[S]-2000 dated March 22, 2000 whereby it resolved that a portion of 4,480 square meters of Lot 1236 registered in the name of the Heirs of Benita Domingo has a current and fair market value which may be appraised at ₱1,200 per square meter.

Atty. Henry P. Alog, appointed Commissioner of the National Power Corporation submitted his Commissioner's Report dated June 7, 2000 and made the following recommendations:

1. For plaintiff NPC to pay defendants for those areas affected that is classified and is actually devoted for agricultural purposes, an easement fee equivalent to 10% of the market value of the agricultural lots based on the area covered by the right-of-way clearance;

2. For plaintiff NPC to acquire and pay defendant Libunao the full market value of his property (174.00 sq. m.) that is classified as residential lot.

The plaintiff NPC paid all the defendants and intervenors the damages to improvements existing on their lands such as palay crops, fruit, trees, *etc.*

On August 29, 1997, the City Appraisal Committee of Cabanatuan composed of City Assessor Engr. Norberto P. Cajucom, as Chairman and City Treasurer Bernardo C. Pineda and City Engineer Mac Arthur S. Yapas, members, issued Resolution No. 03-[S]-97 recommending that the current and fair market value of the lots in question be appraised at ₱700.00 per square meter for residential lot and ₱460.00

per square meter for agricultural lot. Hence, the said committee recommended the total amount of ₱122,919.61 as payment for the 1,212.00 square meters of the land owned by the defendant Sonia P. Sanopo, married to Ruperto Libunao and the total amount of ₱204,480.00 as payment for the 4,380 square meters of land owned by the defendants heirs of Benita Domingo.[3]

On January 5, 2001, the RTC, taking into consideration the Commissioners' Reports, issued its Decision,[4] the dispositive portion of which reads:

> WHEREFORE, premises considered, judgment is hereby rendered:
>
> 1. Upholding the right of the plaintiff to expropriate the properties of the defendants which are particularly described below for public use or purpose as stated in the complaint;
>
> 2. Ordering the plaintiff National Power Corporation to pay the defendants spouses Ruperto Libunao and Sonia P. Sanopo the total sum of ₱1,818,000.00 at the rate of ₱1,500.00 per square meter of Lot 1277-A-3-A covered by Transfer Certificate of Title No. T-52726 issued by the Register of Deeds of Cabanatuan City in the name of Sonia P. Sanopo, married to Ruperto Libunao, located at Sumacab Norte, Cabanatuan City with an area of 1,212 square meters covered by Tax Declaration No. 05203-00456;
>
> 3. Ordering the plaintiff to pay the defendants heirs of Benita Domingo the total sum of ₱2,628,000.00 at the rate of ₱600.00 per square meter of a portion of 4,380 square meters of Lot 1236 covered by Transfer Certificate of Title No. T-889 issued by the Register of Deeds of Cabanatuan City in the names of the heirs of Benita Domingo, namely: spouses Antonio Apacible and Clarita Sioson, and Spouses Eligio Garcia and Salud Sioson, located in Sumacab Norte, Cabanatuan City, covered by Tax Declaration No. 05201-00207;
>
> 4. Ordering the plaintiff to pay the said defendants the legal rate of interest of the said amounts of compensation fixed by this Court from the taking of the possession of the

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[3] *Rollo,* pp. 11-13.

[4] Penned by Judge Raymundo Z. Annang; docketed as Civil Case No. 2892 AF, raffled to Branch 86; records, pp. 320-324.

properties in question by the plaintiff on January 7 and 8, 1998, until fully paid;

5. Ordering the plaintiff to pay the costs of this suit;

6. Ordering a certified copy of this judgment or decision to be recorded in the Office of the Register of Deeds of Cabanatuan City upon its finality.

SO ORDERED.[5]

In so ruling, the RTC considered the 3 recommendations/ resolutions of different dates submitted to it by the City Appraisal Committee (CAC) of Cabanatuan City for the purpose of ascertaining the just compensation for the subject properties to wit: Resolution No. 03-S-97 dated August 29, 1997, and Resolution Nos. 07-S-2000 and 08-S-2000 both dated March 22, 2000, and the Report submitted by Commissioner Henry P. Alog for petitioner. It ruled that the amount of just compensation should be based on the value of the property as of the date of its taking or the filing of the complaint, whichever came first; that petitioner's complaint was filed on October 30, 1997 and petitioner's taking of the properties was made on January 7 and 8, 1998, thus, the just compensation for the expropriated property should be reckoned from October 30, 1997.

The RTC did not give its approval to CAC's recommended appraised value of ₱2,200 per sq. meter for respondents Spouses Libunao's property and ₱1,200 per sq. meter for the property of respondents Heirs of Domingo, because the appraisals were determined in 2000 and not on October 30, 1997 when the complaint was filed. The RTC then fixed the value of the properties of respondents Spouses Libunao at ₱1,500 per sq. meter and of respondents Heirs of Domingo at ₱600.00 per sq. meter.

Dissatisfied, petitioner and respondents Heirs of Domingo separately appealed the RTC Decision to the CA.

On April 30, 2004, the CA issued its assailed Decision, the dispositive portion of which reads:

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

WHEREFORE, the appealed Decision dated January 5, 2001 is MODIFIED. The amount of just compensation to be paid to the Sps. Libunao and to the Heirs of Domingo for NPC's taking of their properties with an area of 1,212 square meters and 4,380 square meters described in TCT No. 52776 and T-889, respectively, is hereby fixed at ₱700.00 per square meter for residential land and ₱460.00 per square meter for agricultural land. The costs of suit awarded in favor of the Sps. Libunao and the Heirs of Benita Domingo are deleted.[6]

Anent petitioner's appeal assailing the amounts fixed by the RTC as the fair market value for the subject properties, the CA found that CAC Resolution No. 03-S-97 dated August 29, 1997, recommending the rates of ₱700.00 per sq. meter for residential lot and ₱460.00 per sq. meter for agricultural lot was the most reliable proof of valuation; that, as between the valuation based on the prevailing market value on March 22, 2000, or almost three years after the filing of the complaint, and another based on the appraisal made on August 29, 1997, or two months prior to the filing of the complaint, the latter was considered as the just and equitable basis for compensation being the closest assessment of the market value of the properties to the time the expropriation complaint was filed.

The CA found no reversible error committed by the RTC in ordering the acquisition of the entire 1,212 sq. meters of land owned by respondents Spouses Libunao, since in the document entitled DATA OF LOT EXPROPRIATED, which was attached to Commissioner Alog's Report, it was admitted that the total land area affected was 1,212 sq. meters for respondents Spouses Libunao and 4,380 sq. meters for respondents Heirs of Domingo.

The CA upheld the RTC's award of legal interest on the amount of compensation since a judgment in expropriation proceedings must provide for the payment of legal interest as a matter of law from the time the government took over the land until it paid the owners thereof, thus, the government is liable to pay 6% if no immediate payment was made for the value of the property at the time of actual taking. It found that the amount which petitioner allegedly deposited in a bank merely represented

[6] *Rollo*, pp. 21-22.

the provisional value of the properties sought to be expropriated to enable it to take possession of the land; that the amount withdrawn by the property owners corresponded to the consequential loss or damage to improvements suffered by the owners due to the installation of the transmission lines. The RTC's award of the cost of the suit was deleted since petitioner's charter exempts it from the obligation to pay the costs of the proceedings.

The CA found no merit on the appeal of respondents Heirs of Domingo and ruled that the valuation embodied in Resolution No. 03-S-97 dated August 29, 1997 be also made applicable to them.

Petitioner moved for a partial reconsideration of the Decision, which the CA denied in its Resolution[7] dated January 3, 2005.

Hence, herein petition assigning the following errors committed by the CA:

THE COURT OF APPEALS SERIOUSLY ERRED IN PRONOUNCING THAT THE EXPROPRIATION SHOULD COVER THE ENTIRE AREA OF RESPONDENTS' PROPERTIES, ALTHOUGH ONLY A RIGHT-OF-WAY EASEMENT THEREON WAS ACTUALLY TAKEN AND BEING USED BY PETITIONER.

THE COURT OF APPEALS GRAVELY ERRED IN REQUIRING PETITIONER TO PAY INTERESTS TO BE RECKONED FROM THE DATE OF TAKING UNTIL FULL PAYMENT OF THE WHOLE PROPERTY.[8]

Petitioner contends that it simply needed a mere right-of-way easement on the aerial space above respondents' properties; that the presence of transmission lines over the subject area will not damage, impair or render the entire area thereof inutile for agricultural and residential purposes; that it conducted relevant studies and initiated safety nets to ensure that the transmission lines are technically safe, environmental-friendly and would cause least injury to the affected area compatible with public interest; that, in contrast, respondents did not present any evidence to

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[7] *Supra* note 2.

[8] *Rollo*, pp. 43-44.

the contrary and even the two CAC Resolutions failed to mention any actual damage or impairment that the transmission lines would possibly cause on the subject properties; that it is but proper and legal that petitioner should only be obligated to pay 10% of the market value of the subject properties in accordance with Section 3-A of Republic Act (R.A.) 6395.[9]

Petitioner claims that it had already paid respondents the full assessed value of the properties in the amount of ₱5,196.58 prior to the use of the aerial space above respondents' properties and such amount was already withdrawn by respondents; that the amount of just compensation determined by the RTC and modified by the CA indubitably followed the formula of just compensation equals market value plus consequential loss minus consequential benefit; that consequential loss necessarily included whatever interest may be due to the owner relative to the unpaid balance of just compensation; and, that a separate computation

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[9] SEC. 3-A. In acquiring private property or private property rights through expropriation proceedings where the land or portion thereof will be traversed by the transmission lines, only a right-of-way easement thereon shall be acquired when the principal purpose for which such land is actually devoted will not be impaired, and where the land itself or a portion thereof will be needed for the projects or works, such land or portion thereof as necessary shall be acquired.

In determining the just compensation of the property or property sought to be acquired through expropriation proceedings, the same shall –

(a) With respect to the acquired land or portion thereof, not to exceed the market value declared by the owner or administrator or anyone having legal interest in the property, or such market value as determined by the assessor, whichever is lower.

(b) With respect to the acquired right-of-way easement over the land or portion thereof, not to exceed ten percent (10%) of the market value declared by the owner or administrator or anyone having legal interest in the property, or such market value as determined by the assessor, whichever is lower.

In addition to the just compensation for easement of right-of-way, the owner of the land or owner of the improvement, as the case may be, shall be compensated for the improvements actually damaged by the construction and maintenance of the transmission lines, in an amount not exceeding the market value thereof as declared by the owner or administrator, or anyone having legal interest in the property, or such market value as determined by the assessor whichever is lower; *Provided*, That in cases any buildings, houses, and similar structures are actually affected by the right-of-way for the

for interest in addition to the consequential loss included in the aforesaid formula is grossly unfair and disadvantageous to the government as it will amount to double compensation.

Respondents Spouses Libunao argue that the petition should be denied for having failed to present issues involving questions of law; that the CA correctly ordered the payment of their 1,212 sq. meter land since the construction of the transmission lines impaired the agricultural purpose of their land; that the check dated August 5, 1998 in the amount of ₱387,699.00 issued by petitioner to respondents Spouses Libunao was payment for the damaged improvements in their subject property and not as payment for the assessed value of the property; and that the CA correctly upheld the RTC's order for petitioner to pay legal interest on the amount of compensation.

Respondents Heirs of Domingo claim that the first issue raised in the petition involves a question of fact and, therefore, it is not proper for a petition for review, nonetheless, they argue that there was no reversible error committed by the CA. They contend that in the document entitled DATA OF LOT EXPROPRIATED attached to the Report submitted by Commissioner Alog, it stated in no uncertain terms that the area of respondents Heirs of Domingo's properties affected by the expropriation was 4,380 sq. meter; that petitioner's allegations that it had conducted relevant studies and initiated safety nets to guarantee the safety of the transmission lines were not at all raised in the RTC; and that payment of legal interest on the amount of just compensation is provided under Section 10, Rule 67 of the Rules of Court.

In its Consolidated Reply, petitioner argues that there is no factual issue involved with respect to the correct application and interpretation of Section 3-A of R.A. 6395; that there are

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transmission lines, their transfer, if feasible, shall be effected at the expense of the Corporation: *Provided, further,* That such market value prevailing at the time the Corporation gives notice to the landowner or administrator or anyone having legal interest in the property, to the effect that his land or portion thereof is needed for its projects or works shall be used as basis to determine the just compensation therefor.

instances where factual findings of the appellate court may be reviewed by the Court such as when the CA failed to notice certain relevant facts which if properly considered will justify a different conclusion; that such exception applies in this case since the CA failed to consider that petitioner had conducted studies on the subject properties which result showed that the installation of transmission lines on the aerial space above the subject properties was safe and would not, in any way, affect the beneficial use thereof for agricultural purposes.

The petition lacks merit.

The Court shall first resolve the procedural matter raised by respondents, *i.e.,* whether petitioner should pay just compensation for the entire area of respondents' properties or only an easement fee of 10% of the market value of the properties traversed by the transmission lines is a factual matter which is not proper for a petition for review.

In *National Power Corporation v. Purefoods Corporation,*[10] the Court held:

> There is a question of law when the issue does not call for an examination of the probative value of the evidence presented, the truth or falsehood of facts being admitted and the doubt concerns the correct application of law and jurisprudence on the matter. On the other hand, there is a question of fact when the doubt or controversy arises as to the truth or falsity of the alleged facts. When there is no dispute as to fact, the question of whether or not the conclusion drawn therefrom is correct is a question of law. **The issue raised by petitioner of whether or not only an easement fee of 10% of the market value of the expropriated properties should be paid to the affected owners is a question of law.** This issue does not call for the reevaluation of the probative value of the evidence presented but rather the determination of whether the pertinent laws cited by NAPOCOR in support of its argument are applicable to the instant case.[11]

On the substantive issue, the Court finds no reversible error committed by the CA in affirming the RTC's conclusion that

[10] G.R. No. 160725, September 12, 2008.

[11] Emphasis supplied.

the payment of just compensation should be for the entire area of respondents' subject properties. Petitioner's argument that it should only be required to pay an easement fee of 10% of the market value of the properties since it simply needed a right-of-way easement on the aerial space above respondents' properties for the passage of its transmission lines has long been found unmeritorious by the Court.

In *National Power Corporation v. Manubay Agro-Industrial Development Corporation,*[12] a case involving an easement of a right-of-way over a parcel of land that would be traversed by high-powered transmission lines, just like the situation obtaining in the instant petition, the Court held that the nature and effect of the installation of power lines and the limitations on the use of the land for an indefinite period should be considered, as the owners of the properties would be deprived of the normal use of their properties. For this reason, the property owners are entitled to the payment of just compensation based on the full market value of the affected properties. The Court explained:

> Granting *arguendo* that what petitioner acquired over respondent's property was purely an easement of a right of way, still, we cannot sustain its view that it should pay only an easement fee, and not the full value of the property. The acquisition of such an easement falls within the purview of the power of eminent domain. This conclusion finds support in similar cases in which the Supreme Court sustained the award of just compensation for private property condemned for public use. *Republic v. PLDT* held thus:
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> > x x x. Normally, of course, the power of eminent domain results in the taking or appropriation of title to, and possession of, the expropriated property; but no cogent reason appears why the said power may not be availed of to impose only a burden upon the owner of condemned property, without loss of title and possession. It is unquestionable that real property may, through expropriation, be subjected to an easement of right of way.
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> True, an easement of a right of way transmits no rights except the easement itself, and respondent retains full ownership of the

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[12] G.R. No. 150936, August 18, 2004, 437 SCRA 60.

property. The acquisition of such easement is, nevertheless, not *gratis.* As correctly observed by the CA, considering the nature and the effect of the installation of power lines, the limitations on the use of the land for an indefinite period would deprive respondent of normal use of the property. For this reason, the latter is entitled to payment of a just compensation, which must be neither more nor less than the monetary equivalent of the land.

Just compensation is defined as the full and fair equivalent of the property taken from its owner by the expropriator. The measure is not the taker's gain, but the owner's loss. The word "just" is used to intensify the meaning of the word "compensation" and to convey thereby the idea that the equivalent to be rendered for the property to be taken shall be real, substantial, full and ample.

In eminent domain or expropriation proceedings, the just compensation to which the owner of a condemned property is entitled is generally the market value. Market value is "that sum of money which a person desirous but not compelled to buy, and an owner willing but not compelled to sell, would agree on as a price to be given and received therefor." Such amount is not limited to the assessed value of the property or to the schedule of market values determined by the provincial or city appraisal committee. However, these values may serve as actors to be considered in the judicial valuation of the property.[13]

This ruling has been repeatedly reiterated in subsequent cases[14] and continues to be the controlling doctrine.

In its complaint for expropriation, petitioner sought authority to enter and take possession and control over the subject properties, together with the improvements, and to demolish all improvements existing thereon to commence and undertake the construction of its transmission line project. In fact, petitioner

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[13] *Id.* at 67-68.

[14] See *National Power Corporation v. Santa Loro Vda. de Capin,* G.R. No. 175176, October 17, 2008; *National Power Corporation v. Maria Bagui*, *Vedasto Bagui*, *et al*., G.R. No. 164964, October 17, 2008; *National Power Corporation v. Purefoods Corporation, supra* note 10; *National Power Corporation v. Bongbong,* G.R. No. 164079, April 3, 2007, 520 SCRA 290; *National Power Corporation v. Aguirre-Paderanga*, G.R. No. 155065, July 20, 2005, 464 SCRA 481; *National Power Corporation v. Chiong,* G.R. No. 152436, June 20, 2003, 404 SCRA 427.

had already taken possession of the subject properties and had demolished the plants, trees and crops found in the subject properties as evidenced by checks payments for the damaged improvements. The overhead transmission lines which traverse respondents' properties could be considered indefinite in nature. Moreover, the high-tension electric current passing through the transmission line would expose respondents' lives and limbs to danger. Thus, the expropriation would in fact not be limited to an easement of right-of-way only.[15]

In *National Power Corporation v. Aguirre-Paderanga*,[16] the Court said:

> [I]t cannot be gainsaid that NPC's complaint merely involves a simple case of mere passage of transmission lines over Dilao, *et al.'s* property. Aside from the actual damage done to the property traversed by the transmission lines, the agricultural and economic activity normally undertaken on the entire property is unquestionably restricted and perpetually hampered as the environment is made dangerous to the occupant's life and limb.

Petitioner's allegation that it had conducted relevant studies and initiated safety nets to guarantee that the transmission lines are technically safe and would cause least injury to the affected areas was not raised at all in the RTC as correctly argued by respondents Heirs of Domingo, thus, could no longer be considered on appeal.

Petitioner's reliance on Section 3-A of R.A. 6395, as amended, is misplaced. While Section 3-A of R.A. 6395 indeed states that only 10% of the market value of the property is due to the owner of the property subject to an easement of right-of-way, said rule is not binding on the Court.[17] It has been reiterated that the determination of "just compensation" in eminent domain cases is a judicial function.[18] Any valuation for just compensation

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[15] *National Power Corporation v. Bongbong, supra* note 13.

[16] *Supra* note 13, at 495.

[17] *National Power Corporation v. Purefoods Corporation*, *supra* note 10.

[18] *Id.*, citing *Land Bank of the Philippines v. Celada*, 479 SCRA 495, 505 (2006).

laid down in the statutes may serve only as a guiding principle or one of the factors in determining just compensation, but it may not substitute the court's own judgment as to what amount should be awarded and how to arrive at such amount.[19]

Petitioner's claim that it should not be ordered to pay interest to be reckoned from the date of taking until the full payment of the value of the subject properties deserves scant consideration.

Section 10, Rule 67 of the Rules of Court provides:

> SEC. 10. *Rights of plaintiff after judgment and payment*. - Upon payment by the plaintiff to the defendant of the compensation fixed by the judgment, with legal interest thereon from the taking of the possession of the property, or after tender to him of the amount so fixed and payment of the costs, the plaintiff shall have the right to enter upon the property expropriated and to appropriate it for the public use or purpose defined in the judgment, or to retain it should he have taken immediate possession thereof under the provision of Section 2 hereof. x x x.

Clearly, respondents are entitled to the payment of legal interest on the compensation for the subject lands from the time of the taking of their possession up to the time that full payment is made by petitioner.[20] In accordance with jurisprudence, the legal interest allowed in payment of just compensation for lands expropriated for public use is six percent (6%) per annum.[21]

Finally, the Court finds no merit on petitioner's claim that the amount of ₱5,196.58 which petitioner deposited in a bank to be able to obtain the issuance of the writ of possession was already withdrawn by respondents. A perusal of the records

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[19] *Id.*, citing *Export Processing Zone Authority v. Dulay,* 149 SCRA 305, 312 (1987).

[20] *National Power Corporation v. Court of Appeals*, G.R. No. 106804, August 12, 2004, 436 SCRA 195, 211, citing *National Power Corporation v. Court of Appeals*, 129 SCRA 665, 674 (1984), *Amigable v. Cuenca*, 43 SCRA 360, 364-365 (1972); *National Power Corporation v. Angas*, 208 SCRA 542, 548-549 (1992).

[21] *Id.*

does not show any evidence that respondents had withdrawn such amount. On the contrary, the CA found that the amount withdrawn by respondents corresponds to the consequential loss or damages to improvements suffered by them by reason of petitioner's installation of its transmission lines.[22]

WHEREFORE, the petition is *DENIED.* The Decision dated April 30, 2004 and the Resolution dated January 3, 2005 of the Court of Appeals in CA-G.R. CV No. 70582 are *AFFIRMED.*

SO ORDERED.

Puno, C.J.,[*] *Ynares-Santiago (Chairperson), Chico-Nazario,* and *Velasco, Jr., JJ.,* concur.

THIRD DIVISION

[G.R. No. 169700. July 30, 2009]

APOLONIA BANAYAD FRIANELA, *petitioner, vs.* **SERVILLANO BANAYAD, JR.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JURISDICTION; CONFERRED BY LAW IN FORCE AT THE TIME OF THE INSTITUTION OF THE ACTION AND DETERMINED BY THE ALLEGATIONS OR AVERMENTS IN THE COMPLAINT OR PETITION; CASE AT BAR. — The jurisdiction of the court to hear and decide a case is conferred by the law in force at the time of the institution of the action unless such statute provides for a retroactive application thereof.

[22] Records, p. 20.

[*] Designated as an additional member, in lieu of Associate Justice Antonio Eduardo B. Nachura, per raffle dated September 26, 2007.

Jurisdiction is moreover determined by the allegations or averments in the complaint or petition. In this case, at the time the petition for the allowance of Moises's holographic will was instituted, the then Sections 19 and 33 of *Batas Pambansa* (B.P.) *Blg.* 129 were in force, x x x The applicable law, therefore, confers jurisdiction on the RTC or the MTCs over probate proceedings depending on the gross value of the estate, which value must be alleged in the complaint or petition to be filed.

2. **ID.; ID.; ID.; THE ISSUE OF LACK OF JURISDICTION MAY BE RAISED BY ANY OF THE PARTIES OR MAY BE RECKONED BY THE COURT AT ANY STAGE OF THE PROCEEDINGS, EVEN ON APPEAL, AND IS NOT LOST BY WAIVER OR BY ESTOPPEL. —** Nowhere in the petition is there a statement of the gross value of Moises's estate. Thus, from a reading of the original petition filed, it cannot be determined which court has original and exclusive jurisdiction over the proceedings. The RTC therefore committed gross error when it had perfunctorily assumed jurisdiction despite the fact that the initiatory pleading filed before it did not call for the exercise of its jurisdiction. The RTC should have, at the outset, dismissed the case for lack of jurisdiction. Be it noted that the dismissal on the said ground may be ordered *motu proprio* by the courts. Further, the CA, on appeal, should have dismissed the case on the same ground. Settled is the doctrine that the issue of jurisdiction may be raised by any of the parties or may be reckoned by the court, at any stage of the proceedings, even on appeal, and is not lost by waiver or by estoppel.

3. **ID.; ID.; ID.; ID.; EXCEPTION LAID DOWN IN *TIJAM V. SIBONGHANOY*, WHERE THE ISSUE OF LACK OF JURISDICTION HAS ONLY BEEN RAISED DURING THE EXECUTION STAGE, IS NOT APPLICABLE TO CASE AT BAR; EXPLAINED. —** Despite the pendency of this case for around 18 years, the exception laid down in *Tijam v. Sibonghanoy* and clarified recently in *Figueroa v. People* cannot be applied. First, because, as a general rule, the principle of estoppel by laches cannot lie against the government. No injustice to the parties or to any third person will be wrought by the ruling that the trial court has no jurisdiction over the instituted probate proceedings. Second and most important, because in *Tijam*, the delayed invocation of lack of jurisdiction has been made during the **execution stage** of a final and

executory ruling of a court. In *Figueroa*, the Court has emphasized that estoppel by laches only supervenes in exceptional cases similar to the factual milieu in *Tijam*. [I]n *Tijam*, the issue of lack of jurisdiction has only been raised during the execution stage, specifically when the matter of the trial court's denial of the surety's motion to quash the writ of execution has been brought to the appellate court for review. Here, the trial court's assumption of unauthorized jurisdiction over the probate proceedings has been discovered by the Court during the appeal stage of the main case, not during the execution stage of a final and executory decision. Thus, the exceptional rule laid down in *Tijam* cannot apply.

APPEARANCES OF COUNSEL

Law Firm of Fernandez Villareal-Fernandez Hernandez & Associates for petitioner.
Horacio R. Makalintal, Jr. and *Jose P. Villamor, Jr.* for respondent.

D E C I S I O N

NACHURA, *J*.:

Before the court is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the June 17, 2005 Decision[1] of the Court of Appeals (CA) in CA-G.R. CV No. 53929, and the August 17, 2005 Resolution[2] denying the motion for partial reconsideration thereof.

Narrated in brief are the antecedent facts and proceedings, to wit:

Following the death of her uncle, the testator Moises F. Banayad, petitioner, who was named as devisee in the will, filed before the Regional Trial Court (RTC) of Pasay City, on

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[1] Penned by Associate Justice Arturo D. Brion (now, of this Court), with Associate Justices Eugenio S. Labitoria and Eliezer R. De Los Santos concurring; CA *rollo*, pp. 145-166.

[2] *Id.* at 191-195.

June 3, 1991, Sp. Proc. No. 3664-P[3] for the allowance of the November 18, 1985 holographic will of the decedent. Petitioner alleged that Moises died without issue and left to her the following properties, namely: (1) a parcel of land situated in Pasay City and described in Transfer Certificate of Title No. 9741; (2) images of *Oracion del Huerto* and *Pieta* including the crown; and (3) all personal belongings.[4]

Respondent, a cousin of the petitioner, filed his opposition and counter-petitioned for the allowance of two other holographic wills of the decedent, one dated September 27, 1989 and another dated September 28, 1989.[5]

After trial on the merits, the RTC, on September 29, 1995, rendered its Decision[6] declaring the September 27, 1989 holographic will as having revoked the November 18, 1985 will, allowing the former, and appointing respondent as administrator of Moises's estate.[7]

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[3] Records, p. 9.

[4] *Id.* at 9-10.

[5] *Id.* at 15-17.

[6] *Id.* at 263-267.

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

WHEREFORE, finding the holographic will of Moises F. Banayad executed on September 27, 1989 to be duly executed, that the testator at the time of the execution thereof was of sound and disposing mind, not acting under duress, menace or undue influence or fraud and that said will revoked the previous holographic will dated November 18, 1985, the aforesaid holographic will is hereby allowed.

Accordingly, let a certificate of allowance be issued and attached to the will dated September 27, 1989, the same to be filed and recorded by the Clerk of Court. Let letters testamentary with a copy of the will annexed thereto issue to Fr. Lino F. Banayad, to the children of Servillano F. Banayad, namely, Lucia B. Ongpauco and Servillano Banayad, Jr. and the children of Bonifacio F. Banayad, namely, Socorro B. Adame, Herman B. Banayad, Aurora B. Offalas (sic), Apolonia B. Frianela (sic), Reynaldo A. Banayad, Bonifacio A. Banayad, Jr., Emerenciana A. Banayad, Ma. Elena B. Amante and Zenaida B. Parcero.

The oppositor counter-petitioner Servillano Banayad, Jr. is hereby appointed Administrator with the will annexed of Moises F. Banayad (sic); and that Letters of Administration with will annexed shall issue to said person upon

On appeal, the CA, in the assailed June 17, 2005 Decision,[8] modified the decision of the trial court and ruled that the September 27, 1989 holographic will had only revoked the November 18, 1985 will insofar as the testamentary disposition of Moises's real property was concerned.[9]

With the denial of her motion for reconsideration in the further assailed August 17, 2005 Resolution,[10] petitioner elevated the case before us via the instant petition.[11]

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taking the oath as required by law and for him to file a bond in the sum of TWENTY THOUSAND (₱20,000.00) PESOS thru a reputable surety company.

The Administrator herein appointed is hereby required to deliver to this Court the original of the said holographic will within fifteen (15) days from notice hereof.

Let copies hereof be furnished the heirs and the Bureau of Internal Revenue.

SO ORDERED. (*Id.* at 266-267.)

[8] *Supra* note 1.

[9] The dispositive portion of the appellate court's decision reads:

WHEREFORE, premises considered, we hereby partially GRANT the appeal and accordingly MODIFY the appealed Decision. We RULE that the September 27, 1989 (sic) only revoked the November 18, 1985 will insofar as the testamentary disposition of Moises' real property is concerned. The wills dated November 18, 1985 and September 27, 1989 are hereby ALLOWED, consistent with the modification discussed above. The lower court's other rulings are AFFIRMED.

SO ORDERED. (CA *rollo*, p. 165.)

[10] *Supra* note 2.

[11] In her memorandum, petitioner raised the following issues for the Court's resolution:

I.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED WHEN IT DISREGARDED THE PROVISIONS OF ARTICLE 783 OF THE NEW CIVIL CODE AND FOUND THE WILL OF SEPTEMBER 27, 1989 VALID.

II.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ACTED CORRECTLY WHEN IT FAILED TO CONSIDER ARTICLE 799 OF THE NEW CIVIL CODE AND FOUND THE SEPTEMBER 27, 1989 WILL VALID DESPITE THE INCAPACITY OF MOISES BANAYAD TO EXECUTE THE SAME.

The Court notes that the trial court focused all of its attention on the merits of the case without first determining whether it could have validly exercised jurisdiction to hear and decide Sp. Proc. No. 3664-P. On appeal, the appellate court also overlooked the issue on the jurisdictional competence of the trial court over the said case. This Court, after a meticulous review of the records, finds that the RTC of Pasay City had no jurisdiction over the subject matter in Sp. Proc. No. 3664-P.

The jurisdiction of the court to hear and decide a case is conferred by the law in force at the time of the institution of the action unless such statute provides for a retroactive application thereof.[12] Jurisdiction is moreover determined by the allegations or averments in the complaint or petition.[13]

III.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ACTED WITH PROPRIETY IN FINDING THE WILL OF SEPTEMBER 27, 1989 VALID NOTWITHSTANDING ITS NON-COMPLIANCE WITH THE PROVISIONS OF ARTICLES 804, 814 AND 812 OF THE NEW CIVIL CODE.

IV.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS MISAPPLIED ARTICLE 831 OF THE NEW CIVIL CODE WHEN IT DECLARED THAT THE SEPTEMBER 27, 1989 WILL REVOKED THE WILL DATED NOVEMBER 18, 1985 INSOFAR AS THE TESTAMENTARY DISPOSITION OF MOISES BANAYAD'S REAL PROPERTY IS CONCERNED.

V.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED WHEN IT FAILED TO APPLY ARTICLE 839(4) TO THE CASE AT BAR NOTWITHSTANDING THE FACT THAT THE WILL DATED SEPTEMBER 27, 1989 WAS PROCURED WITH UNDUE AND IMPROPER PRESSURE AND INFLUENCE.

VI.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN AFFIRMING THE APPOINTMENT OF RESPONDENT SERVILLANO BANAYAD JR. AS ADMINISTRATOR OF MOISES BANAYAD'S ESTATE. (*Rollo*, pp. 160-161.)

[12] *Alarilla v. Sandiganbayan*, G.R. No. 136806, August 22, 2000, 393 Phil. 143, 155; *Escobal v. Justice Garchitorena*, G.R. No. 124644, February 5, 2004, 466 Phil. 625, 635.

[13] *Villacastin v. Pelaez*, G.R. No. 170478, May 22, 2008, 554 SCRA 189, 194.

In this case, at the time the petition for the allowance of Moises's holographic will was instituted, the then Sections 19 and 33[14] of *Batas Pambansa* (B.P.) *Blg.* 129[15] were in force, thus—

SECTION 19. Jurisdiction in civil cases. — Regional Trial Courts shall exercise exclusive original jurisdiction:

x x x x x x x x x

(4) In all matters of probate, both testate and intestate, where the gross value of the estate exceeds twenty thousand pesos (₱20,000.00);

x x x x x x x x x

SECTION 33. Jurisdiction of Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts in civil cases. — Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts shall exercise:

(1) Exclusive original jurisdiction over civil actions and probate proceedings, testate and intestate, including the grant of provisional remedies in proper cases, where the demand does not exceed twenty thousand pesos exclusive of interest and costs but inclusive of damages of whatever kind, the amount of which must be specifically alleged: Provided, That where there are several claims or causes of action between the same or different parties, embodied in the same complaint, the amount of the demand shall be the totality of the claims in all the causes of action irrespective of whether the causes of action arose out of the same or different transactions; and

x x x x x x x x x

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[14] These provisions were amended by Republic Act No. 7691 entitled "An Act Expanding the Jurisdiction of the Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts, Amending for the Purpose Batas Pambansa Blg. 129, Otherwise Known as the 'Judiciary Reorganization Act of 1980'," approved on March 25, 1994, and took effect on April 15, 1994, fifteen days after publication in the Malaya and in the Times Journal on March 30, 1994, pursuant to Section 8 thereof. In the amendatory law, the jurisdictional amounts were increased.

[15] Entitled "The Judiciary Reorganization Act of 1980," approved on August 14, 1981.

The applicable law, therefore, confers jurisdiction on the RTC or the MTCs over probate proceedings depending on the gross value of the estate,[16] which value must be alleged in the complaint or petition to be filed. Significantly, in this case, the original petition docketed before the trial court contains only the following averments:

x x x x x x x x x

1. That Petitioner is of legal age, married, Filipino and residing at 2237 P. Burgos St., Pasay City who is named devisee in the Last Will and Testament of MOISES BANAYAD, deceased who died in Pasay City General Hospital on March 27, 1991 xerox copy of his death certificate is herewith attached as Annex "A" to form integral part hereof;

2. That the said Last Will and Testament is herewith (sic) attached as Annex "B" and made an integral part of this Petition, the original thereof will be presented to this Honorable Court at the time of probate;

3. That the decedent is an inhabitant of the Philippines and residing at 2237 P. Burgos St., Pasay City at the time of his death;

4. That the properties left by the decedent consist of real and personal properties particularly described herein below, which decedent all bequeathed to petitioner;

A. A parcel of land described under TCT No. 9741 xerox copy of which is herewith (sic) attached as Annex "C".

B. Imahen ng Oracion del Huerto at Pieta, kasama and (sic) korona.

C. All personal belongings.

5. That the testator at the time of the execution of the said Will was of sound and disposing mind.

WHEREFORE, it is most respectfully prayed of the Honorable Court that:

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[16] *Lim v. Court of Appeals*, G.R. No. 124715, January 24, 2000, 380 Phil. 61, 70-71; see *Maloles II v. Phillips*, G.R. No. 129505, January 31, 2000, 324 SCRA 172; *RCBC v. Hon. Isnani, etc., et al.*, G.R. No. 117383, March 6, 1995, 312 Phil. 194.

a. Upon proper notice and hearing, the above mentioned Will be admitted to probate;

b. That letters testamentary or administration be issued to herein petitioner without bond;

Petitioner prays for such other reliefs just and equitable in (sic) the premises.

x x x x x x x x x[17]

Nowhere in the petition is there a statement of the gross value of Moises's estate. Thus, from a reading of the original petition filed, it cannot be determined which court has original and exclusive jurisdiction over the proceedings.[18] The RTC therefore committed gross error when it had perfunctorily assumed jurisdiction despite the fact that the initiatory pleading filed before it did not call for the exercise of its jurisdiction. The RTC should have, at the outset, dismissed the case for lack of jurisdiction. Be it noted that the dismissal on the said ground may be ordered *motu proprio* by the courts.[19] Further, the CA, on appeal, should have dismissed the case on the same ground. Settled is the doctrine that the issue of jurisdiction may be raised by any of the parties or may be reckoned by the court, at any stage of the proceedings, even on appeal, and is not lost by waiver or by estoppel.[20]

Despite the pendency of this case for around 18 years, the exception laid down in *Tijam v. Sibonghanoy*[21] and clarified recently in *Figueroa v. People*[22] cannot be applied. First, because, as a general rule, the principle of estoppel by laches cannot lie

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[17] Records, pp. 9-10.

[18] See *Hilario v. Salvador*, G.R. No. 160384, April 29, 2005, 457 SCRA 815, 826.

[19] *Rosa J. Sales, Earl Ryan Cheng and Emil Ralph Cheng v. William Barro*, G.R. No. 171678, December 10, 2008.

[20] *Figueroa v. People*, G.R. No. 147406, July 14, 2008, 558 SCRA 63, 81.

[21] No. L-21450, April 15, 1968, 131 Phil. 556.

[22] *Supra* note 20; see *Vargas v. Caminas*, G.R. No. 137869, June 12, 2008, 554 SCRA 305.

against the government.[23] No injustice to the parties or to any third person will be wrought by the ruling that the trial court has no jurisdiction over the instituted probate proceedings.

Second and most important, because in *Tijam*, the delayed invocation of lack of jurisdiction has been made during the **execution stage** of a final and executory ruling of a court. In *Figueroa*, the Court has emphasized that estoppel by laches only supervenes in exceptional cases similar to the factual milieu in *Tijam*. It is well to note the following factual setting of *Tijam*:

> On July 19, 1948 — barely one month after the effectivity of Republic Act No. 296 known as the Judiciary Act of 1948 — the spouses Serafin Tijam and Felicitas Tagalog commenced Civil Case No. R-660 in the Court of First Instance of Cebu against the spouses Magdaleno Sibonghanoy and Lucia Baguio to recover from them the sum of ₱1,908.00, with legal interest thereon from the date of the filing of the complaint until the whole obligation is paid, plus costs. As prayed for in the complaint, a writ of attachment was issued by the court against defendants' properties, but the same was soon dissolved upon the filing of a counter-bond by defendants and the Manila Surety and Fidelity Co., Inc. hereinafter referred to as the Surety, on the 31st of the same month.
>
> After being duly served with summons the defendants filed their answer in which, after making some admissions and denials of the material averments of the complaint, they interposed a counterclaim. This counterclaim was answered by the plaintiffs.
>
> After trial upon the issues thus joined, the Court rendered judgment in favor of the plaintiffs and, after the same had become final and executory, upon motion of the latter, the Court issued a writ of execution against the defendants. The writ having been returned unsatisfied, the plaintiffs moved for the issuance of a writ of execution against the Surety's bond (Rec. on Appeal pp. 46-49), against which the Surety filed a written opposition (*Id*. pp. 49) upon two grounds, namely, (1) Failure to prosecute and (2) Absence of a demand upon the Surety for the payment of the amount due under the judgment. Upon these grounds the Surety prayed the Court not only to deny

[23] See however *Estate of the Late Jesus S. Yujuico v. Republic*, G.R. No. 168661, October 26, 2007, 537 SCRA 513, 530, in which the Court applied the equitable principle of estoppel by laches against the government to avoid an injustice to innocent purchasers for value of a land.

the motion for execution against its counter-bond but also the following *affirmative relief*: "to relieve the herein bonding company of its liability, if any, under the bond in question" (*Id.* p. 54) The Court denied this motion on the ground solely that no previous demand had been made on the Surety for the satisfaction of the judgment. Thereafter the necessary demand was made, and upon failure of the Surety to satisfy the judgment, the plaintiffs filed a second motion for execution against the counter-bond. On the date set for the hearing thereon, the Court, upon motion of the Surety's counsel, granted the latter a period of five days within which to answer the motion. Upon its failure to file such answer, the Court granted the motion for execution and the corresponding writ was issued.

Subsequently, the Surety moved to quash the writ on the ground that the same was issued without the required summary hearing provided for in Section 17 of Rule 59 of the Rules of Court. As the Court denied the motion, the Surety appealed to the Court of Appeals from such order of denial and from the one denying its motion for reconsideration (*Id*. p. 97). Its record on appeal was then printed as required by the Rules, and in due time it filed its brief raising therein no other question but the ones covered by the following assignment of errors:

> "I. That the Honorable Court *a quo* erred in issuing its order dated November 2, 1957, by holding the incident as submitted for resolution, without a summary hearing and compliance with the other mandatory requirements provided for in Section 17, Rule 59 of the Rules of Court.
>
> "II. That the Honorable Court *a quo* erred in ordering the issuance of execution against the herein bonding company-appellant.
>
> "III. That the Honorable Court *a quo* erred in denying the motion to quash the writ of execution filed by the herein bonding company- appellant as well as its subsequent motion for reconsideration, and/or in not quashing or setting aside the writ of execution."

Not one of the assignment of errors — it is obvious raises the question of lack of jurisdiction, neither directly nor indirectly. Although the appellees failed to file their brief, the Court of Appeals, on December 11, 1962, decided the case affirming the orders appealed from.

On January 8, 1963 — five days after the Surety received notice of the decision, it filed a motion asking for extension of time within which to file a motion for reconsideration. The Court of Appeals granted the motion in its resolution of January 10 of the same year. Two days later the Surety filed a pleading entitled MOTION TO DISMISS, alleging substantially that appellees' action was filed in the Court of First Instance of Cebu on July 19, 1948 for the recovery of the sum of ₱1,908.00 only; that a month before that date Republic Act No. 296, otherwise known as the Judiciary Act of 1948, had already become effective, Section 88 of which placed within the original exclusive jurisdiction of inferior courts all civil actions where the value of the subject-matter or the amount of the demand does not exceed ₱2,000.00, exclusive of interest and costs; that the Court of First Instance therefore had no jurisdiction to try and decide the case. Upon these premises the Surety's motion prayed the Court of Appeals to set aside its decision and to dismiss the case. By resolution of January 16, 1963 the Court of Appeals required the appellees to answer the motion to dismiss, but they failed to do so. Whereupon, on May 20 of the same year, the Court resolved to set aside its decision and to certify the case to Us.

x x x x x x x x x[24]

Clearly, then, in *Tijam*, the issue of lack of jurisdiction has only been raised during the execution stage, specifically when the matter of the trial court's denial of the surety's motion to quash the writ of execution has been brought to the appellate court for review. Here, the trial court's assumption of unauthorized jurisdiction over the probate proceedings has been discovered by the Court during the appeal stage of the main case, not during the execution stage of a final and executory decision. Thus, the exceptional rule laid down in *Tijam* cannot apply.

Since the RTC has no jurisdiction over the action, all the proceedings therein, including the decision rendered, are null and void.[25] With the above disquisition, the Court finds it unnecessary to discuss and resolve the other issues raised in the petition.

[24] *Tijam v. Sibonghanoy*, *supra* note 21, at 558-561.

[25] *Hilario v. Salvador*, *supra* note 18, at 829. See *Ancheta v Guersey-Dalaygon*, G.R. No. 139868, June 8, 2006, 490 SCRA 140, 148; *Vda. de Kilayko v. Tengco*, G.R. No. 45425, March 27, 1992, 207 SCRA 600, 612,

IN THE LIGHT OF THE FOREGOING, Sp. Proc. No. 3664-P before the Regional Trial Court of Pasay City is *DISMISSED* for lack of jurisdiction.

SO ORDERED.

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

THIRD DIVISION

[G.R. Nos. 173654-765. July 30, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **TERESITA PUIG and ROMEO PORRAS,** *accused-appellants.*

SYLLABUS

REMEDIAL LAW; CRIMINAL PROCEDURE; ARREST; RECALL OF WARRANT OF ARREST, PROPER IN CASE AT BAR; EXPLAINED. — In a Decision dated 28 August 2008, the Court granted the petition for review on *certiorari* filed in this case. The dispositive portion of the Decision reads: WHEREFORE, premises considered, the Petition for Review on *Certiorari* is hereby GRANTED. The Orders dated 30 January 2006 and 9 June 2006 of the RTC dismissing Criminal Cases No. 05-3054 to 05-3165 are REVERSED and SET ASIDE. Let the corresponding Warrants of Arrest issue against herein respondents TERESITA PUIG and ROMEO PORRAS. The RTC Judge of Branch 68, in Dumangas, Iloilo, is directed to proceed with the trial of Criminal Cases No. 05-3054 to 05-3165, inclusive, with reasonable dispatch. No pronouncement as to costs. However, on 2 September 2008,

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in which the Court declared that a final decree of distribution of the estate may even be set aside on the ground of lack of jurisdiction.

the Supreme Court *En Banc*, instead of ordering the arrest of respondents Teresita Puig and Romeo Porras for purposes of proceeding with the trial of Criminal Cases No. 05-3054 to 05-3165, issued a Warrant of Arrest addressed to the Director of the National Bureau of Investigation (NBI) and the Chief of the Philippine National Police (PNP), commanding them to effectuate the immediate *arrest* of herein respondent Teresita Puig only and *commit* her to the Correctional Institution for Women in Mandaluyong City. In light of the 28 August 2008 Decision of this Court and considering that trial on the merits has yet to proceed, the Warrant of Arrest ordering the *arrest* and *commitment* of respondent Teresita Puig to the Correctional Institution is hereby *recalled*.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Law Firm of Laurion Delos Reyes & Partners and *Jose Gelacio Lira* and *Rogelio P. Licos* for respondents.

R E S O L U T I O N

CHICO-NAZARIO, *J.*:

In a Decision dated 28 August 2008, the Court granted the petition for review on *certiorari* filed in this case. The dispositive portion of the Decision reads:

WHEREFORE, premises considered, the Petition for Review on *Certiorari* is hereby GRANTED. The Orders dated 30 January 2006 and 9 June 2006 of the RTC dismissing Criminal Cases No. 05-3054 to 05-3165 are REVERSED and SET ASIDE. Let the corresponding Warrants of Arrest issue against herein respondents TERESITA PUIG and ROMEO PORRAS. The RTC Judge of Branch 68, in Dumangas, Iloilo, is directed to proceed with the trial of Criminal Cases No. 05-3054 to 05-3165, inclusive, with reasonable dispatch. No pronouncement as to costs.[1]

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[1] *Rollo,* p. 186.

However, on 2 September 2008, the Supreme Court *En Banc*, instead of ordering the arrest of respondents Teresita Puig and Romeo Porras for purposes of proceeding with the trial of Criminal Cases No. 05-3054 to 05-3165, issued a Warrant of Arrest addressed to the Director of the National Bureau of Investigation (NBI) and the Chief of the Philippine National Police (PNP), commanding them to effectuate the immediate *arrest* of herein respondent Teresita Puig only and *commit* her to the Correctional Institution for Women in Mandaluyong City.

In light of the 28 August 2008 Decision of this Court and considering that trial on the merits has yet to proceed, the Warrant of Arrest ordering the *arrest* and *commitment* of respondent Teresita Puig to the Correctional Institution is hereby *recalled*.

ACCORDINGLY, a new *WARRANT of ARREST* is hereby entered commanding the Director of the NBI and the PNP Chief to immediately *ARREST*, for the purpose of further proceedings (trial on the merits) in Criminal Cases No. 05-3054 to No. 05-3165, both respondents TERESITA PUIG and ROMEO PORRAS whose known address is Poblacion, Pototan, Iloilo, or anywhere in the Republic of the Philippines. *FURTHER,* the said officials are both *DIRECTED* to *SUBMIT* a report within ten (10) days from compliance herewith.

SO ORDERED.

Ynares-Santiago (Chairperson), Velasco, Jr., Leonardo-de Castro,[*] and *Peralta, JJ.,* concur.

[*] Associate Justice Teresita Leonardo–de Castro was designated as special member per raffle dated 16 June 2008 *vice* Associate Justice Antonio Eduardo B. Nachura, who was the solicitor general handling this case.

SPECIAL THIRD DIVISION

[G.R. No. 174154. July 30, 2009]

JESUS CUENCO, *petitioner, vs.* **TALISAY TOURIST SPORTS COMPLEX, INCORPORATED and MATIAS B. AZNAR III,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; AS A RULE, THE SUPREME COURT IS NOT A TRIER OF FACTS; EXCEPTION. —** As a rule, the Supreme Court is not a trier of facts. In a petition for review on *certiorari*, it is discretionary upon the Court whether it will look into the factual determinations of the lower courts. However, due to the conflicting findings of the RTC and the CA, the Court took exception and reviewed the records of the case to arrive at a judicious resolution of the controversy, *i.e.*, whether petitioner is entitled to the return of the amount of the deposit.

2. **ID.; ID.; ID.; ISSUES OR GROUNDS NOT RAISED DURING THE TRIAL CANNOT BE RAISED FOR THE FIRST TIME ON APPEAL AND MORE ESPECIALLY ON MOTION FOR RECONSIDERATION; CASE AT BAR. —** Borne out by the records of the case is the testimony of Ateniso Coronado that petitioner continued to hold cockfights for two months beyond the expiration of the lease contract. Such declaration was neither questioned nor denied by petitioner during the trial of the case in the RTC and on appeal before the CA. Neither was it contested by petitioner in his Memorandum filed with this Court. x x x Well-settled is the rule that issues or grounds not raised below cannot be resolved on review by the Supreme Court, for to allow the parties to raise new issues is antithetical to the sporting idea of fair play, justice and due process. Issues not raised during the trial cannot be raised for the first time on appeal and more especially on motion for reconsideration. Litigation must end at some point; once the case is finally adjudged, the parties must learn to accept victory or defeat.

APPEARANCES OF COUNSEL

Federico C. Cabilao, Jr. for petitioner.
Godwin Denzil B. Manginsay and *Ethel D. Soria* for respondents.

R E S O L U T I O N

NACHURA, *J.*:

For resolution are the Partial Motion for Reconsideration[1] filed by petitioner and the Motion for Reconsideration[2] filed by respondents of the Decision[3] of the Court dated October 17, 2008.

The factual background of the case is as follows:

Petitioner leased from respondents the Talisay Tourist Sports Complex for the operation of a cockpit. The lease was for a period of two (2) years, but was subsequently renewed for a period of four (4) years. Compliant with the lease contract, petitioner gave respondents a deposit equivalent to six (6) months' rental, amounting to Five Hundred Thousand Pesos (₱500,000.00), to answer for whatever damages may be caused to the premises during the period of the lease.

Upon expiration of the lease contract on May 8, 1998, a public bidding was conducted. The contract was awarded to a new lessee. Thus, petitioner demanded the return of the amount deposited. However, petitioner's four (4) demand letters remained unheeded. Thus, petitioner filed a complaint for sum of money, damages and attorney's fees before the Regional Trial Court (RTC) of Cebu City.

The trial court ruled in favor of petitioner and directed the respondents to return the full amount of the deposit plus interest

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[1] *Rollo*, pp. 339-342.

[2] *Id.* at 344-353.

[3] *Id.* at 320-338.

of three percent (3%) per month from August 18, 1998 until full payment thereof. On appeal, the Court of Appeals (CA) reversed the decision of the trial court. Hence, petitioner filed a petition for review on *certiorari*[4] before this Court.

On October 17, 2008, the Court rendered a Decision,[5] the dispositive portion of which reads:

> WHEREFORE, the petition is **PARTLY GRANTED**. The Decision of the Court of Appeals is hereby **REVERSED AND SET ASIDE**. The Decision of the RTC in Civil Case No. CEB-22847 is hereby **REINSTATED** with the following modifications:
>
> (1) Talisay Tourist Sports Complex, Inc. is solely liable to return the amount of the deposit after deducting the amount of the two-months arrears in rentals; and
>
> (2) The rate of legal interest to be paid is SIX PERCENT (6%) on the amount due computed from October 21, 1998, and TWELVE PERCENT (12%) interest, thereon upon finality of this decision until full payment thereof.
>
> SO ORDERED.[6]

Unsatisfied, both parties moved for reconsideration. Petitioner moves for partial reconsideration as he denies that he overstayed for two months in the leased premises. On the other hand, respondents aver that the expenses they incurred for the repair of the cockpit amounting to Twenty-four Thousand Nine Hundred Pesos (₱24,900.00) should be deducted from the amount of deposit that will be returned to petitioner. They also pray that the Court reconsider its decision and issue a new one affirming the decision of the Court of Appeals.

The motions for reconsideration filed by the contending parties are substantially factual and must be denied for lack of merit.

As a rule, the Supreme Court is not a trier of facts. In a petition for review on *certiorari*, it is discretionary upon the

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[4] RULES OF COURT, Rule 45.

[5] *Supra* note 3.

[6] *Id*. at 337.

Court whether it will look into the factual determinations of the lower courts. However, due to the conflicting findings of the RTC and the CA, the Court took exception and reviewed the records of the case to arrive at a judicious resolution of the controversy, *i.e.*, whether petitioner is entitled to the return of the amount of the deposit.

Borne out by the records of the case is the testimony of Ateniso Coronado that petitioner continued to hold cockfights for two months beyond the expiration of the lease contract. Such declaration was neither questioned nor denied by petitioner during the trial of the case in the RTC and on appeal before the CA. Neither was it contested by petitioner in his Memorandum[7] filed with this Court. Binding is the finding of the CA on the matter, *viz.*:

> Witness Ateniso Coronado whose credibility has not been impeached, and whose testimony has neither been overthrown by contradictory evidence, gave the most telltale factual account. There is no gainsaying that the contract of lease between herein parties for the occupation and use of the complex expired on May 8, 1998, but appellee [petitioner] did not refute the pronouncement of witness that he (appellee) [petitioner] continued to hold cockfights during the months of June and July despite knowledge that his lease would no longer be renewed as evidenced by the very first letter he sent to appellants [respondents] dated June 8, 1998, and *albeit* the non-objection of appellants [respondents] on his extended stay. The assessment of rentals from appellee [petitoner] for two (2) extended months therefore came as a necessary consequence pursuant to Articles 1670 and 1687 of the Civil Code of the Philippines in relation to the contract of lease. The rental for the last month immediately preceding the expiration of the contract is pegged at ₱97,916.67, hence the two month extension requires a rent in the amount of ₱195,833.34.[8]

Well-settled is the rule that issues or grounds not raised below cannot be resolved on review by the Supreme Court, for to allow the parties to raise new issues is antithetical to the sporting

[7] *Id.* at 281-310.

[8] *Id.* at 39.

idea of fair play, justice and due process.[9] Issues not raised during the trial cannot be raised for the first time on appeal and more especially on motion for reconsideration. Litigation must end at some point; once the case is finally adjudged, the parties must learn to accept victory or defeat.

Furthermore, on June 27, 2007, the Court required the parties to submit their memoranda, and were apprised that no new issues may be raised; and the issues raised in the pleadings not included in the memoranda shall be deemed waived or abandoned, per Supreme Court Administrative Matter No. 99-2-04-SC.

As to the amount of repairs that respondents want to be credited in their favor, the RTC ruled, as affirmed by the CA, that the new lessee underwrote the repairs and not the respondents.[10] Thus, there is no basis for respondents' claim for reimbursement.

WHEREFORE, the Partial Motion for Reconsideration of Petitioner dated November 26, 2008 and the Motion for Reconsideration of Respondents dated November 25, 2008 of the Decision of the Court dated October 17, 2008 are hereby *DENIED.*

SO ORDERED.

Ynares-Santiago (Chairperson), Carpio,[*] *Chico-Nazario,* and *Bersamin,*[**] *JJ.,* concur.

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[9] *General Credit Corporation v. Alsons Development and Investment Corporation,* G.R. No. 154975, January 29, 2007, 513 SCRA 225, 226; *Baluyut v. Poblete*, G.R. No. 144435, February 6, 2007, 514 SCRA 370; *Pascual v. People*, G.R. No. 160540, March 22, 2007, 518 SCRA 730, 731; *People v. Casela*, G.R. No. 173243, March 23, 2007, 519 SCRA 30; *People v. Nabong,* G.R. No. 172324, April 23, 2007, 520 SCRA 437, 439; *Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue,* G.R. No. 168498, April 24, 2007, 522 SCRA 144; *Ong Lim Sing, Jr. v. FEB Leasing and Finance Corporation,* G.R. No. 168115, June 8, 2007, 524 SCRA 333; *Fuentes v. Caguimbal,* G.R. No. 150305, November 22, 2007, 538 SCRA 12.

[10] *Rollo,* p. 90.

[*] Additional member vice Justice Adolfo S. Azcuna (retired) per raffle dated April 27, 2009.

[**] Additional member vice Justice Alicia Austria-Martinez (retired) per raffle dated May 27, 2009.

SECOND DIVISION

[G.R. No. 174364. July 30, 2009]

NORTHWEST AIRLINES, *petitioner, vs.* **DELFIN S. CATAPANG,** *respondent.*

SYLLABUS

1. **CIVIL LAW; DAMAGES; AWARD OF MORAL AND EXEMPLARY DAMAGES, PROPER IN CASE AT BAR; EXPLAINED. —** Petitioner's breach in this case was aggravated by the undenied treatment received by respondent when he tried to rebook his ticket. Instead of civilly informing respondent that his ticket could not be rebooked, petitioner's agent in New York exhibited rudeness in the presence of respondent's brother-in-law and other customers, insulting respondent by telling him that he could not understand English. Passengers have the right to be treated by a carrier's employees with kindness, respect, courtesy and due consideration. They are entitled to be protected against personal misconduct, injurious language, indignities and abuses from such employees. So it is that any discourteous conduct on the part of these employees toward a passenger gives the latter an action for damages against the carrier. The award of moral and exemplary damages to respondent is thus justified.

2. **ID.; ID.; INCLUSION OF FILING FEES AS PART OF THE ACTUAL DAMAGES IS SUPERFLUOUS, IF NOT ERRONEOUS, THE SAME BEING CHARGEABLE TO THE COST OF SUIT. —** The inclusion of filing fees as part of the **actual damages** is superfluous, if not erroneous, the same being chargeable to the **"cost of suit"** awarded by the trial court and affirmed by the appellate court. Sections 8 and 10, Rule 142 of the Rules of Court enlighten: SEC. 8. *Costs, how taxed*. — In inferior courts, the costs shall be taxed by the justice of the peace or municipal judge and included in the judgment. In superior courts, costs shall be taxed by the clerk of the corresponding court on five days' written notice given

by the prevailing party to the adverse party. With this notice shall be served a statement of the items of costs claimed by the prevailing party, verified by his oath or that of his attorney. Objections to the taxation shall be made in writing, specifying the items objected to. Either party may appeal to the court from the clerk's taxation. The costs shall be inserted in the judgment if taxed before its entry, and payment thereof shall be enforced by execution. x x x SEC. 10. *Costs in Courts of First Instance.* — In an action or proceeding pending in a Court of First Instance, the prevailing party may recover the following costs, and no other: x x x a) For the complaint or answer, fifteen pesos; b) For his own attendance, and that of his attorney, down to and including final judgment, twenty pesos; c) For each witness necessarily produced by him, for each day's necessary attendance of such witness at the trial, two pesos, and his lawful traveling fees; d) For each deposition lawfully taken by him, and produced in evidence, five pesos; e) For original documents, deeds, or papers of any kind produced by him, nothing; f) For official copies of such documents, deeds, or papers, the lawful fees necessarily paid for obtaining such copies; x x x g) **The lawful fees paid by him in entering and docketing the action or recording the proceedings, for the service of any process in action, and all lawful clerk's fees paid by him.**"

3. ID.; ID.; AWARD OF ATTORNEY'S FEES, NOT PROPER. — As for the award of attorney's fees, the trial court did not state the factual and legal basis thereof. The transcript of stenographic notes of the lower court's proceedings do not show that respondent adduced proof to sustain his general averment of a retainer agreement in the amount of ₱200,000.00. The award must thus be deleted.

APPEARANCES OF COUNSEL

Quisumbing Torres for petitioner.
D.S. Catapang, Jr. Law Office for respondent.

D E C I S I O N

CARPIO MORALES, *J*.:

Delfin S. Catapang (respondent), a lawyer and, at the time material to the case at bar, Assistant Vice President and Head of the Special Projects Department, Corporate Services Division of the United Coconut Planters Bank (UCPB), was directed by UCPB to go to Paris on a business trip. As he intended to proceed, after his trip to Paris, to the United States to visit his siblings, he requested First United Travel, Inc. (FUT) to issue him a ticket that would allow rebooking or rerouting of flights within the United States.

Complying with respondent's requirement, FUT informed him, via telephone, that Northwest Airlines, Inc. (petitioner) was willing to accommodate his request provided he would pay an additional US$50 for every rebooking or rerouting of flight. Respondent agreed with the condition, hence, FUT, as petitioner's authorized agent, issued respondent a ticket covering the New York to Los Angeles via Detroit and the Los Angeles to Manila segments of his travel, indicating thereon the following details of his itinerary:

x x x x x x x x x

12MAR LV NYC/LAGUARDIA 0935 NORTHWEST
AR LOS ANGELES 1433
VIA DETROIT MI
x x x x x x x x x

The rebooking/rerouting scheme was annotated on the restriction portion of the ticket issued to respondent bearing No. 012 6832392670 5 as follows:

No end./7 days adv. Purchase
<u>US$50 – rebooking/re-routing/cancellation fee</u> (Underscoring supplied)

On respondent's arrival in New York, he called up by telephone petitioner's office which informed him that his ticket was not

"rebookable or reroutable." He was, nevertheless, advised to go to petitioner's nearest branch office.

Respondent thus proceeded on March 10, 1992 to petitioner's ticket office at the World Trade Center where he was treated in a rude manner by an employee who informed him that his ticket was not rebookable or reroutable since it was of a "restricted type," and that unless he upgraded it by paying US$644.00, he could not rebook. Left with no choice, respondent paid that amount for rebooking.

Upon his return to the Philippines, respondent, by letter of March 24, 1992, wrote petitioner:

> At about 9:30 in the morning of March 11, 1992, I went to the sales office in the World Trade Center where I explained to your black woman representative my predicament. Your representative **rudely told me** that my ticket is the restrictive type and that my flight can not be rebooked or rerouted. I explained that the only restriction on my ticket is that I should pay US$50.00 if I have to rebook or reroute my flight and asked your representative to read the restriction. Your representative **rudely and impolitely retorted** that I could not understand English and that unless I pay the amount of US$644.00, I cannot get a rebooking and rerouting. Despite my appeal and protestation, she did not reconsider her decision. As I was badly needed in Detroit on the evening of the same day and had to be back in Manila on the 14th of March, I was compelled to pay, under protest, the amount of US$644.00 using my American Express Card as my cash was insufficient to cover the amount. It was only then that I was issued ticket no. 012:4488:504:099.
>
> Considering that my ticket was cleared with you prior to its issuance and that FUT is your duly accredited agent, you are bound by the terms of the ticket issued by FUT in your behalf. You have no right to unilaterally change the tenor of your contract during its effectivity without my consent.
>
> Your airline's willful breach of the terms and conditions of my ticket and the shabby treatment that I received from your personnel hurt my feeling, humiliated and embarrassed me in the presence of my brother-in-law and other people nearby who witnessed the incident. The fact that your employee did that to a bank officer and a lawyer

like me only shows that your airline can also do the same to others, not to mention the poor and hapless persons.

Because I could not bear my wounded feeling, the shabby treatment, the humiliation and the embarrassment that I received from your employee, I asked for the cancellation and refund of my ticket covering my trip from Los Angeles to the Philippines for which I was given a refund application slip no. 012 0230189256 3 by your ticket counter at the Los Angeles airport on March 12, 1992.

To compensate me for the expenses that I incurred, and the wounded feeling, humiliation and embarrassment that were caused by your airline's willful breach of contract with me, I demand that you pay me damages in the amount of ₱1,000,000.00 within a period of five (5) days from your receipt hereof. Otherwise, I shall have no alternative but to seek redress from our court of justice and to hold you liable for all other expenses attendant thereto.[1] (Underscoring supplied)

Respondent's letter of demand remained unanswered, unheeded, drawing him to file on July 1, 1992 with the Regional Trial Court (RTC) of Makati a complaint for damages against petitioner.

Petitioner claimed in its Answer that respondent's ticket was a discounted one, subject to the rules which petitioner's agents have to abide by. Thus, with respect to the annotation on respondent's ticket of the US$50.00 rebooking charge, petitioner explained that the same was subject to the "rules of applicability," which rules could not be reflected on the ticket.

By Decision of October 5, 2000,[2] Branch 56 of the RTC Makati faulted petitioner for breach of contract of carriage, disposing as follows:

WHEREFORE, all the foregoing considered, this Court declares defendant liable to pay plaintiff and orders the latter to pay him the following sums:

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[1] Records, pp. 11-12.

[2] *Rollo*, pp. 145-153.

1. US$ 823.00 or its Peso equivalent at the time of the payment with legal interest and Php7,372.50 for filing fees as actual damages;
2. ₱800,000.00 as moral damages;
3. ₱100,000.00 as exemplary damages;
4. ₱200,000.00 as and for attorney's fees; and
5. Cost of suit.

SO ORDERED.[3]

On appeal, the Court of Appeals, by Decision of June 30, 2006[4] affirmed the trial court's Decision with modification, thus:

WHEREFORE, except for the reduction of the award of moral damages from ₱800,000.00 to ₱400,000.00, the appealed Decision dated October 5, 2000 is affirmed in all other respects.

SO ORDERED.[5] (Underscoring supplied)

Hence, the present petition which assails the award to respondent of moral damages, petitioner positing that it was not guilty of breach of contract. In any event, it assails the award to respondent of exemplary damages, it positing that the same is not recoverable in cases of breach of contract of carriage unless the carrier is guilty of wanton, fraudulent, reckless, oppressive or malevolent conduct of which it is not, so it claims.

Additionally, petitioner assails 1) the award of attorney's fees, positing that under Article 2208 of the Civil Code, attorney's fees and expenses of litigation cannot, as a general rule, be recovered, and of actual damages for respondent did not suffer any pecuniary loss; 2) the order for reimbursement of filing fees there being no basis; and 3) the award of a total of ₱700,000.00 in damages for being excessive and unprecedented.

The petition is bereft of merit.

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[3] *Id.* at 153.

[4] Penned by Associate Justice Fernanda Lampas-Peralta with the concurrence of Associate Justices Eliezer R. Delos Santos and Myrna Dimaranan-Vidal.

[5] *Rollo,* p. 65.

When respondent inquired from petitioner's agent FUT if he would be allowed to rebook/reroute his flight, FUT advised him that he could, on the condition that he would pay $50 for every rebooking. He was not told by FUT and the ticket did not reflect it that the ticket being issued to him was a "restricted type" to call for its upgrading before a rebooking/rerouting.

Petitioner's reservation supervisor, Amelia Merris, in fact admitted that, as the above-quoted entry on the restriction portion of the ticket reads, the only restriction on respondent's ticket pertains only to non-endorsement.

ATTY. CATAPANG

Q. x x x Is it a fact that <u>the only restriction on the first line is that no end./7days advance purchase, is that correct?</u> And what does that phrase no.end/7days purchase means?

A. "No end," means non endorsable, sir.

Q. When you say non endorsable you cannot transfer it to another airline?

A. That is right, sir.

x x x x x x x x x

Q. <u>Based on the restriction, there is no such restriction</u>?

A. <u>Yes, sir</u>.[6] (Underscoring supplied)

Petitioner's breach in this case was aggravated by the <u>undenied</u> treatment received by respondent when he tried to rebook his ticket. Instead of civilly informing respondent that his ticket could not be rebooked, petitioner's agent in New York exhibited rudeness in the presence of respondent's brother-in-law and other customers, insulting respondent by telling him that he could not understand English.

Passengers have the right to be treated by a carrier's employees with kindness, respect, courtesy and due consideration. They are entitled to be protected against personal misconduct, injurious language, indignities and abuses from such employees. So it is

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[6] TSN, March 5, 1993, pp. 32-33.

that any discourteous conduct on the part of these employees toward a passenger gives the latter an action for damages against the carrier.[7]

The award of moral and exemplary damages to respondent is thus justified.

The inclusion of filing fees as part of the **actual damages** is superfluous, if not erroneous, the same being chargeable to the **"cost of suit"** awarded by the trial court and affirmed by the appellate court. Sections 8 and 10, Rule 142 of the Rules of Court enlighten:

SEC. 8. *Costs, how taxed*. — In inferior courts, the costs shall be taxed by the justice of the peace or municipal judge and included in the judgment. In superior courts, costs shall be taxed by the clerk of the corresponding court on five days' written notice given by the prevailing party to the adverse party. With this notice shall be served a statement of the items of costs claimed by the prevailing party, verified by his oath or that of his attorney. Objections to the taxation shall be made in writing, specifying the items objected to. Either party may appeal to the court from the clerk's taxation. The costs shall be inserted in the judgment if taxed before its entry, and payment thereof shall be enforced by execution.

x x x x x x x x x

SEC. 10. *Costs in Courts of First Instance.* — In an action or proceeding pending in a Court of First Instance, <u>the prevailing party may recover the following costs</u>, and no other:

a) For the complaint or answer, fifteen pesos;

b) For his own attendance, and that of his attorney, down to and including final judgment, twenty pesos;

c) For each witness necessarily produced by him, for each day's necessary attendance of such witness at the trial, two pesos, and his lawful traveling fees;

d) For each deposition lawfully taken by him, and produced in evidence, five pesos;

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[7] *Korean Airlines Co. Ltd. vs. Court of Appeals*, G.R. Nos. 114061-113842, August 3, 1994, 234 SCRA 717, 723.

e) For original documents, deeds, or papers of any kind produced by him, nothing;

f) For official copies of such documents, deeds, or papers, the lawful fees necessarily paid for obtaining such copies;

g) **The lawful fees paid by him in entering and docketing the action or recording the proceedings, for the service of any process in action, and all lawful clerk's fees paid by him.** (Emphasis and underscoring supplied)

As for the award of attorney's fees, the trial court did not state the factual and legal basis thereof.[8] The transcript of stenographic notes of the lower court's proceedings do not show that respondent adduced proof to sustain his general averment of a retainer agreement in the amount of ₱200,000.00. The award of actual damages of ₱7,372.50. The award must thus be deleted.

WHEREFORE, the Court of Appeals decision of June 30, 2006 is *AFFIRMED* with *MODIFICATION* in that the award of attorney's fees is deleted for lack of basis. And the award of actual damages of ₱7,372.50 representing filing fees is deleted.

SO ORDERED.

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

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[18] *Car Cool Philippines, Inc. vs. Ushio Realty and Development Corporation,* G.R. No. 138088, January 23, 2006, 479 SCRA 404, 414.

* Additional member per Special Order No. 664 dated July 15, 2009.

THIRD DIVISION

[G.R. No. 175910. July 30, 2009]

ATTY. ROGELIO E. SARSABA, *petitioner, vs.* **FE *VDA. DE* TE, represented by her Attorney-in-Fact, FAUSTINO CASTAÑEDA,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; QUESTION OF LAW DISTINGUISHED FROM QUESTION OF FACT; ISSUES RAISED IN CASE AT BAR ARE QUESTIONS OF LAW. —** There is a "**question of law**" when the doubt or difference arises as to what the law is on certain state of facts, and which does not call for an examination of the probative value of the evidence presented by the parties-litigants. On the other hand, there is a "**question of fact**" when the doubt or controversy arises as to the truth or falsity of the alleged facts. Simply put, when there is no dispute as to fact, the question of whether or not the conclusion drawn therefrom is correct, is a question of law. Verily, the issues raised by herein petitioner are "questions of law," as their resolution rest solely on what the law provides given the set of circumstances availing. The first issue involves the jurisdiction of the court over the person of one of the defendants, who was not served with summons on account of his death. The second issue, on the other hand, pertains to the legal effect of death of the plaintiff during the pendency of the case.

2. **ID.; ID.; ID.; RULE ON APPEALS; ELUCIDATED. —** Significantly, the rule on appeals is outlined below, to wit: (1) In all **cases decided by the RTC in the exercise of its original jurisdiction**, appeal may be made to the Court of Appeals by mere notice of appeal where the appellant raises questions of fact or mixed questions of fact and law; (2) In all **cases decided by the RTC in the exercise of its original jurisdiction where the appellant raises only questions of law**, the appeal must be taken to the Supreme Court on a petition for review on *certiorari* under Rule 45. (3) All appeals from judgments rendered by the RTC in the exercise of its appellate jurisdiction, regardless of whether the appellant raises questions

of fact, questions of law, or mixed questions of fact and law, shall be brought to the Court of Appeals by filing a petition for review under Rule 42. Accordingly, an appeal may be taken from the RTC which exercised its original jurisdiction, before the Court of Appeals or directly before this Court, provided that the subject of the same is a **judgment or final order** that completely disposes of the case, or of a particular matter therein when declared by the Rules to be appealable. The first mode of appeal, to be filed before the Court of Appeals, pertains to a writ of error under Section 2(a), Rule 41 of the Rules of Court, if questions of fact or questions of fact and law are raised or involved. On the other hand, the second mode is by way of an appeal by *certiorari* before the Supreme Court under Section 2(c), Rule 41, in relation to Rule 45, where only questions of law are raised or involved.

3. **ID.; ID.; ID.; SUBJECT OF APPEAL SHOULD BE A JUDGMENT OR FINAL ORDER THAT COMPLETELY DISPOSES OF THE CASE; FINAL JUDGMENT OR ORDER DISTINGUISHED FROM AN INTERLOCUTORY ORDER. —** An order or judgment of the RTC is deemed **final** when it finally disposes of a pending action, so that nothing more can be done with it in the trial court. In other words, the order or judgment ends the litigation in the lower court. On the other hand, an order which does not dispose of the case completely and indicates that other things remain to be done by the court as regards the merits, is **interlocutory**. *Interlocutory* refers to something between the commencement and the end of the suit which decides some point or matter, but is not a final decision on the whole controversy.

4. **ID.; ID.; ID.; ID.; AN ORDER DENYING A MOTION TO DISMISS IS INTERLOCUTORY, HENCE, NOT APPEALABLE; REMEDIES FOR THE DENIAL; CASE AT BAR. —** x x x [A]n order denying a motion to dismiss is interlocutory. Under Section 1(c), Rule 41 of the Rules of Court, an interlocutory order is not appealable. As a remedy for the denial, a party has to file an answer and interpose as a defense the objections raised in the motion, and then to proceed to trial; or, a party may immediately avail of the remedy available to the aggrieved party by filing an appropriate special civil action for *certiorari* under Rule 65 of the Revised Rules of Court. Let it be stressed though that a petition for *certiorari*

is appropriate only when an order has been issued without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction. Based on the foregoing, the Order of the RTC denying petitioner's Omnibus Motion to Dismiss is not appealable even on pure questions of law. It is worth mentioning that the proper procedure in this case, as enunciated by this Court, is to cite such interlocutory order as an error in the appeal of the case — in the event that the RTC rules in favor of respondent — and not to appeal such interlocutory order. On the other hand, if the petition is to be treated as a petition for review under Rule 45, it would likewise fail because the proper subject would only be judgments or final orders that completely dispose of the case. Not being a proper subject of an appeal, the Order of the RTC is considered interlocutory. Petitioner should have proceeded with the trial of the case and, should the RTC eventually render an unfavorable verdict, petitioner should assail the said Order as part of an appeal that may be taken from the final judgment to be rendered in this case. Such rule is founded on considerations of orderly procedure, to forestall useless appeals and avoid undue inconvenience to the appealing party by having to assail orders as they are promulgated by the court, when all such orders may be contested in a single appeal.

5. ID.; ID.; ID.; PRINCIPLE ON HIERARCHY OF COURTS; NO VIOLATION THEREOF WHEN CASES BROUGHT BEFORE THE APPELLATE COURTS DO NOT INVOLVE FACTUAL BUT LEGAL QUESTIONS AS IN CASE AT BAR. — And, even if We treat the petition to have been filed under Rule 65, the same is still dismissible for violating the principle on hierarchy of courts. Generally, a direct resort to us in a petition for *certiorari* is highly improper, for it violates the established policy of strict observance of the judicial hierarchy of courts. This principle, as a rule, requires that recourse must first be made to the lower-ranked court exercising concurrent jurisdiction with a higher court. However, the judicial hierarchy of courts is not an iron-clad rule. A strict application of the rule is not necessary when cases brought before the appellate courts do not involve factual but legal questions. In the present case, petitioner submits pure questions of law involving the effect of non-service of summons following the death of the person to whom it should be served, and the effect of the death of the complainant during the pendency of the case. We deem

it best to rule on these issues, not only for the benefit of the bench and bar, but in order to prevent further delay in the trial of the case. Resultantly, our relaxation of the policy of strict observance of the judicial hierarchy of courts is warranted.

6. **ID.; ID.; EFFECT OF FAILURE TO PLEAD; EXCEPTIONS; ISSUE OF LACK OF JURISDICTION WAS NOT INVOKED AT THE PROPER TIME IN CASE AT BAR. —** [A] motion to dismiss may be filed within the time for but before the filing of an answer to the complaint or pleading asserting a claim. Among the grounds mentioned is the court's lack of jurisdiction over the person of the defending party. As a rule, all defenses and objections not pleaded, either in a motion to dismiss or in an answer, are deemed waived. The exceptions to this rule are: (1) when the court has no jurisdiction over the subject matter, (2) when there is another action pending between the parties for the same cause, or (3) when the action is barred by prior judgment or by statute of limitations, in which cases, the court may dismiss the claim. In the case before Us, petitioner raises the issue of lack of jurisdiction over the person of Sereno, not in his Motion to Dismiss or in his Answer but only in his Omnibus Motion to Dismiss. Having failed to invoke this ground at the proper time, that is, in a motion to dismiss, petitioner cannot raise it now for the first time on appeal.

7. **ID.; ID.; FAILURE TO SERVE SUMMONS ON THE PERSON OF ONE OF THE DEFENDANTS WILL NOT BE A CAUSE FOR THE DISMISSAL OF THE COMPLAINT AGAINST THE OTHER DEFENDANTS; EXPLAINED. —** x x x We cannot countenance petitioner's argument that the complaint against the other defendants should have been dismissed, considering that the RTC never acquired jurisdiction over the person of Sereno. The court's failure to acquire jurisdiction over one's person is a defense which is personal to the person claiming it. Obviously, it is now impossible for Sereno to invoke the same in view of his death. Neither can petitioner invoke such ground, on behalf of Sereno, so as to reap the benefit of having the case dismissed against all of the defendants. Failure to serve summons on Sereno's person will not be a cause for the dismissal of the complaint against the other defendants, considering that they have been served with copies of the summons and complaints and have long submitted their respective responsive pleadings. In fact, the other defendants

in the complaint were given the chance to raise all possible defenses and objections personal to them in their respective motions to dismiss and their subsequent answers. We agree with the RTC in its Order when it resolved the issue in this wise: As correctly pointed by defendants, the Honorable Court has not acquired jurisdiction over the person of Patricio Sereno since there was indeed no valid service of summons insofar as Patricio Sereno is concerned. Patricio Sereno died before the summons, together with a copy of the complaint and its annexes, could be served upon him. However, the failure to effect service of summons unto Patricio Sereno, one of the defendants herein does not render the action DISMISSIBLE, considering that the three (3) other defendants, namely, Atty. Rogelio E. Sarsaba, Fulgencio Lavares and the NLRC, were validly served with summons and the case with respect to the answering defendants may still proceed independently. Be it recalled that the three (3) answering defendants have previously filed a Motion to Dismiss the Complaint which was denied by the Court. Hence, only the case against Patricio Sereno will be DISMISSED and the same may be filed as a claim against the estate of Patricio Sereno, but the case with respect to the three (3) other accused will proceed.

8. **ID.; ID.; ACTIONS; RULE ON SUBSTITUTION OF PARTIES; PURPOSE; EFFECT OF FAILURE OF COUNSEL TO COMPLY THEREWITH. —** x x x [T]he rule on substitution by heirs is not a matter of jurisdiction, but a requirement of due process. The rule on substitution was crafted to protect every party's right to due process. It was designed to ensure that the deceased party would continue to be properly represented in the suit through his heirs or the duly appointed legal representative of his estate. Moreover, non-compliance with the Rules results in the denial of the right to due process for the heirs who, though not duly notified of the proceedings, would be substantially affected by the decision rendered therein. Thus, it is only when there is a denial of due process, as when the deceased is not represented by any legal representative or heir, that the court nullifies the trial proceedings and the resulting judgment therein. In the case before Us, it appears that respondent's counsel did not make any manifestation before the RTC as to her death. In fact, he had actively participated in the proceedings. Neither had he shown any proof that he had been retained by respondent's legal representative or any

one who succeeded her. However, such failure of counsel would not lead Us to invalidate the proceedings that have long taken place before the RTC. The Court has repeatedly declared that failure of the counsel to comply with his duty to inform the court of the death of his client, such that no substitution is effected, will not invalidate the proceedings and the judgment rendered thereon if the action survives the death of such party. The trial court's jurisdiction over the case subsists despite the death of the party. The purpose behind this rule is the protection of the right to due process of every party to the litigation who may be affected by the intervening death. The deceased litigants are themselves protected as they continue to be properly represented in the suit through the duly appointed legal representative of their estate.

9. **CIVIL LAW; AGENCY; EXTINGUISHED BY THE DEATH OF THE PRINCIPAL; EXCEPTION. —** Anent the claim of petitioner that the special power of attorney dated March 4, 1997 executed by respondent in favor of Faustino has become *functus officio* and that the agency constituted between them has been extinguished upon the death of respondent, corollarily, he had no more personality to appear and prosecute the case on her behalf. Agency is extinguished by the death of the principal. The only exception where the agency shall remain in full force and effect even after the death of the principal is when if it has been constituted in the common interest of the latter and of the agent, or in the interest of a third person who has accepted the stipulation in his favor. A perusal of the special power of attorney leads us to conclude that it was constituted for the benefit solely of the principal or for respondent Fe *Vda. de* Te. Nowhere can we infer from the stipulations therein that it was created for the common interest of respondent and her attorney-in-fact. Neither was there any mention that it was to benefit a third person who has accepted the stipulation in his favor. On this ground, We agree with petitioner. x x x

10. **REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; DEATH OF PARTY; CRITERIA FOR DETERMINING WHETHER AN ACTION SURVIVES DEATH; AN ACTION FOR THE RECOVERY OF A PERSONAL PROPERTY IS NOT EXTINGUISHED BY THE DEATH OF A PARTY. —** x x x Civil Case No. 3488, which is an action for the recovery of a personal property, a motor vehicle, is an action that survives

pursuant to Section 1, Rule 87 of the Rules of Court. As such, it is not extinguished by the death of a party. In *Gonzalez v. Philippine Amusement and Gaming Corporation*, We have laid down the criteria for determining whether an action survives the death of a plaintiff or petitioner, to wit: x x x The question as to whether an action survives or not depends on the nature of the action and the damage sued for. If the causes of action which survive the wrong complained [of] affects primarily and principally property and property rights, the injuries to the person being merely incidental, while in the causes of action which do not survive the injury complained of is to the person the property and rights of property affected being incidental. x x x

APPEARANCES OF COUNSEL

Rogelio E. Sarsaba for himself.
William G. Carpentero for respondent.

D E C I S I O N

PERALTA, *J.*:

Before us is a petition for review on *certiorari*[1] with prayer for preliminary injunction assailing the Order[2] dated March 22, 2006 of the Regional Trial Court (RTC), Branch 19, Digos City, Davao del Sur, in Civil Case No. 3488.

The facts, as culled from the records, follow.

On February 14, 1995, a Decision was rendered in NLRC Case No. RAB-11-07-00608-93 entitled, *Patricio Sereno v. Teodoro Gasing/Truck Operator*, finding Sereno to have been illegally dismissed and ordering Gasing to pay him his monetary claims in the amount of ₱43,606.47. After the Writ of Execution was returned unsatisfied, Labor Arbiter Newton R. Sancho issued an *Alias* Writ of Execution[3] on June 10, 1996, directing Fulgencio

[1] Pursuant to Rule 45 of the 1997 Rules of Civil Procedure; *rollo*, pp. 11-26.

[2] Penned by Judge Carmelita Sarno-Davin; *id.* at 33-34.

[3] Records, pp. 76-78.

R. Lavarez, Sheriff II of the National Labor Relations Commission (NLRC), to satisfy the judgment award. On July 23, 1996, Lavarez, accompanied by Sereno and his counsel, petitioner Atty. Rogelio E. Sarsaba, levied a Fuso Truck bearing License Plate No. LBR-514, which at that time was in the possession of Gasing. On July 30, 1996, the truck was sold at public auction, with Sereno appearing as the highest bidder.[4]

Meanwhile, respondent Fe *Vda. de* Te, represented by her attorney-in-fact, Faustino Castañeda, filed with the RTC, Branch 18, Digos, Davao del Sur, a Complaint[5] for recovery of motor vehicle, damages with prayer for the delivery of the truck *pendente lite* against petitioner, Sereno, Lavarez and the NLRC of Davao City, docketed as Civil Case No. 3488.

Respondent alleged that: (1) she is the wife of the late Pedro Te, the registered owner of the truck, as evidenced by the Official Receipt[6] and Certificate of Registration;[7] (2) Gasing merely rented the truck from her; (3) Lavarez erroneously assumed that Gasing owned the truck because he was, at the time of the "taking,"[8] in possession of the same; and (4) since neither she nor her husband were parties to the labor case between Sereno and Gasing, she should not be made to answer for the judgment award, much less be deprived of the truck as a consequence of the levy in execution.

Petitioner filed a Motion to Dismiss[9] on the following grounds: (1) respondent has no legal personality to sue, having no real interests over the property subject of the instant complaint; (2) the allegations in the complaint do not sufficiently state that the respondent has cause of action; (3) the allegations in the complaint do not contain sufficient cause of action as against him; and (4)

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[4] Certificate of Sale; *id.* at 45.

[5] Records, pp. 2-7.

[6] Annex "B" of the Complaint, *id.* at 11.

[7] Annex "C" of the Complaint, *id*. at 12.

[8] Extract from the Police Blotter of the Kiblawan Municipal Police Office, dated April 1, 1997, Annex "D" of the Complaint, *id.* at 13.

[9] Records, pp. 16-26.

the complaint is not accompanied by an Affidavit of Merit and Bond that would entitle the respondent to the delivery of the truck *pendente lite*.

The NLRC also filed a Motion to Dismiss[10] on the grounds of lack of jurisdiction and lack of cause of action.

Meanwhile, Lavarez filed an Answer with Compulsory Counterclaim and Third-Party Complaint.[11] By way of special and affirmative defenses, he asserted that the RTC does not have jurisdiction over the subject matter and that the complaint does not state a cause of action.

On January 21, 2000, the RTC issued an Order[12] denying petitioner's Motion to Dismiss for lack of merit.

In his Answer,[13] petitioner denied the material allegations in the complaint. Specifically, he cited as affirmative defenses that: respondent had no legal personality to sue, as she had no interest over the motor vehicle; that there was no showing that the heirs have filed an intestate estate proceedings of the estate of Pedro Te, or that respondent was duly authorized by her co-heirs to file the case; and that the truck was already sold to Gasing on March 11, 1986 by one Jesus Matias, who bought the same from the Spouses Te. Corollarily, Gasing was already the lawful owner of the truck when it was levied on execution and, later on, sold at public auction.

Incidentally, Lavarez filed a Motion for Inhibition,[14] which was opposed[15] by respondent.

On October 13, 2000, RTC Branch 18 issued an Order[16] of inhibition and directed the transfer of the records to Branch 19.

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[10] *Id.* at 62-65.

[11] *Id.* at 92-98.

[12] Penned by Judge Rodolfo A. Escovilla; *id.* at 175-177.

[13] Records, pp. 196-199.

[14] *Id.* at 206-210.

[15] *Id.* at 212-213; 216-217.

[16] *Id.* at 218.

RTC Branch 19, however, returned the records back to Branch 18 in view of the appointment of a new judge in place of Judge-designate Rodolfo A. Escovilla. Yet, Branch 19 issued another Order[17] dated November 22, 2000 retaining the case in said branch.

Eventually, the RTC issued an Order[18] dated May 19, 2003 denying the separate motions to dismiss filed by the NLRC and Lavarez, and setting the Pre-Trial Conference on July 25, 2003.

On October 17, 2005, petitioner filed an Omnibus Motion to Dismiss the Case on the following grounds:[19] (1) lack of jurisdiction over one of the principal defendants; and (2) to discharge respondent's attorney-in-fact for lack of legal personality to sue.

It appeared that the respondent, Fe *Vda. de* Te, died on April 12, 2005.[20]

Respondent, through her lawyer, Atty. William G. Carpentero, filed an Opposition,[21] contending that the failure to serve summons upon Sereno is not a ground for dismissing the complaint, because the other defendants have already submitted their respective responsive pleadings. He also contended that the defendants, including herein petitioner, had previously filed separate motions to dismiss the complaint, which the RTC denied for lack of merit. Moreover, respondent's death did not render *functus officio* her right to sue since her attorney-in-fact, Faustino Castañeda, had long testified on the complaint on March 13, 1998 for and on her behalf and, accordingly, submitted documentary exhibits in support of the complaint.

On March 22, 2006, the RTC issued the assailed Order[22] denying petitioner's aforesaid motion.

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[17] *Id.* at 228.

[18] *Id.* at 246-248.

[19] *Rollo*, pp. 56-58.

[20] Named as Prescilla Suarez Te in her Death Certificate, records, p. 305.

[21] *Rollo,* pp. 308-310.

[22] *Supra* note 2.

Petitioner then filed a Motion for Reconsideration with Motion for Inhibition,[23] in which he claimed that the judge who issued the Order was biased and partial. He went on to state that the judge's husband was the defendant in a petition for judicial recognition of which he was the counsel, docketed as Civil Case No. C-XXI-100, before the RTC, Branch 21, Bansalan, Davao del Sur. Thus, propriety dictates that the judge should inhibit herself from the case.

Acting on the motion for inhibition, Judge Carmelita Sarno-Davin granted the same[24] and ordered that the case be re-raffled to Branch 18. Eventually, the said RTC issued an Order[25] on October 16, 2006 denying petitioner's motion for reconsideration for lack of merit.

Hence, petitioner directly sought recourse from the Court via the present petition involving pure questions of law, which he claimed were resolved by the RTC contrary to law, rules and existing jurisprudence.[26]

There is a "**question of law**" when the doubt or difference arises as to what the law is on certain state of facts, and which does not call for an examination of the probative value of the evidence presented by the parties-litigants. On the other hand, there is a "**question of fact**" when the doubt or controversy arises as to the truth or falsity of the alleged facts. Simply put, when there is no dispute as to fact, the question of whether or not the conclusion drawn therefrom is correct, is a question of law.[27]

Verily, the issues raised by herein petitioner are "questions of law," as their resolution rest solely on what the law provides given the set of circumstances availing. The first issue involves the jurisdiction of the court over the person of one of the

[23] *Rollo*, pp. 36-42.

[24] Order dated August 1, 2006; *id.* at 46-48.

[25] *Rollo*, p. 50.

[26] *Id.* at 20.

[27] *Cucueco v. Court of Appeals*, 484 Phil. 254, 264 (2004).

defendants, who was not served with summons on account of his death. The second issue, on the other hand, pertains to the legal effect of death of the plaintiff during the pendency of the case.

At first brush, it may appear that since pure questions of law were raised, petitioner's resort to this Court was justified and the resolution of the aforementioned issues will necessarily follow. However, a perusal of the petition requires that certain procedural issues must initially be resolved before We delve into the merits of the case.

Notably, the petition was filed directly from the RTC which issued the Order in the exercise of its original jurisdiction. The question before Us then is: whether or not petitioner correctly availed of the mode of appeal under Rule 45 of the Rules of Court.

Significantly, the rule on appeals is outlined below, to wit:[28]

(1) In all **cases decided by the RTC in the exercise of its original jurisdiction**, appeal may be made to the Court of Appeals by mere notice of appeal where the appellant raises questions of fact or mixed questions of fact and law;

(2) In all **cases decided by the RTC in the exercise of its original jurisdiction where the appellant raises only questions of law**, the appeal must be taken to the Supreme Court on a petition for review on *certiorari* under Rule 45.

(3) All appeals from judgments rendered by the RTC in the exercise of its appellate jurisdiction, regardless of whether the appellant raises questions of fact, questions of law, or mixed questions of fact and law, shall be brought to the Court of Appeals by filing a petition for review under Rule 42.

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[28] *Sevilleno v. Carilo*, G.R. No. 146454, September 14, 2007, 533 SCRA 385, 388, citing *Macawiwili Gold Mining and Development Co., Inc. v. Court of Appeals,* 297 SCRA 602 (1998). Significantly, under the Revised Rules on Criminal Procedure, all criminal cases, where the penalty imposed by the RTC is death, *reclusion perpetua* or life imprisonment, are now appealed before the Court of Appeals, instead of directly before this Court on automatic review, which new procedure was in accordance with the pronouncement in *People v. Mateo* (G.R. Nos. 147678-87, July 7, 2007, 433 SCRA 640).

Accordingly, an appeal may be taken from the RTC which exercised its original jurisdiction, before the Court of Appeals or directly before this Court, provided that the subject of the same is a **judgment or final order** that completely disposes of the case, or of a particular matter therein when declared by the Rules to be appealable.[29] The first mode of appeal, to be filed before the Court of Appeals, pertains to a writ of error under Section 2(a), Rule 41 of the Rules of Court, if questions of fact or questions of fact and law are raised or involved. On the other hand, the second mode is by way of an appeal by *certiorari* before the Supreme Court under Section 2(c), Rule 41, in relation to Rule 45, where only questions of law are raised or involved.[30]

An order or judgment of the RTC is deemed **final** when it finally disposes of a pending action, so that nothing more can be done with it in the trial court. In other words, the order or judgment ends the litigation in the lower court.[31] On the other hand, an order which does not dispose of the case completely and indicates that other things remain to be done by the court as regards the merits, is **interlocutory**. *Interlocutory* refers to something between the commencement and the end of the suit which decides some point or matter, but is not a final decision on the whole controversy.[32]

The subject of the present petition is an Order of the RTC, which denied petitioner's Omnibus Motion to Dismiss, for lack of merit.

We have said time and again that an order denying a motion to dismiss is interlocutory.[33] Under Section 1(c), Rule 41 of

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[29] 1997 Rule of Civil Procedure (as amended), Rule 41, Sec. 1.

[30] *First Bancorp, Inc. v. Court of Appeals*, G. R. No. 151132, June 22, 2006, 492 SCRA 221, 235, citing Rule 41, Section 2, 1997 Rules of Civil Procedure, as amended.

[31] *Madrigal Transport, Inc. v. Lapanday Holdings Corporation*, G.R. No. 156067, August 11, 2004, 436 SCRA 123, 132.

[32] *Philippine Computer Solutions, Inc. v. Hernandez*, G.R. No. 168776, July 17, 2007, 527 SCRA 809, 824.

[33] *Mondragon Leisure and Resorts Corporation v. United Coconut Planters Bank*, 471 Phil. 570, 574 (2004).

the Rules of Court, an interlocutory order is not appealable. As a remedy for the denial, a party has to file an answer and interpose as a defense the objections raised in the motion, and then to proceed to trial; or, a party may immediately avail of the remedy available to the aggrieved party by filing an appropriate special civil action for *certiorari* under Rule 65 of the Revised Rules of Court. Let it be stressed though that a petition for *certiorari* is appropriate only when an order has been issued without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction.

Based on the foregoing, the Order of the RTC denying petitioner's Omnibus Motion to Dismiss is not appealable even on pure questions of law. It is worth mentioning that the proper procedure in this case, as enunciated by this Court, is to cite such interlocutory order as an error in the appeal of the case — in the event that the RTC rules in favor of respondent — and not to appeal such interlocutory order. On the other hand, if the petition is to be treated as a petition for review under Rule 45, it would likewise fail because the proper subject would only be judgments or final orders that completely dispose of the case.[34]

Not being a proper subject of an appeal, the Order of the RTC is considered interlocutory. Petitioner should have proceeded with the trial of the case and, should the RTC eventually render an unfavorable verdict, petitioner should assail the said Order as part of an appeal that may be taken from the final judgment to be rendered in this case. Such rule is founded on considerations of orderly procedure, to forestall useless appeals and avoid undue inconvenience to the appealing party by having to assail orders as they are promulgated by the court, when all such orders may be contested in a single appeal.

In one case,[35] the Court adverted to the hazards of interlocutory appeals:

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[34] *De Castro v. Fernandez*, G.R. No. 155041, February 14, 2007, 515 SCRA 682, 686.

[35] *Philippine Computer Solutions, Inc. v. Hernandez*, *supra* note 32, at 825, citing *Go v. Court of Appeals*, 297 SCRA 574, 581-582 (1998).

It is axiomatic that an interlocutory order cannot be challenged by an appeal. Thus, it has been held that "the proper remedy in such cases is an ordinary appeal from an adverse judgment *on the merits*, incorporating in said appeal the grounds for assailing the interlocutory order. Allowing appeals from interlocutory orders would result in the 'sorry spectacle' of a case being subject of a counterproductive *ping-pong* to and from the appellate court as often as a trial court is perceived to have made an error in any of its interlocutory rulings." x x x.

Another recognized reason of the law in permitting appeal only from a final order or judgment, and not from an interlocutory or incidental one, is to avoid multiplicity of appeals in a single action, which must necessarily suspend the hearing and decision on the merits of the case during the pendency of the appeal. If such appeal were allowed, trial on the merits of the case would necessarily be delayed for a considerable length of time and compel the adverse party to incur unnecessary expenses, for one of the parties may interpose as many appeals as incidental questions may be raised by him, and interlocutory orders rendered or issued by the lower court.[36]

And, even if We treat the petition to have been filed under Rule 65, the same is still dismissible for violating the principle on hierarchy of courts. Generally, a direct resort to us in a petition for *certiorari* is highly improper, for it violates the established policy of strict observance of the judicial hierarchy of courts.[37] This principle, as a rule, requires that recourse must first be made to the lower-ranked court exercising concurrent jurisdiction with a higher court. However, the judicial hierarchy of courts is not an iron-clad rule. A strict application of the rule is not necessary when cases brought before the appellate courts do not involve factual but legal questions.[38]

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[36] *Judy Anne L. Santos v. People of the Philippines and Bureau of Internal Revenue*, G.R. No. 173176, August 26, 2008.

[37] *Pacoy v. Cajigal*, G.R. No. 157472, September 28, 2007, 534 SCRA 338, 346.

[38] *Rogelio Z. Bagabuyo v. Comelec*, G.R. No. 176970, December 8, 2008.

In the present case, petitioner submits pure questions of law involving the effect of non-service of summons following the death of the person to whom it should be served, and the effect of the death of the complainant during the pendency of the case. We deem it best to rule on these issues, not only for the benefit of the bench and bar, but in order to prevent further delay in the trial of the case. Resultantly, our relaxation of the policy of strict observance of the judicial hierarchy of courts is warranted.

Anent the first issue, petitioner argues that, since Sereno died before summons was served on him, the RTC should have dismissed the complaint against all the defendants and that the same should be filed against his estate.

The Sheriff's Return of Service[39] dated May 19, 1997 states that Sereno could not be served with copy of the summons, together with a copy of the complaint, because he was already dead.

In view of Sereno's death, petitioner asks that the complaint should be dismissed, not only against Sereno, but as to all the defendants, considering that the RTC did not acquire jurisdiction over the person of Sereno.

Jurisdiction over a party is acquired by service of summons by the sheriff, his deputy or other proper court officer, either personally by handing a copy thereof to the defendant or by substituted service.[40] On the other hand, summons is a writ by which the defendant is notified of the action brought against him. Service of such writ is the means by which the court may acquire jurisdiction over his person.[41]

Records show that petitioner had filed a Motion to Dismiss on the grounds of lack of legal personality of respondent; the

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[39] Records, p. 49.

[40] *St. Aviation Services Co., Pte., Ltd. v. Grand International Airways, Inc.*, G.R. No. 140288, October 23, 2006, 505 SCRA 30, 36.

[41] *Casimina v. Legaspi*, G.R. No. 147530, June 29, 2005, 462 SCRA 171, 177-178.

allegations in the complaint did not sufficiently state that respondent has a cause of action or a cause of action against the defendants; and, the complaint was not accompanied by an affidavit of merit and bond. The RTC denied the motion and held therein that, on the basis of the allegations of fact in the complaint, it can render a valid judgment. Petitioner, subsequently, filed his answer by denying all the material allegations of the complaint. And by way of special and affirmative defenses, he reiterated that respondent had no legal personality to sue as she had no real interest over the property and that while the truck was still registered in Pedro Te's name, the same was already sold to Gasing.

Significantly, a motion to dismiss may be filed within the time for but before the filing of an answer to the complaint or pleading asserting a claim.[42] Among the grounds mentioned is the court's lack of jurisdiction over the person of the defending party.

As a rule, all defenses and objections not pleaded, either in a motion to dismiss or in an answer, are deemed waived.[43] The exceptions to this rule are: (1) when the court has no jurisdiction over the subject matter, (2) when there is another action pending between the parties for the same cause, or (3) when the action is barred by prior judgment or by statute of limitations, in which cases, the court may dismiss the claim.

In the case before Us, petitioner raises the issue of lack of jurisdiction over the person of Sereno, not in his Motion to Dismiss or in his Answer but only in his Omnibus Motion to Dismiss. Having failed to invoke this ground at the proper time, that is, in a motion to dismiss, petitioner cannot raise it now for the first time on appeal.

In fine, We cannot countenance petitioner's argument that the complaint against the other defendants should have been dismissed, considering that the RTC never acquired jurisdiction over the person of Sereno. The court's failure to acquire

[42] 1997 Rules of Civil Procedure (as amended), Rule 16, Sec. 1(a).

[43] 1997 Rules of Civil Procedure (as amended), Rule 9, Sec. 1.

jurisdiction over one's person is a defense which is personal to the person claiming it. Obviously, it is now impossible for Sereno to invoke the same in view of his death. Neither can petitioner invoke such ground, on behalf of Sereno, so as to reap the benefit of having the case dismissed against all of the defendants. Failure to serve summons on Sereno's person will not be a cause for the dismissal of the complaint against the other defendants, considering that they have been served with copies of the summons and complaints and have long submitted their respective responsive pleadings. In fact, the other defendants in the complaint were given the chance to raise all possible defenses and objections personal to them in their respective motions to dismiss and their subsequent answers.

We agree with the RTC in its Order when it resolved the issue in this wise:

> As correctly pointed by defendants, the Honorable Court has not acquired jurisdiction over the person of Patricio Sereno since there was indeed no valid service of summons insofar as Patricio Sereno is concerned. Patricio Sereno died before the summons, together with a copy of the complaint and its annexes, could be served upon him.
>
> However, the failure to effect service of summons unto Patricio Sereno, one of the defendants herein does not render the action DISMISSIBLE, considering that the three (3) other defendants, namely, Atty. Rogelio E. Sarsaba, Fulgencio Lavares and the NLRC, were validly served with summons and the case with respect to the answering defendants may still proceed independently. Be it recalled that the three (3) answering defendants have previously filed a Motion to Dismiss the Complaint which was denied by the Court.
>
> Hence, only the case against Patricio Sereno will be DISMISSED and the same may be filed as a claim against the estate of Patricio Sereno, but the case with respect to the three (3) other accused will proceed.

Anent the second issue, petitioner moves that respondent's attorney-in-fact, Faustino Castañeda, be discharged as he has no more legal personality to sue on behalf of Fe *Vda. de* Te, who passed away on April 12, 2005, during the pendency of the case before the RTC.

When a party to a pending action dies and the claim is not extinguished, the Rules of Court require a substitution of the deceased.[44] Section 1, Rule 87 of the Rules of Court enumerates the actions that survived and may be filed against the decedent's representatives as follows: (1) actions to recover real or personal property or an interest thereon, (2) actions to enforce liens thereon, and (3) actions to recover damages for an injury to a person or a property. In such cases, a counsel is obliged to inform the court of the death of his client and give the name and address of the latter's legal representative.[45]

The rule on substitution of parties is governed by Section 16,[46] Rule 3 of the 1997 Rules of Civil Procedure, as amended.

Strictly speaking, the rule on substitution by heirs is not a matter of jurisdiction, but a requirement of due process. The rule on substitution was crafted to protect every party's right to due process. It was designed to ensure that the deceased party would continue to be properly represented in the suit through his heirs or the duly appointed legal representative of his estate. Moreover, non-compliance with the Rules results in

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[44] *De la Cruz v. Joaquin*, G.R. No. 162788, July 28, 2005, 464 SCRA 576, 583. See also *Board of Liquidators v. Heirs of M. Kalaw et al.*, 127 Phil. 399, 414 (1967).

[45] *Napere v. Barbarona*, G.R. No. 160426, January 31, 2008, 543 SCRA 376, 381.

[46] **SEC. 16**. *Death of party; duty of counsel.* - Whenever a party to a pending action dies, and the claim is not thereby extinguished, it shall be the duty of his counsel to inform the court within thirty (30) days after such death of the fact thereof, and to give the name and address of his legal representative or representatives. Failure of counsel to comply with this duty shall be a ground for disciplinary action.

The heirs of the deceased may be allowed to be substituted for the deceased, without requiring the appointment of an executor or administrator and the court may appoint a guardian *ad litem* for the minor heirs.

The court shall forthwith order said legal representative or representatives to appear and be substituted within a period of thirty (30) from notice. If no legal representative is named by the counsel for the deceased party, or if the one so named shall fail to appear within the specified period, the court may order the opposing party, within a specified time, to procure the appointment of an executor or administrator for the estate of the deceased and the latter

the denial of the right to due process for the heirs who, though not duly notified of the proceedings, would be substantially affected by the decision rendered therein. Thus, it is only when there is a denial of due process, as when the deceased is not represented by any legal representative or heir, that the court nullifies the trial proceedings and the resulting judgment therein.[47]

In the case before Us, it appears that respondent's counsel did not make any manifestation before the RTC as to her death. In fact, he had actively participated in the proceedings. Neither had he shown any proof that he had been retained by respondent's legal representative or any one who succeeded her.

However, such failure of counsel would not lead Us to invalidate the proceedings that have long taken place before the RTC. The Court has repeatedly declared that failure of the counsel to comply with his duty to inform the court of the death of his client, such that no substitution is effected, will not invalidate the proceedings and the judgment rendered thereon if the action survives the death of such party. The trial court's jurisdiction over the case subsists despite the death of the party.[48]

The purpose behind this rule is the protection of the right to due process of every party to the litigation who may be affected by the intervening death. The deceased litigants are themselves protected as they continue to be properly represented in the suit through the duly appointed legal representative of their estate.[49]

Anent the claim of petitioner that the special power of attorney[50] dated March 4, 1997 executed by respondent in favor of Faustino has become *functus officio* and that the agency constituted between them has been extinguished upon the death of respondent,

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shall immediately appear for and on behalf of the deceased. The court charges in procuring such appointment, if defrayed by the opposing party, may be recovered as costs.

[47] *Napere v. Barbona, supra* note 45, at 382.

[48] *Id*.

[49] *Sumaljag v. Literato*, G.R. No. 149787, June 18, 2008, 555 SCRA 53, 62.

[50] Records, pp. 9-10.

corollarily, he had no more personality to appear and prosecute the case on her behalf.

Agency is extinguished by the death of the principal.[51] The only exception where the agency shall remain in full force and effect even after the death of the principal is when if it has been constituted in the common interest of the latter and of the agent, or in the interest of a third person who has accepted the stipulation in his favor.[52]

A perusal of the special power of attorney leads us to conclude that it was constituted for the benefit solely of the principal or for respondent Fe *Vda. de* Te. Nowhere can we infer from the stipulations therein that it was created for the common interest of respondent and her attorney-in-fact. Neither was there any mention that it was to benefit a third person who has accepted the stipulation in his favor.

On this ground, We agree with petitioner. However, We do not believe that such ground would cause the dismissal of the complaint. For as We have said, Civil Case No. 3488, which is an action for the recovery of a personal property, a motor vehicle, is an action that survives pursuant to Section 1, Rule 87 of the Rules of Court. As such, it is not extinguished by the death of a party.

In *Gonzalez v. Philippine Amusement and Gaming Corporation*,[53] We have laid down the criteria for determining whether an action survives the death of a plaintiff or petitioner, to wit:

x x x The question as to whether an action survives or not depends on the nature of the action and the damage sued for. If the causes of action which survive the wrong complained [of] affects primarily and principally property and property rights, the injuries to the person being merely incidental, while in the causes of action which do not survive the injury complained of is to the person the property and rights of property affected being incidental. x x x

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[51] New Civil Code, Article 1919 (3).

[52] New Civil Code, Article 1930.

[53] G.R. No. 144891, May 27, 2004, 429 SCRA 533, 540.

Thus, the RTC aptly resolved the second issue with the following ratiocination:

While it may be true as alleged by defendants that with the death of Plaintiff, Fe *Vda. de* Te, the Special Power of Attorney she executed empowering the Attorney-in-fact, Faustino Castañeda to sue in her behalf has been rendered *functus officio*, however, this Court believes that the Attorney-in-fact had not lost his personality to prosecute this case.

It bears stressing that when this case was initiated/filed by the Attorney-in-fact, the plaintiff was still very much alive.

Records reveal that the Attorney-in-fact has testified long before in behalf of the said plaintiff and more particularly during the state when the plaintiff was vehemently opposing the dismissal of the complainant. Subsequently thereto, he even offered documentary evidence in support of the complaint, and this court admitted the same. When this case was initiated, jurisdiction was vested upon this Court to try and hear the same to the end. Well-settled is the rule to the point of being elementary that once jurisdiction is acquired by this Court, it attaches until the case is decided.

Thus, the proper remedy here is the Substitution of Heirs and not the dismissal of this case which would work injustice to the plaintiff.

SEC. 16, RULE 3 provides for the substitution of the plaintiff who dies pending hearing of the case by his/her legal heirs. As to whether or not the heirs will still continue to engage the services of the Attorney-in-fact is another matter, which lies within the sole discretion of the heirs.

In fine, We hold that the petition should be denied as the RTC Order is interlocutory; hence, not a proper subject of an appeal before the Court. In the same breath, We also hold that, if the petition is to be treated as a petition for *certiorari* as a relaxation of the judicial hierarchy of courts, the same is also dismissible for being substantially insufficient to warrant the Court the nullification of the Order of the RTC.

Let this be an occasion for Us to reiterate that the rules are there to aid litigants in prosecuting or defending their cases before the courts. However, these very rules should not be abused so as to advance one's personal purposes, to the detriment

of orderly administration of justice. We can surmise from the present case herein petitioner's manipulation in order to circumvent the rule on modes of appeal and the hierarchy of courts so that the issues presented herein could be settled without going through the established procedures. In *Vergara, Sr. v. Suelto*,[54] We stressed that this should be the constant policy that must be observed strictly by the courts and lawyers, thus:

> x x x. **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.** It cannot and should not be burdened with the task of dealing with causes in the first instance. **Its original jurisdiction to issue the so-called extraordinary writs should be exercised only where absolutely necessary or where serious and important reasons exist therefor.** Hence, that jurisdiction should generally be exercised relative to actions or proceedings before the Court of Appeals, or before constitutional or other tribunals, bodies or agencies whose acts for some reason or another are not controllable by the Court of Appeals. **Where the issuance of an extraordinary writ is also within the competence of the Court of Appeals or a Regional Trial Court, it is in either of these courts that the specific action for the writ's procurement must be presented. This is and should continue to be the policy in this regard, a policy that courts and lawyers must strictly observe.**[55]

WHEREFORE, premises considered, the Petition is *DENIED.* The Order dated March 22, 2006 of the Regional Trial Court, Branch 19, Digos, Davao del Sur in Civil Case No. 3488, is hereby *AFFIRMED.* Costs against the petitioner.

SO ORDERED.

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

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[54] G.R. No. 74766, December 21, 1987, 156 SCRA 753.

[55] *Id.* at 766. (Emphasis supplied.)

EN BANC

[G.R. Nos. 178831-32. July 30, 2009]

JOCELYN SY LIMKAICHONG, *petitioner, vs.* **COMMISSION ON ELECTIONS, NAPOLEON N. CAMERO and RENALD F. VILLANDO,** *respondents.*

[G.R. No. 179120. July 30, 2009]

LOUIS C. BIRAOGO, *petitioner, vs.* **HON. PROSPERO NOGRALES, Speaker of the House of Representatives of the Congress of the Philippines, and JOCELYN SY LIMKAICHONG,** *respondents.*

[G.R. Nos. 179132-33. July 30, 2009]

OLIVIA P. PARAS, *petitioner, vs.* **HON. PROSPERO NOGRALES, in his capacity as Speaker of the House of Representatives; HON. ROBERTO NAZARENO, in his capacity as Secretary General of the House of Representatives; HON. RHODORA SEVILLA, in her capacity as Deputy Secretary General for Finance of the House of Representatives; THE COMMISSION ON ELECTIONS and JOCELYN SY LIMKAICHONG,** *respondents.*

[G.R. Nos. 179240-41. July 30, 2009]

RENALD F. VILLANDO, *petitioner, vs.* **COMMISSION ON ELECTIONS and JOCELYN SY LIMKAICHONG,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; LEGISLATIVE DEPARTMENT; HOUSE OF REPRESENTATIVES; ISSUE AS TO THE QUALIFICATIONS OF MEMBERS THEREOF SHOULD BE QUESTIONED IN THE PROPER PROCEEDINGS, AND DUE PROCESS MUST BE OBSERVED; RATIONALE. — x x x [I]t is not enough that one’s qualification, or lack of it, to hold an office requiring one to be a natural-born citizen, be attacked and questioned before any tribunal or government institution. Proper

proceedings must be strictly followed by the proper officers under the law. Hence, in seeking Limkaichong's disqualification on account of her citizenship, the rudiments of fair play and due process must be observed, for in doing so, she is not only deprived of the right to hold office as a Member of the House of Representative but her constituents would also be deprived of a leader in whom they have put their trust on through their votes. The obvious rationale behind the foregoing ruling is that in voting for a candidate who has not been disqualified by final judgment during the election day, the people voted for her *bona fide*, without any intention to misapply their franchise, and in the honest belief that the candidate was then qualified to be the person to whom they would entrust the exercise of the powers of government.

2. **ID.; ID.; ID.; ID.; HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL (HRET); SOLE JUDGE OF ALL CONTESTS RELATING TO THE ELECTION, RETURNS, AND QUALIFICATIONS OF MEMBERS OF THE HOUSE OF REPRESENTATIVES. —** x x x Limkaichong was proclaimed by the Provincial Board of Canvassers, she had taken her oath of office, and she was allowed to officially assume the office on July 23, 2007. Accordingly, we ruled in our April 1, 2009 Decision that the House of Representatives Electoral Tribunal (HRET), and no longer the COMELEC, should now assume jurisdiction over the disqualification cases. Pertinently, we held: x x x The Court has invariably held that once a winning candidate **has been proclaimed**, **taken his oath**, and **assumed office** as a Member of the House of Representatives, **the COMELEC's jurisdiction over election contests relating to his election, returns, and qualifications ends, and the HRET's own jurisdiction begins**. It follows then that the proclamation of a winning candidate divests the COMELEC of its jurisdiction over matters pending before it at the time of the proclamation. The party questioning his qualification should now present his case in a proper proceeding before the HRET, the constitutionally mandated tribunal to hear and decide a case involving a Member of the House of Representatives with respect to the latter's election, returns and qualifications.

The use of the word "sole" in Section 17, Article VI of the Constitution and in Section 250 of the OEC underscores the exclusivity of the Electoral Tribunals' jurisdiction over election contests relating to its members. **Section 17**, **Article VI** of the **1987 Constitution** provides: Sec. 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.

3. **ID.; ID.; ID.; ID.; 1998 HRET RULES DOES NOT APPLY TO DISQUALIFICATION BASED ON CITIZENSHIP; EXPLAINED. —** The 1998 HRET Rules, as amended, provide for the manner of filing either an election protest or a petition for *quo warranto* against a Member of the House of Representatives. In our Decision, we ruled that the ten-day prescriptive period under the 1998 HRET Rules does not apply to disqualification based on citizenship, because qualifications for public office are continuing requirements and must be possessed not only at the time of appointment or election or assumption of office but during the officer's entire tenure. Once any of the required qualifications is lost, his title may be seasonably challenged. Accordingly, the 1987 Constitution requires that Members of the House of Representatives must be natural-born citizens not only at the time of their election but during their entire tenure. Being a continuing requirement, one who assails a member's citizenship or lack of it may still question the same at any time, the ten-day prescriptive period notwithstanding.

4. **REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; A DECISION MUST NOT ONLY BE SIGNED BY THE**

JUSTICES WHO TOOK PART IN THE DELIBERATION, BUT MUST ALSO BE PROMULGATED TO BE CONSIDERED A DECISION; ELUCIDATED. — The Court in *Belac v. Commision on Elections,* held that a decision must not only be **signed** by the Justices who took part in the deliberation, but must also be **promulgated** to be considered a **Decision**, to wit: ***[A] true decision of the Court is the decision <u>signed by the Justices and duly promulgated</u>. Before that decision is so signed and promulgated, there is no decision of the Court to speak of.*** The vote cast by a member of the Court after the deliberation is always understood to be subject to confirmation at the time he has to sign the decision that is to be promulgated. The vote is of no value if it is not thus confirmed by the Justice casting it. The purpose of this practice is apparent. Members of this Court, even after they have cast their votes, wish to preserve their freedom of action till the last moment when they have to sign the decision, so that they may take full advantage of what they may believe to be the best fruit of their most mature reflection and deliberation. In consonance with this practice, **before a decision is signed and promulgated, all opinions and conclusions stated during and after the deliberation of the Court, remain in the breasts of the Justices, binding upon no one, not even upon the Justices themselves.** Of course, they may serve for determining what the opinion of the majority provisionally is and for designating a member to prepare the decision of the Court, but in **no way is that decision binding unless and until signed and promulgated**. We add that at any time before promulgation, the *ponencia* may be changed by the *ponente.* Indeed, if any member of the court who may have already signed it so desires, he may still withdraw his concurrence and register a qualification or dissent as long as the decision has not yet been promulgated. **A promulgation signifies that on the date it was made the judge or judges who signed the decision continued to support it.** Thus, an unpromulgated decision is no decision at all. At the very least, they are part of the confidential internal deliberations of the Court which must not be released to the public. A decision becomes binding only after it is validly promulgated. Until such operative act occurs,

there is really no decision to speak of, even if some or all of the Justices have already affixed their signatures thereto. During the intervening period from the time of signing until the promulgation of the decision, any one who took part in the deliberation and had signed the decision may, for a reason, validly withdraw one's vote, thereby preserving one's freedom of action.

APPEARANCES OF COUNSEL

Victor C. Avecilla for petitioner in G.R. No. 179120.
George S. Briones for petitioner in G.R. Nos. 179132-33.
Alfredo L. Villamor for petitioner in G.R. Nos. 179240-41.
Pacifico A. Agabin and *Pete Quirino-Quadra* for Jocelyn S. Limkaichong.

R E S O L U T I O N

PERALTA, *J.*:

The instant motion with prayer for oral argument filed by Louis C. Biraogo, petitioner in G.R. No. 179120, seeks a reconsideration of the Court's April 1, 2009 Decision, which granted Jocelyn D. Sy Limkaichong's petition for *certiorari* in G.R. Nos. 178831-32. The Court dismissed all the other petitions, including Biraogo's petition, and reversed the Joint Resolution of the Commission on Election's (COMELEC) Second Division dated May 17, 2007 in SPA Nos. 07-247 and 07-248 disqualifying Limkaichong from running as a congressional candidate in the First District of Negros Oriental due to lack of citizenship requirement.

Biraogo prefaced his motion by stating that justice and constitutionalism must remain entrenched in Philippine case law. To achieve this end, he maintained that the Court should reconsider its April 1, 2009 Decision. He also prayed for an oral argument, which he posited, would help the Court in the just and proper disposition of the pending incident.

After an assiduous review of the motion for reconsideration, we resolve that the same should be denied for lack of merit.

Most of the arguments advanced by Biraogo are a mere rehash of his previous arguments, which we have all considered and found without merit in the Decision dated April 1, 2009. Nonetheless, in order to lay to rest once and for all Biraogo's misgivings, we shall discuss only the relevant issues and revalidate our Decision by ruling on his motion as follows:

The core issue in the consolidated petitions is the qualification of Limkaichong to run for, be elected to, and assume and discharge, the position of Representative for the First District of Negros Oriental. The contention of the parties who sought her disqualification is that she is not a natural-born citizen, hence, she lacks the citizenship requirement in Section 6,[1] Article VI of the 1987 Constitution. In the election that ensued, she was voted for by the constituents of Negros Oriental and garnered the highest votes. She was eventually proclaimed as the winner and has since performed her duties and responsibilities as Member of the House of Representatives.

Indeed, the citizenship requirement was enshrined in our Constitution in order to ensure that our people and country do not end up being governed by aliens.[2] With this principle in mind, we have said in *Aquino v. COMELEC*[3] that if one of the essential qualifications for running for membership in the House of Representatives is lacking, then not even the will of a majority or plurality of the voters would substitute for a requirement mandated by the fundamental law itself. Hence assuming, time constraints notwithstanding, and after proper proceedings before

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[1] **Sect. 6.** No person shall be a Member of the House of Representatives unless he is a **natural-born citizen of the Philippines** and, on the day of the election, is at least twenty-five years of age, able to read and write, and, except the party-list representatives, a registered voter in the district in which he shall be elected, and a resident thereof for a period of not less than one year immediately preceding the day of the election.

[2] *Frivaldo v. Commission on Elections,* 327 Phil. 521, 551 (1996).

[3] G.R. No. 120265, September 18, 1995, 248 SCRA 400, 429.

the proper tribunal be had, that Limkaichong would prove to be an alien, the court of justice would tilt against her favor and would not sanction such an imperfection in her qualification to hold office. But, first things first.

The proponents against Limkaichong's qualification stated that she is not a natural-born citizen because her parents were Chinese citizens at the time of her birth. They went on to claim that the proceedings for the naturalization of Julio Ong Sy, her father, never attained finality due to procedural and substantial defects.

In our Decision, We held that:

> However, in assailing the citizenship of the father, the proper proceeding should be in accordance with Section 18 of Commonwealth Act No. 473 which provides that:
>
> > Sec. 18. *Cancellation of Naturalization Certificate Issued*. — **Upon motion made in the proper proceedings by the Solicitor General or his representative, or by the proper provincial fiscal, the competent judge may cancel the naturalization certificate issued and its registration in the Civil Register**:
> >
> > 1. If it is shown that said naturalization certificate was obtained fraudulently or illegally;
> > 2. If the person naturalized shall, within five years next following the issuance of said naturalization certificate, return to his native country or to some foreign country and establish his permanent residence there: *Provided*, That the fact of the person naturalized remaining more than one year in his native country or the country of his former nationality, or two years in any other foreign country, shall be considered as *prima facie* evidence of his intention of taking up his permanent residence in the same:
> > 3. If the petition was made on an invalid declaration of intention;

4. If it is shown that the minor children of the person naturalized failed to graduate from a public or private high school recognized by the Office of Private Education [now Bureau of Private Schools] of the Philippines, where Philippine history, government or civics are taught as part of the school curriculum, through the fault of their parents either by neglecting to support them or by transferring them to another school or schools. A certified copy of the decree canceling the naturalization certificate shall be forwarded by the Clerk of Court of the Department of Interior [now Office of the President] and the Bureau of Justice [now Office of the Solicitor General];

5. If it is shown that the naturalized citizen has allowed himself to be used as a dummy in violation of the constitutional or legal provisions requiring Philippine citizenship as a requisite for the exercise, use or enjoyment of a right, franchise or privilege. (Emphasis supplied)

As early as the case of *Queto v. Catolico*, where the Court of First Instance judge *motu propio* and not in the proper denaturalization proceedings called to court various grantees of certificates of naturalization (who had already taken their oaths of allegiance) and cancelled their certificates of naturalization due to procedural infirmities, the Court held that:

> x x x **It may be true that**, as alleged by said respondents, that **the proceedings for naturalization were tainted with certain infirmities, fatal or otherwise,** but that is beside the point in this case. The jurisdiction of the court to inquire into and rule upon such infirmities must be properly invoked in accordance with the procedure laid down by law. Such procedure is the cancellation of the naturalization certificate. [Section 1(5), Commonwealth Act No. 63], in the manner fixed in Section 18 of Commonwealth Act No. 473, hereinbefore quoted, namely, "upon motion made

> in the proper proceedings by the Solicitor General or his representatives, or by the proper provincial fiscal." **In other words, the initiative must come from these officers, presumably after previous investigation in each particular case.** (Emphasis supplied)

Clearly, under law and jurisprudence, it is the State, through its representatives designated by statute, that may question the illegally or invalidly procured certificate of naturalization in the appropriate denaturalization proceedings. It is plainly not a matter that may be raised by private persons in an election case involving the naturalized citizen's descendant.

Accordingly, it is not enough that one's qualification, or lack of it, to hold an office requiring one to be a natural-born citizen, be attacked and questioned before any tribunal or government institution. Proper proceedings must be strictly followed by the proper officers under the law. Hence, in seeking Limkaichong's disqualification on account of her citizenship, the rudiments of fair play and due process must be observed, for in doing so, she is not only deprived of the right to hold office as a Member of the House of Representative but her constituents would also be deprived of a leader in whom they have put their trust on through their votes. The obvious rationale behind the foregoing ruling is that in voting for a candidate who has not been disqualified by final judgment during the election day, the people voted for her *bona fide*, without any intention to misapply their franchise, and in the honest belief that the candidate was then qualified to be the person to whom they would entrust the exercise of the powers of government.[4]

These precepts, notwithstanding, Biraogo remained firm in his belief that this Court erred in its Decision and that the COMELEC Joint Resolution dated May 17, 2007 disqualifying Limkaichong should have been affirmed. He even went to a great extent of giving a dichotomy of the said Joint Resolution by stating that it was composed of two parts, the first part of

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[4] *Ocampo v. House of Representatives Electoral Tribunal*, G.R. No. 158466, June 14, 2004, 432 SCRA 144, 149.

which is the substantive part, and the second, pertains to the injunctive part. For this purpose, the dispositive portion of the said COMELEC Joint Resolution is reproduced below:

WHEREFORE, the Petitions are GRANTED and Jocelyn D. Sy-Limkaichong is declared as DISQUALIFIED from her candidacy for Representative of the First District of Negros Oriental.

The Provincial Supervisor of the Commission on Elections of Negros Oriental is hereby directed to strike out the name JOCELYN SY-LIMKAICHONG from the list of eligible candidates for the said position, and the concerned Board of Canvassers is hereby directed to hold and/or suspend the proclamation of JOCELYN SY-LIMKAICHONG as winning candidate, if any, until this decision has become final.

SO ORDERED.[5]

Biraogo maintained that the Motion for Reconsideration filed by Limkaichong suspended only the execution of the substantive relief or the first part of the above-quoted COMELEC Joint Resolution. However, it did not suspend the execution of the injunctive part and, accordingly, the Provincial Supervisor of the COMELEC should not have proceeded with Limkaichong's proclamation as the winning candidate in the elections.

His argument has no leg to stand on. We cannot take a decision or resolution on a piece-meal basis and apply only that part which is seemingly beneficial to one's cause and discard the prejudicial part which, obviously, would just be a hindrance in advancing one's stance or interests. Besides, the COMELEC Joint Resolution which Biraogo dichotomized was effectively suspended when Limkaichong timely filed her Motion for Reconsideration pursuant to Section 13(c),[6] Rule 18 and Section

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[5] *Rollo*, pp. 30-35. (Emphasis supplied)

[6] Sec. 13. *Finality of Decisions or Resolutions.* - x x x

(c) Unless a motion for reconsideration is seasonably filed, a decision or resolution of a Division shall become final and executory after the lapse of five (5) days in Special actions and Special cases and after fifteen (15) days in all other actions or proceedings, following its promulgation.

2,[7] Rule 19 of the COMELEC Rules of Procedure. Hence, it cannot as yet be implemented for not having attained its finality.

Nevertheless, events have already transpired after the COMELEC has rendered its Joint Resolution. Limkaichong was proclaimed by the Provincial Board of Canvassers, she had taken her oath of office, and she was allowed to officially assume the office on July 23, 2007. Accordingly, we ruled in our April 1, 2009 Decision that the House of Representatives Electoral Tribunal (HRET), and no longer the COMELEC, should now assume jurisdiction over the disqualification cases. Pertinently, we held:

x x x The Court has invariably held that once a winning candidate **has been proclaimed**, **taken his oath**, and **assumed office** as a Member of the House of Representatives, **the COMELEC's jurisdiction over election contests relating to his election, returns, and qualifications ends, and the HRET's own jurisdiction begins**.[8] It follows then that the proclamation of a winning candidate divests the COMELEC of its jurisdiction over matters pending before it at the time of the proclamation. The party questioning his qualification should now present his case in a proper proceeding before the HRET, the constitutionally mandated tribunal to hear and decide a case involving a Member of the House of Representatives with respect to the latter's election, returns and qualifications. The use of the word "sole" in Section 17, Article VI of the Constitution and in Section 250[9] of the OEC underscores the exclusivity of the

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[7] Sec. 2. *Period for Filing Motions for Reconsideration.* - A motion to reconsider a decision, resolution, order, or ruling of a Division shall be filed within five (5) days from the promulgation thereof. Such motion, if not *pro forma*, suspends the execution or implementation of the decision, resolution, order or ruling.

[8] *Vinzons-Chato v. Commission on Elections*, G.R. No. 172131, April 2, 2007, 520 SCRA 166, 179, citing *Aggabao v. Commission on Elections*, 449 SCRA 400, 404-405 (2005); *Guerrero v. Commission on Elections*, 391 Phil. 344, 352 (2000).

[9] Sec. 250. *Election Contests for Batasang Pambansa, Regional, Provincial and City Offices*. - A sworn petition contesting the election of any Member of the Batasang Pambansa or any regional, provincial or city official shall be filed with the Commission by any candidate who has duly filed a certificate of candidacy and has been voted for the same office, within ten days after the proclamation of the results of the election.

Electoral Tribunals' jurisdiction over election contests relating to its members.[10]

Section 17, **Article VI** of the **1987 Constitution** provides:

> Sec. 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.
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> x x x x x x x x x

Petitioners (in G.R. Nos. 179120, 179132-33, and 179240-41) steadfastly maintained that Limkaichong's proclamation was tainted with irregularity, which will effectively prevent the HRET from acquiring jurisdiction.

The fact that the proclamation of the winning candidate, as in this case, was alleged to have been tainted with irregularity does not divest the HRET of its jurisdiction.[11] The Court has shed light on this in the case of *Vinzons-Chato*,[12] to the effect that:

> In the present case, it is not disputed that respondent Unico has already been proclaimed and taken his oath of office as a Member of the House of Representatives (Thirteenth Congress); hence, the COMELEC correctly ruled that it had already lost jurisdiction over petitioner Chato's petition. The issues raised by petitioner Chato essentially relate to the canvassing of returns and alleged invalidity of respondent Unico's proclamation. These are matters that are best addressed to the sound judgment

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[10] *Vinzons-Chato v. Commission on Elections, supra* note 8, at 178, citing *Rasul v. Commission on Elections*, 371 Phil. 760, 766 (1999).

[11] *Lazatin v. Commission on Elections*, 241 Phil. 343, 344 (1988).

[12] *Supra* note 8, at 180.

and discretion of the HRET. Significantly, the allegation that respondent Unico's proclamation is null and void does not divest the HRET of its jurisdiction:

> x x x [I]n an electoral contest where the validity of the proclamation of a winning candidate who has taken his oath of office and assumed his post as congressman is raised, that issue is best addressed to the HRET. The reason for this ruling is self-evident, for it avoids duplicity of proceedings and a clash of jurisdiction between constitutional bodies, with due regard to the people's mandate.
>
> Further, for the Court to take cognizance of petitioner Chato's election protest against respondent Unico would be to usurp the constitutionally mandated functions of the HRET.

In fine, any allegations as to the invalidity of the proclamation will not prevent the HRET from assuming jurisdiction over all matters essential to a member's qualification to sit in the House of Representatives.

The 1998 HRET Rules, as amended, provide for the manner of filing either an election protest or a petition for *quo warranto* against a Member of the House of Representatives. In our Decision, we ruled that the ten-day prescriptive period under the 1998 HRET Rules does not apply to disqualification based on citizenship, because qualifications for public office are continuing requirements and must be possessed not only at the time of appointment or election or assumption of office but during the officer's entire tenure. Once any of the required qualifications is lost, his title may be seasonably challenged.[13] Accordingly, the 1987 Constitution requires that Members of the House of Representatives must be natural-born citizens not only at the time of their election but during their entire tenure. Being a continuing requirement, one who assails a member's citizenship or lack of it may still question the same at any time, the ten-day prescriptive period notwithstanding.

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[13] *Frivaldo v. Commission on Elections*, G.R. No. 87193, June 23, 1989, 174 SCRA 245, 255.

In fine, we hold that Biraogo had not successfully convinced us to reconsider our Decision and grant his motion for reconsideration.

In a last-ditched attempt to muddle the issues, Biraogo observed that the Decision dated April 1, 2009 is a complete turn-around from the ruling embodied in the Decision written by Justice Ruben T. Reyes which, although unpromulgated, was nonetheless signed by fourteen (14) Associate Justices and approved by the Court *en banc* on July 15, 2008. He decried the absence of an explanation in the Decision dated April 1, 2009 for the said departure or turn-around.

Such a position deserves scant consideration.

The Court in *Belac v. Commision on Elections,*[14] held that a decision must not only be **signed** by the Justices who took part in the deliberation, but must also be **promulgated** to be considered a **Decision**, to wit:

> ***[A] true decision of the Court is the decision signed by the Justices and duly promulgated. Before that decision is so signed and promulgated, there is no decision of the Court to speak of***. The vote cast by a member of the Court after the deliberation is always understood to be subject to confirmation at the time he has to sign the decision that is to be promulgated. The vote is of no value if it is not thus confirmed by the Justice casting it. The purpose of this practice is apparent. Members of this Court, even after they have cast their votes, wish to preserve their freedom of action till the last moment when they have to sign the decision, so that they may take full advantage of what they may believe to be the best fruit of their most mature reflection and deliberation. In consonance with this practice, **before a decision is signed and promulgated, all opinions and conclusions stated during and after the deliberation of the Court, remain in the breasts of the Justices, binding upon no one, not even upon the Justices themselves**. Of course, they may serve for determining what the opinion of the majority provisionally is and for designating a member to prepare the decision of the Court, but in **no way is that decision binding unless and until signed and promulgated**.

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[14] 408 Phil. 511, 525-526 (2001). (Underscoring and emphasis supplied)

We add that at any time before promulgation, the *ponencia* may be changed by the *ponente*. Indeed, if any member of the court who may have already signed it so desires, he may still withdraw his concurrence and register a qualification or dissent as long as the decision has not yet been promulgated. **A promulgation signifies that on the date it was made the judge or judges who signed the decision continued to support it.**

Thus, an unpromulgated decision is no decision at all. At the very least, they are part of the confidential internal deliberations of the Court which must not be released to the public. A decision becomes binding only after it is validly promulgated.[15] Until such operative act occurs, there is really no decision to speak of, even if some or all of the Justices have already affixed their signatures thereto. During the intervening period from the time of signing until the promulgation of the decision, any one who took part in the deliberation and had signed the decision may, for a reason, validly withdraw one's vote, thereby preserving one's freedom of action.

In sum, we hold that Biraogo's Motion for Reconsideration with Prayer for Oral Argument must be denied. This Court did not err in ruling that the proper remedy of those who may assail Limkaichong's disqualification based on citizenship is to file before the HRET the proper petition at any time during her incumbency.

WHEREFORE, the Motion for Reconsideration with Prayer for Oral Argument filed by petitioner Louis C. Biraogo in G.R. No. 179120 is *DENIED with FINALITY.*

SO ORDERED.

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

Velasco, Jr., J., dissents. I adopt my dissent to the April 1, 2009 Decision.

*Brion, J.,*on official leave.

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[15] *Jamil v. Commission on Elections*, G.R. No. 123648, December 15, 1997, 283 SCRA 349, 371.

SECOND DIVISION

[G.R. No. 179512. July 30, 2009]

EAGLE STAR SECURITY SERVICES, INC., *petitioner, vs.* **BONIFACIO L. MIRANDO,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; PARTS OF A PLEADING; CERTIFICATION AGAINST FORUM-SHOPPING; WHERE THE PETITIONER IS A CORPORATION, THE CERTIFICATION AGAINST FORUM-SHOPPING SHOULD BE SIGNED BY ITS DULY AUTHORIZED REPRESENTATIVE; LIBERAL APPLICATION THEREOF NOT WARRANTED IN CASE AT BAR. —** There is no proof that petitioner's representative Reynaldo G. Tauro (Tauro) was authorized to file the petition on its behalf. The Board Resolution (Annex "R" to the petition), which was adopted during petitioner's Special Board Meeting of May 20, 2006, states: RESOLVED as it is hereby resolved that the corporation shall elevate **on *Certiorari* before the Court of Appeals** NLRC NCR Case No. 039872-04 entitled "Bonifacio L. Mirando, *complainant*, versus Eagle Star Security Services, Inc., *respondent*." RESOLVED further as it is hereby resolved that **Mr. REYNALDO G. TAURO, shall be appointed as authorized representative of the Corporation, to represent and sign in behalf of the corporation the Verification and Certification of the petition for afore-mentioned case.** Clearly, Annex "R was adopted for the purpose of authorizing Tauro to file petitioner's petition for "*Certiorari* **before the Court of Appeals**." Despite petitioner's awareness in its Reply to respondents' Comment filed before this Court of the defect in Tauro' authority to sign for and in its behalf the Verification and Certification against Non-Forum Shopping, it failed even to belatedly file the requisite authority. *Fuentebella and Rolling Hills Memorial Park v. Castro,* on the requirement of a certification against forum shopping, explains: The reason for this is that the principal party has actual knowledge whether a petition has previously been filed involving the same case or substantially the same issues. If, for any reason, the principal party cannot sign the petition, the one signing on his behalf

must have been duly authorized. . . . **Where the petitioner is a corporation, the certification against forum shopping should be signed by its duly authorized director or representative …[I]f the real party-in-interest is a corporate body, an officer of the corporation can sign the certification against forum shopping as long as he is authorized by a resolution of its board of directors.** x x x **A certification *without the proper authorization* is defective and constitutes a valid cause for the dismissal of the petition**. Petitioner's discourse on relaxation of technical rules of procedure in the interest of substantial justice does not impress. While there have been instances when the Court dispensed with technicalities on the basis of special circumstances or compelling reasons, there is no such circumstance or reason in the present case which warrants the liberal application of technical rules.

2. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; ARTICLE 286 OF THE LABOR CODE, AS AMENDED FINDS NO APPLICATION IN CASE AT BAR; EXPLAINED. —** Petitioner's citation of Article 286 of the Labor Code reading: **ART. 286. *When employment not deemed terminated*. —** The *bona fide* suspension of the operation of a business or undertaking for a period not exceeding six (6) months, or the fulfillment by the employee of a military or civic duty shall not terminate employment. In all such cases, the employer shall reinstate the employee to his former position without loss of seniority rights if he indicates his desire to resume his work not later than one (1) month from the resumption of operations of his employer or from his relief from the military or civic duty is misplaced. *Philippine Industrial Security Agency v. Dapiton* teaches: We stress that Article 286 applies only when there is a *bonafide suspension of the employer's operation of a business or undertaking for a period not exceeding six (6) months.* In such a case, there is no termination of employment but only a temporary displacement of employees, albeit the displacement should not exceed six (6) months. The paramount consideration should be the dire exigency of the business of the employer that compels it to put some of its employees temporarily out of work. In security services, the temporary "off-detail" of guards takes place when the security agency's clients decide not to renew their contracts with the security

agency, resulting in a situation where the available posts under its existing contracts are less than the number of guards in its roster. In the present case, there is no showing that there was lack of available posts at petitioner's clients or that there was a request from the client-bank, where respondent was last posted and which continued to hire petitioner's services, to replace respondent with another. Petitioner suddenly prevented him from reporting on his tour of duty at the bank on December 15, 2001 and had not thereafter asked him to report for duty.

APPEARANCES OF COUNSEL

Sam Norman G. Fuentes for petitioner.
Edwin B. Belen for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

Bonifacio Mirando (respondent), who was hired by Eagle Star Security Services, Inc. (petitioner) as a security guard on July 29, 1997, was posted at the Heroes Hill Branch (in Quezon City) of Equitable-PCI Bank (now Banco de Oro-EPCI Bank) with a 9:00 a.m.-to-5:00 p.m. shift and a daily wage of ₱250.00.[1]

On December 14, 2001, respondent was made to sign a duty schedule for December 15 (a Saturday). When he reported for work on December 15, 2001, he was told by the detachment commander, Juanito Endencio (Endencio), not to report for duty per instruction of the head office. Respondent thus called up the head office and was told by Wilfredo Dayon that he was removed from duty by Ernesto Agodilla (Agodilla), petitioner's operations manager.[2] As respondent was thereafter no longer asked to report for duty, he filed on December 18, 2001 a complaint[3] for illegal dismissal against petitioner and its president

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[1] *Rollo*, pp. 50-51, 70-71, 86-87.

[2] *Ibid.*

[3] NLRC records I, p. 2; Docketed as NLRC NCR North Sector Case No. 12-06545-2001.

Wilfredo Encarnacion (Encarnacion) at the National Labor Relations Commission (NLRC). He later amended his complaint on February 1, 2002 to include a prayer for reinstatement and payment of full backwages, damages and attorney's fees.[4]

Responding to the complaint, petitioner alleged that respondent went on absence without official leave (AWOL) on December 16, 2001 and had not since reported for work, drawing it to send him a notice on December 26, 2001 to explain his absence, but he failed to respond thereto.[5]

Petitioner further alleged that in a Memorandum[6] dated December 26, 2001 sent to Agodilla, Endencio reported that respondent pulled out his uniform on December 15, 2001 and that according to him (respondent), he "w[ould] render (sic) voluntary resignation by December 17, 2001[,] Monday."

By Decision[7] of October 29, 2003, Labor Arbiter Lilia Savari found that respondent was illegally dismissed, disposing as follows:

WHEREFORE, a Decision is hereby rendered declaring complainant to have been illegally dismissed. Concomitantly, respondents are ordered to reinstate complainant to his former position without loss of seniority rights and with payment of full backwages from the time of his illegal dismissal on December 15, 2001. If reinstatement is no longer feasible, payment of separation benefits plus refund of cash bond is hereby ordered.

Further, respondents are ordered to pay complainant [service incentive leave pay] for 2001, balance of 13th month pay for the year 2001, ₱1,500.00 representing difference in uniform allowance and 10% of the aggregate amount as attorney's fees.

Computation of the award prepared by the NLRC Computation Unit is hereto attached and made integral part of this Decision.

SO ORDERED.

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[4] *Id.* at 7.

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

[6] *Id.* at 39.

[7] *Rollo*, pp. 85-98.

On appeal, the NLRC, by Decision[8] of October 28, 2005, modified the Labor Arbiter's Decision by dismissing the complaint as against Encarnacion and awarding attorney's fees based on the 13th month pay and service incentive leave pay.

On petitioner's and respondent's respective motions for reconsideration, the NLRC amended its Decision, by Resolution[9] of April 28, 2006, by reducing the "monetary awards to [herein respondent] representing [the] cash bond [equivalent], 13th month pay and service incentive leave pay" to ₱1,100.00, ₱2,403.08 and ₱107.17, respectively.

Petitioner, via *certiorari*, elevated the case to the Court of Appeals which, by Decision[10] of August 31, 2007, affirmed the NLRC Decision of October 28, 2005 and Resolution of April 28, 2006.

In affirming the NLRC ruling, the CA observed:

> . . . [I]f indeed it were true that the private respondent manifested his **intention to resign** on December 15, 2001 to Juanito Endencio[,] then the petitioner agency would have **no reason to declare the former as AWOL** as their first reaction would have been to allow the private respondent to execute a resignation letter. Moreover, the Court finds it very peculiar that Juanito Endencio, whom the private respondent allegedly told of his intention to resign on December 15, 2001, did not report the incident immediately to the petitioner agency but instead waited until December 26, 2001, or 11 days after, to submit a memorandum reporting the said incident. This boggles the mind as logic dictates that such an important incident, if it were true, should have elicited a much more immediate reaction from Juanito Endencio, being the Detachment Commander or Officer in Charge of the petitioner agency. After all a security guard threatening to quit, thereby abandoning his post, is not an incident that should be taken lightly, much less ignored by a supervisor,

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[8] *Id.* at 69-76; Penned by Presiding Commissioner Lourdes C. Javier with the concurrence of Commissioner Tito F. Genilo. Commissioner Romeo C. Lagman took no part.

[9] *Id.* at 341-346.

[10] *Id.* at 49-67; Penned by Associate Justice Romeo F. Barza with Associate Justices Mariano C. Del Castillo and Jose C. Mendoza concurring.

especially considering that the private respondent's post was at a bank. In addition, it is significant to note that the said memorandum came several days **after** the private respondent filed his case against the petitioner for illegal dismissal on December 18, 2001. (Emphasis and underscoring supplied)

Hence, the present petition for review which faults the appellate court

I

. . . WHEN IT AFFIRMED THE FINDINGS OF FACTS OF THE NLRC AND THE LABOR ARBITER WHICH RELIED ON MANIFESTLY MISTAKEN SPECULATIONS, SURMISES AND INFERENCES.

II

… IN FINDING THAT RESPONDENT WAS ILLEGALLY DISMISSED AND IN FAILING TO APPRECIATE THE OVERWHELMING EVIDENCE ESTABLISHED ON RECORD WHICH SHOWS BEYOND PERADVENTURE OF DOUBT THAT RESPONDENT WAS NEVER DISMISSED BUT RATHER WENT ON AWOL.

III

… IN FINDING RESPONDENT TO BE ENTITLED TO FULL BACKWAGES AND SEPARATION [PAY], INCLUDING ATTORNEY'S FEES DESPITE THE FACT THAT NO IOTA OF EVIDENCE [WAS PRESENTED] TO SATISFY THE BURDEN OF PROOF REQUIRED TO SUPPORT THE MONEY CLAIMS.[11] (Underscoring supplied)

Petitioner reiterates that it did not dismiss respondent who, so it claims, voluntarily separated himself from the service by refusing to report for work.[12] And it contends that respondent's amendment of his complaint after forty nine days to include a prayer for reinstatement, among other things, exposed his scheme that he did not actually want to be reinstated but merely wanted a "windfall" in the form of backwages and separation pay.[13]

[11] *Id.* at 35.

[12] *Id.* at 36-38.

[13] *Id.* at 40-41.

Petitioner goes on to argue that even assuming that respondent was not given any duty assignment, his filing of the complaint for illegal dismissal was "premature" as he should be considered to have been in floating status or off-detail under Article 286[14] of the Labor Code.[15]

Respondent, in his Comment,[16] maintains that the present petition was filed manifestly for delay as the grounds cited therein are mere rehash of those already sufficiently passed upon by the administrative bodies and the appellate court.

Additionally, respondent argues that the present petition must be treated as a "mere scrap of paper" since the one who signed it was "not properly authorized by the [p]etitioner to file [it] before this [Court]."

The petition must be denied.

There is no proof that petitioner's representative Reynaldo G. Tauro (Tauro) was authorized to file the petition on its behalf.[17] The Board Resolution (Annex "R" to the petition), which was adopted during petitioner's Special Board Meeting of May 20, 2006, states:

> RESOLVED as it is hereby resolved that the corporation shall elevate **on *Certiorari* before the Court of Appeals** NLRC NCR Case No. 039872-04 entitled "Bonifacio L. Mirando, *complainant*, versus Eagle Star Security Services, Inc., *respondent*."

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[14] Art. 286. When employment not deemed terminated.—The *bona fide* suspension of the operation of a business or undertaking for a period not exceeding six (6) months, or the fulfillment by the employee of a military or civic duty shall not terminate employment. In all such cases, the employer shall reinstate the employee to his former position without loss of seniority rights if he indicates his desire to resume his work not later than one (1) month from the resumption of operations of his employer or from his relief from the military or civic duty.

[15] *Rollo* at pp. 42-43.

[16] *Id.* at 233-239.

[17] *Id.* at 230.

RESOLVED further as it is hereby resolved that **Mr. REYNALDO G. TAURO, shall be appointed as authorized representative of the Corporation, to represent and sign in behalf of the corporation the Verification and Certification of the petition for afore-mentioned case.** (Italics in the original; emphasis and underscoring supplied)

Clearly, Annex "R was adopted for the purpose of authorizing Tauro to file petitioner's petition for "*Certiorari* **before the Court of Appeals**."[18] Despite petitioner's awareness in its Reply to respondents' Comment filed before this Court of the defect in Tauro' authority to sign for and in its behalf the Verification and Certification against Non-Forum Shopping,[19] it failed even to belatedly file the requisite authority.

Fuentebella and Rolling Hills Memorial Park v. Castro,[20] on the requirement of a certification against forum shopping, explains:

The reason for this is that the principal party has actual knowledge whether a petition has previously been filed involving the same case or substantially the same issues. If, for any reason, the principal party cannot sign the petition, the one signing on his behalf must have been duly authorized.

. . . **Where the petitioner is a corporation, the certification against forum shopping should be signed by its duly authorized director or representative ...[I]f the real party-in-interest is a corporate body, an officer of the corporation can sign the certification against forum shopping as long as he is authorized by a resolution of its board of directors.**

x x x x x x x x x

A certification *without the proper authorization* is defective and constitutes a valid cause for the dismissal of the petition. (Citations omitted; emphasis, italics and underscoring supplied)

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[18] CA *rollo*, p. 159.

[19] *Id.* at 246-256.

[20] G.R. No. 15086, 494 SCRA 183 (2006).

Petitioner's discourse on relaxation of technical rules of procedure in the interest of substantial justice does not impress. While there have been instances when the Court dispensed with technicalities on the basis of special circumstances or compelling reasons,[21] there is no such circumstance or reason in the present case which warrants the liberal application of technical rules.

AT ALL EVENTS, **on the merits**, the appellate court did not commit any reversible error in affirming the congruent findings of the Labor Arbiter and the NLRC that respondent was illegally dismissed.

Both the Labor Arbiter and the NLRC gave weight to the January 24, 2002 Sworn Affidavit[22] of Gary Villasis (Villasis), a fellow security guard of respondent, which reads in part:

> 3. That I am [respondent's] co-worker as [s]ecurity [g]uard at the said bank from the period of April 30, 2000 up to December 15, 2001 and [respondent] was terminated on the dated [*sic*] stated above without any violation, (Underscoring supplied),

as well as to Villasis' handwritten "*Pagpapatunay*"[23] dated

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[21] Vide: *General Milling Corp. v. NLRC,* 442 Phil. 425 (2002); *Shipside Inc. v. Court of Appeals,* G.R. No. 143377, 352 SCRA 334 (2001); *Uy v. Land Bank of the Phils.,* 391 Phil. 303 (2000), citing *Melo v. Court of Appeals*, G.R. No. 123686, 318 SCRA 94 (1999) *De Guia v. De Guia*, G.R. No. 135384, 356 SCRA 287 (2001); and *Damasco v. NLRC*, G.R. Nos. 115755 & 116101, 346 SCRA 714 (2000) citing *Condo Suite Club Travel, Inc. v. NLRC,* G.R. No. 125671, 323 SCRA 679 (2000); *Philippine Scout Veterans Security and Investigation Agency Inc. v. NLRC,* G.R. No. 124500, 299 SCRA 690 (1998); *Judy Phils., Inc. v. NLRC*, G.R. No. 111934, 289 SCRA 755 (1998).

[22] NLRC records I, p. 14.

[23] *Id.* at 36-37; Said handwritten declaration reads in part: *"NA NOONG DECEMBER 14, 2001 NAGPAPIRMA ANG AMING DETACHMENT COMMANDER NA SI MR. JUANITO ENDENCIO NG SCHEDULE SA DUTY PARA SA DEC. 15, 2001. SI SG MIRANDO AY NAKAPIRMA SA NASABING [S]CHEDULE. NANG PUMASOK SI SG MIRANDO KINABUKASAN [SA] AGENCY HINDI SIYA PINADUTY NI MR. ENDENCIO AT HINDI KO ALAM KONG ANO ANG DAHILAN KAYA PINIRMAHAN KO ANG AFFIDAVIT BILANG WITNESS NI SG MIRANDO PARA PATUNAYAN NA SIYA AY NAKAPIRMA SA SCHEDULE NG DUTY PARA SA DECEMBER 15, 2001."*

February 19, 2002 corroborating respondent's claim that he was unceremoniously relieved of his duties without any explanation.

The persistence of respondent to resume his duties, not to mention his immediate filing of the illegal dismissal complaint, should dissipate any doubt that he did not abandon his job.

Clutching at straws, petitioner argues that respondent was on temporary "off-detail," the period of time a security guard is made to wait until he is transferred or assigned to a new post or client;[24] and since petitioner's business is primarily dependent on contracts entered into with third parties, the temporary "off-detail" of respondent does not amount to dismissal as long as the period does not exceed 6 months, following Art. 286 of the Labor Code.[25]

Petitioner's citation of Article 286 of the Labor Code reading:

> **ART. 286.** ***When employment <u>not deemed terminated</u>.*** — The *bona fide* suspension of the operation of a business or undertaking for a period not exceeding six (6) months, or the fulfillment by the employee of a military or civic duty shall not terminate employment. In all such cases, the employer shall reinstate the employee to his former position without loss of seniority rights if he indicates his desire to resume his work not later than one (1) month from the resumption of operations of his employer or from his relief from the military or civic duty. (Emphasis in the original; underscoring supplied)

is misplaced. *Philippine Industrial Security Agency v. Dapiton* teaches:

> We stress that Article 286 applies only when there is a *bonafide suspension of the employer's operation of a business or undertaking for a period not exceeding six (6) months.* In such a case, there is no termination of employment but only a temporary displacement of employees, albeit the displacement should not exceed

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[24] *Superstar Security Agency v. NLRC,* 184 SCRA 74 (1990).

[25] *Rollo*, p. 42.

six (6) months. The paramount consideration should be the dire exigency of the business of the employer that compels it to put some of its employees temporarily out of work. In security services, the temporary "off-detail" of guards takes place when the security agency's clients decide not to renew their contracts with the security agency, resulting in a situation where the available posts under its existing contracts are less than the number of guards in its roster.[26] (Underscoring supplied)

In the present case, there is no showing that there was lack of available posts at petitioner's clients or that there was a request from the client-bank, where respondent was last posted and which continued to hire petitioner's services, to replace respondent with another. Petitioner suddenly prevented him from reporting on his tour of duty at the bank on December 15, 2001 and had not thereafter asked him to report for duty.

In fine, the appellate court's affirmance of the NLRC decision is in order.

WHEREFORE, the petition is *DENIED.*

Costs against petitioner.

SO ORDERED.

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

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[26] *Philippine Industrial Security Agency v. Dapiton*, G.R. No. 127421, December 8, 1999, 377 Phil. 951, 962.

[*] Additional member per Special Order No. 664 dated July 15, 2009.

THIRD DIVISION

[G.R. No. 180458. July 30, 2009]

DEVELOPMENT BANK OF THE PHILIPPINES, *petitioner, vs.* **FAMILY FOODS MANUFACTURING CO. LTD., and SPOUSES JULIANCO and CATALINA CENTENO,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; APPEAL BY *CERTIORARI* TO THE SUPREME COURT; AS A GENERAL RULE, A PETITION LACKING COPIES OF ESSENTIAL PLEADINGS AND PORTIONS OF THE CASE RECORD MAY BE DISMISSED; EXCEPTION; CASE AT BAR. —** As a general rule, a petition lacking copies of essential pleadings and portions of the case record may be dismissed. This rule, however, is not petrified. As the exact nature of the pleadings and parts of the case record that must accompany a petition is not specified, much discretion is left to the court to determine the necessity for copies of pleadings and other documents. A careful perusal of the records of the case shows that the petitioners substantially complied with the procedural requirements of Section 4, Rule 45 of the Rules of Court. Attached to the petition for review as annexes are legible certified duplicate originals of the assailed CA decision and resolution. DBP also attached the pleadings filed before the RTC and the latter's decision. The attachment of the pleadings and of the decisions of the RTC and CA provides sufficient basis to resolve the instant controversy. As held by this Court in *Air Philippines Corporation v. Zamora*: [E]ven if a document is relevant and pertinent to the petition, it need not be appended if it is shown that the contents thereof can also found in another document already attached to the petition. Thus, if the material allegations in a position paper are summarized in a questioned judgment, it will suffice that only a certified true copy of the judgment is attached. Third, a petition lacking an essential pleading or part of the case record may still be given due course or reinstated (if earlier dismissed) upon showing that petitioner later submitted the documents required, or that it will serve

the higher interest of justice that the case be decided on the merits. Nevertheless, even if the pleadings and other supporting documents were not attached to the petition, the dismissal is unwarranted because the CA records containing the promissory notes and the real estate and chattel mortgages were elevated to this Court. Without a doubt, we have sufficient basis to actually and completely dispose of the case. We must stress that cases should be determined on the merits, after all parties have been given full opportunity to ventilate their causes and defenses, rather than on technicalities or procedural imperfections. In that way, the ends of justice would be served better. Rules of procedure are mere tools designed to expedite the decision or resolution of cases and other matters pending in court. A strict and rigid application of rules, resulting in technicalities that tend to frustrate rather than promote substantial justice, must be avoided. In fact, Section 6 of Rule 1 states that the Rules shall be liberally construed in order to promote their objective of ensuring the just, speedy and inexpensive disposition of every action and proceeding.

2. **ID.; ID.; ISSUES RAISED FOR THE FIRST TIME ON APPEAL ARE BARRED BY ESTOPPEL. —** The records show that respondents in their complaint never raised as a ground or basis for the annulment of the auction sale the nullity of the stipulated interest; that during the pre-trial conference, and in the course of trial, the validity of the stipulated interest was never put as an issue. What respondents questioned were the interest and charges that were allegedly imposed or collected in excess of those provided in the real estate and chattel mortgages. It was only in the appellants' brief that respondents raised the validity of the stipulated interest rate and invoked this Court's ruling in *Medel v. Court of Appeals*. Clearly, respondents raised the issue for the first time on appeal. It is well settled that issues raised for the first time on appeal are barred by estoppel. Arguments not raised in the original proceedings cannot be considered on review; otherwise, it would violate basic principles of fair play. The CA, therefore, had no basis for, and erred in, reducing the stipulated interest rates.

3. **CIVIL LAW; CONTRACTS; AUTONOMY OF CONTRACTS; PARTIES ARE FREE TO STIPULATE TERMS AND CONDITIONS THAT THEY DEEM CONVENIENT, PROVIDED THESE ARE NOT CONTRARY TO LAW,**

MORALS, GOOD CUSTOMS, PUBLIC ORDER OR PUBLIC POLICY.— x x x [R]espondents' own evidence shows that they agreed on the stipulated interest rates of 18% and 22%, and on the penalty charge of 8%, in each promissory note. It is a basic principle in civil law that parties are bound by the stipulations in the contracts voluntarily entered into by them. Parties are free to stipulate terms and conditions that they deem convenient, provided these are not contrary to law, morals, good customs, public order, or public policy. There is nothing in the records, and in fact, there is no allegation, showing that respondents were victims of fraud when they signed the promissory notes. Neither is there a showing that in their contractual relations with DBP, respondents were at a disadvantage on account of their moral dependence, mental weakness, tender age or other handicap, which would entitle them to the vigilant protection of the courts as mandated by Article 24 of the Civil Code. Likewise, the 18% and 22% stipulated rates of interest in the two (2) promissory notes are not unconscionable or excessive, contrary to the CA ruling. In *Garcia v. Court of Appeals,* this Court sustained the interest rates of 18% and 24% per annum on the loans obtained by Chemark from Security Bank. Also, in *Bautista v. Pilar Development Corporation,* the validity of the 21% interest rate was upheld. Thus, the stipulated rates on respondents' promissory notes cannot be stricken down for being contrary to public policy.

4. **ID.; OBLIGATIONS; OBLIGATIONS WITH A PENAL CLAUSE; PENALTY CHARGE; VALIDITY THEREOF UPHELD IN CASE AT BAR. —** x x x [W]e uphold the validity of the 8% penalty charge. In *Development Bank of the Philippines v. Go*, this Court had the occasion to state that the 8% penalty charge is valid, *viz.*: This Court has recognized a penalty clause as an accessory obligation which the parties attach to a principal obligation for the purpose of insuring the performance thereof by imposing on the debtor a special prestation (generally consisting in the payment of a sum of money) in case the obligation is not fulfilled or is irregularly or inadequately fulfilled. The enforcement of the penalty can be demanded by the creditor only when the non-performance is due to the fault or fraud of the debtor. The non-performance gives rise to the presumption of fault; in order to avoid the payment of the penalty, the debtor has the burden of proving

an excuse — the failure of the performance was due to either *force majeure* or the acts of the creditor himself. In this case, respondents failed to discharge the burden. Thus, they cannot avoid the payment of the agreed penalty charge.

APPEARANCES OF COUNSEL

Michael Vernon R. De Gorio for petitioner.
Policarpio Pangulayan & Azura Law Office for respondents.

D E C I S I O N

NACHURA, *J.*:

At bar is a petition for review on *certiorari* under Rule 45 of the Rules of Court filed by petitioner Development Bank of the Philippines (DBP), challenging the May 11, 2007 Decision[1] and the October 24, 2007 Resolution[2] of the Court of Appeals (CA) in CA-G.R. CV No. 81360.

On September 15, 1982, respondent Family Foods Manufacturing Co. Ltd. (FAMILY FOODS), a partnership owned and operated by Spouses Julianco and Catalina Centeno (spouses Centeno) obtained an industrial loan of ₱500,000.00 from DBP. The loan was evidenced by a promissory note dated September 15, 1982 and payable in seven (7) years, with quarterly amortizations of ₱31,760.40. The loan carried an interest rate of 18% per annum, and penalty charge of 8% per annum. As security, spouses Centeno executed a real estate mortgage on the parcels of land in Los Baños, Laguna, covered by Transfer Certificate of Title (TCT) Nos. T-651217, T-96878 and T-96689; and a chattel mortgage over the buildings, equipment and machineries therein, in favor of DBP.

On October 14, 1984, FAMILY FOODS was granted an additional loan of ₱440,000.00, payable on or before November

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[1] Penned by Associate Justice Vicente Q. Roxas (dismissed), with Associate Justices Josefina Guevarra-Salonga and Ramon R. Garcia, concurring; *rollo*, pp. 8-19.

[2] *Id.* at 21.

8, 1989, with interest at 22% per annum and penalty charge of 8%. The loan was, likewise, secured by the same real estate and chattel mortgages.

FAMILY FOODS failed to pay the loans when they became due. Demand to pay was made, but it was not heeded. Accordingly, DBP filed a petition for extrajudicial foreclosure of mortgage with the Office of the Clerk of Court of the Regional Trial Court (RTC) of Laguna. A notice of sale, setting the auction sale on August 20, 1990, was issued and was published in *The Barangay* on July 19, August 5 and August 12, 1990. As scheduled, the sale proceeded, and the properties were awarded to DBP as the highest bidder. A certificate of sale was issued and was registered with the Register of Deeds.

On January 10, 1991, before the redemption period expired, FAMILY FOODS entered into a contract of lease over the foreclosed properties with DBP for agreed monthly rentals of ₱12,000.00. Spouses Centeno paid ₱24,000.00 as advanced rentals, but refused to pay the succeeding rentals. They, likewise, failed to redeem the foreclosed properties; hence, DBP consolidated its title over the same.

On March 3, 1994, spouses Centeno filed a suit for *Annulment of Sale with Prayer for Issuance of a Writ of Injunction and/or Restraining Order*.[3] They admitted obtaining loans in the amount of ₱940,000.00 from DBP, but claimed that they made substantial payments amounting to ₱773,466.59. DBP, however, imposed interest and other charges in excess of those provided in the promissory note and in the real estate and chattel mortgages, thus, unnecessarily increasing their outstanding obligation. Spouses Centeno further claimed that the foreclosure was void, because the notice of public action was not published in a newspaper of general circulation, as required by law. *The Barangay*, the newspaper where the notice of auction sale was published, they asserted, was not a newspaper of general circulation in Laguna. The certificate of posting issued by the Sheriff was, likewise, defective, as it was not in affidavit form or under oath, as

[3] *Id.* at 64-70.

required by Act No. 3135. Finally, spouses Centeno prayed for the issuance of a restraining order to enjoin DBP from taking possession of the property pending adjudication of the case.

DBP filed its answer[4] asserting lack of cause of action, as a defense. It averred that the foreclosure proceeding was valid and in accordance with law, arguing that it was not flawed by lack of notice or publication. FAMILY FOODS and spouses Centeno were duly notified of the scheduled auction sale. The notices of foreclosure sale were posted and published, as required by law. DBP further averred that respondents were estopped from questioning the foreclosure proceeding, because respondents already entered into a contract of lease with DBP. In so doing, respondents acknowledged DBP's ownership of the subject properties, thereby admitting the validity of the foreclosure proceeding. It added that respondents, as tenants, could not deny the DPB's title over the property, citing Sec. 4 (b), Rule 31 of the Rules of Court.

In due course and after hearing, the RTC rendered a decision[5] on January 30, 2003, dismissing the complaint. It rejected respondents' assertion that the notice of auction sale was not published and posted, as required by law. It also sustained DBP's argument that respondents are estopped from assailing the auction sale after the execution of the contract of lease. Respondents' claim of payment was, likewise, rejected for lack of factual and legal basis. Respondents filed a motion for reconsideration, but the RTC denied the same.[6]

Forthwith, respondents appealed to the Court of Appeals (CA). In its May 11, 2007 Decision, the appellate court modified the RTC decision. While upholding the validity of the auction sale, the CA reduced the interest rates and penalty charges stipulated in the two (2) promissory notes for being iniquitous and unconscionable. The dispositive portion of the CA decision reads:

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[4] *Id.* at 77-85.

[5] *Id.* at 86-103.

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

WHEREFORE, premises considered, the assailed January 30, 2003 Decision of the Regional Trial Court of Calamba, Laguna, Branch 92, in Civil Case No. 2082-94-C, is hereby MODIFIED with respect to the penalty which is hereby REDUCED to three percent (3%) per annum and with respect to the interest rates charged in the two promissory notes, these iniquitous interest rates are hereby REDUCED to twelve percent (12%) per annum each of the two promissory notes. All other aspects of the decision are hereby AFFIRMED.

SO ORDERED.[7]

Respondents filed a motion for reconsideration, while DBP moved for partial reconsideration of the decision, but these were both denied by the CA on October 24, 2007.

Respondents and DBP then came to us with their respective petitions for review assailing the CA ruling. Respondents' petition was docketed as G.R No. 180318, while that of DBP was docketed as G.R. No. 180458. The petitions, however, were not consolidated.

On February 2, 2008, this Court dismissed G.R. No. 180318 and affirmed the CA ruling. Thus, what remains to be resolved is DBP's petition, raising the following issues:

I. WHETHER THE REASONABLENESS OF THE STIPULATED PENALTY CHARGE AND INTEREST RATES ARE WITHIN THE ISSUES OF THE INSTANT CASE;

II. WHETHER THE JUSTIFICATION PROVIDED FOR THE REDUCTION OF THE STIPULATED PENALTY CHARGE AND INTEREST RATES IS SUPPORTED BY THE EVIDENCE ON RECORD;

III. WHETHER THE STIPULATED PENALTY CHARGE OF 8% PER ANNUM AND INTEREST RATES OF 18% AND 22% PER ANNUM ARE UNREASONABLE, INIQUITOUS AND UNCONSCIONABLE UNDER THE APPLICABLE DECISIONS OF THE SUPREME COURT.[8]

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[7] *Id.* at 60.

[8] *Id.* at 34.

We will first address the procedural issue raised by the respondents in their comment.

Respondents moved for the outright dismissal of the petition on the ground that DBP did not attach material portions of the record, *i.e.* promissory notes, real estate and chattel mortgages, and other documents, which are necessary for a complete determination of the merits of the petition. They assert that DBP violated Sec. 4, Rule 45[9] of the Rules of Civil Procedure, thus, justifying the outright dismissal of the petition.

We disagree.

As a general rule, a petition lacking copies of essential pleadings and portions of the case record may be dismissed.[10] This rule, however, is not petrified. As the exact nature of the pleadings and parts of the case record that must accompany a petition is not specified, much discretion is left to the court to determine the necessity for copies of pleadings and other documents.[11]

A careful perusal of the records of the case shows that the petitioners substantially complied with the procedural requirements of Section 4, Rule 45 of the Rules of Court. Attached to the petition for review as annexes are legible certified duplicate

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[9] 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 xxx (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 portion of the record as would support the petition; xxx

[10] 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.

The Supreme Court may on its own initiative deny the petition on the ground that the appeal is without merit, or is prosecuted manifestly for delay, or that the questions raised therein are too unsubstantial to require consideration.

[11] *Air Philippines Corporation v. Zamora*, G.R. No. 148247, August 7, 2006, 498 SCRA 59, 69.

originals of the assailed CA decision and resolution. DBP also attached the pleadings filed before the RTC and the latter's decision. The attachment of the pleadings and of the decisions of the RTC and CA provides sufficient basis to resolve the instant controversy.

As held by this Court in *Air Philippines Corporation v. Zamora*:[12]

> [E]ven if a document is relevant and pertinent to the petition, it need not be appended if it is shown that the contents thereof can also be found in another document already attached to the petition. Thus, if the material allegations in a position paper are summarized in a questioned judgment, it will suffice that only a certified true copy of the judgment is attached.
>
> Third, a petition lacking an essential pleading or part of the case record may still be given due course or reinstated (if earlier dismissed) upon showing that petitioner later submitted the documents required, or that it will serve the higher interest of justice that the case be decided on the merits.

Nevertheless, even if the pleadings and other supporting documents were not attached to the petition, the dismissal is unwarranted because the CA records containing the promissory notes and the real estate and chattel mortgages were elevated to this Court. Without a doubt, we have sufficient basis to actually and completely dispose of the case.

We must stress that cases should be determined on the merits, after all parties have been given full opportunity to ventilate their causes and defenses, rather than on technicalities or procedural imperfections. In that way, the ends of justice would be served better. Rules of procedure are mere tools designed to expedite the decision or resolution of cases and other matters pending in court. A strict and rigid application of rules, resulting in technicalities that tend to frustrate rather than promote substantial justice, must be avoided. In fact, Section 6 of Rule 1 states that the Rules shall be liberally construed in order to promote their objective of ensuring the just, speedy and

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[12] *Id.* at 70.

inexpensive disposition of every action and proceeding.[13]

Now we resolve the merit of the petition.

DBP faults the CA for ruling on the reasonableness of the stipulated interest and, accordingly, modifying the RTC decision. It points out that respondents never questioned the interest and charges stipulated in the promissory notes and in the real estate and chattel mortgages throughout the proceedings in the court *a quo*. What respondents questioned were the interest and charges allegedly imposed or collected in excess of those provided in the real estate and chattel mortgages. Thus, it contends that the CA committed reversible error in ruling on the issue, which was neither raised in the complaint nor ventilated during the trial. In any case, there was nothing illegal in the stipulated rate of interest. DBP, therefore, prays for the reversal of the assailed decision and resolution.

We grant the petition.

The records show that respondents in their complaint never raised as a ground or basis for the annulment of the auction sale the nullity of the stipulated interest;[14] that during the pre-trial conference,[15] and in the course of trial, the validity of the stipulated interest was never put as an issue. What respondents questioned were the interest and charges that were allegedly imposed or collected in excess of those provided in the real estate and chattel mortgages. It was only in the appellants' brief that respondents raised the validity of the stipulated interest rate and invoked this Court's ruling in *Medel v. Court of Appeals*.[16] Clearly, respondents raised the issue for the first time on appeal.

It is well settled that issues raised for the first time on appeal are barred by estoppel. Arguments not raised in the original proceedings cannot be considered on review; otherwise, it would

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[13] *Posadas-Moya & Associates Construction Co., Inc. v. Greenfield Development Corp.*, 451 Phil. 647, 661 (2003).

[14] *See* complaint, *rollo*, pp. 64-70, at 66.

[15] *See* RTC Decision, *id.* at 86-103, 93.

[16] 359 Phil. 821 (1998).

violate basic principles of fair play.[17] The CA, therefore, had no basis for, and erred in, reducing the stipulated interest rates.

Moreover, respondents' own evidence shows that they agreed on the stipulated interest rates of 18% and 22%, and on the penalty charge of 8%, in each promissory note. It is a basic principle in civil law that parties are bound by the stipulations in the contracts voluntarily entered into by them. Parties are free to stipulate terms and conditions that they deem convenient, provided these are not contrary to law, morals, good customs, public order, or public policy.[18]

There is nothing in the records, and in fact, there is no allegation, showing that respondents were victims of fraud when they signed the promissory notes. Neither is there a showing that in their contractual relations with DBP, respondents were at a disadvantage on account of their moral dependence, mental weakness, tender age or other handicap, which would entitle them to the vigilant protection of the courts as mandated by Article 24[19] of the Civil Code.

As held by this Court in *Vales v. Villa*,[20] and *Spouses Pascual v. Ramos*:[21]

All men are presumed to be sane and normal and subject to be moved by substantially the same motives. When of age and sane, they must take care of themselves. In their relations with others in the business of life, wits, sense, intelligence, training, ability and judgment meet and clash and contest, sometimes with gain and advantage to all, sometimes to a few only, with loss and injury to others. In these contests men must depend upon themselves – upon

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[17] *Ong Lim Sing, Jr. v. FEB Leasing and Finance Corp.*, G.R. No. 168115, June 8, 2007, 524 SCRA 333, 343.

[18] *Spouses Pascual v. Ramos*, 433 Phil. 449, 460 (2002).

[19] Art. 24. In all contractual, property or other relations, when one of the parties is at a disadvantage on account of his moral dependence, ignorance, indigence, mental weakness, tender age or other handicap, the courts must be vigilant for his protection.

[20] 35 Phil 769, 787-788 (1916).

[21] 433 Phil. 449, 461 (2002).

their own abilities, talents, training, sense, acumen, judgment. The fact that one may be worsted by another, of itself, furnishes no cause of complaint. One man cannot complain because another is more able, or better trained, or has better sense or judgment than he has; and when the two meet on a fair field the inferior cannot murmur if the battle goes against him. The law furnishes no protection to the inferior simply because he is inferior, any more than it protects the strong because he is strong. The law furnishes protection to both alike – to one no more or less than to the other. It makes no distinction between the wise and the foolish, the great and the small, the strong and the weak. The foolish may lose all they have to the wise; but that does not mean that the law will give it back to them again. Courts cannot follow one every step of his life and extricate him from bad bargains, protect him from unwise investments, relieve him from one-sided contracts, or annul the effects of foolish acts. Courts cannot constitute themselves guardians of persons who are not legally incompetent. Courts operate not because one person has been defeated or overcome by another, but because he has been defeated or overcome *illegally.* Men may do foolish things, make ridiculous contracts, use miserable judgment, and lose money by then – indeed, all they have in the world; but not for that alone can the law intervene and restore. There must be, in addition, a *violation* of law, the commission of what the law knows as an *actionable wrong*, before the courts are authorized to lay hold of the situation and remedy it.

Likewise, the 18% and 22% stipulated rates of interest in the two (2) promissory notes are not unconscionable or excessive, contrary to the CA ruling.

In *Garcia v. Court of Appeals*,[22] this Court sustained the interest rates of 18% and 24% per annum on the loans obtained by Chemark from Security Bank. Also, in *Bautista v. Pilar Development Corporation*,[23] the validity of the 21% interest rate was upheld. Thus, the stipulated rates on respondents' promissory notes cannot be stricken down for being contrary to public policy.

Similarly, we uphold the validity of the 8% penalty charge.

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[22] Nos. 82282-83, November 24, 1988, 167 SCRA 815, 830.

[23] 371 Phil. 533, 544 (1999).

In *Development Bank of the Philippines v. Go*,[24] this Court had the occasion to state that the 8% penalty charge is valid, *viz.*:

> This Court has recognized a penalty clause as an accessory obligation which the parties attach to a principal obligation for the purpose of insuring the performance thereof by imposing on the debtor a special prestation (generally consisting in the payment of a sum of money) in case the obligation is not fulfilled or is irregularly or inadequately fulfilled. The enforcement of the penalty can be demanded by the creditor only when the non-performance is due to the fault or fraud of the debtor. The non-performance gives rise to the presumption of fault; in order to avoid the payment of the penalty, the debtor has the burden of proving an excuse — the failure of the performance was due to either *force majeure* or the acts of the creditor himself.[25]

In this case, respondents failed to discharge the burden. Thus, they cannot avoid the payment of the agreed penalty charge.

WHEREFORE, the petition is *GRANTED.* The assailed Decision and Resolution of the Court of Appeals in CA-G.R. CV No. 81360 are *REVERSED* and *SET ASIDE.* The January 30, 2003 Decision of the Regional Trial Court of Calamba, Branch 92, dismissing Civil Case 2082-94-C, is *REINSTATED.*

SO ORDERED.

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

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[24] G.R. No. 168779, September 14, 2007, 533 SCRA 460.

[25] *Id.* at 470-471.

EN BANC

[G.R. No. 184801. July 30, 2009]

JONAS TAGUIAM, *petitioner, vs.* **COMMISSION ON ELECTIONS and ANTHONY C. TUDDAO,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; COMMISSION ON ELECTIONS (COMELEC); COMELEC RULES OF PROCEDURE; SUSPENSION THEREOF ALLOWED BY THE CONSTITUTION IN THE INTEREST OF JUSTICE AND TO DETERMINE THE TRUE WILL OF THE ELECTORATE. — While the petition was indeed filed beyond the 5-day reglementary period, the COMELEC however has the discretion to suspend its rules of procedure or any portion thereof. Sections 3 and 4 of Rule 1 of the COMELEC Rules of Procedure state, to *wit*: Sec. 3. Construction. — These rules shall be liberally construed in order to promote the effective and efficient implementation of the objectives of ensuring the holding of free, orderly, honest, peaceful and credible elections and to achieve just, expeditious and inexpensive determination and disposition of every action and proceeding brought before the Commission. Sec. 4. Suspension of the Rules. — In the interest of justice and in order to obtain speedy disposition of all matters pending before the Commission, these rules or any portion thereof may be suspended by the Commission. Certainly, such rule of suspension is in accordance with the spirit of Section 6, Article IX-A of the Constitution which bestows upon the COMELEC the power to "promulgate its own rules concerning pleadings and practice before it or before any of its offices" to attain justice and the noble purpose of determining the true will of the electorate. In *Jaramilla v. Commission on Elections* and *Dela Llana v. Commission on Elections*, the Court affirmed the COMELEC's suspension of its rules of procedure regarding the late filing of a petition for correction of manifest error and annulment of proclamation in view of its paramount duty to determine the real will of the electorate. We have consistently employed liberal construction of procedural rules in election cases to the end that the will of the people in the choice of public officers may not be defeated

by mere technical objections. In the instant case, records show that petitioner was declared the 12th winning candidate based on SOVPs containing mathematical and clerical errors. The total number of votes in the SOVPs of the identified precincts are markedly different from the votes tabulated in their respective ERs, *i.e.*, petitioner was given additional votes, while private respondent's votes were reduced, which altered the outcome of the election. Petitioner was declared the last winning candidate for the position of *Sangguniang Panglungsod* of Tuguegarao City, instead of private respondent.

2. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; ELUCIDATED; ABSENT IN CASE AT BAR. —** Grave abuse of discretion arises when a lower court or tribunal violates the Constitution, the law or existing jurisprudence. Grave abuse of discretion means such capricious and whimsical exercise of judgment as would amount to lack of jurisdiction; it contemplates a situation where the power is exercised in an arbitrary or 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. In a *certiorari* proceeding, as in the instant case, it is imperative for petitioner to show caprice and arbitrariness on the part of the court or agency whose exercise of discretion is being assailed. For acting pursuant to its Constitutional mandate of determining the true will of the electorate with substantiated evidence, the Court finds no grave abuse of discretion on the part of COMELEC in annulling the proclamation of petitioner. Said proclamation is flawed from the beginning because it did not reflect the true and legitimate will of the electorate. Having been based on a faulty tabulation, there can be no valid proclamation to speak of.

APPEARANCES OF COUNSEL

Law Firm of Ferrer & Frias for petitioner.
The Solicitor General for public respondent.
Placido M. Sabban for private respondent.

DECISION

YNARES-SANTIAGO, *J.*:

This petition for *certiorari* with prayer for issuance of a temporary restraining order and writ of preliminary injunction[1] assails the December 20, 2007 Resolution[2] of the Second Division of the Commission on Elections (COMELEC) in SPC No. 07-171 which granted private respondent Anthony C. Tuddao's Petition for Correction of Manifest Error and Annulment of Proclamation of petitioner Jonas Taguiam as the 12th winning candidate for the *Sangguniang Panglungsod* of Tuguegarao City, Cagayan. Also assailed is the October 9, 2008 Resolution[3] of the COMELEC *En Banc* denying petitioner's Motion for Reconsideration.[4]

Petitioner and private respondent were candidates for the position of *Sangguniang Panglungsod* of Tuguegarao City in Cagayan during the 2007 National and Local Elections. On May 19, 2007, petitioner was proclaimed by the City Board of Canvassers (CBOC) as the 12th ranking and winning candidate for the said position with 10,981 votes.[5] Private respondent obtained 10,971 votes[6] and was ranked no. 13.

On May 25, 2007, private respondent filed with the COMELEC a petition for correction of manifest errors in the

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[1] *Rollo*, pp. 3-20.

[2] *Id.* at 26-35; penned by Presiding Commissioner Florentino A. Tuason, Jr. and concurred in by Commissioners Rene V. Sarmiento and Nicodemo T. Ferrer.

[3] *Id.* at 36-46; penned by Commissioner Moslemen T. Macarambon and concurred in by Chairman Jose A.R. Melo and Commissioners Rene V. Sarmiento, Nicodemo T. Ferrer, Leonardo L. Leonida, and Lucenito N. Tagle.

[4] *Id.* at 161-172.

[5] As per the Certificate of Canvass of Votes and Proclamation of the Winning Candidates for City Offices issued by the City Board Canvassers of Tuguegarao City; *id.* at 47.

[6] As per the May 24, 2007 Certification issued by the Office of the City Election Officer of COMELEC in Tuguegarao City; *id.* at 57.

Election Returns and Statement of Votes for 27 clustered precincts[7] and for the annulment of the proclamation of the affected winning candidate in Tuguegarao City. He alleged that he was credited with less votes in several Statements of Votes by Precincts (SOVP) as compared with the tally of his votes in the election returns ERs), whereas petitioner was credited with more votes. Private respondent offered evidence in the following nine precincts: 0035A/0036A, 0061A/0063A, 69A/69B, 87A/87B, 192A/192B, 264A/265A, 324A/325B, 326A, and 328B.

Petitioner denied the allegations of private respondent and argued that the petition should be dismissed for having been filed late or six days after the proclamation of the winning candidates.[8] Meanwhile, the members of the CBOC of Tuguegarao City denied private respondent's allegations of manifest errors in the SOVP; maintained that petitioner garnered more votes than those obtained by private respondent; and that they have properly performed their duties and functions.[9]

On December 20, 2007, the Second Division of the COMELEC issued the assailed Resolution, to wit:

IN VIEW OF THE FOREGOING, the instant Petition filed by Anthony Tuddao for Correction of Manifest Error and Annulment of Proclamation of Jonas Taguiam is hereby GRANTED.

ACCORDINGLY, the City Board of Canvassers of Tuguegarao, Cagayan is hereby DIRECTED to (i) RECONVENE after giving due notice to the concerned parties, (ii) CORRECT the errors in the Statement of Votes by Precinct (SOVP), and thereafter proclaim the 12th winning candidate for the Sangguniang Panlungsod of Tuguegarao, Cagayan.

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[7] *Id.* at 49-54: Precincts 004A/004B, 0015S/0020A, 0030A/0032A, 0035A/0036A, 0041B/0045B, 0049A, 0061A/0063A, 0064A/0064B, 0067A/0067B, 0069A/0069B, 0087A/0087B, 0106A/0107B, 0139A/0140B, 133A/174B, 0178A/0178B, 0179A, 0190A/0190B, 0192A/0192B, 0216, 0229A/0229B, 0257A/0257B, 0264A/0265A, 0266A/0267A, 0283A/0283B, 0324A/0325B, 0326A, 0328B.

[8] *Id.* at 133-138.

[9] *Id.* at 139-142.

Let the City Board of Canvassers of Tuguegarao, Cagayan implement this Resolution with dispatch.

SO ORDERED.[10]

The COMELEC held that the belated filing of private respondent's petition cannot deter its authority to ascertain the true will of the electorate and thereafter affirm such will. Thus, after due proceedings, the COMELEC found private respondent's allegations duly substantiated with material evidence and confirmed the following:

A. With regard to the votes of private respondent:

	Precinct No.	SOVP No.	ER No.	Votes in SOVP	Votes in ER	Votes Affected
1	69A/69B	15327	9602679	27	27	0
2	87A/87B	10543	9602699	13	13	0
3	192A/192B	10531	9602801	20	19	-1
4	326A	10532	9602921	43	53	+10
TOTAL						+9

B. With regard to the votes of petitioner:

	Precinct No.	SOVP No.	ER No.	Votes in SOVP	Votes in ER	Votes Affected
1	35A/36A	10543	9602647	40	33	-7
2	61A/63A	10539	9602672	55	50	-5
3	264A/265A	10528	9602871	39	29	-10
4	324A/325A	10533	9602920	62	61	-1
5	328B	10527	9602924	33	32	-1
TOTAL						-24

The COMELEC concluded that nine votes should be added to the total number of votes garnered by private respondent; while 24 votes should be deducted from the total number of votes obtained by petitioner. Thus, the total number of votes obtained by private respondent was 10,980, while the total number of votes received by petitioner was 10,957. As such, private respondent was rightfully the 12th winning candidate for the *Sangguniang Panglungsod* of Tuguegarao City, Cagayan.

[10] *Id.* at 34.

Petitioner filed a motion for reconsideration which was denied by the COMELEC *En Banc* on October 9, 2008.

Hence, this Petition for *Certiorari*[11] raising the issue of whether or not the COMELEC committed grave abuse of discretion amounting to lack or excess of jurisdiction when it took cognizance of private respondent's petition for correction of manifest errors in the Election Returns and Statement of Votes despite its late filing.

Petitioner avers that private respondent's petition for correction of manifest errors should have been dismissed outright for failure to show any justification for its late filing; that, if the petition had been properly dismissed, private respondent had other remedies available, such as an election protest.

Rule 27, Section 5 of the 1993 COMELEC Rules of Procedure expressly states that:

> Pre-proclamation Controversies Which May Be Filed Directly with the Commission –
>
> (a) The following pre-proclamation controversies may be filed directly with the Commission:
>
> x x x x x x x x x
>
> 2)When the issue involves the correction of manifest errors in the tabulation or tallying of the results during the canvassing as where (1) a copy of the election returns or certificate of canvass was tabulated more than once, (2) two or more copies of the election returns of one precinct, or two or more copies of certificate of canvass were tabulated separately, (3) there has been a mistake in the copying of the figures into the statement of votes or into the certificate of canvass, or (4) so-called returns from non-existent precincts were included in the canvass, and such errors could not have been discovered during the canvassing despite the exercise of due diligence and proclamation of the winning candidates had already been made.
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> x x x x x x x x x

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[11] *Id.* at 3-20.

If the petition is for correction, it must be filed not later than five (5) days following the date of proclamation and must implead all candidates who may be adversely affected thereby.

While the petition was indeed filed beyond the 5-day reglementary period, the COMELEC however has the discretion to suspend its rules of procedure or any portion thereof. Sections 3 and 4 of Rule 1 of the COMELEC Rules of Procedure state, to *wit*:

Sec. 3. Construction. — These rules shall be liberally construed in order to promote the effective and efficient implementation of the objectives of ensuring the holding of free, orderly, honest, peaceful and credible elections and to achieve just, expeditious and inexpensive determination and disposition of every action and proceeding brought before the Commission.

Sec. 4. Suspension of the Rules. — In the interest of justice and in order to obtain speedy disposition of all matters pending before the Commission, these rules or any portion thereof may be suspended by the Commission.

Certainly, such rule of suspension is in accordance with the spirit of Section 6, Article IX-A of the Constitution which bestows upon the COMELEC the power to "promulgate its own rules concerning pleadings and practice before it or before any of its offices" to attain justice and the noble purpose of determining the true will of the electorate.[12]

In *Jaramilla v. Commission on Elections*[13] and *Dela Llana v. Commission on Elections*,[14] the Court affirmed the COMELEC's suspension of its rules of procedure regarding the late filing of a petition for correction of manifest error and annulment of proclamation in view of its paramount duty to determine the real will of the electorate. We have consistently employed liberal construction of procedural rules in election

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[12] *Dela Llana v. Commission on Elections*, 462 Phil. 355, 372 (2003).

[13] 460 Phil. 507 (2003).

[14] *Supra* note 12.

cases to the end that the will of the people in the choice of public officers may not be defeated by mere technical objections.[15]

In the instant case, records show that petitioner was declared the 12th winning candidate based on SOVPs containing mathematical and clerical errors. The total number of votes in the SOVPs of the identified precincts are markedly different from the votes tabulated in their respective ERs, *i.e.*, petitioner was given additional votes, while private respondent's votes were reduced, which altered the outcome of the election. Petitioner was declared the last winning candidate for the position of *Sangguniang Panglungsod* of Tuguegarao City, instead of private respondent.

In *Torres v. Commission on Elections*,[16] the Court reiterated that while the remedy of the losing party is an election protest after his opponent has already been proclaimed as winning candidate, such recourse is on the assumption, however, that there has been a valid proclamation. Where a proclamation is null and void, the proclamation is no proclamation at all and the proclaimed candidate's assumption of office cannot deprive the COMELEC of the power to declare such nullity and annul the proclamation.[17]

It is significant to note that petitioner did not assail the factual findings of the COMELEC of manifest error in the tabulation of votes but only raised issues on the foregoing technicalities. Hence, the COMELEC's unrebutted findings of fact are therefore sustained.

Grave abuse of discretion arises when a lower court or tribunal violates the Constitution, the law or existing jurisprudence. Grave abuse of discretion means such capricious and whimsical

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[15] *Octava v. Commission on Elections*, G.R. No. 166105, March 22, 2007, 518 SCRA 759, 765-766.

[16] 337 Phil. 270 (1997).

[17] *Id.* at 275-276, citing *Duremdes v. Commission on Elections*, G.R. Nos. 86362-63, October 27, 1989, 178 SCRA 746 and *Aguam v. Commission on Elections*, 132 Phil. 353 (1968).

exercise of judgment as would amount to lack of jurisdiction; it contemplates a situation where the power is exercised in an arbitrary or 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. In a *certiorari* proceeding, as in the instant case, it is imperative for petitioner to show caprice and arbitrariness on the part of the court or agency whose exercise of discretion is being assailed.[18]

For acting pursuant to its Constitutional mandate of determining the true will of the electorate with substantiated evidence, the Court finds no grave abuse of discretion on the part of COMELEC in annulling the proclamation of petitioner. Said proclamation is flawed from the beginning because it did not reflect the true and legitimate will of the electorate. Having been based on a faulty tabulation, there can be no valid proclamation to speak of.[19]

WHEREFORE, this petition for *certiorari* is *DISMISSED* for lack of merit. The December 20, 2007 Resolution of the Second Division of the Commission on Elections (COMELEC) and the October 9, 2008 Resolution of the COMELEC *En Banc* are hereby *AFFIRMED.*

SO ORDERED.

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

Brion, J., on official leave.

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[18] *Fernandez v. Commission on Elections*, G.R. No. 171821, October 9, 2006, 504 SCRA 116.

[19] *Tatlonghari v. Commission on Elections*, G.R. No. 86645, July 31, 1991, 199 SCRA 849, 857-858.

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Material alteration — The misplacement of the typewritten entries for the payee and the amount on the same blank, and the repetition of the amount using a check writer were glaringly obvious irregularities on the face of the check. (Bank of America NT & SA *vs*. Philippine Racing Club, G.R. No. 150228, July 30, 2009) p. 687

— The presence of irregularities in each of the two checks should have alerted a bank to be cautious before proceeding to encash them which it did not do. *(Id.)*

CIVIL SERVICE

Optional retirement — Mooted the disapproval of appointment. (Civil Service Commission *vs*. Tahanlangit, G.R. No. 180528, July 27, 2009) p. 517

CLERKS OF COURT

Dishonesty — Committed in case of falsification of daily time record. (Concerned Employees of the MTC of Meycauayan, Bulacan *vs*. Paguio-Bacani, A.M. No. P-06-2217, July 30, 2009) p. 630

— Imposable penalty is suspension from service for one (1) year without pay in lieu of dismissal from service taking into account the length of service and the fact that the offense committed was the first infraction. *(Id.)*

Dishonesty and Falsification — Committed in case a clerk of court made it appear that she rendered service on the dates in question when in fact she did not. (Concerned Employees of the MTC of Meycauayan, Bulacan *vs*. Paguio-Bacani, A.M. No. P-06-2217, July 30, 2009) p. 630

Duties — To be the role model for all court employees under their supervision. (Concerned Employees of the MTC of Meycauayan, Bulacan *vs*. Paguio-Bacani, A.M. No. P-06-2217, July 30, 2009) p. 630

Inefficiency and Incompetence — Failure of a clerk of court to ensure an orderly and efficient records management in the court constitutes manifest inefficiency and incompetence in the performance of official duties. (Re: Report on the Judicial Audit Conducted in the MTCC, Branch 2, Cagayan de Oro City, A.M. No. 02-8-207-MTCC, July 27, 2009) p. 415

CODE OF JUDICIAL CONDUCT

Rule 2.03 — By using his position to help private persons settle a legal dispute, a judge is administratively liable thereunder; respondent judge should be mindful to conduct

himself in a manner that gives no ground for reproach and free from any appearance of impropriety. (Favor *vs*. Judge Untalan, RTC, Branch 149, Makati City, A.M. RTJ-08-2158, July 30, 2009) p. 668

CODE OF PROFESSIONAL RESPONSIBILITY

Rule 13.02 — Lawyer's continued attacks against the complainant and its products despite the pendency of the civil case against him and the court's status quo order constitute a violation thereof. (Foodsphere, Inc. *vs*. Mauricio, Jr., A.C. No. 7199, July 22, 2009) p. 1

COLLECTIVE BARGAINING AGREEMENT

Concept — The law between the contracting parties. (University of San Agustin, Inc. *vs*. University of San Agustin Employees Union-FFW, G.R. No. 177594, July 23, 2009) p. 258

COMMISSION ON ELECTIONS

COMELEC Rules of Procedure — It is the COMELEC *en banc* which has the discretion to resolve motions for reconsideration. (Flauta, Jr. *vs*. COMELEC, G.R. No. 184586, July 22, 2009) p. 134

— Suspension thereof allowed by the Constitution in the interest of justice and to determine the true will of the electorate. (Taguiam *vs*. COMELEC, G.R. No. 184801, July 30, 2009) p. 856

— The non-payment or the insufficient payment of the additional appeal fee does not affect the perfection of the appeal and does not result in the outright or ipso facto dismissal of the appeal; the COMELEC has discretion to allow or dismiss a perfected appeal that lacks payment of the prescribed appeal fee. (Divinagracia, Jr. *vs*. COMELEC, G.R. No. 186007, July 27, 2009) p. 538

Jurisdiction — Appreciation of the contested ballots and election documents involves a question of fact, best left to the determination of the COMELEC as a specialized agency

tasked with the supervision of elections all over the country. (Divinagracia, Jr. *vs*. COMELEC, G.R. No. 186007, July 27, 2009) p. 538

— COMELEC has express jurisdiction under Section 78 of the Omnibus Election Code over petitions for cancellation of certificate of candidacies on the ground of false representations; the Constitution also extends to the Commission all necessary and incidental powers for it to achieve the holding of free, orderly, honest, peaceful and credible elections. (Maruhom *vs*. COMELEC, G.R. No. 179430, July 27, 2009) p. 501

— The Court will not interfere with a Commission on Elections decision/resolution unless the Commission is shown to have committed grave abuse of discretion; no capricious and whimsical exercise of judgment on the part of the Commission in rendering the assailed resolutions in SPA No. 07-093. *(Id.)*

Jurisdiction over election protest — Filing of protest before the board of election inspectors, not a condition sine qua non before the COMELEC acquires jurisdiction over the election protest. (Panlilio *vs*. COMELEC, G.R. No. 181478, July 15, 2009)

Powers and functions — Broad powers, discussed. (Flauta, Jr. *vs*. COMELEC, G.R. No. 184586, July 22, 2009) p. 134

COMMON CARRIERS

Illegal sale of prohibited drugs — Elements. (People *vs*. Cortez, G.R. No. 183819, July 23, 2009) p. 360

(People *vs*. Barba, G.R. No. 182420, July 23, 2009) p. 330

COMPROMISE AGREEMENTS

Application — When terms of the agreement are clear and explicit that they do not justify an attempt to read into it any alleged intention of the parties, the same are to be understood literally, just as they appear on the face of the contract. (Privatization and Management Office *vs*. Legaspi Towers 300, Inc., G.R. No. 147957, July 22, 2009) p. 16

CONTEMPT

Indirect contempt — A judge's act of unceremoniously citing complainant in contempt is a clear evidence of his unjustified use of authority vested upon him by law; respondent should not have allowed himself to be annoyed to a point that he would even waste valuable court time and resources on a trivial matter; the alleged incident is too flimsy and inconsequential to be the basis of an indirect contempt proceeding; the act of the complainant is not contrary or clearly prohibited by an order of the court. (Inonog *vs*. Judge Ibay, A.M. No. RTJ-09-2175, July 28, 2009) p. 558

CONTRACTS

Autonomy of — Parties are free to stipulate terms and conditions that they deem convenient, provided these are not contrary to law, morals, good customs, public order or public policy. (DBP *vs*. Family Foods Manufacturing Co. Ltd., G.R. No. 180458, July 30, 2009) p. 843

COURT PERSONNEL

Duties — Agents of the law should refrain from the use of language that is abusive, offensive, scandalous, menacing or otherwise improper; respondent sheriff's utterances to complainant while effecting the writ of execution was evident violation of the rules of conduct for judicial employees. (Quilo *vs*. Jundarino, A.M. No. P-09-2644, July 30, 2009) p. 646

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Principle of Hierarchy of Courts — No violation thereof when cases brought before the appellate courts do not involve factual but legal questions. (Atty. Sarsaba *vs. Vda. de* Te, G.R. No. 175910, July 30, 2009) p. 794

DAMAGES

Attorney's fees — Power of court to award attorney's fees and litigation expenses demands factual, legal and equitable

justification. (Bank of America NF & SA *vs*. Philippine Racing Club, G.R. No. 150228, July 30, 2009) p. 687

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Chain of custody of the seized drugs — Discussed. (People *vs*. Barba, G.R. No. 182420, July 23, 2009) p. 330

DEMURRER TO EVIDENCE

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Certificate of candidacy — A false representation of material fact in the certificate of candidacy is a ground for denial or cancellation thereof. (Maruhom *vs*. COMELEC, G.R. No. 179430, July 27, 2009) p. 501

— Petitioner's earlier registration in Marawi is deemed valid, while her subsequent registration in Marantao is *void ab initio*; as such, her claim that she is a registered voter in Marantao is considered a false representation in her certificate of candidacy. *(Id.)*

Eligibility of candidates — Voter registration constitutes a material fact because it affects her eligibility to be elected as municipal mayor of Marantao. (Maruhom *vs*. COMELEC, G.R. No. 179430, July 27, 2009) p. 501

EMINENT DOMAIN

Just compensation — Determination thereof is a judicial function. (Land Bank of the Phils. *vs*. Dumlao, G.R. No. 167809, July 23, 2009) p. 245

— Situation where the provision of R.A. No. 6657 (Comprehensive Agrarian Reform Law of 1988) on the

determination of just compensation can be applied retrospectively. *(Id.)*

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— Elements that must concur for the cardio-vascular disease to be compensable under the 2000 POEA Amended Standard Terms and Conditions. *(Id.)*

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Dismissal — Employee validly dismissed but due process' right was violated; effect. (Mantle Trading Services, Inc. *vs*. NLRC, G.R. No. 166705, July 28, 2009) p. 570

— Requisites for a valid dismissal. *(Id.)*

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Concept — Defined and distinguished from instigation. (People *vs*. Cortez, G.R. No. 183819, July 23, 2009) p. 360

Tests — The "objective test" is adopted in this jurisdiction to determine the validity of a buy-bust operation; application. (People *vs*. Cortez, G.R. No. 183819, July 23, 2009) p. 360

— Two tests to determine the occurrence of entrapment. *(Id.)*

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Doctrine/Principle of — COMELEC's application of the doctrine of estoppel by laches is well taken; petitioner's filing of the appellee's brief was an invocation of the COMELEC's jurisdiction and an indication of his active participation and cannot be refuted on the mere asseveration that he was only complying with the COMELEC's directive to file

the same. (Divinagracia, Jr. *vs*. COMELEC, G.R. No. 186007, July 27, 2009) p. 538

— Issues raised for the first time on appeal are barred by estoppel. (DPB *vs*. Family Foods Manufacturing Co. Ltd., G.R. No. 180458, July 30, 2009) p. 843

EXPROPRIATION

Just compensation **—** Its determination is a function addressed by the courts of justice and may not be usurped by any other branch or official of the government. (Rep. of the Phils. *vs.* Sps. Libunao and Sanopo, G.R. No. 166553, July 30, 2009) p. 748

— Property owners are entitled to just compensation based on the full market value of the affected properties. *(Id.)*

— Property owners are entitled to the payment of legal interest on the compensation for the subject lands from the time of the taking of their possession up to the time that full payment is made. *(Id.)*

FORESTRY REFORM CODE OF THE PHILIPPINES (P.D. NO. 705)

Violation of **—** P.D. No. 705 punishes anyone who shall, gather, collect or remove timber or other forest products from any forest land, or timber from alienable or disposable land, or from private land, without any authority. (Aquino *vs*. People, G.R. No. 165448, July 27, 2009) p. 422

— Petitioner may have been remiss in his duties when he failed to restrain the sawers from cutting trees more than what was covered by the permit but the same is not enough to convict him under Section 68 of P.D. No. 705. *(Id.)*

— Petitioner was merely charged by the community environment and natural resources officer to supervise the implementation of the permit, but he was not the one who cut, gathered, collected or removed the pine trees within the contemplation of Section 68 of P.D. No. 705. *(Id.)*

FORUM SHOPPING

Certificate of non-forum shopping — The lack of certification against forum shopping or a defective certification is generally not curable by its subsequent submission or correction, unless there is a need to relax the rule under special circumstances or for compelling reasons. (Argallon-Jocson *vs*. CA, G.R. No. 162836, July 30, 2009) p. 730

— Where the petitioner is a corporation, the certification against forum-shopping should be signed by its duly authorized representative; liberal application thereof not warranted in case at bar. (Eagle Star Security Services, Inc. *vs*. Mirando, G.R. No. 179512, July 30, 2009) p. 832

Certification and verification — Relaxation of the rule on verification and certification against forum shopping cannot be applied in case at bar; petitioner never offered any satisfactory explanation for its stubborn non-compliance with or disregard of the rules. (Pyro Copper Mining Corp. *vs*. Mines Adjudication BOARD-DENR, G.R. No. 179674, July 28, 2009) p. 583

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1998 HRET Rules — Does not apply to disqualification based on citizenship; explained. (Sy Limkaichong *vs*. COMELEC, G.R. Nos. 178831-32, July 30, 2009) p. 817

Jurisdiction — Sole judge of all contests relating to the election, returns, and qualifications of members of the House of Representatives. (Sy Limkaichong *vs*. COMELEC, G.R. Nos. 178831-32, July 30, 2009) p. 817

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Code of Judicial Conduct — A judge should be more prudent in the observation of his dealings with the public to obviate the mistaken impression of impropriety in that he is probably using his position as a judge to impose improper pressure or exert undue influence so as to obtain the desired result in a given situation. (Favor *vs*. Judge Untalan, RTC, Br. 149, Makati City, A.M. RTJ-08-2158, July 30, 2009) p. 668

Prompt resolution of cases — Being designated Acting Presiding Judge in another sala in addition to her original station is not an excuse for a judge's delay in promptly deciding cases pending before her sala. (*Re*: Report on the Judicial Audit Conducted in the MTCC, Branch 2, Cagayan de Oro City, A.M. No. 02-8-207-MTCC, July 27, 2009) p. 415

— The court's policy on prompt resolution of cases, reiterated. *(Id.)*

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— Issue of lack of jurisdiction may be raised by any of the parties or may be reckoned by the court at any stage of the proceedings, even on appeal, and is not lost by waiver or by estoppel. *(Id.)*

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— Nature and definition, reiterated. *(Id.)*

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— Respondent's intimation to petitioner spouses that she wanted to repurchase the property is insufficient; tender of payment is necessary to effectively exercise the right of repurchase. (Sps. Narvaez *vs.* Sps. Alciso, G.R. No. 165907, July 27, 2009) p. 452

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Rules prescribing time — Rationale for the amendments under A.M. No. 07-7-12-SC is essentially to prevent the use of the petition for certiorari under Rule 65 to delay a case or even defeat the ends of justice; the rule stands that petitions for *certiorari* must be filed strictly within 60 days from notice of judgment or from the order denying a motion for reconsideration. (Laguna Metts Corp. *vs.* CA, G.R. No. 185220, July 27, 2009) p. 530

— The time for doing specific or for taking certain proceedings are considered absolutely indispensable to prevent needless

delays and to orderly and promptly discharge judicial business; mandatory nature. *(Id.)*

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Burden of proof — Employer has the burden of proof to show by substantial evidence that respondent is not entitled to sales commission; failure of employers to submit necessary documents that are in their possession gives rise to the presumption that presentation thereof is prejudicial to its cause. (Grandteq Industrial Steel Products, Inc. *vs.* Margallo, G.R. No. 181393, July 28, 2009) p. 612

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Duties —Sheriffs are mandated to discharge their duties with due care and utmost diligence; in serving the court's writs and processes and in implementing its lawful orders, a sheriff cannot afford to err without affecting the administration of justice. (Quilo *vs.* Jundarino, A.M. No. P-09-2644, July 30, 2009) p. 646

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Discharge of — Conditions. (People *vs.* Estacio, Jr., G.R. No. 171655, July 22, 2009) p. 60

— Error in the discharge of the accused as a state witness will not affect the competency and quality of his testimony. *(Id.)*

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Service of — Failure to serve summons on the person of one of the defendants will not be a cause for the dismissal of the complaint against the other defendants. (Atty. Sarsaba *vs. Vda. de* Te, G.R. No. 175910, July 30, 2009) p. 794

— Trial courts should be cautious in dismissing complaints on the sole ground of improper service of summons considering that it is well within their discretion to order the issuance of service of alias summons on the correct person in the interest of substantial justice. (Sps. Anunciacion *vs.* Bocanegra, G.R. No. 152496, July 30, 2009) p. 705

— Voluntary appearance; the filing of the motion to dismiss without invoking the lack of jurisdiction over the person of the respondents is deemed a voluntary appearance on the part of the respondents under Section 20, Rule 14 of the 1997 Rules of Civil Procedure. *(Id.)*

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Principle of — The principle against unjust enrichment obliges petitioner-employer to refund to respondent the car loan payments she had made, since she has not actually acquired the car. (Grandteq Industrial Steel Products, Inc. *vs*. Margallo, G.R. No. 181393, July 28, 2009) p. 612

— There is unjust enrichment when a person unjustly retains a benefit at the loss of another, or when a person retains the money or property of another against the fundamental principles of justice, equity and good conscience. *(Id.)*

— When applicable. (Privatization and Management Office *vs*. Legaspi Towers 300, Inc., G.R. No. 147957, July 22, 2009) p. 16

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Credibility of — A matter best left to the determination of the trial court. (People *vs.* Ganoy, G.R. No. 174370, July 23, 2009) p. 250

— Different people react differently to a given situation and there is no standard form of human behavioral response when one is confronted with a strange event. (People *vs*. Quemeggen , G.R. No. 178205, July 27, 2009) p. 487

— Eyewitnesses' account on the commission of the crime is sufficient to establish the prosecution's case; presentation of an expert witness is no longer necessary. (People *vs*. Quemeggen, G.R. No. 178205, July 27, 2009) p. 487

— Findings of the trial court generally deserve great respect and are accorded finality; exceptions. (People *vs*. Wasit, G.R. No. 182454, July 23, 2009) p. 340

— Inconsistencies on minor details and collateral matters do not affect the veracity and weight of testimonies where there is consistency in relating the principal occurrence and the positive identification of the accused. *(Id.)*

— Mental retardation does not disqualify a person from testifying. (People *vs*. Martinez, G.R. No. 182687, July 23, 2009) p. 351

— Positive identification prevails over bare denial and alibi. (People *vs*. Wasit, G.R. No. 182454, July 23, 2009) p. 340

— When the inconsistency has been sufficiently explained and stands the rigorous tests of direct and cross-examination, such will not discredit the credibility of the witness. (People *vs*. Villanueva, Jr., G.R. No. 187152, July 22, 2009) p. 152

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Agpalo, Comments on Omnibus Election Code,
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A. BOOKS

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